

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

FIRST SOURCE FINANCIAL MANAGEMENT INC.

Applicant

-and-

BLOCK 80 HOLDINGS INC. and ANDRE SHERMAN

Respondents

**FACTUM OF THE COURT-APPOINTED RECEIVER,
TDB RESTRUCTURING LIMITED**

January 12, 2026

ROBINS APPLEBY LLP
Barristers + Solicitors
2600 - 120 Adelaide Street West
Toronto, ON M5H 1T1

Dominique Michaud LSO No.: 56871V
Email: dmichaud@robapp.com
Tel: (416) 360-3795

Anisha Samat LSO No.: 82342Q
Email: asamat@robapp.com
Tel: (416) 360-1901

Lawyers for the Court-Appointed
Receiver, TDB Restructuring Limited

TO: SERVICE LIST ATTACHED

SERVICE LIST
(as at August 22, 2025)

<p>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP 155 Wellington Street West, 35th Floor Toronto, Ontario M5V 3H1</p> <p>Jeffrey Larry LSO No. 44608D Email: jeff.larry@paliareroland.com Tel.: 416-646-4330</p> <p>Ryan Shah LSO No. 88250C Email: ryan.shah@paliareroland.com Tel: 416-646-6356</p> <p>Lawyers for the Applicant</p>	<p>TDB RESTRUCTURING LIMITED 11 King St. West, Suite 700 Toronto, ON M5H 4C7</p> <p>Bryan Tannenbaum Email: btannenbaum@tdbadvisory.ca Tel: 416-238-5055</p> <p>Arif Dhanani Email: adhanani@tdbadvisory.ca Tel: 647-725-0183</p> <p>The Court-Appointed Receiver</p>
<p>ROBINS APPLEBY LLP 2600 - 120 Adelaide Street West Toronto, ON M5H 1T1</p> <p>Dominique Michaud LSO No.: 56871V Email: dmichaud@robapp.com Tel: (416) 360-3795</p> <p>Anisha Samat LSO No.: 82342Q Email: asamat@robapp.com Tel: (416) 360-1901</p> <p>Lawyers for the Court-Appointed Receiver, TDB Restructuring Limited</p>	<p>MANIS LAW Yonge Eglinton Centre 1600-2300 Yonge Street Toronto, ON M4P 1E4</p> <p>Howard Manis LSO No. 34366V Email: hmanis@manislaw.ca Tel: 416-417-7257</p> <p>Lawyers for Georgian Bay Services Inc.</p>
<p>OAKMONT LAW 106-3410 South Service Road Burlington, ON L7N 3T2</p> <p>Sharoon Gill LSO No. 62189Q Email: sgill@oakmontlaw.com Tel: 289-812-1020 ext.301</p> <p>Lawyers for 2070409 Ontario Inc.</p>	<p>Andre Sherman 135 Holmes Avenue Toronto, ON M2J 5B5</p> <p>Email: andresherman14@gmail.com</p>

<p>BLOCK 80 HOLDINGS INC. 135 Holmes Avenue Toronto, ON M2J 5B5</p> <p>Email: andresherman14@gmail.com</p>	<p>CANADA REVENUE AGENCY National Insolvency Office P.O. Box 3038 32 Church Street St. Catharines, ON L4R 3b9</p> <p>Jennifer O’Keefe-Rahman Email: jennifer.okeefe-rahman@cra-arc.gc.ca Tel: (905 536-7628)</p> <p>Canada Revenue Agency</p>
<p>GEORGIAN BAY SERVICES INC. 171 Robert St East Penetanguishene, ON L9M 1P9</p> <p>James Barrow Email: james@gbcs.ca Tel: 705-528-9007</p>	<p>OFFICE OF THE SUPERINTENDENT OF BANKRUPTCY CANADA 151 Yonge Street, 4th Floor Toronto, ON M5C 2W7</p> <p>Email: osbservice-bsfservice@ised-isde.gc.ca</p>
<p>ATTORNEY GENERAL OF CANADA Department of Justice of Canada Ontario Regional Office, Tax Law Section 400-120 Adelaide Street West Toronto, ON M5H 1T1</p> <p>Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca</p>	<p>HIS MAJESTY THE KING IN RIGHT OF CANADA as represented by Ministry of Finance Legal Services Branch Revenue Collections Branch – Insolvency Unit 33 King Street West, 6th Floor Oshawa, ON L1H 8H5</p> <p>Email: insolvency.unit@ontario.ca</p>

