

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

1000171168 ONTARIO INC.

Applicant

-and-

PORT SEVERN HEIGHTS INC.

Respondent

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

March 25, 2026

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

1000171168 ONTARIO INC.

Plaintiff (Defendant by Counterclaim)

-and-

PORT SEVERN HEIGHTS INC.

Defendant (Plaintiff by Counterclaim)

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

PART I - INTRODUCTION

1. By Order of the Honourable Justice Stevenson dated September 20, 2024 (the “**Receivership Order**”), TDB Restructuring Limited (“**TDB**”) was appointed as receiver (in such capacity, the “**Receiver**”) of the Property bearing PIN 48018-0821 (LT) (the “**Property**”), owned by 1000171168 Ontario Inc. (the “**Debtor**”), pursuant to section 243 of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and section 101 of the *Courts of Justice Act* (the “**CJA**”).¹

2. The Receiver brings this motion for, *inter alia*, the following relief:

- (a) an Order, if necessary, abridging the time for service of the Notice of Motion and Motion Record herein and dispensing of service thereof;

¹ First Report of the Receiver dated March 19, 2026 (“**First Report**”), Tab 2 of the Receiver’s Motion Record dated March 20, 2026 (“**MR**”), at Appendix “A”.

- (b) an Approval and Vesting Order (the “**AVO**”) authorizing the transaction (the “**Transaction**”) contemplated by the agreement of purchase and sale dated March 11, 2026 (the “**APS**”) between the Receiver and Port Severn Heights Inc. (“**Port Severn**”), for the sale of the Property, and vesting in Port Severn the Debtor’s right, title and interest in the Property, free and clear of all claims and encumbrances other than permitted encumbrances, upon delivery of a certificate by the Receiver to Port Severn;
- (c) an Order approving the First Report of the Receiver dated March 19, 2026 (the “**First Report**”) and the activities and conduct of the Receiver as described therein;
- (d) an Order approving the Receiver’s fees and disbursements, and the fees and disbursements of the Receiver’s independent counsel, and the estimated costs to complete the receivership administration as described in the First Report;
- (e) an Order approving the Receiver’s Statement of Receipts and Disbursements for the period from October 10, 2024 to March 15, 2026 (the “**SRD**”);
- (f) an Order sealing the Confidential Appendices to the First Report;
- (g) an Order discharging the Receiver upon the filing of a certificate (the “**Discharge Certificate**”) with the Court; and
- (h) such further and other relief as this Honourable Court may deem just.

3. The proposed Transaction is the result of a thorough and extended sale process for the Property. Despite extensive marketing efforts over several months, no third-party offers were received. In these circumstances, the Receiver is of the view that the Transaction represents the best and only viable realization available and recommends that the Court approve the Transaction because:

- (a) the Receiver has made reasonable and good faith efforts to sell the Property;
- (b) a broad marketing of the Property was carried out by the Receiver;
- (c) the APS represents the only available offer for the Property; and

(d) it is consistent with *Soundair* principles.²

4. The Receiver has also filed two Confidential Appendices which contain an unredacted copy of the executed APS, and email correspondence with the Debtor discussing refinancing efforts. These contain commercially sensitive information. The Receiver requests that the Confidential Appendices be sealed pending closing of the Transaction, or until further Order of this Court, to avoid prejudice in the event that the Transaction does not close.

5. In addition to requesting approval of the First Report and the Receiver's and its counsel's activities, fees, receipts and disbursements, the Receiver further requests that this Court discharge the Receiver upon filing of a Discharge Certificate as substantially all of its duties and mandates will have been completed upon the closing of the Transaction.

