

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF THOMAS DYLAN SUITOR,  
an individual with a locality of Burlington, Ontario

**MOTION RECORD**  
**(Returnable November 21, 2024)**

November 19, 2024

**FRED TAYAR & ASSOCIATES**  
**Professional Corporation**  
65 Queen Street West | Suite 1200  
Toronto, ON M5H 2M5

**FRED TAYAR – LSO No. 23909N**  
T: 416-363-1800 ext. 200  
E: [fred@fredtayar.com](mailto:fred@fredtayar.com)

**Lawyers for TDB Restructuring Limited**  
Interim Receiver of Thomas Dylan Suitor

TO THE SERVICE LIST

ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY

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ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF THOMAS DYLAN SUITOR,  
an individual with a locality of Burlington, Ontario

**NOTICE OF MOTION**

TDB Restructuring Limited (the “**Interim Receiver**”) will make a motion to the Honourable Mr. Justice Osborne on Thursday, November 21, 2024 at 12:00 p.m., or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:**

- in writing under subrule 37.12.1(1) because it is unopposed.
- in writing as an opposed motion under subrule 37.12.1(4).
- orally, via video-conference.

**THE MOTION IS FOR:**

1. An order abridging the time for service of this notice of motion and motion record, if necessary.
2. An order:
  - a. approving the Interim Receiver’s First Report and the activities of the Interim Receiver described therein;

- b. approving the following protocol for payments by the Respondent or his companies:
  - i. subject to sub-paragraph (ii), Suitor will be authorized to pay any invoices received from any person, provided that the amount to that person does not exceed a pre-determined threshold to be quantified by the Interim Receiver (the “**Approval Threshold**”);
  - ii. Suitor to provide a summary of Proposed Payments during the preceding week, with bank statements. The Interim Receiver will be at liberty to raise concerns and to restrict payments to payees at its sole discretion; and
  - iii. Any payment exceeding the Approval Threshold must receive prior approval from the Interim Receiver.
- c. authorizing the Interim Receiver to share information derived from execution of its mandate with the applicant creditor, The Fuller Landau Group Inc. in its capacity as Court-appointed Receiver of The Lion’s Share Group Inc., and with KSV Restructuring Inc. (“**KSV**”), in its capacity as the Court-appointed Monitor of the Balboa Group, and with such other persons as the Interim Receiver deems appropriate;
- d. declaring that all such sharing of information does not contravene the provisions of *The Bankruptcy and Insolvency Act (Canada)* (the “**BIA**”) or the Rules thereunder, and may be utilized by the Parties to the pending bankruptcy application in respect of Suitor, or in any other proceedings involving Suitor or any of the Suitor Companies (as that term is defined in the First Report of the Interim Receiver); and
- e. authorizing and approving the fees of the Interim Receiver for the period October 7, 2024 to and including November 15, 2024, and the fees of its counsel.

3. Costs of this motion.
4. Such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. The Interim Receiver was appointed pursuant to the Order of the Honourable Mr. Justice Osborne dated October 7, 2024 (the “**Appointment Order**”).
2. The affairs of the debtor, Thomas Dylan Suitor (“**Suitor**”), are complex and entangled with those of dozens of other entities which are either in receivership or CCAA protection.
3. Under the provisions of the Appointment Order, the Interim Receiver was authorized:

*to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable[.]*<sup>1</sup>

4. Paragraph 4 of the Appointment Order defines Persons as follows:

*4. **THIS COURT ORDERS** that: (i) the Debtor; (ii) all of his current and former employees, agents, accountants, legal counsel and all other persons acting on his instructions or behalf; (iii) all service providers, and all other persons acting on his instructions or behalf; (iv) all Related Entities and their respective current and former directors, officers, employees, agents, accountants, legal counsel, and equity holders; and (v) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “Persons” and each being a “Person”) shall forthwith advise the Interim Receiver of the existence of any Property in such Person’s possession or control, and shall grant immediate and continued access to the Property to the Interim Receiver.*

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<sup>1</sup> At paragraph 3 (f), emphasis added

5. In paragraphs 80, 94, and 99 of his Endorsement, Justice Osborne held as follows.

*80. ...[I]n my view, it is appropriate that the interim receiver be appointed **in the circumstances where the Receiver has been seeking information from him for months, those inquiries remain outstanding, and there are a number of outstanding questions and issues relating to Suitor's assets and those of his companies. The interim receivership will sift through all of this information, and attempt to sort out all of that material, and the resulting entitlements.***

*94. The notion that the issues in the Balboa CCAA Proceedings have no direct bearing on the issues to be decided on this motion is artificial. **They are inescapably linked, and the full extent of the relationship between and among all of these entities is the very thing that it is proposed that the interim receiver will investigate if appointed, all in order that creditors and stakeholders are not prejudiced, and beneficial entitlement to those assets can be determined in a fair and transparent way.***

*99. Given Suitor's own expressed objective as described in his affidavit of assisting in working with creditors, I accept the submission of the Receiver that the prejudice to him by this interim receivership is limited.<sup>2</sup>*

6. These paragraphs of the endorsement leads the Interim Receiver to believe that the intent of the Appointment Order was to enable the Interim Receiver to share information derived from its mandate, as expressed in the Appointment Order, (the "**Mandate**"), with the Applicant and KSV, also Court-appointed officers in the other insolvencies.

7. However, the *BIA* and the jurisprudence thereunder, does not permit the Applicant to obtain discovery from Suitor in advance of the bankruptcy trial.

8. Conscious of this restriction, the Interim Receiver has asked Suitor's counsel for confirmation that "*information received or gathered by the Interim Receiver may be*

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<sup>2</sup> Emphasis added

shared” with the Applicant and KSV. Counsel for Suitor declined to provide that confirmation, stating in part that:

*[t]he objection my client has at this point with sharing the information gathered by the interim receiver is that it is not complete...The information, if my client consents to sharing it, should not be provided piecemeal or incomplete as this will potentially prejudice my client...*

Recently, Suitor’s counsel has stated that he won’t oppose disclosure to KSV or Fuller on certain terms.

9. The Interim Receiver is asking the Court to provide it with directions identifying the entities to which it may disclose information derived from its Mandate. More specifically, the Interim Receiver requests permission to disclose such information to the Applicant and KSV, in conjunction with the Court’s confirmation that such disclosure will not contravene the *BIA* or in any way prejudice the Applicant’s bankruptcy application against Suitor, or any other Court proceedings.

10. The Interim Receiver also requests approval of its activities and fees, and those of its counsel.

11. Such further and other grounds as counsel may advise and this Honourable Court permits.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of this motion:

1. Report of the Interim Receiver dated November 19, 2024.
2. The Endorsement of the Honourable Justice Osborne dated October 7, 2024.



2. Such further and other material as counsel may advise and this Honourable Court permits.

November 19, 2024

**FRED TAYAR & ASSOCIATES**  
**Professional Corporation**  
65 Queen Street West | Suite 1200  
Toronto, ON M5H 2M5

**FRED TAYAR – LSO No. 23909N**  
T: 416-363-1800 ext. 200  
E: [fred@fredtayar.com](mailto:fred@fredtayar.com)

**Lawyers for TDB Restructuring Limited**  
Interim Receiver of Thomas Dylan Suitor

### **Email Service List**

[gabrahamson@fullerllp.com](mailto:gabrahamson@fullerllp.com); [aerlich@fullerllp.com](mailto:aerlich@fullerllp.com); [ashah@fullerllp.com](mailto:ashah@fullerllp.com);  
[jennifer.stam@nortonrosefulbright.com](mailto:jennifer.stam@nortonrosefulbright.com); [evan.cobb@nortonrosefulbright.com](mailto:evan.cobb@nortonrosefulbright.com);  
[lauren.archibald@nortonrosefulbright.com](mailto:lauren.archibald@nortonrosefulbright.com); [dylan@elevationrealty.ca](mailto:dylan@elevationrealty.ca);  
[tanya@taplaw.ca](mailto:tanya@taplaw.ca); [vin@taplaw.ca](mailto:vin@taplaw.ca); [ngoldstein@ksvadvisory.com](mailto:ngoldstein@ksvadvisory.com);  
[dsieradzki@ksvadvisory.com](mailto:dsieradzki@ksvadvisory.com); [nelzakhem@ksvadvisory.com](mailto:nelzakhem@ksvadvisory.com); [rjacobs@cassels.com](mailto:rjacobs@cassels.com);  
[jbellossimo@cassels.com](mailto:jbellossimo@cassels.com); [skukulowicz@cassels.com](mailto:skukulowicz@cassels.com); [jberger@tdbadvisory.ca](mailto:jberger@tdbadvisory.ca);  
[btannenbaum@tdbadvisory.ca](mailto:btannenbaum@tdbadvisory.ca); [fred@fredtayar.com](mailto:fred@fredtayar.com); [george@chaitons.com](mailto:george@chaitons.com);  
[dim@chaitons.com](mailto:dim@chaitons.com); [forte@gsnh.com](mailto:forte@gsnh.com); [drake@gsnh.com](mailto:drake@gsnh.com); [kplunkett@airdberlis.com](mailto:kplunkett@airdberlis.com);  
[mvanzandvoort@airdberlis.com](mailto:mvanzandvoort@airdberlis.com); [sparsons@airdberlis.com](mailto:sparsons@airdberlis.com); [irmaboyle1@gmail.com](mailto:irmaboyle1@gmail.com);  
[goetz@hotmai.com](mailto:goetz@hotmai.com); [sofia.m.neves@gmail.com](mailto:sofia.m.neves@gmail.com); [dan.uszynski@outlook.com](mailto:dan.uszynski@outlook.com);  
[christophermonteiro@hotmail.com](mailto:christophermonteiro@hotmail.com); [gagnonj20@gmail.com](mailto:gagnonj20@gmail.com);  
[kathy.glaser@sympatico.ca](mailto:kathy.glaser@sympatico.ca); [heidi@makeagreatday.ca](mailto:heidi@makeagreatday.ca); [annemarieblinco@hotmail.com](mailto:annemarieblinco@hotmail.com);  
[kerrreiki@yahoo.ca](mailto:kerrreiki@yahoo.ca); [eflodrowski@gmail.com](mailto:eflodrowski@gmail.com); [bmary806@gmail.com](mailto:bmary806@gmail.com);  
[davidpgriffiths3@gmail.com](mailto:davidpgriffiths3@gmail.com); [haliflats@gmail.com](mailto:haliflats@gmail.com)

**IN THE MATTER OF THE BANKRUPTCY OF THOMAS DYLAN SUITOR, AN INDIVIDUAL WITH A LOCALITY OF BURLINGTON, ONTARIO**

ONTARIO  
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

**NOTICE OF MOTION  
(Returnable November 21, 2024)**

**FRED TAYAR & ASSOCIATES**  
**Professional Corporation**  
65 Queen Street West | Suite 1200  
Toronto, ON M5H 2M5

**FRED TAYAR – LSO No. 23909N**  
T: 416-363-1800 ext. 200  
E: [fred@fredtayar.com](mailto:fred@fredtayar.com)

**Lawyers for TDB Restructuring Limited**  
Interim Receiver of Thomas Dylan Sutor

**2**



**TDB Restructuring Limited**  
Licensed Insolvency Trustee

11 King St. W., Suite 700  
Toronto, ON M5H 4C7

info@tdbadvisory.ca

416-575-4440

416-915-6228

[tdbadvisory.ca](http://tdbadvisory.ca)

