



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: BK-24-00208718-OT31

DATE: June 5, 2025

NO. ON LIST: 3

TITLE OF PROCEEDING: In the Matter of Bankruptcy of THOMAS DYLAN SUITOR

BEFORE: STEELE, J.

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Vinayak Mishra	Counsel for Dylan Sutor, Debtor	vmishra@albatrosslaw.ca
Joshua Tayar	Counsel for Interim Receiver/Trustee TDB, Moving Party	joshua@fredtayar.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Jennifer Stam	Counsel for Fuller Landau, Receiver of Lion's Share Group Inc., respondent	Jennifer.stam@nortonrosefulbright.com
Michael Cassone	Counsel for Libro Credit Union Ltd., Creditor	mcassone@harrisonpensa.com
Dennis Domenichni	Self-Represented Creditor	vimtechnicaltd@gmail.com
William Fawcett	Counsel for Stuart Mackey & City of St. Thomas, Creditor	william.fawcett@mckenzielake.com

Other:

Name of Person Appearing	Name of Party	Contact Info
Fred Tayar	Counsel for Interim Receiver	fred@fredtayar.com
Patrick Corney	Counsel for National Bank	pcorney@millerthomson.com

David Im	Counsel for Court-Appointed Secured Lender in Balboa CCAA proceedings	dim@chaitons.com
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ENDORSEMENT OF JUSTICE STEELE:

- [1] TDB Restructuring Limited, in its capacities as the Trustee in Bankruptcy and Court-Appointed Interim Receiver of Thomas Dylan Suitor, seeks an order:
- a. Approving the Interim Receiver’s Second Report and activities;
 - b. Authorizing TDB to sell seven properties: 775 King Road, Burlington, Ontario; 2298 Fassel Ave., Burlington, Ontario; 10 Norfolk St. S., Simcoe, Ontario; 133 Prospect Ave. Hamilton, Ontario; 38 Duncan Ave. S., Kirkland Lake, Ontario; 388 Downie Street, Stratford, Ontario, and; 207 Ross Street, St. Thomas, Ontario (collectively, the “Properties”);
 - c. Declaring that TDB shall remain the interim receiver of all Mr. Suitor’s property under the Appointment Order until the disposition of Mr. Suitor’s appeal of the Bankruptcy Order or further court order;
 - d. Granting charges on the Properties to secure the fees and disbursements of TDB and its counsel;
 - e. Authorizing TDB to redact Confidential Appendix “1” from its Second Report and sealing it from the public record until the closing of the sales of the Properties or further court order; and
 - f. Approving the fees and disbursements of TDB and its counsel as set out in the Second Report and the Fee Affidavits.
- [2] Capitalized terms used in this endorsement that are not defined herein have the meaning set out in TDB’s factum and supplementary factum.
- [3] Fuller Landau Group Inc., in its capacity as the court appointed receiver of the property of Lion’s Share Group Inc. (the “Lion’s Share Receiver”), the applicant creditor, supports the motion.
- [4] Libro Credit Union Limited (“Libro”), the first mortgagee of 207 Ross opposes the inclusion of 207 Ross within TDB’s proposed sales process. Libro filed affidavit evidence and a factum.

- [5] Dennis Domenichini opposes the inclusion of 38 Duncan Avenue within TDB's proposed sales process. Mr. Domenichini filed an affidavit on June 4, 2025 and made oral submissions at the hearing. He subsequently filed on Case Centre, with the Court's permission, draft documents prepared by his former lawyer dated May 31, 2024.

Background

- [6] TDB was appointed as Interim Receiver over all of Mr. Suitor's property by Order dated October 7, 2024.
- [7] By Order, dated March 26, 2025, Mr. Suitor was adjudged bankrupt, and TDB was appointed as the trustee of his estate: *Suitor v. Fuller Landau Group*, 2025 ONSC 1686. Mr. Suitor is appealing that decision.
- [8] The present motion first came before me on May 26, 2025. The Interim Receiver had contemplated the inclusion of ten properties in the proposed sales process. During that proceeding, the Interim Receiver advised that there were properties that were to be excluded from the proposed sales process.
- [9] I adjourned the matter to June 5, 2025, and directed the Interim Receiver to provide additional submissions to address the proposed exclusion of certain properties from the proposed sales process.
- [10] Libro is the first mortgagee on the 207 Ross Street property. Libro is owed about \$186,000 (plus interest and costs) under a demand promissory note. Libro has delivered a demand for payment under the note, which has not been satisfied.
- [11] Dennis and Jessica Domenichini hold a mortgage on 38 Duncan Avenue South. They are the first mortgagees on the property. Dennis and Jessica Domenichini are owed about \$653,000 (plus interest and costs). The loan is in default. A demand letter was sent on December 13, 2024 demanding repayment of the loan, which has not been satisfied.