Email Service List: jeff.larry@paliarerland.com; ryan.shah@paliarerland.com; btannenbaum@tdbadvisory.ca; adhanani@tdbadvisory.ca; andresherman14@gmail.com; sgill@oakmontlaw.com; james@gbcs.ca; dmichaud@robapp.com; asamat@robapp.com; jennifer.okeefe-rahman@cra-arc.gc.ca; AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca; insolvency.unit@ontario.ca; hmanis@manislaw.ca; osbservice-bsfservice@ised-isde.gc.ca

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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BETWEEN:

FIRST SOURCE FINANCIAL MANAGEMENT INC.

Applicant

-and-

BLOCK 80 HOLDINGS INC. and ANDRE SHERMAN

Respondents

**FACTUM OF THE COURT APPOINTED RECEIVER, TDB
RESTRUCTURING LIMITED**

PART I - INTRODUCTION

1. TDB Restructuring Limited (“**TDB**”) in its capacity as the Court-appointed Receiver (in such capacity, the “**Receiver**”), without security, over the property, assets and undertakings of the Respondent, Block 80 Holdings Inc. (the “**Debtor**”), including the lands and premises municipally known as Block 80, Bellisle Heights, 61 Thompsons Rd. West, Penetanguishene, Ontario (the “**Penetanguishene Property**”), brings this motion for:

- (a) an Order, if necessary, abridging the time for service of the Notice of Motion and Motion Record herein and dispensing of service thereof;
- (b) an Order approving the Second Report of the Receiver dated January 7, 2026 (the “**Second Report**”) and the activities and conduct of the Receiver as described therein;
- (c) an Order approving the Receiver’s fees and disbursements, and the fees and disbursements of the Receiver’s counsel, Robins Appleby LLP (“**RA**”), as well as the estimated costs to complete the receivership administration as described in the Second Report and in the Affidavits of Arif Dhanani sworn January 6, 2026 (the “**Dhanani Affidavit**”), and Dominique Michaud, sworn January 7, 2026 (the

“Michaud Affidavit”);

- (d) an Order authorizing and directing the Receiver to make a distribution of any funds remaining in its possession to the Applicant, First Source Financial Management Inc. (**“First Source”** or the **“Applicant”**), after payment of all professional fees and costs related to the receivership administration has been made;
- (e) an Order discharging the Receiver upon the filing of a certificate (the **“Discharge Certificate”**) with the Court confirming that its remaining duties (as set out in the Second Report) have been completed, and authorizing the Receiver to complete certain administrative matters following the discharge of the Receiver (the **“Discharge Order”**);
- (f) an Order directing that TDB, in its capacity as former Receiver, once discharged,
 - (i) be authorized to pay to First Source any funds received by the Receiver following the Discharge Order, provided that the amounts paid do not exceed the Debtor’s indebtedness to First Source; or
 - (ii) be permitted to apply to this Court for further direction if the Receiver is of the view that the direction of the Court is required; and
- (g) such further and other relief as this Honourable Court may deem just.

PART II - SUMMARY OF FACTS

Background of Legal Proceedings

2. On July 8, 2024, by Order of the Honourable Justice Black (the **“Appointment Order”**), TDB was appointed as Receiver over the Penetanguishene Property, pursuant to section 243 of the Bankruptcy and Insolvency Act (**“BIA”**) and section 101 of the Courts of Justice Act (**“CJA”**).¹

3. On October 3, 2025, the Receiver served its Motion Record, including its First Report dated October 3, 2025 (the **“First Report”**) seeking, among other relief, an Approval and Vesting Order

¹ [Order of Justice Black dated July 8, 2024](#) (the **“Appointment Order”**); Second Report of the Receiver dated January 7, 2026 (the **“Second Report”**) at para 1