PART II - SUMMARY OF FACTS

The Parties, the Property and the Mortgage

6. The Plaintiff/Defendant by Counterclaim in this action, the Debtor, is a company incorporated pursuant to the laws of Ontario and is the registered owner of the Property.³

7. The Defendant/Plaintiff by Counterclaim in this action, Port Severn (or the "**Lender**"), is the secured lender of the Debtor.⁴

8. The Property comprises vacant land, which was intended to be developed into a residential dwelling (the "**Project**").⁵

² *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#) [**"Soundair"**]

³ First Report at paras 7-8

⁴ First Report at para 9

⁵ First Report at para 8

9. On May 5, 2022, the Debtor granted the Lender a vendor take-back mortgage in the principal amount of \$6,000,000, which was registered against title to the Property as Instrument No. MT264645 (the “**Mortgage**”).⁶

10. 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.⁷

11. On September 20, 2024, the Lender brought a motion to, *inter alia*, appoint a receiver over the Property, pursuant to which the Receivership Order was granted.⁸

12. As of March 9, 2026, the amount owing to Port Severn with respect to the Mortgage is \$6,798,972.80.⁹

Other Creditors

13. There is a second-ranking charge in the amount of \$4,000,000.00, registered on May 5, 2022, in favour of 1000080373 Ontario Inc., as instrument number MT264646 (the “**Second Mortgage**”).¹⁰

14. The Receiver has obtained an opinion that, subject to the usual qualifications and assumptions, Port Severn holds valid and enforceable security over the Property.¹¹

⁶ First Report at para 9

⁷ First Report at para 10

⁸ First Report at paras 11-12

⁹ First Report at para 13

¹⁰ First Report at para 53

¹¹ First Report at para 55, Appendix “G”

The Sale Process

15. The Receivership Order, *inter alia*, grants the Receiver the power to market the Property, including advertising and soliciting offers and negotiating terms of sale as the Receiver, in its discretion, may deem appropriate.

16. Accordingly, the Receiver developed a robust sale process to market the Real Property in an open and transparent manner designed to maximize realizations (the “**Sale Process**”), which included:

- (a) requesting listing proposals from three commercial real estate brokers for the marketing and sale of the Property, of which, it ultimately selected Cushman & Wakefield (“**Cushman**”);
- (b) entering into a multiple listing service (“**MLS**”) agreement with Cushman to market the Property; and
- (c) coordinating with Cushman to upload a form of APS to the online data room maintained by Cushman (the “**Data Room**”), and reviewing and approving a confidentiality agreement with respect to the same.¹²

17. Cushman undertook, *inter alia*, the following marketing efforts as they:

- (a) arranged for a sale sign to be placed at the Property;
- (b) prepared a brochure / teaser letter that was mailed out along with the Confidentiality Agreement on a targeted basis;
- (c) sent emails to their distribution list of approximately 6,100 parties; and
- (d) published an advertisement to be placed in the Globe and Mail, Insolvency Insider and the Novae Res Urbis.¹³

¹² First Report at paras 28-30, 32

¹³ First Report at para 33

18. Upon discussions with Cushman, the Receiver determined that no bid deadline would be imposed and that offers would be reviewed on or after February 5, 2025; offers were encouraged at any time during the Listing Period (defined below).¹⁴

19. The Property was marketed from December 13, 2024 to September 15, 2025 (the “**Listing Period**”).¹⁵

20. Although Cushman received six (6) Confidentiality Agreements, no offers were received. During the Listing Period, the asking price for the Property also had to be adjusted several times to respond to market feedback, and the absence of any offers. Ultimately, despite the price reductions and continued marketing efforts, no offers were received and the listing agreement with Cushman expired on September 15, 2025.¹⁶

21. In the circumstances, the Receiver entered into negotiations with Port Severn regarding a credit bid transaction for the Property (the “**Transaction**”).¹⁷

The Transaction

22. The salient terms of the APS are outlined in the First Report, and include, *inter alia*, 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

¹⁴ First Report at para 31

¹⁵ First Report at para 35

¹⁶ First Report at para 35

¹⁷ First Report at para 38

- (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 (“Closing”).¹⁸

23. The Receiver is of the view that the approval of the Transaction is appropriate for the following reasons:

- (a) the Property was widely exposed to the market through the Sale Process;
- (b) the timeline was sufficient to allow interested parties to perform due diligence and submit offers; and
- (c) given the length of time on the market, it is unlikely that exposing the Property to the market for additional time will result in a superior transaction than the one contemplated by the APS.¹⁹