**IN THE MATTER OF THE INTERIM RECEIVERSHIP OF**

**THOMAS DYLAN SUITOR**

**FIRST REPORT OF THE INTERIM RECEIVER**

**NOVEMBER 19, 2024**

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## 1.0 INTRODUCTION

1. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated October 7, 2024 (the “**Appointment Order**”), TDB Restructuring Limited was appointed as interim receiver (the “**Interim Receiver**”) of the property, assets and undertaking (the “**Property**”) of Thomas Dylan Suitor (“**Mr. Suitor**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. The Appointment Order empowered and authorized the Interim Receiver to, among other things:
  - (a) *monitor the Debtor’s bank accounts and the accounts of Related Entities (as defined below) and approve all disbursements from the Debtor’s bank accounts and the accounts of Related Entities; and*
  - (b) *take any steps that the Interim Receiver may deem necessary or desirable to prevent any disbursement, withdrawal, transfer, sale, encumbrance of personal or real property of the Debtor **or corporations or other entities associated with, related to or controlled by the Debtor (the “Related Entities”)** [...]*<sup>1</sup>
3. The Endorsement of Justice Osborne dated October 7, 2024 (the “**Endorsement**”), is attached as **Appendix “B”** to this report.
4. The Appointment Order, the Endorsement and other pertinent documents related to these proceedings, has been posted on the Receiver’s website, which can be found at:

<https://tdbadvisory.ca/insolvency-case/d-suitor/>

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<sup>1</sup> Emphasis added

## **1.1 Purpose of Report**

5. The purpose of this first report to Court (the “**First Report**”) is to:
  - (a) provide the Court with information about the Interim Receiver’s activities since the date of the Appointment Order to the date of this First Report;
  - (b) seek advice and directions from the Court regarding:
    - i. the disclosure of the Provided Information (as defined herein) to Mr. Suitor’s creditors and other interested parties; and
    - ii. the Interim Receiver’s obligation to continue monitoring the accounts of the Related Entities and the disbursements therefrom;
  - (c) request that the Court grant an order:
    - i. approving the First Report and the activities of the Interim Receiver as set out herein;
    - ii. approving the disclosure of the Provided Information (as defined herein) and confirming that any disclosure of the Provided Information does not contravene the provisions of the BIA or the Rules thereunder, and may be utilized by the parties to the pending bankruptcy application in respect of Mr. Suitor or any other proceedings involving Mr. Suitor or any of the Suitor Companies (as defined herein);
    - iii. approving the Monitoring Protocol (as defined herein); and
    - iv. approving the fees and disbursements of the Interim Receiver to October 31, 2024, and the fees and disbursements of the Interim Receiver’s counsel to November 10, 2024.

## **1.2 Terms of Reference**

6. In preparing the First Report and making the comments herein, the Interim Receiver has relied upon information from third-party sources (collectively, the



“**Information**”). Certain of the information contained in the First Report may refer to, or is based on, the Information. As the Information has been provided by other parties or obtained from documents filed with the Court in this matter, the Interim Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Interim Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Interim Receiver expresses no opinion or other form of assurance in respect of the Information.

7. Unless otherwise stated, all dollar amounts contained in the First Report are expressed in Canadian dollars.

## **2.0 ACTIVITIES OF THE INTERIM RECEIVER**

8. The following is a summary of the Receiver’s activities since the date of the Appointment Order:
  - (a) engaged in preliminary discussions with the Fuller Landau Group Inc. (“**Fuller**” or the “**Applicant**”), in its capacity as Court-Appointed receiver of The Lion’s Share Group Inc. (“**Lion’s Share**”) to gather preliminary information regarding Mr. Suitor’s affairs and specifically the debts owing by Mr. Suitor to Lion’s Share;
  - (b) reviewed court filings in the Lion’s Share receivership, the Balboa Group of companies’ (the “**Balboa Group**”) CCAA proceedings, and other documents relating to the appointment the Interim Receiver;
  - (c) engaged in discussions with independent legal counsel to clarify terms of the Appointment Order and scope of the Interim Receiver’s authority;
  - (d) prepared the Information Request (as defined herein) and corresponded extensively with Mr. Suitor and his representatives regarding same;

- (e) conducted weekly meetings with Mr. Suitor, his employees and his counsel to discuss the status of the Information Request, monitoring processes, and payment approvals, etc.;
- (f) responded to inquiries from creditors of Mr. Suitor and the Related Entities, providing clarity on the Interim Receiver's mandate and the scope of the Interim Receiver's authority;
- (g) Considered and responded to various requests for the Interim Receiver to lift the stay of proceedings under the terms of the Appointment Order with respect to the Related Entities;
- (h) arranged for the registration of the Order on the real properties identified by Mr. Suitor as being owned by companies in which Mr. Suitor is a shareholder, or one of the Related Entities; and
- (i) prepared this First Report to Court.

### **3.0 INFORMATION REQUEST**

- 9. Upon its appointment, the Interim Receiver prepared a preliminary request for information to Mr. Suitor regarding his assets and liabilities, and the assets and liabilities of the Related Entities (the "**Information Request**"). A copy of the Information Request is attached as **Appendix "C"** to this report.
- 10. As of the date of the First Report, Mr. Suitor and his representatives have provided the following information to the Interim Receiver in response to the Information Request (collectively, the "**Provided Information**"):
  - (a) a list of thirty-nine (39) companies that are associated with, related to, or controlled by Mr. Suitor (the "**Suitor Companies**"). A list of the Suitor Companies is attached as **Appendix "D"** to this report.;
  - (b) a list of all bank accounts, credit cards, and investment accounts held by or associated with Mr. Suitor or the Suitor Companies;
  - (c) a statement of personal net worth for Mr. Suitor;

- (d) details regarding pending sales of assets owned by Mr. Suitor or the Suitor Companies;
- (e) details regarding any enforcement proceedings, legal action or other steps that have been commenced in respect of Mr. Suitor or the Suitor Companies' assets;
- (f) access to certain digital books and records for the Suitor Companies;
- (g) copies of insurance policies relating to the assets held by Mr. Suitor and the Suitor Companies; and
- (h) a monthly budget for Mr. Suitor's personal income and expenses.

#### **4.0 THE RELATED ENTITIES**

11. Pursuant to the terms of the Appointment Order, the Interim Receiver was empowered to monitor the bank accounts and disbursements of both Mr. Suitor and the Related Entities, but the complexity of Mr. Suitor's affairs has caused difficulties given the limited funding provided to the Interim Receiver to complete its mandate (as defined below).
12. Schedule "C" to the Appointment Order set out a list of sixteen (16) corporations in which Mr. Suitor was believed to have an interest as a shareholder (the "**Related Entities**" as defined by the Appointment Order). As set out previously in this First Report, Mr. Suitor has provided an expanded list of companies in which he holds shares either directly or indirectly, referred to as the Suitor Companies.
13. Since its appointment, the Interim Receiver required that Mr. Suitor provide it with a weekly list of proposed disbursements relating to Mr. Suitor's personal accounts and the accounts of the Suitor Companies (collectively, the "**Disbursements**") together with the invoices supporting those Disbursements. The Interim Receiver has been reviewing those invoices, and provided approval for payments which appear to be in the normal course of business. The Interim Receiver has been careful to balance its mandate to elicit information with the requirement of Justice

Osborne's Order to not interfere with the business operations of Mr. Suitor or the Suitor Companies.

14. The Interim Receiver notes that the review and approval process has rapidly become onerous, time-consuming, and costly, as the weekly list typically includes 40 to 75 payments. Given (i) the volume of Disbursements, (ii) the lack of background information regarding the transactions and the business practices of each of the Related Entities, and (iii) the limited financial resources available to the Interim Receiver, the Interim Receiver is concerned that it is not in a position to do a sufficient analysis of the underlying transactions prior to approval, and therefore cannot be fully comfortable regarding the propriety of the Disbursements.
15. In view of the foregoing, the Interim Receiver believes that the current level of monitoring of the Suitor Companies is not sustainable. To streamline the process, the Interim Receiver proposes the following protocol (the "**Monitoring Protocol**"):
  - (a) Mr. Suitor will have blanket authorization to pay invoices to any person, provided that the amount to that person does not exceed a pre-determined threshold to be quantified by the Interim Receiver (the "**Approval Threshold**");
  - (b) any payment exceeding the Approval Threshold must receive prior approval from the Interim Receiver; and
  - (c) Mr. Suitor will provide the Interim Receiver on a weekly basis with a list of all payments issued below the Approval Threshold during the prior week, along with corresponding bank statements for all accounts from which payments were processed. The Interim Receiver reserves the right to review any such payments, raise concerns, and restrict further payments to any persons as deemed necessary.

## **5.0 THE DISCLOSURE OF INFORMATION**

16. The Applicant is the Court-appointed Receiver of Lion's Share, which it says is a significant creditor of Mr. Suitor. KSV Restructuring Inc. ("**KSV**") is the Court-

appointed Monitor of the Balboa Group, of which Mr. Sutor is a principal. The affairs of Mr. Sutor, Lion's Share, and the Balboa Group are complex and entangled.<sup>2</sup>

17. Under the provisions of the Appointment Order, the Interim Receiver was authorized:

*to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable[.]*

18. Paragraph 4 of the Appointment Order defines Persons as follows:

**4. THIS COURT ORDERS** that: (i) the Debtor; (ii) all of his current and former employees, agents, accountants, legal counsel and all other persons acting on his instructions or behalf; (iii) all service providers, and all other persons acting on his instructions or behalf; (iv) all Related Entities and their respective current and former directors, officers, employees, agents, accountants, legal counsel, and equity holders; and (v) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Interim Receiver of the existence of any Property in such Person's possession or control, and shall grant immediate and continued access to the Property to the Interim Receiver.<sup>3</sup>

19. In paragraphs 80, 94, and 99 of his Endorsement, Justice Osborne held as follows:

*80. ...[I]n my view, it is appropriate that the interim receiver be appointed **in the circumstances where the Receiver has been seeking information from him for months, those inquiries remain outstanding**, and there are a number of outstanding questions and issues relating to Sutor's assets and those of his companies. **The interim receivership will sift through all of this***

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<sup>2</sup> Endorsement at paragraphs 14-23

<sup>3</sup> Emphasis added

**information, and attempt to sort out all of that material, and the resulting entitlements.**

94. *The notion that the issues in the Balboa CCAA Proceedings have no direct bearing on the issues to be decided on this motion is artificial. **They are inescapably linked, and the full extent of the relationship between and among all of these entities is the very thing that it is proposed that the interim receiver will investigate if appointed, all in order that creditors and stakeholders are not prejudiced,** and beneficial entitlement to those assets can be determined in a fair and transparent way.*

99. *Given Suitor's own expressed objective as described in his affidavit of assisting in working with creditors, I accept the submission of the Receiver that the prejudice to him by this interim receivership is limited.<sup>4</sup>*

20. The Interim Receiver believes that the intent of the Appointment Order was to enable the Interim Receiver to share information derived from its mandate pursuant to the terms of the Appointment Order with Fuller, all at the discretion of the Interim Receiver.
21. However, the Bankruptcy and Insolvency Act RSC 1985, c B-3 (the “**BIA**”), and the jurisprudence thereunder do not permit the Applicant to obtain discovery from Mr. Suitor in advance of the bankruptcy trial.<sup>5</sup>
22. Conscious of this restriction, the Interim Receiver has asked Mr. Suitor's counsel for confirmation that “information received or gathered by the Interim Receiver may be shared” with the Applicant and KSV. Counsel for Mr. Suitor declined to provide that confirmation, stating in part that:

*[t]he objection my client has at this point with sharing the information gathered by the interim receiver is that it is not complete...The information, if my client consents*

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<sup>4</sup> Emphasis added

<sup>5</sup> *Media-1-Stop (London) Limited.* (1970), 13 C.B.R. (N.S.) 96 (Ont. Sup. Ct.)