(“**AVO**”) with respect to the sale of the Penetanguishene Property to Penetang Shores Inc. (“**PSI**”), a company related to First Source. The Court granted the AVO on October 15, 2025, and also granted an Administration Order on the same day, approving, *inter alia*, the fees and disbursements of the Receiver and its counsel for the periods of May 1, 2024 to September 30, 2025, and October 24, 2024 to September 30, 2025, respectively.²

4. Shortly after, the Receiver became aware of a Canada Revenue Agency (“**CRA**”) deemed trust claim asserted against the Debtor under the *Excise Tax Act*, Canada, in the approximate amount of \$600,000 (the “**Deemed Trust Claim**”), which would rank in priority to First Source’s security.³

5. As a result of the Deemed Trust Claim, First Source and PSI were not prepared to close the transaction with respect to the sale of the Penetanguishene Property, which was scheduled to close on November 14, 2025. The Receiver and PSI therefore agreed to extend closing of the transaction to the business day following completion of an assignment in bankruptcy of the Debtor.⁴

6. On November 28, 2025, the Court granted⁵:

- (a) an amended approval and vesting order (the “**Amended AVO**”);
- (b) an Amended and Restated Appointment Order extending the receivership such that the Receiver was appointed over the assets, property and undertakings of the Debtor as opposed to just the Penetanguishene Property (which was owned by the Debtor) (the “**Amended Appointment Order**”); and
- (c) an order granting leave to the Receiver to file an assignment in bankruptcy on

² Second Report at para 2

³ Second Report at para 3

⁴ Second Report at para 4

⁵ Second Report at paras 5-6

behalf of the Debtor (the “**Bankruptcy Order**”).

7. On November 28, 2025, the Receiver filed an assignment in bankruptcy on behalf of the Debtor, and on December 1, 2025, the Office of the Superintendent of Bankruptcy issued a certificate of appointment appointing TDB as trustee in bankruptcy of the Debtor, subject to affirmation at the first meeting of creditors (the “**Certificate of Appointment**”).⁶

8. Following the assignment in bankruptcy of the Debtor, the sale of the Penetanguishene Property successfully closed on December 1, 2025, and the Receiver issued its certificate confirming the transaction was completed to the Receiver’s satisfaction.⁷

The Receiver’s Activities since its First Report dated October 3, 2025 (the “First Report”)

9. Since the Receiver’s First Report, the Receiver has conducted the following activities:
- (a) finalized and assembled the First Report;
 - (b) liaised with the property manager at the Penetanguishene Property to prepare, finalize and release a report to MPAC for property assessment purposes;
 - (c) updated the Receiver’s website in accordance with the Court’s e-service protocol;
 - (d) reconciled the property manager’s rent receipts and disbursements for October and November 2025;
 - (e) prepared and sent to First Source copies of all contracts and relevant emails in connection with the Penetanguishene Property;
 - (f) liaised with the property manager and First Source to ensure property management services are transitioned and post-closing rent collections are paid to PSI;
 - (g) reviewed and approved applications for rental of vacant units forwarded by the

⁶ Second Report at para 7

⁷ Second Report at para 13

property manager;

- (h) attended in Court to obtain the AVO, the Amended AVO, the Amended Appointment Order and the Bankruptcy Order;
- (i) reviewed and off on closing documents, in escrow, including, among other things, the statement of adjustments, undertaking to adjust, assignment and assumption of leases, assignment and assumption of contracts and direction re funds;
- (j) reviewed the draft Court materials in connection with the bankruptcy of the Debtor;
- (k) facilitated the transfer of utility accounts to PSI and paid all remaining utilities subsequent to closing of the sale of the Penetanguishene Property;
- (l) finalized all insurance matters after the closing of the sale of the Penetanguishene Property;
- (m) liaised with First Source and Georgian Bay Contracting Services (“GBCS”) regarding remaining construction work outstanding, and the payment of invoices to GBCS for completed work; and
- (n) made an interim distribution to First Source.⁸