24. Further, despite having ample time and opportunity to refinance the Property or repay the Mortgage, the Debtor has been unsuccessful in doing so, which has led the Receiver to conclude that the Debtor is unable to implement a viable refinancing or mortgage assignment solution.²⁰ Evidence of this is contained in the email correspondence between the Receiver and the Debtor contained in Confidential Appendix 2 (a redacted version of which is contained at Appendix “E”) to the First Report.²¹

25. In the circumstances, the Receiver is satisfied that the Transaction will generate the maximum value for the Property and is in the best interests of all stakeholders.²²

¹⁸ First Report at para 39

¹⁹ First Report at paras 41-42

²⁰ First Report at paras 44-48

²¹ First Report at Appendix “E”, Confidential Appendix 2

²² First Report at para 43

Payment of Proceeds from the Transaction

26. Upon the closing of the Transaction, 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 Estimated Fees (as defined and set out in the First Report); and
- (d) payment of the balance to Port Severn.²³

Approval of the First Report and Activities of the Receiver

27. In addition to the activities described above, in the First Report, the Receiver has included a detailed description of its other activities which include:

- (a) contacting and requesting the Debtor for information including creditor listings, employee records, bank information, HST account information, lease agreements, insurance policies and service provider information;
- (b) attending at the Property and taking protective measures with respect to the Property;
- (c) arranging for liability insurance for the Property;
- (d) preparing the Notice and Statement of the Receiver pursuant to section 245(1) of the *BIA*: and
- (e) contacting the Township of Georgian Bay to determine any outstanding property

²³ First Report at para 56

taxes.²⁴

28. The Receiver submits that its activities as set out in the First Report are fair and reasonable and should be approved.

Approval of Statement of Receipts and Disbursements, and Fees and Disbursements

29. The First Report seeks approval of the Receiver's SRD for the period of October 10, 2024 to March 15, 2026.²⁵

30. As outlined in the Fee Affidavits of the Receiver and the Receiver's counsel, contained in the First Report, the Receiver and its counsel are also seeking approval of their fees and disbursements which:

- (a) in the case of the Receiver, for the period between June 11, 2024 to March 15, 2026, are in the total amount of \$175,723.97²⁶; and
- (b) in the case of the Receiver's counsel, for the period between December 5, 2024 to March 10, 2026, are in the total amount of \$50,258.31.²⁷

Sealing the Confidential Appendices

31. The Receiver is requesting that the Court seal the Confidential Appendices to the First Report, i.e. the unredacted APS and copies of communications with the Debtor, pending the completion of the Transaction or further order of this Honourable Court.

32. The Confidential Appendices should be sealed as their contents contain commercially

²⁴ First Report at paras 14-25

²⁵ First Report, Appendix "H"

²⁶ First Report, Appendix "I" – Affidavit of Bryan Tannenbaum, sworn March 17, 2026

²⁷ First Report, Appendix "J" – Affidavit of Dominique Michaud, sworn March 11, 2026

sensitive financial information which could have a negative impact on the market for the Property should the Transaction not close.

33. The salutary effects of sealing the Confidential Appendices outweighs any deleterious effects.

Discharge of the Receiver

34. Once the Transaction has closed, the Receiver's administration will be substantially complete and it is appropriate that the Receiver be discharged upon filing of the Discharge Certificate, with authority to complete any incidental administrative matters following discharge.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

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

- (a) should the Court approve the Transaction?
- (b) should the Court approve the First Report and the activities of the Receiver described therein?
- (c) should the Court approve the Receiver's SRD and the fees and disbursements of the Receiver and its counsel?
- (d) is it appropriate for the Court to seal the Confidential Appendices to the First Report, pending closing of the Transaction or further Order of the Court?
- (e) should the Court approve the discharge of the Receiver, upon the filing of the Discharge Certificate?

A. The Court Should Approve the Transaction

36. The Transaction is consistent with the principles set out in *Royal Bank v. Soundair Corp* and the Court should approve it.

37. In assessing whether to approve a sale by a receiver, the Court should consider:

- (a) whether the receiver has made a sufficient effort to get the best price, and has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process, by which offers are obtained; and
- (d) whether there has been unfairness in the working out of the process.