*to sharing it, should not be provided piecemeal or incomplete as this will potentially prejudice my client...*

23. Recently, Mr. Suitor's counsel has stated that Mr. Suitor will not oppose disclosure to Fuller or KSV, on certain terms.
24. Copies of the correspondence between counsel are attached as **Appendix "E"** to this report.
25. The Interim Receiver is therefore asking the Court to provide it with direction identifying the entities to which it may disclose information derived from its mandate. More specifically, the Interim Receiver requests permission to disclose such information to the Applicant, and a declaration that such disclosure does not contravene the BIA.

## **6.0 THE RETAINER**

26. The Interim Receiver undertook this assignment at the request of the Applicant, with a retainer of \$100,000 (the "**Retainer**") provided by KSV. As set out in further detail herein, the Retainer is rapidly being depleted, and the Interim Receiver is concerned that, given the time required to perform even basic monitoring of the Suitor Companies' expenditures (rather than intensive review), the Retainer will not last until Mr. Suitor's bankruptcy application is tried on February 25, 2025 (as currently scheduled), much less be sufficient for the administration of his bankruptcy estate.

## **7.0 PROFESSIONAL FEES**

27. The Interim Receiver's accounts for the period from October 7, 2024 to October 31, 2024 total \$34,337.95 in fees and disbursements, plus HST of \$4,462.91, for a total amount of \$38,800.85. A copy of the Interim Receiver's accounts, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Jeffrey Berger sworn on November 19, 2024 and attached as **Appendix "F"** to this report.
28. The accounts of the Receiver's counsel, Fred Tayar & Associates P.C., for the period from October 7, 2024 to November 10, 2024 total \$13,591.25 in fees and

disbursements, plus HST of \$1,766.87 for a total amount of \$15,358.12. A copy of counsel's interim accounts, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Mindy Tayar affirmed on November 18, 2024 and attached as **Appendix "G"** to this report.

## **8.0 RECEIVER'S REQUEST OF THE COURT**

29. Based on the foregoing, the Receiver respectfully requests that the Court grant the orders described in paragraph 5(c) above.

All of which is respectfully submitted to this Court as of this 19<sup>th</sup> day of November, 2024.

**TDB RESTRUCTURING LIMITED**, solely in its capacity as Interim Receiver of Thomas Dylan Sutor and not in its personal or corporate capacity

Per:



Jeffrey Berger, CPA, CA, CIRP, LIT  
Managing Director



# **APPENDIX A**

THE HONOURABLE JUSTICE OSBORNE

OCTOBER 7, 2024

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE BANKRUPTCY  
OF THOMAS DYLAN SUITOR, an individual  
with a locality of Burlington, Ontario

**ORDER**

**(Appointing Interim Receiver)**

**THIS MOTION** made by the applicant, The Fuller Landau Group Inc., in its capacity as receiver of the property, assets and undertaking of The Lion's Share Group Inc., (the "**Applicant**") for an Order pursuant to section 46 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") appointing TDB Restructuring Limited ("**TDB**") as interim receiver (in such capacity, the "**Interim Receiver**") without security, of all of the property, assets and undertaking of Thomas Dylan Sutor (the "**Debtor**"), was heard orally on October 3, 2024, in Toronto, Ontario.

**ON READING** the Notice of Motion of the Applicant dated August 31, 2024; the Fourth Report of the Applicant dated August 31, 2024; the Supplement to the Fourth Report of the Applicant dated September 30, 2024; the consent of TDB to act as Interim Receiver dated August 30, 2024; and the affidavit of verification of Gary Abrahamson sworn August 30, 2024;

**AND UPON** hearing the submissions of counsel for the Interim Receiver, counsel for the Applicant, counsel for the Debtor, and such other counsel who were present, no one else appearing although duly served as appears from the affidavit of service of Evan Cobb sworn September 19, 2024 and the affidavits of service of Lauren Archibald sworn September 19, 2024 and October 1, 2024.

## SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this matter is properly heard today and hereby dispenses with further service thereof.

## APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 46 of the BIA, TDB is hereby appointed Interim Receiver, without security, of all of the property, assets and undertaking of the Debtor, including, without limitation, the real property described in Schedule "A" hereto (the "**Property**").

## INTERIM RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) to monitor the Debtor's bank accounts and the accounts of Related Entities (as defined below) and approve all disbursements from the Debtor's bank accounts and the accounts of Related Entities;
- (b) to take any steps that the Interim Receiver may deem necessary or desirable to prevent any disbursement, withdrawal, transfer, sale, encumbrance of personal or real property of the Debtor or corporations or other entities associated with, related to or controlled by the Debtor (the "**Related Entities**"), including the Related Entities listed on Schedule "C" hereto;
- (c) to engage independent security personnel to preserve and protect the Property;
- (d) to take any steps the Interim Receiver may deem necessary or desirable to preserve and protect the personal property and real property legally or beneficially owned by the Debtor or the Related Entities pending further order of the Court including, but not limited to, changing locks, security codes and passwords and the taking of physical inventories, and the control of access to the Debtor's or the Related Entities' Records (as defined below) and premises;

- (e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Interim Receiver's powers and duties, including without limitation those conferred by this Order;
- (f) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;
- (g) to undertake any investigations deemed appropriate by the Interim Receiver with respect to the business and affairs of the Debtor;
- (h) to apply to this Court for such further relief, advice and directions as the Interim Receiver may determine as necessary or desirable;
- (i) to register a copy of this Order and any other Orders in respect of the Property against title to the Property or against title to the assets of the Related Entities;
- (j) to conduct examinations of any person, if deemed necessary in the Interim Receiver's discretion; and
- (k) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including opening any mail or other correspondence addressed to any of the Debtor or the Related Entities,

and in each case the Interim Receiver shall be exclusively authorized and empowered to do so, to the exclusion of the Debtor, and without interference from any other person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER**

4. **THIS COURT ORDERS** that: (i) the Debtor; (ii) all of his current and former employees, agents, accountants, legal counsel and all other persons acting on his instructions or behalf; (iii) all service providers, and all other persons acting on his instructions or behalf; (iv) all Related Entities and their respective current and former directors, officers, employees, agents, accountants, legal counsel, and equity holders; and (v) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being

“Persons” and each being a “Person”) shall forthwith advise the Interim Receiver of the existence of any Property in such Person’s possession or control, and shall grant immediate and continued access to the Property to the Interim Receiver.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records, information and cloud-based data of any kind related to the business or affairs of the Debtor or the Related Entities, and any computer programs, computer tapes, computer disks, cloud or other data storage media containing any such information (the foregoing, collectively, the “Records”) in that Person’s possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software, cloud and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer, in the cloud or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer, cloud or other system and providing the Interim Receiver with any and all access codes, account names, account numbers, account creating credentials that may be required to gain access to the information.

**NO PROCEEDINGS AGAINST THE INTERIM RECEIVER**

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or any Related Entities or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor, the Related Entities or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

9. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Related Entities, the Interim Receiver, or affecting the Property, including, without limitation, licences and permits, are hereby stayed and suspended except with the written consent of the Interim Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall: (i) empower the Interim Receiver or the Debtor, to carry on any business which the Debtor, is not lawfully entitled to carry on; (ii) exempt the Interim Receiver or the Debtor, from compliance with statutory or regulatory provisions relating to health, safety or the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE INTERIM RECEIVER**

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor or a Related Entity, without written consent of the Interim Receiver or leave of this Court.

## CONTINUATION OF SERVICES

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or any of the Related Entities, or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, construction management services, project management services, permit and planning management services, accounting services, centralized banking services, payroll services, insurance, employee benefits, transportation services, utility or other services to the Debtor or the Related Entities, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Interim Receiver (including, where a notice of termination may have been given with an effective date after the date of this Order), and that the Interim Receiver shall be entitled to the continued use of the Debtor's or the Related Entities' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Interim Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

## EMPLOYEES

12. **THIS COURT ORDERS** that all employees of the Debtor or the Related Entities shall remain the employees of the Debtor or the Related Entities. The Interim Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Interim Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA, or under the *Wage Earner Protection Program Act* (the "WEPPA").

## LIMITATION ON ENVIRONMENTAL LIABILITIES

13. **THIS COURT ORDERS** that nothing herein contained shall require the Interim Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property or the Related Entities that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating

to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property or any property of the Related Entities within the meaning of any Environmental Legislation, unless it is actually in Possession.

#### **LIMITATION ON THE INTERIM RECEIVER’S LIABILITY**

14. **THIS COURT ORDERS** that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the WEPPA. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **INTERIM RECEIVER’S ACCOUNTS**

15. **THIS COURT ORDERS** that the Interim Receiver and counsel to the Interim Receiver 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 that the Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the “**Interim Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Interim Receiver’s Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

16. **THIS COURT ORDERS** that the Interim Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Interim Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.



17. **THIS COURT ORDERS** that prior to the passing of its accounts, the Interim Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE INTERIM RECEIVERSHIP**

18. **THIS COURT ORDERS** that the Interim Receiver be at liberty and it is hereby empowered to borrow by way of a credit facility, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount that is acceptable to the Applicant and as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Interim Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Interim Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest, fees and charges thereon, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Interim Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **THIS COURT ORDERS** that neither the Interim Receiver’s Borrowings Charge nor any other security granted by the Interim Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

20. **THIS COURT ORDERS** that the Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “B” hereto (the “**Interim Receiver’s Certificate**”), as modified to reflect the terms of the credit facility between the Interim Receiver and the Applicant referred to in paragraph 18, for any amount borrowed by it pursuant to this Order.

21. **THIS COURT ORDERS** that the monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Interim Receiver’s Certificates.