Interim and Proposed Final Distribution

10. After the closing of the Penetanguishene Property, the Receiver has made the following distributions:

- (a) payment to the Town of Penetanguishene for all outstanding property taxes owing on the Penetanguishene Property, including all further interest or fees at the time of closing;
- (b) all remaining unpaid fees and disbursements of the Receiver and its counsel relating to the Penetanguishene Property;
- (c) payment to Cushman & Wakefield, the real estate brokers, of the commissions owed to it upon the successful closing of the Penetanguishene Property in the event

⁸ Second Report at para 14

of a credit bid;

- (d) payment to GBCS for the construction extras incurred by it in completing construction work in connection with the Penetanguishene Property. GBCS' final invoice for completion of a portion of the work still outstanding has yet to be rendered and is unpaid on the basis that this work has not yet been completed; and
- (e) on the basis that the amount of the payment to the Receiver by the PSI was more than sufficient to cover all of the outstanding charges and obligations, and that First Source has a first ranking charge on the Penetanguishene Property, the Receiver made an interim distribution to First Source in the amount of \$100,000 at First Source's request.⁹

11. The Receiver currently has \$189,400 remaining in its trust account. As detailed in the Second Report, the Receiver proposes to, as part of its Remaining Duties (as defined herein):

- (a) pay all remaining unpaid professional fees and disbursements of the Receiver and its counsel;
- (b) pay GBCS' final invoice for additional work outstanding on the Penetanguishene Property, when it is rendered, and if not completed at the time of final distribution, hold back and pay the remaining contract amount of \$31,032.74, inclusive of HST, once the work has been completed; and
- (c) distribute any remaining funds to First Source.¹⁰

Approval of Fees and Disbursements

12. The Amended Appointment Order provides that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements at their standard rates and charges unless otherwise ordered by the Court, secured by the Receiver's Charge.¹¹

13. As outlined in the Dhanani Affidavit and the Michaud Affidavit, the Receiver and its

⁹ Second Report at para 15.

¹⁰ Second Report at para 16

¹¹ Amended Appointment Order at para 18.

counsel are seeking approval of their fees and disbursements for services rendered:

- (a) in the instance of the Receiver, for the period of October 1, 2025 to December 31, 2025;
- (b) in the instance of the Receiver's independent counsel, RA, for the period of October 1, 2025 to December 31, 2025.¹²

14. The Receiver also seeks approval of anticipated costs incurred by the Receiver and its counsel to be incurred, to complete the administration of the Receivership. The Receiver submits that these are fair and reasonable and such relief should be granted by this Court.

Discharge of Receiver

15. Upon the closing of the Transaction, the Receiver's duties and responsibilities under the Appointment Order will have been materially completed, and its remaining duties (**"Remaining Duties"**) include:

- (a) preparing the Final Statement of the Receiver pursuant to section 246(3) of the BIA, which will be prepared and filed with the Office of the Superintendent of Bankruptcy after the Receiver distributes the remaining funds in its trust account;
- (b) making the distributions as set out in the Second Report; and
- (c) closing the Receiver's trust account.¹³

16. The Receiver is requesting that it be discharged upon the filing of the Discharge Certificate as its administration is substantially complete.¹⁴

¹² Second Report at paras 22-23; Appendices "K" and "L"

¹³ Second Report at para 17

¹⁴ Second Report at para 18

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

17. The Receiver's motion raises the following legal issues:

- (a) whether the Court should approve the Second Report and the activities of the Receiver described therein;
- (b) whether the Court should approve the fees and disbursements of the Receiver and its counsel, RA; and
- (c) whether the Court should discharge and release the Receiver and its counsel.