38. The Court confirmed in *Soundair* that “if the court were to reject the recommendation of the Receiver in any but the most exceptional circumstances, it would materially diminish and weaken the role and function of the Receiver, both in the perception of receivers and in the perception of any others who might have occasion to deal with them.”²⁸

39. Furthermore, it is well established in Canadian insolvency law that a secured creditor is permitted to credit bid its debt instead of providing cash consideration.²⁹

40. Taking these into consideration, it is submitted that the Court should approve the Transaction and related relief sought by the Receiver. In specific:

- (a) the sale process conducted was commercially reasonable and consistent with the Receiver’s mandate, involving broad market exposure through multiple channels and targeted outreach to a significant pool of prospective purchasers;
- (b) the lengthy marketing period, which was approximately nine months, provided a meaningful opportunity for interested parties to conduct due diligence and submit offers;

²⁸ *Soundair*, supra note 2, at para 1

²⁹ *Elleway Acquisitions Ltd. v. 4358376 Canada Inc.*, [2013 ONSC 7009](#) (Commercial List) at para 38; *8527504 Canada Inc. v. Liquibrands Inc.*, [2015 ONSC 5912](#) (Commercial List) at para 20, ref’g leave to appeal *8527504 Canada Inc. v. Sun Pac Foods Limited*, [2015 ONCA 916](#); and *North American Tungsten Corporation Ltd. (Re)*, [2016 BCSC 12](#) at para 24.

- (c) the complete absence of any offers, despite sustained marketing efforts and multiple pricing adjustments, strongly demonstrates the Property's limited market value and supports the Receiver's conclusion that no superior transaction is likely to be obtained through further efforts; and
- (d) in these circumstances, and given the Debtor's inability to refinance, the Transaction represents the only viable realization currently available, and reflects fair consideration.

41. Courts have also emphasized that deference is to be afforded to the Receiver in respect of the Transaction. Unless there is a violation of the *Soundair* principles or other exceptional circumstances, the Court should defer to the Receiver's recommendation to sell a debtor's assets.³⁰

42. The sale process that was conducted was also neither improvident nor unfair. There are no exceptional circumstances that would lead this Court to depart from the Receiver's recommendation.

43. As such, the Receiver respectfully submits that the proposed vesting order be granted.

B. The First Report and Activities of the Receiver Should be Approved

44. 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.³¹

³⁰ *9-Ball Interests Inc. v. Traditional Life Sciences Inc.*, [2012 ONSC 2788](#) at para 28; and *Business Development Bank of Canada et al v. 1673747 Ontario Inc. et al.*, [2013 ONSC 286](#) at para 38.

³¹ *Kingsett Mortgage Corporation v. Churchill Lands United Inc.*, [2024 ONSC 7127](#) (Commercial List) at para 45 (“*Churchill Lands*”)

45. The Court's inherent jurisdiction allows it to approve the activities of a receiver, when considered within the receiver's mandate, powers and authority.³² Courts consider the following 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.³³

46. In the circumstances at hand, all of the above factors are satisfied. The Receiver's activities as described in the First Report were carried out pursuant to the Receiver's duties and powers as set out in the Receivership Order, in the best interests of the Debtor's stakeholders. 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 form of 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.

C. The SRD, and the Fees and Disbursements of the Receiver and its Counsel Should be Approved

47. The Receiver is also seeking approval of its SRD, and the professional fees and

³² *Bank of America Canada v. Willann Investments Ltd.*, [1996 CanLII 2782 \(ON CA\)](#)

³³ *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, [2023 ONSC 3400](#) (Commercial List) at para 66 ("Triple-I Capital")

disbursements incurred by it and its legal counsel as described in the fee affidavits attached to the First Report, including the estimated fees of the Receiver and its independent legal counsel in connection with these proceedings, and the receipts and disbursements as set out in the First Report.

48. 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.³⁴

49. 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 fair and reasonable in light of the mandate, and what they were able to accomplish, including running the sale process and negotiating the APS.

D. The Court Should Seal the Confidential Appendices

50. The Receiver seeks an Order sealing the Confidential Appendices in the First Report, pending closing of the Transaction or further Order of this Court.