## SERVICE AND NOTICE

22. **THIS COURT ORDERS** that The Guide Concerning Commercial List E-Service (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://tdbadvisory.ca/insolvency-case/d-suitor>.

23. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to any creditors of the Debtor or other interested parties at their respective addresses as last shown on the records of the Debtor, and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

24. **THIS COURT ORDERS** that the Applicant, the Interim Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 8100-2-175 (SOR/DORS).

## GENERAL

25. **THIS COURT ORDERS** that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

26. **THIS COURT ORDERS** that nothing in this Order shall prevent the Interim Receiver from acting as a receiver, trustee in bankruptcy or monitor of the Debtor.

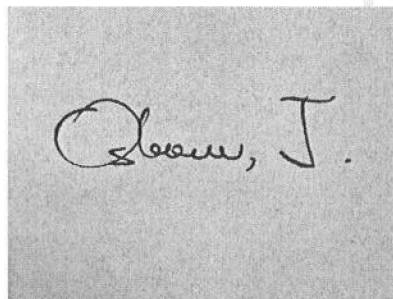
27. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

28. **THIS COURT ORDERS** that the Interim Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Interim Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

29. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Interim Receiver from the estates of the Debtor, with such priority and at such time as this Court may determine.

30. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

31. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Prevailing Eastern Time on the date hereof without any need for entry and/or filing.

A rectangular box containing a handwritten signature in black ink that reads "Osborne, J.".

Digitally signed  
by Osborne J.

Date:

2024.10.07

14:11:30 -04'00'

**SCHEDULE "A"**  
**DESCRIPTION OF REAL PROPERTY**

<b>No.</b>	<b>Municipal Address</b>	<b>PIN</b>	<b>Registered Owner</b>
1.	775 King Road, Burlington, Ontario, L7T 3K6	PIN 07096-0052 (LT)	Thomas Dylan Sutor
2.	2298 Fassel Avenue, Burlington, Ontario, L7R 3P3	PIN 07077-0108 (LT)	Thomas Dylan Sutor

**SCHEDULE "B"**  
**INTERIM RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that TDB Restructuring Limited, the interim receiver (the "**Interim Receiver**") of the property, assets and undertaking of Thomas Dylan Suitor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the \_\_\_ day of August, 2024 (the "**Order**") made in an action having Court file number BK-24-00208718-OT31, has received as such Interim Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_, which the Interim Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [**daily**][**monthly not in advance on the \_\_\_ day of each month**] after the date hereof at a notional rate per annum equal to the rate of percent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Interim Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Interim Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Interim Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Interim Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Interim Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**TDB RESTRUCTURING LIMITED**, solely in its capacity as Interim Receiver of the Property, and not in its personal capacity

Per: \_\_\_\_\_

Name:

Title:

**SCHEDULE "C"**  
**RELATED ENTITIES**

<b>No.</b>	<b>Entity Name</b>
1.	10 Norfolk St. Inc.
2.	1083 Main Street Inc.
3.	2657677 Ontario Inc.
4.	2710654 Ontario Inc.
5.	388 Downie St. Inc.
6.	642 Hamilton Road Inc.
7.	Commercial Urkel Inc.
8.	Conduit Asset Management Inc.
9.	Dylan Sutor Professional Real Estate Holding Corporation
10.	Elev8 Inc.
11.	Elevation Reality Network Inc.
12.	Happy Town Housing Inc.
13.	Old Thing Back Inc.
14.	Prospect Real Estate Inc.
15.	Upgrade Housing Inc.
16.	Up-town Funk Inc.

IN THE MATTER OF THE BANKRUPTCY OF THOMAS DYLAN SUITOR, AN INDIVIDUAL  
WITH A LOCALITY OF BURLINGTON, ONTARIO

BK-24-00208718-OT31

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

PROCEEDING COMMENCED AT  
TORONTO

**INTERIM RECEIVER ORDER**

**NORTON ROSE FULBRIGHT CANADA LLP**  
222 Bay Street, Suite 3000  
Toronto ON M5K 1E7

**Jennifer Stam LSO#: 46735J**  
Tel: 416.202.6707  
[jennifer.stam@nortonrosefulbright.com](mailto:jennifer.stam@nortonrosefulbright.com)

**Evan Cobb LSO#: 55787N**  
Tel: 416.216.1929  
[evan.cobb@nortonrosefulbright.com](mailto:evan.cobb@nortonrosefulbright.com)

Lawyers for the Receiver



# **APPENDIX B**



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL SLIP / ENDORSEMENT**

COURT FILE  
NO.:

BK-24-00208718-OT31

DATE: 7 October 2024

NO. ON LIST: 3,4

In the matter of the Bankruptcy of Thomas Dylan Suitor

BEFORE  
JUSTICE: Osborne

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Jennifer Stam, Evan Cobb & Lauren Archibald	The Fuller Landau Group Inc, receiver of the property, assets and undertaking of The Lion's Share Group Inc.	<a href="mailto:Jennifer.stam@nortonrosefulbright.com">Jennifer.stam@nortonrosefulbright.com</a> <a href="mailto:Evan.cobb@nortonrosefulbright.com">Evan.cobb@nortonrosefulbright.com</a> <a href="mailto:Lauren.archibald@nortonrosefulbright.com">Lauren.archibald@nortonrosefulbright.com</a>

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
Tanya Pagliaroli & Vinayak Mishra	Thomas Dylan Suitor, Debtor	<a href="mailto:tanya@taplaw.ca">tanya@taplaw.ca</a> <a href="mailto:vin@taplaw.ca">vin@taplaw.ca</a>

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Shaun F. Parsons	The Noteholders of The Lion's Share Group Inc.	<a href="mailto:sparsons@airdberlis.com">sparsons@airdberlis.com</a>
Mario Forte	Unsecured Lenders of The Lion's Share Group Inc.	<a href="mailto:forte@gsnh.com">forte@gsnh.com</a>

## **ENDORSEMENT OF JUSTICE OSBORNE:**

### **The Motion**

1. The Receiver of The Lions Share Group Inc. seeks an order appointing TDB Restructuring Limited as interim receiver over the property of Thomas Dylan Suito pursuant to section 46 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “*BIA*”) within this Bankruptcy Application, with the powers and responsibilities as set out in the draft order appended to the Motion Record.
2. The Receiver relies upon the Fourth Report dated August 31, 2024, the Supplement to the Fourth Report dated September 30, 2024 and the Affidavit of Verification of Gary Abrahamson sworn August 30, 2024, together with their respective Appendices and Exhibits.
3. The Receiver’s motion, which it brings in its capacity as Receiver and not for any self-interested purpose, is supported by:
  - a. Representative Counsel to the Secured Creditors appointed in the Balboa CCAA Proceedings (described below);
  - b. Representative Counsel appointed in the Balboa CCAA Proceedings on behalf of the holders of the non-Lion’s Share unsecured claims; and
  - c. Representative Counsel appointed in the Lion’s Share receivership proceedings on behalf of the LS Lenders (described below).
4. The Debtor opposes the appointment of an interim receiver and relies on his affidavit affirmed September 26, 2024 and his supplementary affidavit affirmed October 2, 2024, together with Exhibits thereto.
5. Defined terms in this Endorsement have the meaning given to them in the motion materials unless otherwise stated.
6. For the reasons set out below, the motion is granted.

### **The Test**

7. There is no dispute about the applicable test. An interim receiver may be appointed pursuant to section 46(1) of the *BIA* if:
  - a. an Application for a Bankruptcy Order has been filed; and
  - b. the appointment of an interim receiver is necessary for the protection of the estate.
8. There is no issue here that an Application for Bankruptcy Order in respect of the Debtor was filed on August 30, 2024 in the judicial district of the Debtor’s locality, in this case, Burlington, Ontario.
9. Accordingly, the focus on this motion is on the second branch of the test. Courts have held that in determining whether an interim receiver is necessary for the protection of the estate, the moving party must establish that:
  - a. on a balance of probabilities, the creditor petitioning the debtor into bankruptcy is likely to succeed in obtaining a Bankruptcy Order; and
  - b. there is an immediate need for protection of the debtor’s estate due to the grave danger that assets will disappear, or the estate is otherwise in jeopardy.

See: *Konopy, Re*, 2009 CanLII 44412 (ONSC) (“*Konopy*”) at para. 21, quoting with approval from Houlden and Morawetz, *Bankruptcy and Insolvency Law of Canada*, 4<sup>th</sup> ed., (Toronto: Carswell, Looseleaf ed., 2009) at p. 2-115.

10. It is important to note at the outset of the analysis that I am not determining for the purposes of this interim receivership motion whether the Bankruptcy Application will succeed. That is for another day. The purpose of an interim receivership pursuant to section 46 of the *BIA* is to protect the interests of secured creditors during the brief period between the time when a secured creditor delivers the Notice and the determination of the Bankruptcy Application.
11. Moreover, the powers of an interim receiver are intended to advance this interim objective of conserving assets and are limited, both generally by section 46(2) which specifies those things that the court may direct an interim receiver to do, and specifically in this case by the terms of the draft order sought by the Receiver. Those terms are discussed further below.

### **Receiver Likely to Succeed in Obtaining a Bankruptcy Order**

12. The Receiver submits on this motion that the Bankruptcy Application is likely to be successful since Suitor has engaged in several acts of bankruptcy, and that it is clear that a trustee in bankruptcy should be appointed over his affairs for the benefit of all stakeholders.
13. The Receiver further submits that its investigation is continuing, so the full extent and quantum of Mr. Suitor’s indebtedness and obligations to Lion’s Share under certain promissory notes and/or otherwise, continues to be investigated. For this reason, it was unable to quantify an exact quantum of that indebtedness (even subject to per diem interest and costs that continue to accrue).
14. The overarching context within which this motion is brought is relevant to this analysis.
15. The Receivership Order in the Lion’s Share Receivership Proceedings appointing the Receiver over the property of Lion’s Share was granted on April 3, 2024.
16. Lion’s Share carried on business of, among other things, issuing promissory notes to individuals and corporations (the “LS Lenders”) to generate funds to then be advanced as loans, usually by way of promissory notes issued to corporations and individuals (“LS Borrowers”). The assets of The Lion’s Share consist almost exclusively of these unsecured loans to borrowers documented through those promissory notes.
17. Claire Drage (“Drage”) is the owner of the Lion’s Share. Drage filed an assignment in bankruptcy on April 8, 2024, five days after the Receivership Order was made in the Lion’s Share Receivership Proceedings.
18. One of those significant LS Borrower groups is a group of borrowers consisting of a number of corporations collectively referred to as the “Balboa Borrowers”.<sup>1</sup> The Balboa Borrowers commenced CCAA proceedings which are continuing.
19. The Debtor, Dylan Suitor (“Suitor”), is one of the four principals of the Balboa Borrowers. By order made in the Balboa CCAA Proceedings on June 25, 2024, the powers of the Balboa CCAA Monitor were substantially enhanced, and the power and authority of the four principals to manage or govern the Balboa CCAA Borrowers was correspondingly displaced.
20. The Receiver submits that Suitor has significant liabilities and obligations to Lion’s Share as one of the Balboa Principals, and pursuant to other direct obligations and personal guarantees.