A. The Court Should Approve the Second Report and the Receiver's Activities as Set Out Therein

18. The Receiver seeks approval of the Second Report and its activities and conduct as set out therein.

19. It is common practice for court officers in insolvency proceedings, including receivers, to seek court approval of their reports and the activities described therein, and this Court has emphasized that such court approval allows court officers to bring their activities before the court and address concerns of stakeholders while simultaneously presenting the court with an opportunity to satisfy itself that the court officer's activities have been conducted prudently and diligently.¹⁵

20. The Court's inherent jurisdiction allows it to approve the activities of a receiver, when considered within the receiver's mandate, powers and authority.¹⁶ Courts consider the following

¹⁵ *Kingsett Mortgage Corporation v. Churchill Lands United Inc.*, [2024 ONSC 7127](#) (Commercial List) at para 45 (“*Churchill Lands*”)

¹⁶ *Bank of America Canada v. Willann Investments Ltd.*, [1993] O.J. No. 1647, 20 C.B.R. (3d) 223 (Ont. Gen. Div.) at para 3, aff'd [1996 CanLII 2782](#) (Ont. C.A.).

factors:

- (a) the receiver's activities were necessary and undertaken in good faith;
- (b) the receiver's activities were consistent with its duties and powers granted in prior orders;
- (c) the receiver's activities were reasonable and for the benefit of stakeholders generally; and
- (d) the proposed form of order incorporates the standard qualification that only the receiver, in its personal capacity, and only with respect to its personal liability, shall be entitled to rely upon or utilize such approval.¹⁷

21. In the circumstances at hand, all of the above factors are satisfied. The Receiver's activities as described in the Second Report were necessary to liquidate the Debtor's primary asset, the Penetanguishene Property. These were carried out pursuant to the Receiver's duties and powers as set out in the Amended Appointment Order, and the AVO, and in good faith. No interested party has disputed that the Receiver has acted in good faith and for the benefit of all stakeholders, at any time during the course of these Receivership proceedings. Finally, the proposed Discharge Order incorporates the standard qualification providing that the Receiver shall only be entitled to rely on Court approval in its personal capacity and in respect of its personal liability.

22. As such, the Receiver submits that the Court should approve the Second Report and the Receiver's activities and conduct as described therein.

B. The Court Should Approve the Fees and Disbursements of the Receiver and its Counsel

23. The Receiver is seeking approval of the professional fees incurred by it and its legal counsel

¹⁷ *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, [2023 ONSC 3400](#) (Commercial List) at para 66 ("Triple-I Capital")

as described in the fee affidavits (the Dhanani Affidavit and the Michaud Affidavit) attached to the Second Report, including the estimated fees of the Receiver and its independent legal counsel to complete the administration of the Receivership proceedings.

24. The Amended Appointment Order, at paragraph 18, states that the Receiver and its counsel “shall be paid their reasonable fees and disbursements, in each case, at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “Receiver’s Charge”) on the Property, as security for such fees and disbursements...”.

25. In determining whether compensation sought by a Receiver and its counsel is “fair and reasonable”, courts have emphasized the value provided and what was ultimately accomplished.¹⁸

26. The Receiver submits that the professional fees incurred by it and its counsel, and the receipts and disbursements set out in the First Report, are authorized by the Amended Appointment Order, and are fair and reasonable in light of the mandate, and what they were able to accomplish, including attending court on multiple occasions, closing the sale of the Penetanguishene Property, and making the appropriate distributions following the sale.

C. The Court Should Approve the Discharge of the Receiver

27. Once the Receiver has completed its Remaining Duties, it will have completed its mandate.

28. The Receiver thus respectfully submits that this receivership proceeding should be terminated, and the Receiver should be discharged and released following the filing of the

¹⁸ *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#) at paras 44-45.

Discharge Certificate with the Court. The release is a standard term in the Commercial List model discharge order. Justice Pattillo held in *Pinnacle Capital Resources Ltd. v. Kraus Inc.*, “in the absence of any evidence of improper or negligent conduct, the release should issue. A receiver is entitled to close its file once and for all”.¹⁹

29. There is no evidence of any improper and negligent conduct here, and this will also avoid the costs of having to return to court to discharge the Receiver at a later date.

30. For the foregoing reasons, the Receiver recommends that, after the completion of all the Remaining Duties and matters required to wind up the receivership, the Receiver file the Discharge Certificate and upon such filing, the Receiver shall be discharged and the receivership administration will terminate.

PART IV - ORDER REQUESTED

31. The Receiver respectfully requests that this Court grant it the relief it seeks as set out in its Notice of Motion, attached as Tab 1 of the Receiver’s Motion Record dated January 8, 2026.