Analysis

- [12] As noted above, the Interim Receiver seeks court approval to commence a sales process in respect of the Properties.
- [13] The appointment order for the Interim Trustee was made pursuant to section 46 of the BIA. It does not include the power to market and sell properties.
- [14] The proposed draft order, which was included with the Motion Record, includes expanded powers for the Interim Receiver in para. 8, including the power to market and sell the Properties.

- [15] Libro noted that the relief sought on the notice of motion does not specifically contemplate an expansion of the Interim Trustee's powers, nor is authority for doing so provided.
- [16] TDB is of the view that a centralized judicial process is necessary for an orderly collective realization process for the benefit of all stakeholders. As noted by TDB, the Canadian insolvency regime favours the enforcement of stakeholder rights through a "single proceeding model."
- [17] TDB notes that when Osborne J. granted the interim receivership order, he made the following remarks, at para. 90 of his endorsement:

In my view, the chaos that will inevitably result in the circumstances of all of the above from an ad hoc series of efforts by individual creditors who understandably wish to maximize their own position, and the fact that all of this will have the further effect of increasing costs and risking prejudice to other creditors, can and should be avoided or at least minimized through the interim receivership.

- [18] At the attendance, submissions were made on the issue of whether additional properties should be excluded from the sales process.
- [19] However, there was not adequate information before the court regarding the powers of an interim receiver under s. 46 of the BIA and how/whether such powers can be expanded by the court to include the power to market/sell real properties.
- [20] Section 46(1) of the BIA is clear that the purpose of the interim receiver is to maintain value where it is shown to be necessary. That does not seem to contemplate a marketing and sale process.
- [21] Section 46(2) of the BIA sets out the powers of an interim receiver and also does not contemplate a sale unless the goods are perishable or likely to depreciate rapidly in value.
- [22] As noted above, the Appointment Order, which was made pursuant to section 46 of the BIA, does not include the powers to market and sell properties.
- [23] **The parties shall schedule a one-hour appearance before me during the week of June 17, 2025 (or as soon as possible thereafter if the parties are unavailable that week) through the Commercial List Office.**
- [24] The Receiver shall file further materials specifically addressing the jurisdiction issue. I would like case law provided where an interim receiver has exercised similar powers. It would also be helpful to see examples of where a court has expanded the powers of an interim receiver appointed under s. 46 of the BIA to include the powers to market and sell.

- [25] The relief requested at [1] a, b, and d above is adjourned to the return date contemplated in para. [23].
- [26] Certain of the requested relief was not opposed.
- [27] The Interim Receiver seeks court approval of its fees and those of its counsel. Fee affidavits have been filed.
- [28] When considering whether to approve professional accounts, the court will consider the overall value contributed, taking into consideration (a) the nature, extent and value of the assets, (b) the complications encountered, (c) the degree of assistance provided by the debtor, (d) the time spent, (e) the receiver's knowledge, experience and skill, (f) the diligence and thoroughness displayed, (g) the responsibilities assumed, (h) the results of the receiver's efforts, and (i) the cost of comparable services when performed in a prudent and economical manner: *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at paras. 33 and 44-45.
- [29] The Interim Receiver's fees and disbursements, inclusive of taxes, for the period from November 1, 2024 to April 30, 2025 total \$126,163.95. The fees and disbursements for the Interim Receiver's counsel, inclusive of taxes, for the period from November 11, 2024 to April 30, 2024 total \$64,277.53.
- [30] The fees and disbursements of the Interim Receiver and its counsel were incurred at standard rates. The rates are consistent with those charged by sophisticated insolvency professionals and counsel. I am satisfied that the fees and disbursements are fair and reasonable in the circumstances.
- [31] As noted, the Interim Receiver seeks a time limited sealing order in respect of the confidential appendices (which contain estimates regarding the values of the properties). I am satisfied that the time limited, and limited in scope, sealing order that is sought satisfies the test set out in *Sienna Club of Canada v. Canada (Minister of Finance)* as modified by *Sherman Estate v. Donovan*. It is common to temporarily seal commercially sensitive material. The Interim Receiver seeks to temporarily seal the confidential appendices, which contain estimates regarding the values of the properties. These are commercially sensitive documents. No stakeholder will be materially prejudiced by the requested sealing order, which applies to only a limited amount of information for a limited period of time.
- [32] The Interim Receiver is directed to provide the sealed confidential appendices to the Court clerk at the filing office in an envelope with a copy of this endorsement and the signed order (with the relevant provisions highlighted) so that the confidential appendices can be physically sealed. Counsel is further directed to apply, at the appropriate time, for an unsealing order, if necessary.

[33] TDB shall remain the interim receiver of all Mr. Suitor's property under the Appointment Order until the disposition of Mr. Suitor's appeal of the Bankruptcy Order or further court order.

A handwritten signature in blue ink, appearing to be "J. Suitor", is located in the upper right portion of the page. The signature is fluid and cursive, with a horizontal line extending from the end.