

**ONTARIO SUPERIOR COURT OF JUSTICE
CIVIL ENDORSEMENT FORM**
(Rule 59.02(2)(c)(i))

BEFORE:	JUSTICE CALLAGHAN	Court File Number: CV-24-00713711-0000
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Title of Proceeding:	Applicant(s)/ Plaintiff(s)
..... 1000171168 ONTARIO INC. -v- PORT SEVERN HEIGHTS INC.	Respondent(s)/ Defendant(s)

Case Management: **Yes** If so, by whom: _____ **No**

Participants and Non-Participants: *(Rule 59.02(2)(vii))*

Party	Counsel	E-mail Address	Phone #	Participant (Y/N)
1) Plaintiff	Michael Crampton	mcrampton@cpllp.com		Y
2) Plaintiff: Co. Director				Y
3) Defendant	Robert B. Cohen	rcohen@cassels.com		Y
4) Receiver: TDB Restructuring Limited	Dom Michaud	dmichaud@robapp.com		Y
5) Receiver: TDB Restructuring Limited	Ananta Sriram	asriram@robapp.com		Y
6) TDB Restructuring Limited Receiver: Nisan Thurairatnam				Y
7) TDB Restructuring Limited Receiver: Bryan Tannenbaum				Y
8) Second Mortgage	Ben Blay	bblay@scottpetrie.com		Y

Date Heard: *(Rule 59.02(2)(c)(iii))* **April 2, 2026**

Nature of Hearing (mark with an "X"): *(Rule 59.02(2)(c)(iv))*

Motion Appeal Case Conference Pre-Trial Conference Application

Format of Hearing (mark with an "X"): *(Rule 59.02(2)(c)(iv))*

In Writing Telephone Videoconference In Person

If in person, indicate courthouse address:

Relief Requested: (Rule. 59.02(2)(c)(v))

Disposition made at hearing or conference (operative terms ordered): (Rule 59.02(2)(c)(vi))

Costs: On a **N/A** indemnity basis, fixed at \$ are payable
by to [when]

Brief Reasons, if any: (Rule 59.02(2)(b))

1. This motion was brought on an urgent basis to approve the sale of a property by a receiver.
2. To conclude the sale, the Receiver seeks an approval and vesting order (“AVO”). The motion also seeks ancillary orders including approval of the Receiver’s report to this Court and approval of its accounts.
3. The sale involves a credit bid by the first mortgagee. At the outset of the hearing, the debtor sought an adjournment of the hearing.
4. At the hearing, I denied the adjournment request and reserved on the AVO. I am granting the requested orders. The following are my reasons.

Background

5. The “Property” at issue is vacant land which is intended for development. The Property is in the Muskoka area of Ontario.
6. 1000171168 Ontario Inc. is the “Debtor”. Port Severn Heights Inc. is the “Lender.” The Lender received a vendor take back “Mortgage” in the amount of \$6,000,000 (now \$6,798,972.80 as of March 9, 2026). The Lender is the first mortgagee on the Property. There is a second mortgage on the Property in the amount of \$4,000,000 held by 1000080373 Ontario Inc. whose counsel attended the hearing.
7. Upon the Debtor defaulting on the Mortgage, the Lender commenced power of sale proceedings with respect to the Property. However, the Debtor challenged the power of sale proceedings and commenced this action.
8. On September 20, 2024, the Lender brought a motion to, *inter alia*, appoint a receiver over the Property. A Receivership Order was granted appointing TDB Restructuring Limited as the “Receiver”.

9. As part of the Receivership Order, the Receiver was authorized to market the Property for sale. Accordingly, the Receiver developed a plan to market the Property. The Receiver retained a reputable real estate agent that marketed the Property. However, the Property did not sell. While the Property garnered some interest, no offers were received. The Property was marketed from December 13, 2024 to September 15, 2025.

10. The Debtor made several proposals to refinance but was unable to conclude any proposed refinancing. The record demonstrates that the Debtor had ample opportunity to refinance but was unable to do so.

11. Eventually, the Lender made an offer which consisted of a credit bid that was accepted by the Receiver. The agreement of purchase and sale included that:

- (a) the purchased assets with respect to the Transaction include the Property;
- (b) the APS is conditional on Court approval and the issuance of an Order vesting title in Port Severn;
- (c) the Purchaser is buying the assets on an “as is, where is” basis; and
- d) “Closing” of the Transaction shall be completed on the later of: (i) April 10, 2026, or (ii) such other date as the Receiver and the Purchaser may mutually agree upon.