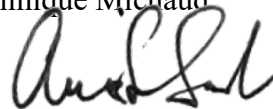
ALL OF WHICH IS RESPECTFULLY SUBMITTED

Date: January 12, 2026



Dominique Michaud

Date: January 12, 2026



Anisha Samat

¹⁹ *Pinnacle Capital Resources Ltd. v Kraus Inc.*, [2012 ONSC 6376](#) (Commercial List) at para 47.

CERTIFICATE RE AUTHORITIES

I, Anisha Samat, Lawyer for the Court-Appointed Receiver, TDB Restructuring Limited, certify:

All authorities are genuine, as required by the Rule 4.06(2.1) of the *Rules of Civil Procedure*.

Date: January 12, 2026

A handwritten signature in black ink, appearing to read 'Anisha Samat', written over a horizontal line.

Anisha Samat

SCHEDULE ‘A’
LIST OF AUTHORITIES

1. *Bank of America Canada v. Willann Investments Ltd.*, [1993] O.J. No. 1647, 20 C.B.R. (3d) 223 (Ont. Gen. Div.), aff’d [1996 CanLII 2782](#) (Ont. C.A.)
2. *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#)
3. *Kingsett Mortgage Corporation v. Churchill Lands United Inc.*, [2024 ONSC 7127](#) (Commercial List)
4. *Pinnacle Capital Resources Ltd. v Kraus Inc.*, [2012 ONSC 6376](#)
5. *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, [2023 ONSC 3400](#) (Commercial List)

ONTARIO COURT (GENERAL DIVISION)

B E T W E E N:

BANK OF AMERICA CANADA

Plaintiff

- and -

WILLANN INVESTMENTS LIMITED
and CRANBERRY VILLAGE, COLLINGWOOD INC.

Defendants

Counsel:

Harry Underwood for the Receiver, Coopers & Lybrand
Limited

Stephen Schwartz for Prenor Trust Company of Canada

Frank Bennett and John Spencer for the Attorney General
of Canada on behalf of Her Majesty the Queen in Right
of Canada and in Right of Ontario

Heard: June 28, 1993

Farley J.

This was a motion for an order approving the Receiver's activities and fees (including the fees of its counsel) as set out in the Receiver's sixth report (covering the period October 1, 1992 to April 19, 1993) and seventh report (April 20, 1993 to June 13, 1993). At a previous hearing on May 14, 1993 the Crown had asked for an adjournment concerning the sixth report (the only report outstanding at that time) for the specific purpose of conducting consensual cross-examinations. Mr. Bennett who was fresh on the record (as of mid morning today with no advance

JCF

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notice to other counsel) raised an objection as to my jurisdiction to hear the motion indicating that there was nothing in Blair J's original order establishing the receivership to allow for after-the-fact approval of the Receiver's activities. His position was that the only jurisdiction I had was to pass the accounts of the Receiver and approve its fees. He maintained that there was an inherent difference between passing of accounts and approval of activities.

I dealt with this general area in my earlier endorsement in this relating to previous reports (endorsement of May 2, 1993); see pp. 16-8. I again note that Mr. Bennett in his own text: F. Bennett, Receiverships (1985: Carswell, Toronto) said at p. 297:

One of the purposes of passing accounts is to afford the receiver judicial protection in carrying out his powers and duties. Another purpose is to afford the debtor, the security holder and any other interested person the opportunity to question the receiver's activities to date.

In reply Mr. Bennett referred me to p. 298 of his text without specifying what was contained there; he gave me a copy of that page after the hearing concluded. I could find nothing of assistance on that page. In my view Mr. Bennett's own text supports the position of the Receiver that I have jurisdiction. It seems to me that the nature of a specific approval hearing is much better to review conduct than a passing of accounts which focuses on receipts and disbursements.