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<sup>1</sup> The Balboa Borrowers are defined at paragraph four of the Fourth Report.

21. The Receiver submits on this motion that the Debtor is indebted to Lion's Share in the amount of \$23,169,435.25 plus chargeable enforcement costs incurred to date and interest and costs that continue to accrue.
22. The Receiver has identified at least 16 Related Entities through searches and public filings owned or controlled by the Debtor (the name of each Related Entity is set out in the motion materials).
23. For all of these reasons, the Receiver submits that interim relief to prevent creditors from getting an advantage over other creditors is appropriate. It further submits that the appointment of an interim receiver is not prejudicial to the Debtor since the powers will be restricted to requiring the Debtor to provide full disclosure with respect to all of his holdings and those of his companies, and powers necessary to preserve his assets.
24. The Receiver submits that numerous acts of bankruptcy under section 42 of the *BIA* have been committed here and that the Debtor has ceased paying his obligations generally as they become due.
25. The Debtor disputes that either of the two branches of the test has been met here. He takes the position that he is not personally indebted to Lion's Share, and while he concedes that it is his signature on the relevant promissory notes, he submits that he did not understand that he was giving any personal guarantees or that he had personal liabilities.
26. I begin with the Bankruptcy Application. It states at paragraph two that:
  - the said Debtor is justly and truly indebted to Lion's Share for, among other things, the following amounts:
    - a) \$1,267,948.83; and
    - b) \$1,403,393.17.
27. Those amounts represent indebtedness owing to Lion's Share pursuant to various promissory notes. A number of those notes are appended to the Fourth Report at Appendix "A".
28. The Affidavit of Verification sworn in support of the Bankruptcy Application is to the same effect, and states that the Debtor is indebted to Lion's Share [for the above amounts] and that the debt "arises from promissory notes signed and guaranteed by Thomas Dylan Sutor in favour of Lion's Share on behalf of a number of companies indebted to Lion's Share, including 10 Norfolk St. Inc. and 388 Downie St. Inc. [among others]" (the Sutor Lion's Share Notes").
29. Upon its appointment, the Receiver reached out to Sutor to discuss these Sutor Lion's Share Notes and a plan for repayment of same. Sutor did not provide any proposal for repayment.
30. The Receiver made formal Demands on the notes on June 18, 2024 and August 16, 2024, which Demand Letters are also attached to the Fourth Report as Appendices "B" and "C" respectively. Each of those two Demand letters sets out the amount owing in respect of the specific named Sutor Lion's Share Borrowers. For example, in the June 18, 2024 Demand Letter, the following amounts are demanded:
  - a. 10. Norfolk \$281,342.35;
  - b. 388 Downie \$130,980.21;
  - c. Commercial Urkel \$273,398.32;
  - d. Happy Town \$318,426.20; and
  - e. Up-town Funk \$263,801.75.

31. Those amounts in the aggregate equal the sum of \$1,267,948.83 referred to above in the Bankruptcy Application.
32. The June 18, 2024 Demand Letter was also delivered to Suitor as guarantor of the above obligations.
33. Subsequent to the June 18 2024 Demand Letter, additional Suitor Lion's Share Notes matured and were not repaid, with the result that the second Demand Letter, the August 16, 2024 Demand Letter, was delivered demanding repayment of the second amount referred to above in the Bankruptcy Application, \$1,403,393.17 pursuant to an additional promissory note dated February 16, 2023.
34. The Fourth Report (at paragraph 19) states that in addition to the above obligations, there is an additional Promissory Note owed by Suitor and in default with a principal balance of \$177,974.69 and interest continuing to accrue.
35. It is agreed by the parties that for the purposes of this motion, the language of each of the Suitor Lion's Share Notes is substantially the same in the relevant respects. For the purposes of this motion, I reference the language of the Note that appears first at Appendix "A" to the Fourth Report in respect of 10 Norfolk Street Inc. to which both parties referred in their materials and submissions, and which they both agreed was representative of all of the Notes at issue.
36. I pause to observe that this company is one of the 16 companies identified in the motion materials as being owned and controlled by Suitor. As noted above, Suitor does not dispute that he owns and controls these 16 companies and indeed admits such in his affidavit (see paragraph 20, and the reference to "my corporation 10 Norfolk St. Inc." and paragraph 21, and the reference to "my corporation 388 Downie Inc.").
37. In submissions this was confirmed, and his counsel further fairly conceded that there is no issue that the debts are due and owing by the corporate entities.
38. Those companies owned several properties (see Appendix "D" to the Fourth Report). As further described below, pursuant to the terms of the Suitor Lion's Share Notes, the Borrowers agreed to allow a charge to be registered against title to those properties. Pursuant to Orders granted by this Court on June 12 and June 26, 2024, respectively, the Receiver was authorized to register the orders on title to those properties, to protect the interests of the Lion's Share estate for the benefit of its creditors.
39. In addition to guaranteeing obligations of the Lion's Share Borrowers, the Receiver submits that Suitor also guaranteed certain obligations of the Balboa Borrowers (entities of which he is one of four principals). Suitor also owns, directly or indirectly through 2657677 Ontario Inc., at least four of these Balboa Borrowers: Interlude, Hometown, Horses, Neat Nests (collectively with Mulligan, the "Suitor Balboa Borrowers").
40. At the time of filing, Suitor was the sole director of these parties. According to corporate profile reports for these entities appended to the Fourth Report, Suitor was an officer, director and shareholder of the Suitor Balboa Borrowers but it appears that he has recently resigned as director and officer.
41. As set out in the Clark Affidavit (Appendix "F") and the Fourth Report (see paragraph 24), the Suitor Balboa Borrowers had outstanding mortgage debt as of December 31, 2023 in amounts exceeding \$25 million. According to the Receiver, certain of those loans were guaranteed by Suitor. Those same entities are obligated under a series of unsecured notes with principal amounts that were due on January 23, 2024 and in the specific amounts set out at paragraph 26 of the Fourth Report. In the aggregate, they total over \$35 million, of which approximately \$23 million is owed to the Lion's Share. That amount is in addition to the obligations owed by the Suitor Lion's Share Borrowers.
42. Suitor's position on this motion is that his personal guarantees of those corporate obligations are not valid. Indeed, this was his principal defence to the motion.

43. As stated above, Suitor does not contest that:
- a. the Suitor Lion's Share Notes were validly issued;
  - b. the Suitor Lion's Share Notes were properly and validly executed by Suitor himself on behalf of the relevant corporation named in each;
  - c. the terms of the Notes were agreed;
  - d. the principal amount of each Note is accurate, and the funds were advanced;
  - e. the funds remain owing by those respective Suitor Lion's Share Borrowers to Lion's Share, and the Notes have not been repaid.
44. Suitor maintains, however, that the obligations under these Notes are those of the respective corporations, and not him personally as a Borrower. Suitor further submits that to the extent that there was any intention that he be a Guarantor, the Notes lack sufficient particulars to give rise to an enforceable guarantee with the result that he is not personally liable thereunder.
45. For the limited purpose of this motion (i.e., whether an interim receiver should be appointed), and recognizing that the relief sought is temporary in nature and that the issue can and will be finally determined in the Bankruptcy Application itself, I am satisfied that the Receiver is likely to succeed on the Bankruptcy Application.
46. It is of assistance to look at the language of these Suitor Lion's Share Notes themselves.
47. The 10 Norfolk Street Inc., Promissory Note Loan Agreement states, in relevant part, the following:
- a. Recital: "Borrowers: 10 Norfolk Street Inc. (the "Borrowers") with personal guarantor(s) Dylan Suitor (the "Borrowers");"
  - b. Article 8: "This Note is secured by the Lender's right to register this Note on title on **all or any properties held by the Borrowers and Guarantors as security** (the "Security") if not paid in full by 6:00 PM on April 13, 2024." [emphasis in original]; and
  - c. Signatories: "Dylan Suitor 10 Norfolk St. Inc. (Borrowers)" and "Dylan Suitor (Borrowers/Guarantors)".
48. Suitor submits that these Notes are the basis for the Demand Letters delivered, that the Receiver did not advance the position before delivery of its factum on this motion that Suitor was a Borrower as well as a Guarantor, and that the guarantee language in the Notes set out above, without more, is insufficient to create an enforceable guarantee.
49. Suitor submits that the definition of "Borrowers" is at best ambiguous and at worst refers to the company only and not him in his personal capacity.
50. For the purposes of this motion only, in my view, it is far from clear that Suitor is not a Borrower as well as a Guarantor. The recital excerpted above states that 10 Norfolk Street is defined as "the Borrowers", as are both that company together "with personal guarantor(s) Dylan Suitor". While the reference or potential reference to the plural of "Borrower" in both instances reflects drafting that is arguably not as clear as it could be, there is a very real argument that Suitor is both a Borrower and a Guarantor.
51. I am reinforced in this conclusion, again for the limited purposes of this motion, by the two other Articles of the Note excerpted above. First, Article 8 refers to other properties held by both the Borrowers and Guarantors as security. Second, Suitor signs as a signatory twice. It is undisputed that he signs first on behalf of the corporate Borrower, 10 Norfolk.

52. However, he also signs a second time. Suitor argues on this motion both that he is not a Borrower, and also that he is not a Guarantor since he did not appreciate or understand that he was signing as such. This is, in contradistinction to the fact that he expressly signs (separate and apart from signing as a corporate representative) as “Borrower/Guarantor”.
53. If Suitor is correct that only the corporate entity was bound, and intended to be bound, by the terms of the Note, including the guarantee, that would have been acknowledged and agreed to by that corporate entity through Suitor’s first signature on its behalf. There must be an explanation as to the intention of the parties and the legal effect as to what Suitor’s second signature, as “Borrowers/Guarantors” means.
54. Again, in my view, there is a real argument on the Bankruptcy Application that Suitor is a Borrower as well as a Guarantor.
55. Leaving aside for a moment the issue of Suitor’s liability as a Borrower, Suitor also denies liability with respect to the guarantee His submission is that the three excerpted paragraphs set above comprise the only references to the guarantee obligation or the fact that Suitor signed in his capacity as personal Guarantor, and that, without more, those provisions are insufficient to give rise to an enforceable guarantee obligation.
56. Suitor submits that these Lion’s Share Promissory Notes were drafted by Drage and/or her group of affiliated companies, including Lion’s Share. He further submits that: Drage encouraged him not to get legal advice; while he “entered into the Lion’s Share Promissory Notes”, he did so without knowledge that he would be bound as a personal guarantor with unlimited liability (factum, para. 5(c)); he entered into the Notes on the basis that they were short-term instruments that his companies would be able to pay off at the end of the term with additional funds promised by Drage and her companies; Drage unilaterally altered terms of the Notes and increased interest payments contrary to his expectations and often without notice; and, finally, that the Notes contain insufficient certainty of terms.
57. With respect to all of those factual defences, Suitor relies on his affidavits. He disputes that he personally owes any money to Lion’s Share pursuant to the Lion’s Share Promissory notes *as a guarantor*, and repeats the statements advanced on his behalf in his factum as set out above (paragraph eight).
58. Suitor further denies owing any funds to Lion’s Share under the Lion’s Share Promissory Notes *personally* (paragraph nine), although notwithstanding this, he submits that he is “committed to try to get the most value out of the properties owned by my corporations to satisfy as many of the secured and unsecured creditors as possible on behalf of the corporations who are party to the agreements” (paragraph 19). I pause to observe that this reinforces my conclusion that an interim receivership is appropriate at this time. It is intended to achieve precisely the objective that Suitor states is also his own objective.
59. With respect to Suitor’s argument about the technical sufficiency of the language in the guarantees, he places considerable reliance on the *Konopy* decision referred to above.
60. In that case, the basis for the bankruptcy order was liability pursuant to a guarantee. A number of arguments were advanced on behalf of the debtor there as to why the applicant had failed to show that a bankruptcy order was “almost certain” to be made, including the fact that there was no original of the guarantee, no evidence at all concerning the circumstances in which the guarantee was executed, the guarantee was not signed by the petitioning creditor, and notwithstanding the alleged execution of the guarantee, the creditor repeatedly sought to obtain a personal guarantee - i.e., it did not consider the form relied upon to be a guarantee (see *Konopy*, at paragraph 18).
61. Strathy J. went on to observe, noting circumstances similar to the present case, that the guarantor in that case did not deny that he had signed the form or that his signature was forged, but rather that he had no recollection of signing the form. (paragraph 24).