12. The Closing date is significant. The date was chosen because the municipal approvals for the development of the Property expire as of April 22, 2026. It is the view of the Lender and Receiver that without this sale process being approved and the financial situation of the Property being stabilized, the existing municipal approvals will not be renewed. It is for this reason, the Lender and Receiver believe that April 10 is the last date by which the sale could close and the Lender could do what is required to satisfy the municipal authorities.

13. In its report to this Court, the Receiver opines that this credit bid is the highest and best offer that is available. It notes that the Property was widely exposed through the sale process without any offers. The sale price was reduced several times to entice offers but without success. The current offer (which is presently sealed hence the reason why this endorsement does not mention the financial terms) is said to be the maximum value of the Property and in the best interest of the stakeholders.

14. As noted, during the process, the Debtor made several attempts to refinance the Property or repay the Mortgage but was unsuccessful in securing the funding. The Receiver is of the view that the Debtor is unable to implement a viable refinancing.

15. Upon Closing, the Receiver intends to distribute the proceeds as follows:

- (a) payment of any applicable priority payables due such as property taxes owing at the time of Closing;
- (b) payment of any unpaid fees and disbursements of the Receiver and its counsel relating to the receivership administration;
- (c) retention of a holdback amount for the Receiver’s estimated; and
- (d) payment of the balance to Port Severn (or as agreed with the second mortgagee).

Adjournment Request

16. The Debtor attended with counsel and requested an adjournment. The Debtor stated that it had a new proposed refinancing. It filed no affidavit in support of its request. The outline of the proposal given

by counsel was not acceptable to either the Lender or Receiver and was viewed as a delay tactic. The Lender and Receiver reiterated the need to have this matter addressed by April 10 because of the pending requirement to renew the approvals.

17. The factors to be considered in respect of an adjournment request vary depending on the factual circumstances. Justice Perrel set out a list of non-exhaustive factors in *Ariston Realty Corp. v. Elcarim Inc.*, 2007 CanLII 13360 (ON SC), at para. 34 that a court may consider when faced with an adjournment request. In general, the court is required to not only consider the competing interests of the parties in advancing or delaying the hearing for which an adjournment is requested but also the broader public interest: *Turbo Logistics Canada Inc. v. HSBC Bank Canada*, 2016 ONCA 222 (CanLII), at paras. 22-27.

18. In this case, I have had regard to both the practical consequences of an adjournment from both a substantive and procedural perspective. This is a matter that has been ongoing since the issuance of the Receivership Order in 2024. There have been multiple attempts by the Debtor to refinance. None have been successful. Today, without affidavit evidence, the Debtor says it has yet another proposal that it wishes to make and have considered by the Receiver and Lender. The proposal as briefly explained by counsel does not meet the approval of either the Lender or the Receiver. There was no position taken by the second mortgagee who attended the hearing, albeit late, and who the Debtor says would benefit from its proposal. As pointed out by the Receiver, not only is the proposal outlined by counsel not acceptable, but the record reveals that previous offers at refinancing have ultimately failed.

19. In contrast, I accept the submission that there is urgency to the approval process. The pending need to extend the municipal proposals creates an urgency to have this matter dealt with now. Clearly, the Lender is taking steps to ensure that the development does not lose the existing approvals and thereby further undermine the equity in the Property and the proposed development which was the reason for the loans in the first place.

20. Moreover, procedurally, the Debtor has provided no affidavit that would assist this Court or the other parties as to the full extent of his proposal. It is not clear whether this is a genuine offer or another false start. This hearing was set almost a week ago. It was heard on the Thursday, being the eve of a four-day court recess. Any adjournment would leave the court little time to consider the matters in issue. In the absence of a genuine offer that might be acceptable to the Lender and Receiver, a further delay would place this Court in the position of not approving the requested in sufficient time to address the municipal approvals.

21. This is not a situation where the Debtor has been denied the opportunity to make proposals. Indeed, the record demonstrates that he has done so but none have been acceptable. This is not a case where the Debtor has been denied either procedural or substantive fairness in the process set by the Receiver.

22. Finally, as discussed below, the Debtor makes this additional offer after the Receiver has accepted the Lender's offer. Allowing last minute offers and redemptions undermines the sales process because it allows bidders to wait in the weeds, underbid during the process, only to make a last-ditch best effort bid after the process has concluded. This is not only unfair to other bidders but results in bidders not putting their best foot forward during the process which ultimately frustrates that objective of securing the highest bid during the process, rather than after an APS is concluded.