It does not seem to me that approval of the activities of the Receiver, a court appointee and therefore an officer of the court, requires specific words of authorization in the original order. To the extent that certain approval activities are mentioned in that order, I would regard these references as merely examples of what may take place. In my view this Court has the inherent jurisdiction to review and either approve or disapprove of the activities of a court appointed receiver. I note here that in this instance the activities were well summarized in the two reports; however such approval (if given) would be to the extent that the reports accurately summarized the material activities of the Receiver. As to inherent jurisdiction, see 80 Wellesley St. East Ltd. v. Fundy Bay Builders Ltd. et al (1972), 25 D.L.R. (3d) 386 (Ont CA) at pp. 389-90.

I pause to note that it would be unusual and illogical that the Receiver could come to court for prior approval but not post approval. If that were the case, one might well expect the courts to be inundated with prior approval requests for virtually any activity.

It seems to me that a receiver should be able to come to court and bare its breast. Having done so, it has exposed itself to the sword of any interested party which may feel aggrieved of any action by that receiver. However, if the court

feels that the receiver has met the objective test required of it, then the court may bestow a shield to the receiver for that reviewed and approved activity. If the activity is disapproved, then the receiver is in the unenviable position of watching itself be disembowelled in court with sanctions then or to be dealt with in accordance with arrangements then worked out.


I would therefore dismiss the Crown's objection to my jurisdiction (now raised as to the sixth and seventh report but apparently the subject of appeal as to earlier approvals).

Having come to that conclusion, I have also concluded that the receiver has met the objective test and that its activities and fees for the period covered by the sixth and seventh report should be approved. I note in this respect while all concerned acknowledged that the fees were "expensive" that Prenor Trust which will ultimately bear the cost was supportive of the receiver. While "expensive", I found the fees in line with the complications and protractions of this receivership.

Costs were asked for in this instance. Mr. Bennett submitted that a costs award against the Crown would discourage creditors in general from appealing and objecting. That should of course be avoided where creditors have taken a reasonable position; in other words, the mere fact that a creditor is not successful in persuading a court of the rightness of its position

should not subject that creditor to a costs sanction. However I view this day's events in a different light. In my view much time was wasted in the Crown's several requests for a further adjournment and there was no advance notice that jurisdiction would be challenged. I would also observe that the scheduled time for this matter was therefore greatly exceeded. Counsel on all sides of a matter owe a duty to ensure that the court office is kept up to date with a realistic estimate of time required. This will, of course, require the cooperation of counsel amongst themselves. (In speaking of cooperation, I note in passing that this motion was merely one of six motions dealt with today concerning this project. Unfortunately none of the counsel involved in these six motions (there being other counsel with respect to the other five) was mindful of the practice directions request that in a continuing complex or multiple motion file there be a sorting through and grouping of the materials to be dealt with the next day. In the present situation, this meant that several motion records had to be retrieved from the office once all the files were sorted out. There were as well the to-be-discouraged late filings. I note that Mr. Bennett indicated that his client never gave him a copy of the seventh report to review and that he had only reviewed the sixth report some 5 or 6 weeks ago for another purpose. His submissions with respect to the actual activities being reviewed were therefore rather limited in extent and time . Costs are awarded against the Crown

payable forthwith to the Receiver in the amount of \$1500 and
Prenor Trust \$500.



Farley, J.
June 28, 1993

6p

SCHEDULE 'B'
TEXT OF STATUTES, REGULATIONS & BY – LAWS

NIL

**FIRST SOURCE FINANCIAL - and-
MANAGEMENT INC.**

**BLOCK 80 HOLDINGS INC. and
ANDRE SHERMAN**

Applicant

Respondents

Court File No.: CV-24-00720929-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**PROCEEDING COMMENCED AT
TORONTO**

**FACTUM OF THE COURT-APPOINTED
RECEIVER, TDB RESTRUCTURING LIMITED**

ROBINS APPLEBY LLP
Barristers + Solicitors
2600 - 120 Adelaide Street West
Toronto, ON M5H 1T1

Dominique Michaud LSO No.: 56871V
Email: dmichaud@robapp.com
Tel: (416) 360-3795

Anisha Samat LSO No.: 82342Q
Email: asamat@robapp.com
Tel: (416) 360-1901

Lawyers for the Court-Appointed Receiver, TDB
Restructuring Limited