62. Notwithstanding all of this, the Court in *Konopy* was satisfied that the applicant had made out a *prima facie* case that the guarantor had indeed signed the guarantee. Strathy J. further observed that: “the form of the guarantee is simple and clear. He guarantees payment of all money due by his company ... There may be defences, whether technical or substantial, but those defences will have to be proven and have not been identified to me. Richards has established a meritorious claim, on the balance of probabilities.”. (para. 25).
63. The approach of Strathy, J. is equally applicable here. Suitor challenges the certainty of terms of the guarantee document he admits he signed. For example, and with respect to 10 Norfolk (although, as noted above, the same argument applies to all of the Notes), and notwithstanding that the language of the Note sets out clearly the principal amount advanced, the applicable interest rate, the maturity and due date for the Note on which date the principal and interest was due and owing, the fact that the Lender could register security on any Property of the Borrowers or the Guarantors if the Note was not repaid on maturity, Suitor submits that there is no certainty as to what amount he guaranteed or when it was due.
64. Suitor further submits that this lack of clarity of language has been held in other cases to be fatal to the successful enforcement of guarantees. See, for example: *Waterloo-Oxford Co-Operative Inc. v. Hamm*, 2005 CanLII 2953; *Times Square v. Shimizu*, 2001 BCCA 448; and *Bank of Nova Scotia v. Williamson*, 2009, ONCA 754, among others.
65. As Strathy J. found in *Konopy*, there may be defences, whether technical or substantial, but those defences will have to be proven. All of that can occur at the hearing of the Bankruptcy Application.
66. I observe that, while Suitor submits as noted above, that Drage and/or her affiliated companies drafted the Notes including the guarantees, that Suitor did not understand he was incurring any liability, and Drage unilaterally amended terms from time to time such that there is no meeting of minds and there was the presence of undue influence, there is no evidence on this motion from Drage or anyone else other than Suitor with respect to the circumstances surrounding the negotiation and execution of these documents. All of that can be explored in the Bankruptcy Application.
67. Finally, Suitor challenges the motivation of the moving party on this motion, which has been held to be a relevant factor in considering the appointment of an interim receiver: *La Hogue Financial Management Services Ltd., v. One Shaftesbury Community Association*, 2005 CanLII 25954 at paras. 29-34.
68. In my view, the motivation of the petitioning creditor here militates in favour of the appointment of an interim receiver. The Receiver is not seeking any relief to advance its own beneficial interest. On the contrary, it is acting exclusively for the benefit of the creditors and the estate generally, in accordance with the terms of its appointment order. It is not a petitioning creditor with a vested interest in recovering funds for its own benefit. Moreover, it is not seeking any beneficial entitlement finding, but rather preservation of assets for an interim period of time.
69. For all of these reasons, I am satisfied that for the purposes of this motion, the Receiver is on a balance of probabilities likely to succeed on the Bankruptcy Application.

### **Immediate Need for protection of the Debtor’s Estate**

70. The Receiver submitted that there was some urgency to the appointment of an interim receiver given its submission that the estate is in jeopardy. It further submits that the appointment of a receiver is just and convenient for the protection of the Debtor’s estate, given the steps the Receiver submits that Suitor has taken to deal with and dissipate assets surreptitiously despite extensive claims, the absence of any meaningful steps to resolve his debts, and the concerns of a high volume of competing creditors.
71. Among others, the Receiver submits two things.

72. First, it submits that in March and May, 2024, the Debtor appears to have granted mortgages to National Bank over two residential properties owned by him for \$3,200,000 and \$1,450,000, respectively, and that it is unclear what Suitor used the proceeds of these loans for.
73. Second, it submits that on May 21, 2024, the Debtor, through one of his holding companies, Elevation Realty Network Inc., purported to take charges in respect of properties owned by one of the LS Borrowers (Happy Town Housing Inc.). After initially suggesting that value had been given for these mortgages, Suitor failed to provide any response to the Receiver after it requested the evidence of such value.
74. All of this is of particular concern, submits the Receiver, given the facts set out in the Fourth Report of the Balboa CCAA Monitor dated June 11, 2024. That Report, appended to the Fourth Report of the Receiver as Appendix “K” and filed on this motion, included findings, among others, that the principals of the Balboa Borrowers had:
- a. engaged in questionable transfers without any apparent benefit to the business, including over \$4 million of payments to corporations affiliated with Suitor or to Suitor himself;
  - b. caused the Balboa Borrowers to make questionable dividend payments;
  - c. exhibited a pervasive lack of proper record keeping and other deficient business practices; and
  - d. in the case of Suitor specifically, swearing false statutory declarations.
75. It was these concerns, placed before the Court through the Fourth Report of the Balboa CCAA Monitor on the motion to expand the powers of that Monitor and restrict the powers of the principals of the Balboa Borrowers (of whom Suitor is one of four), that caused the Court to grant that relief.
76. In addition to the above, the Receiver submits that given the Related Entities that Suitor owns or controls, including those that have been identified by the Receiver to date (and those in turn include the 16 companies referred to above), and further given the sheer number of claims and potential claims to be asserted against Suitor and those Related Entities, interim relief is appropriate to prevent creditors from “jumping the queue” and attempting to gain an advantage over other creditors and/or prejudice the estate and creditors generally.
77. In this regard, and while there is currently in place a stay of proceedings against Suitor in respect of personal claims against him in connection with his obligations related to the Balboa Borrowers, that stay may soon expire upon the completion of transition of management of property in connection with the expansion of the powers of the Balboa CCAA Monitor, after which time the Receiver fully expects that there will be possibly hundreds of additional claims against Suitor absent the granting of the bankruptcy order and the interim receivership order sought here.
78. For his part, Suitor admits that he placed the mortgages and charges on the properties referred to above and highlighted by the Receiver. He maintains that he did so, however, in the ordinary course and not for any improper purpose.
79. I have reviewed all of that evidence. I accept that (as attached as exhibits to Suitor’s affidavit), he has now produced documents such as mortgages and wire confirmations related to the proceeds of the mortgages and loans and questions.
80. It may be that he ultimately succeeds on the Bankruptcy Application in satisfying the Court that he continues to meet his obligations as they come due. However, and notwithstanding his affidavit evidence, in my view, it is appropriate that the interim receiver be appointed in the circumstances where the Receiver has been seeking information from him for months, those inquiries remain outstanding, and there are a number of outstanding questions and issues relating to Suitor’s assets and those of his companies. The

interim receivership will sift through all of this information, and attempt to sort out all of that material, and the resulting entitlements.

81. Moreover, and even if Suitor ultimately establishes on the Bankruptcy Application that, for example, the two National Bank mortgages were placed in the ordinary course to refinance existing obligations, and even if he can further establish that the use of proceeds was not an attempt to dissipate or hide assets from the Receiver (see, for example, paragraphs 26 – 55 relating to the National Bank mortgages, and paragraphs 57- 74 with respect to the Elevation transaction), it is of significant concern that he would not have, at a minimum, disclosed these transactions to the Receiver and to the Balboa CCAA Monitor at the time, and moreover sought their consent.
82. It is not an answer in my view, to say (as he submits) that Suitor undertook some of the transactions at issue before the date of the Notice of Bankruptcy Application. Those transactions clearly took place during the currency of the Balboa CCAA Proceedings (during which Suitor enjoyed the protections that flow from the stay of proceedings - creditors were prohibited from commencing proceedings against him), and indeed he was of course well aware not only of those Proceedings, but also of the fact that the powers of the Monitor had been enhanced and his powers and those of his fellow co-principals restricted, for the very reasons that the Monitor had concerns about Suitor, his companies and the transactions they had undertaken.
83. Given that, aside from all else, these transactions were undertaken while the stay against imposed in the context of the Balboa CCAA Proceedings was pending, it is difficult to accept the submission that these transactions were undertaken as Suitor submits “in the ordinary course” at all. Respectfully, nothing is ordinary about the circumstances of the Balboa CCAA Proceeding, and the Lion’s Share Receivership Proceeding. Significant questions about the whereabouts of millions of dollars belonging to investors remain unanswered.
84. A number of these transactions were undertaken within three months of the insolvency, at least as of August, 2024. I pause to observe the obvious with respect to the Suitor Lion’s Share Promissory Notes: while Suitor has, according to his own affidavit, been working with and cooperating with other unrelated creditors with a view to paying (secured) debts apparently owing to them, the Notes have not been repaid, by Suitor or the companies he owns and controls, the Demand Letters have not been satisfied, and he has advanced no plan or proposal for the repayment of those Notes, even in the record filed in respect of this motion.
85. In addition, Suitor states in his affidavit that he has “been working with secured creditors to minimize costs and maximize returns” (paragraph 25). Suitor goes on to describe how he has been working to negotiate standstill agreements with banks, attempt to sell other properties and engage in other activities involving his assets and those of companies he controls.
86. For example, and with respect to one property (43 Centre), he describes in his affidavit how the Bank of Montréal wanted to proceed with the sale in its capacity as first ranking mortgagee, and that notwithstanding the refusal of the Receiver to consent, BMO intends to go ahead with the sale in any event and intends to proceed with a Notice of Intent to Enforce Security.
87. The Bank may, ultimately, establish that it is entitled to a first priority interest. However, this transaction is one about which the Receiver has concerns, and it is illustrative about the overarching challenge here arising from the interrelated web of Balboa and Lion’s Share principals, entities and transactions: the property at 43 Centre was sold to Suitor’s parents indirectly, through a numbered company they own, as has been admitted. (See electronic mail communication to counsel for the Receiver from Suitor’s counsel respecting this transaction dated August 19, 2024).
88. It was, therefore, a related party transaction. Whatever the ultimate entitlements may be, these assets should not be transferred and encumbered while all the issues described above are still being investigated

and resolved or determined. That is exactly the type of circumstance where an interim receivership to preserve assets is appropriate.