51. In *Sherman Estate v. Donovan*³⁵, the Supreme Court of Canada affirmed the test as set out in *Sierra Club of Canada v. Canada (Minister of Finance)*, for when a court should grant a sealing order:

- (a) where it will prevent serious risk to an important public interest, including a commercial interest, in the context of litigation;
- (b) where the sealing order is necessary to prevent the serious risk because reasonable alternative measures will not prevent this risk; and

³⁴ *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#) at paras 44-45.

³⁵ *Sherman Estate v. Donovan*, [2021 SCC 25](#) [*Sherman*]

- (c) when the salutary effects of the order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.

52. This Court has routinely applied both *Sherman* and *Sierra Club* and held it appropriate to seal information and documentation filed in support of a motion to approve a sale, where the materials “disclose valuations of the assets under sale, the details of the bids received by the court-appointed officer and the purchase price contained in the offer for which court approval is sought”.³⁶

53. Sealing the Confidential Appendices is necessary to protect the integrity and fairness of the sale process, given that it contains commercially sensitive information.

54. The Confidential Appendices would further only need to be sealed until the Transaction is completed or upon a further Order of this Court, thus limiting the scope of the proposed sealing order.

55. Further, redacted copies of the Confidential Appendices have been attached to the First Report, and thus forms part of the public record.

56. Finally, the benefits of the sealing order, which includes ensuring that the Receiver can maximize value of the Property if the Transaction does not close, outweigh any negative consequences related to restricting public access to the record in the short term.

³⁶ *GE Canada Real Estate Financing Business Property Co. v. 1262354 Ontario Inc.*, [2014 ONSC 1173](#) at para. 32 [“*GE Canada*”]

E. The Court Should Approve the Discharge of the Receiver

57. Once the Transaction has closed, the Receiver will have completed its mandate.

58. 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 Discharge Certificate with the Court. The release is a standard term in the Ontario Superior Court of Justice's (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".³⁷

59. 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.

60. For the foregoing reasons, the Receiver recommends that, after the closing of the Transaction, and completion of incidental matters thereto, 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

61. 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 March 20, 2026.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

³⁷ *Pinnacle Capital Resources Ltd. v. Kraus Inc.*, [2012 ONSC 6376](#) (Commercial List) at para 47.

Date: March 25, 2026



DOMINIQUE MICHAUD

Date: March 25, 2026



ANISHA SAMAT

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: March 25, 2026



ANISHA SAMAT

**SCHEDULE ‘A’
LIST OF AUTHORITIES**

1. *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#)
2. *Elleway Acquisitions Ltd. v. 4358376 Canada Inc.*, [2013 ONSC 7009](#) (Commercial List)
3. *8527504 Canada Inc. v. Liquibrands Inc.*, [2015 ONSC 5912](#) (Commercial List) ref’g leave to appeal *8527504 Canada Inc. v. Sun Pac Foods Limited*, [2015 ONCA 916](#)
4. *North American Tungsten Corporation Ltd. (Re)*, [2016 BCSC 12](#)
5. *9-Ball Interests Inc. v. Traditional Life Sciences Inc.*, [2012 ONSC 2788](#)
6. *Business Development Bank of Canada et al v. 1673747 Ontario Inc. et al.*, [2013 ONSC 286](#)
7. *Kingsett Mortgage Corporation v. Churchill Lands United Inc.*, [2024 ONSC 7127](#) (Commercial List)
8. *Bank of America Canada v. Willann Investments Ltd.*, [1996 CanLII 2782 \(ON CA\)](#)
9. *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, [2023 ONSC 3400](#) (Commercial List)
10. *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#)
11. *Sherman Estate v. Donovan*, [2021 SCC 25](#)
12. *GE Canada Real Estate Financing Business Property Co. v. 1262354 Ontario Inc.*, [2014 ONSC 1173](#)
13. *Pinnacle Capital Resources Ltd. v Kraus Inc.*, [2012 ONSC 6376](#) (Commercial List)

1000171168 ONTARIO INC.

- and -

PORT SEVERN HEIGHTS INC.

Plaintiff/Defendant by Counterclaim

Defendant/Plaintiff by Counterclaim

Court File No.: CV-24-00713711-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

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

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