23. Accordingly, I denied the adjournment.

Approval and Vesting Order

24. A motion for an AVO is assessed using the “Soundair principles” established in *Royal Bank of Canada v. Soundair Corp.* (1991), [1991 CanLII 2727 \(ON CA\)](#), 4 O.R. (3d) 1, at para. 14 (C.A.). Those principles require the court to consider:

- whether a sufficient effort has been made to obtain the best price and whether the Receiver has acted improvidently;
- the interests of all of the parties;
- the efficacy and integrity of the process by which the offers were obtained; and
- whether the working out of the process was unfair: *Soundair*, at p. 9.

25. The *Soundair* principles are flexible and case specific. No one factor is determinative. Rather, they are principles that a court must consider when deciding whether a receiver that has sold a property has acted properly: *Cameron Stephens Mortgage Capital Ltd. v. Conacher Kingston Holdings Inc.*, 2025 ONCA 732 (CanLII), at para. 34.

26. In this case, I am satisfied that the receiver obtained the best price and did not act improvidently. There is nothing in the record that would lead me to conclude 1) a significantly higher price might be available; and (2) that the integrity of the process was compromised: *Cameron Stephens Mortgage Capital Ltd. v. Conacher Kingston Holdings Inc.*, 2025 ONCA 732 (CanLII), at para. 37. There was no better bid presented during the sale process. There was no offer before me that can be said to be significantly higher.

27. The Debtor claims that its proposed bid is better than the Lender’s bid. However, the last minute proposal by the Debtor was not set out in any affidavit form. The offer as explained by counsel was largely a proposed refinancing in a form that had been rejected earlier by the Receiver and which never received the financing anticipated by the Debtor. As such, I do not have any reason to believe that “a significantly higher price might be available”.

28. As to the process, there is nothing before me that would suggest that the process employed by the Receiver was compromised and I was directed to no flaw in the process. This was a professionally run sales process that went on for a considerable period of time. The Receiver retained a qualified real estate agent who marketed the Property. The price was set and was modified as time went on given the lack of interest. While six potential buyers signed confidentiality agreements, none bid. As noted, I was not directed to any aspect of this sales process that would suggest the process was flawed in any way or would cause me not to defer to the Receiver’s expertise in this area.

29. In terms of the interest of the parties, the sale is clearly in the interest of the Lender. The second mortgagee does not oppose the order. This leaves the interest of the Debtor.

30. The Debtor has had considerable time to refinance. The Debtor has participated and has made several unsuccessful proposals, some of which are detailed in the record. I was not directed to any of those proposals as being more favourable than the proposed sale. The Debtor, of course, has come with a last-minute offer for which he has asked and been denied an adjournment. As noted, the Debtor has had access to the process from the outset. There has been no complaint as to the process. Rather, the Debtor sought to provide a last minute offer after the sale process had been concluded. As I have indicated, I am of the view that this type of proposal undermines a legitimate bid process. As found in similar circumstances, if the court were to entertain these types of last minute offers they “could act as a potential chill on securing the best offer and be to the overall detriment of stakeholders” : *Rose-Isli Corp. v. Smith*, 2023 ONCA 548 (CanLII), at para. 10. In my view, this process was fair to all stakeholders,

including the Debtor. To consider an offer after the receiver has in good faith entered the transaction with the Lender would undermine the otherwise fair process.

31. Accordingly, I approve the proposed sale and vesting of the Property.

32. There were several ancillary orders requested including the approval of the Receiver's report and approval of its fees. There was no objection to these proposed orders. I have reviewed both the report and fees and find them both to be reasonable and fair. In terms of the requested sealing order, I accept that a sealing order is required until after the Closing. Redated versions will be filed so as to impede the open court principle as little as possible. The redacted information relates only to the financial components of the transaction and the offers of the Debtor. If this sale does not close for any reason, the publication of this information would undermine the fairness of any subsequent marketing of the Property. The sealing order is only temporary until the Closing is completed. In that way, it interferes as little as possible with the open court principle. Finally, I grant the discharge order as drafted, along with the certificate of completion to be completed by the Receiver at the appropriate time.

33. The parties may forward the draft orders to my assistant for approval.

Additional pages attached: Yes No



April-07

, 2026

Date of Endorsement (*Rule 59.02(2)(c)(ii)*)

Signature of Judge/Associate Judge (*Rule 59.02(2)(c)(i)*)