89. In addition, Suitor describes in detail in his affidavit, and in the context of his description of events regarding the two National Bank mortgages, the “Addison King Mortgage” (paragraphs 42 and on). He states that paragraph 50(b) and in the related chart in the affidavit that he paid \$353,965 to [the law firm with carriage of the mortgage transaction] “by selling investments in a Scotiabank investing account”, all of which was inconsistent with the outstanding and unsatisfied Demand from the Lion’s Share Receiver.
90. 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.
91. Moreover, Suitor submits that the allegations against him in the Balboa CCAA Proceedings are “at its highest, allegations of questionable business practices on the part of Suitor in separate CCAA Proceedings that [the Receiver] has been aware of since June 2024 and which have no direct bearing on the issues to be decided on this motion.”
92. I cannot accept the submission as a basis to decline to appoint an interim receiver. In my view, and for the reasons set out above, I am satisfied that the activities of Suitor and companies that he owns or controls (or owned or controlled at the relevant time, and in respect of which he has recently resigned as a director) are inextricably intertwined with the very issues that underlie the Balboa CCAA proceedings.
93. As noted above, Suitor is one of the four principal Balboa Borrowers, the powers of whom were expressly restricted by the Court on motion in that proceeding as a result of concerns arising out of the very issues that underlie both the concerns in that proceeding and Suitor’s assets and entities that are the subject of the proposed interim receivership on this motion.
94. The notion that the issues in the Balboa CCAA Proceedings have no direct bearing on the issues to be decided on this motion is artificial. They are inescapably linked, and the full extent of the relationship between and among all of these entities is the very thing that it is proposed that the interim receiver will investigate if appointed, all in order that creditors and stakeholders are not prejudiced, and beneficial entitlement to those assets can be determined in a fair and transparent way.
95. To be clear, the Receiver does not take the position on this motion that Suitor has misappropriated assets in undertaking the transactions on which the Receiver relies and in respect of which Suitor maintains he undertook for no improper purpose. The point is that Suitor is in fact using and dealing with his assets and those of companies he owns or controls, all in the face of the unsatisfied Demands and the matters being undertaken in the course of both the Balboa CCAA Proceedings and the Lion’s Share Receivership Proceeding.
96. Finally, the powers of the proposed interim receiver will, as set out above, be limited. The fact that those powers are not unlimited is a factor to be considered in approving the interim receivership. An interim receiver is not appointed in a vacuum, and the terms of the proposed appointment are relevant to whether the appointment should be made.
97. The draft order would permit the interim receiver, if appointed, to:
  - a. monitor Suitor’s bank accounts in the accounts of Related Entities and approve all disbursements;
  - b. take any steps deemed necessary or desirable to prevent disbursements, transfers or encumbrances of property;
  - c. to undertake investigations deemed appropriate;

- d. to apply to this Court for further advice and directions; and
- e. undertake other related activities.

98. The object and intent of the proposed interim receivership is to identify and preserve assets in this interim period. It is the disclosure necessary to identify and preserve those assets that the Receiver maintains has been lacking today. I also observe that the powers sought for the interim receiver here are substantially similar to the powers already granted to the Balboa CCAA Monitor. Again, and to state the obvious, those powers do not include the ability to make any final determination as to entitlement to assets of Suitor or companies that he controls. They do, however, provide for the preservation of those assets pending such determinations.
99. Given Suitor's own expressed objective as described in his affidavit of assisting in working with creditors, I accept the submission of the Receiver that the prejudice to him by this interim receivership is limited.
100. Moreover, other than as to the transactions described in his affidavits, which he maintains represent ordinary course refinancings or working with existing creditors in any event, there is no evidence of other recent or pending transactions that would be impacted in any event.
101. Finally in this regard, Suitor submits that he has given an undertaking - confirmed in Court by his counsel - to the effect that while these proceedings are pending, he will not seek to sell, transfer, convey, encumber or otherwise deal with any of his property, including but not limited to real property and other assets, without the consent of the Receiver or further order of the Court.
102. That is consistent with the objects of the receivership, but achieving this asset preservation in the context of the receivership will maximize the fairness and transparency of the process while immensely complex transactions are investigated and explored in a fair and transparent manner. The undertaking, while acknowledged, does not provide the visibility into what is admittedly a complex web of transactions, as I am satisfied is required here.
103. For all of these reasons, I am satisfied that there is an immediate need for protection of the debtor's estate due to the grave danger that assets will disappear, or the estate is otherwise in jeopardy.

### **Result and Disposition**

104. For all of the above reasons, the motion is granted. Order to go in the form signed by me and attached to this Endorsement which has immediate effect without the necessity of issuing and entering.

# **APPENDIX C**



October 9, 2024

**Via Email:** [dylan@elevationrealty.ca](mailto:dylan@elevationrealty.ca)

Mr. Thomas Dylan Suitor  
775 King Road  
Burlington, Ontario  
L7T 3K6

**TDB Restructuring Limited**  
Licensed Insolvency Trustee

11 King St. W, Suite 700  
Toronto, ON M5H 4C7

info@tdbadvisory.ca  
416-575-4440  
416-915-6228

[tdbadvisory.ca](http://tdbadvisory.ca)

## **In the Matter of the Interim Receivership of Thomas Dylan Suitor (the “Debtor”)**

Mr. Suitor,

As you are aware, pursuant to an Order of the Ontario Superior Court of Justice (the “**Court**”) dated October 7, 2024, (the “**Appointment Order**”), TDB Restructuring Limited was appointed as interim receiver (the “**Interim Receiver**”), without security, of all of the property, assets and undertaking of the Debtor. A copy of the Appointment Order, and other pertinent documents relating to this administration can be found on the Receiver’s website:

<https://tdbadvisory.ca/insolvency-case/d-suitor/>

The Interim Receiver has put together a preliminary request list which is below. This is not intended to be an exhaustive request and the Interim Receiver may make further requests as it gains access to more information. Pursuant to the terms of the Appointment Order, the Interim Receiver hereby requests that you provide the following information and documentation relating to the Debtor and all of his related entities (the “**Related Entities**”) **by no later than 5:00 p.m. on Thursday, October 10, 2024.**

- A list of any companies that are owned, controlled or affiliated with the Debtor in addition to those entities set out in **Appendix “A”** hereto including details of the Debtor’s involvement and interests in all such entities (including those listed on Appendix “A”);
- A list of all bank accounts, credit cards, and investment accounts held by or associated with the Debtor and the Related Entities, including account numbers, name(s) on the account, and the current balance of the account;
- A personal net worth statement for the Debtor including all assets owned by the Debtor and the estimated realizable value of those assets, as well as all of the Debtor’s liabilities and their estimated amounts;
- Details regarding any pending sales of the Debtor’s or the Related Entities’ assets;
- Details of all sales of properties, disposition of assets or refinancings that the Debtor or Related Entities have undertaken in the last year including details of use of proceeds;
- Details of any enforcement proceedings, legal actions or other steps that have been commenced in respect of the Debtor’s or the Related Entities’ assets;

- Copies of recent financial statements for each of the Related Entities;
- A list of all creditors for each of the Debtor and the Related Entities, including names, mailing addresses, and amounts owed;
- A list of all employees of the Debtor (if applicable) and each of the Related Entities, with employee names, mailing addresses, and any outstanding payroll amounts;
- Copies of mortgage statements for the real properties located at 775 King Road, Burlington and 2298 Fassel Avenue, Burlington, as set out in Schedule “C” of the Appointment Order;
- Copies of the Debtor's tax returns for 2022 and 2023, along with the Notices of Assessment for each of those years;
- Copies of the Related Entities' tax returns for 2022 and 2023, along with the Notices of Assessment for each of those years;
- Copies of insurance policies held by the Debtor and each of the Related Entities with respect to any real property owned by those parties;
- Copies of any other insurance policies or other insurance products held by the Debtor or the Related Entities;
- Copies of any lease agreements related to real property, along with the current rent roll (if applicable);
- Access to all digital books and records for the Related Entities, and information on the location of any physical books and records; and
- Any other information that is pertinent to the Interim Receiver's mandate.

Should you have any questions, please contact Mr. Berger of the Interim Receiver's office at 647-726-0496 or [jberger@tdbadvisory.ca](mailto:jberger@tdbadvisory.ca).

Yours truly,

**TDB RESTRUCTURING LIMITED**, solely in its capacity  
as Court-appointed Interim Receiver of the Debtor,  
and not in its personal or corporate capacity



Per: Jeffrey Berger, CPA, CA, CIRP, LIT  
Managing Director

Cc: TAP Law, Counsel to the Debtor



## Appendix "A"

### RELATED ENTITIES

No.	Entity Name
1.	10 Norfolk St. Inc.
2.	1083 Main Street Inc.
3.	2657677 Ontario Inc.
4.	2710654 Ontario Inc.
5.	388 Downie St. Inc.
6.	642 Hamilton Road Inc.
7.	Commercial Urkel Inc.
8.	Conduit Asset Management Inc.
9.	Dylan Sutor Professional Real Estate Holding Corporation
10.	Elev8 Inc.
11.	Elevation Reality Network Inc.
12.	Happy Town Housing Inc.
13.	Old Thing Back Inc.
14.	Prospect Real Estate Inc.
15.	Upgrade Housing Inc.
16.	Up-town Funk Inc.

# **APPENDIX D**

No.	Entity	Involve/Interest
1	Suitor Family Trust (2023)	100%
2	Conduit Asset Management Inc.	80%
3	Grow Ontario Property Management Inc.	50%
4	Regenerate Construction Canada Inc.	80%
5	Elevation Realty Network Inc.	100%
6	Dylan Suitor Professional Real Estate Holding Corpora	100%
7	Elev8 Inc.	100%
8	642 Hamilton Road Inc.	100%
9	164 Picton St. Inc.	100%
10	207 Ross Inc.	100%
11	McWhirter-Horvath Properties Inc.	100%
12	Unity Housing Accomodations Inc	100%
13	1083 Main Street Inc.	51%
14	2710654 Ontario Inc.	33%
15	2044583 Ontario Inc.	51%
16	2842879 Ontario Inc	51%
17	1391 Ontario St. Inc.	100%
18	10 Norfolk St. Inc.	100%
19	388 Downie St. Inc.	100%
20	10000023127 Ontario Inc	50%
21	Purple Orchid GP Inc	100%
22	Purple Orchid LP Inc	100%
23	Purple Orchid Holdings Inc	100%
24	Elev8 MC Inc	100%
25	Clients to Close Inc	25%
26	Elev8SID Inc	50%
27	2657677 Ontario Inc.	100%
28	Commercial Urkel Inc.	50%
29	Happy Town Housing Inc.	100%
30	Old Thing Back Inc.	100%
31	Prospect Real Estate Inc.	100%
32	Upgrade Housing Inc.	100%
33	Up-town Funk Inc.	100%
34	Neat Nests Inc.	100%
35	Horses In The Back Inc.	100%
36	Hometown Housing Inc.	100%
37	Interlude Inc.	100%
38	Mulligan Inc.	45%
39	Comedy Bar Danforth Inc.	10%
40	Dylan Suitor Personal (NOA)	100%
41	Dylan Suitor Personal (Tax Return)	100%

# **APPENDIX E**

## Nisan Thurairatnam

---

**From:** Fred Tayar <fred@fredtayar.com>  
**Sent:** Monday, November 18, 2024 3:41 PM  
**To:** Tanya Pagliaroli  
**Cc:** Cristina Garisto; Vinayak Mishra  
**Subject:** RE: In the matter of the Bankruptcy of Thomas Dylan Suitor | Our File No. 24-3258

External sender

Thanks Tanya. I don't expect the material be ready for service until tomorrow. But your email is helpful notwithstanding that a court order will nevertheless be necessary.

Fred

Fred Tayar  
Fred Tayar & Associates  
Professional Corporation  
65 Queen St. West  
Suite 1200  
Toronto, Ontario  
M5H 2M5

tel: (416)363-1800 x200  
fax: (416)363-3356  
[fred@fredtayar.com](mailto:fred@fredtayar.com)

---

**From:** Tanya Pagliaroli <tanya@taplaw.ca>  
**Sent:** November 18, 2024 3:37 PM  
**To:** Fred Tayar <fred@fredtayar.com>  
**Cc:** Cristina Garisto <crisrina@taplaw.ca>; Vinayak Mishra <vin@taplaw.ca>  
**Subject:** Re: In the matter of the Bankruptcy of Thomas Dylan Suitor | Our File No. 24-3258

Hi Fred - my client does not object to the interim receiver sharing the information he has provided with Fuller's and KSV only provided that if any of the information/documents need to be filed with the court, it is done under seal.

I copied with your office's hearing request form but have not yet received a copy of your materials. Would you please provide them as soon as possible?

thanks,  
Tanya

---

**From:** Fred Tayar <[fred@fredtayar.com](mailto:fred@fredtayar.com)>  
**Sent:** Monday, November 18, 2024 2:24 PM  
**To:** Tanya Pagliaroli <[tanya@taplaw.ca](mailto:tanya@taplaw.ca)>  
**Subject:** FW: In the matter of the Bankruptcy of Thomas Dylan Suitor | Our File No. 24-3258

Fred Tayar  
Fred Tayar & Associates  
Professional Corporation  
65 Queen St. West  
Suite 1200  
Toronto, Ontario  
M5H 2M5

tel: (416)363-1800 x200  
fax: (416)363-3356  
[fred@fredtayar.com](mailto:fred@fredtayar.com)

---

**From:** Tanya Pagliaroli <[tanya@taplaw.ca](mailto:tanya@taplaw.ca)>  
**Sent:** November 15, 2024 12:57 PM  
**To:** Fred Tayar <[fred@fredtayar.com](mailto:fred@fredtayar.com)>  
**Cc:** Jeffrey Berger <[jberger@tdbadvisory.ca](mailto:jberger@tdbadvisory.ca)>; Nisan Thurairatnam <[nthurairatnam@tdbadvisory.ca](mailto:nthurairatnam@tdbadvisory.ca)>; Cristina Garisto <[cristina@taplaw.ca](mailto:cristina@taplaw.ca)>; Vinayak Mishra <[vin@taplaw.ca](mailto:vin@taplaw.ca)>  
**Subject:** Re: In the matter of the Bankruptcy of Thomas Dylan Suitor | Our File No. 24-3258

Hi Fred,

The objection my client has at this point with sharing the information gathered by the interim receiver is that it is not complete. There has been a request for further information and clarification as early as this week and he is scheduled to meet with them today to go over some outstanding items.

The information, if my client consents to sharing it, should not be provided piecemeal or incomplete as this will potentially prejudice my client who is making best efforts to cooperate and provide all the information requested of him on a timely basis.

I will revisit the status of the information requests and any outstanding items with my client after today's meeting with the interim receiver and we can revisit my client's position to your request at that point.

Thanks,

Tanya

Sent from my iPhone

On Nov 15, 2024, at 9:39 AM, Fred Tayar <[fred@fredtayar.com](mailto:fred@fredtayar.com)> wrote:

Tanya,

Good morning. I am following up on my letter of November 8 which is attached.

Would you be kind enough to respond today , if it all possible?

Many thanks.

Fred

Get [Outlook for iOS](#)

---

**From:** Marie Pacheco <[marie@fredtayar.com](mailto:marie@fredtayar.com)>  
**Sent:** Friday, November 8, 2024 11:33 AM  
**To:** [tanya@taplaw.ca](mailto:tanya@taplaw.ca) <[tanya@taplaw.ca](mailto:tanya@taplaw.ca)>

**Cc:** [jberger@tdbadvisory.ca](mailto:jberger@tdbadvisory.ca) <[jberger@tdbadvisory.ca](mailto:jberger@tdbadvisory.ca)>; [nthurairatnam@tdbadvisory.ca](mailto:nthurairatnam@tdbadvisory.ca) <[nthurairatnam@tdbadvisory.ca](mailto:nthurairatnam@tdbadvisory.ca)>; Fred Tayar <[fred@fredtayar.com](mailto:fred@fredtayar.com)>

**Subject:** In the matter of the Bankruptcy of Thomas Dylan Sutor | Our File No. 24-3258

Ms. Pagliaroli,  
Please see attached correspondence.  
Regards.

Marie Pacheco  
Law Clerk  
[marie@fredtayar.com](mailto:marie@fredtayar.com)

Fred Tayar & Associates  
Professional Corporation  
Suite 1200 – 65 Queen St. W  
Toronto, ON M5H 2M5  
tel: (416) 363-1800 ext. 600  
fax: (416) 363-3356

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# **APPENDIX F**



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

**B E T W E E N :**

**THE FULLER LANDAU GROUP INC.**  
**RECEIVER OF**  
**THE LION'S SHARE GROUP INC.**

Applicant

- and -

**THOMAS DYLAN SUITOR**

Respondent

**AFFIDAVIT OF JEFFREY BERGER**  
**(Sworn November 19, 2024)**

I, **JEFFREY BERGER**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a Managing Director of TDB Restructuring Limited (“**TDB**”) and as such I have personal knowledge of the matters to which I hereinafter depose, save and except those matters based upon information and belief, in which case I have stated the source of such facts, all of which I verily believe to be true.

2. Pursuant to an order of the Court dated October 7, 2024, TDB was appointed as interim receiver (the “**Interim Receiver**”), without security, of all of the property, assets and undertaking of Thomas Dylan Suitor (the “**Debtor**”).

3. Attached hereto and marked as **Exhibit “A”** to this my affidavit are copies of invoices issued by TDB for fees incurred by TDB in respect of the interim receivership proceedings for the period July 21 to October 31, 2024 (the “**Period**”). The total fees charged for the Period are \$34,312.00, plus disbursements of \$25.95 and HST of \$4,462.91, for a total of \$38,800.85. The average hourly rate charged during the Period was \$509.08.

4. The invoices are a fair and accurate description of the services provided and the amounts charged by TDB for the Period.

5. Attached hereto and marked as **Exhibit “B”** is a schedule summarizing the invoices in Exhibit “A”, the total billable hours charged, the total fees charged and the average hourly rate charged.

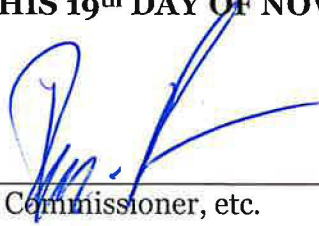
6. I make this affidavit in support of a motion for an Order approving the Interim Receiver’s fees and disbursements and for no other or improper purpose.

SWORN BEFORE ME at the City of )  
Toronto, in the Province of Ontario, on )  
the 19<sup>th</sup> day of November, 2024 )  
)  
)  
)  
)  
)  
)  
)  
)  
)

  
Bryan Alan Jannenbaum,  
A Commissioner, etc., Province of Ontario,  
for TDB Restructuring Limited.  
Expires March 6, 2027.

  
JEFFREY BERGER

**THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF JEFFREY BERGER SWORN BEFORE ME  
THIS 19<sup>th</sup> DAY OF NOVEMBER, 2024**

A handwritten signature in blue ink, appearing to be 'B. Tannenbaum', written over a horizontal line.

A Commissioner, etc.

**Bryan Allan Tannenbaum,  
a Commissioner, etc., Province of Ontario,  
for TDB Restructuring Limited.  
Expires March 6, 2027.**



**To** TDB Restructuring Limited  
 Court-Appointed Interim Receiver of Thomas Dylan Suitor  
 11 King Street West, Suite 700  
 Toronto, ON M5H 4C7

**TDB Restructuring Limited**  
 (416) 915-6228

11 King St. W., Suite 700  
 Toronto, ON M5H 4C7  
 info@tdbadvisory.ca  
 416-575-4440  
 416-915-6228  
 tdbadvisory.ca

**Date** October 31, 2024

**Client File** 46-001  
**Invoice** TDB #1  
**No.** 2410029

For professional services rendered with respect to the appointment of TDB Restructuring Limited as Court-Appointed Interim Receiver of Thomas Dylan Suitor (the “Debtor”) for the period July 21, 2024 to October 15, 2024.

<b>Date</b>	<b>Professional</b>	<b>Description</b>
7/21/2024	Bryan Tannenbaum	Teams call with G. Abrahamson of Fuller Landau LLP, J. Stam of Norton Rose Fulbright Canada LLP and J. Berger re initial call and background.
7/21/2024	Jeff Berger	Call with G. Abrahamson, J. Stam and B. Tannenbaum to discuss potential bankruptcy and interim receivership re D. Suitor.
7/22/2024	Jeff Berger	Review various court filings re Balboa et al in anticipation of D. Suitor mandate.
7/31/2024	Jeff Berger	Receipt and review of draft funding agreement from J. Stam; call from G. Abrahamson re same; discussion with D. Nishimura re PPSA search required for D. Suitor; receipt and review of PPSA search results; call with J. Stam re terms of funding agreement and retainer; subsequent discussion with B. Tannenbaum re same; email to J. Stam with proposed changes; receipt and review of J. Stam response.
8/30/2024	Jeff Berger	Review draft Order, consent and other motion materials regarding potential appointment as interim receiver re D. Suitor.
10/3/2024	Nisan Thurairatnam	Attend to emails and update re hearing.
10/8/2024	Jeff Berger	Receipt and review of Appointment Order and Endorsement of Justice Osborne; review motion materials, Monitor's report, Receiver's report, and other documents to obtain background information; call with J. Stam, G. Abrahamson and B. Tannenbaum to discuss appointment and preliminary information required, etc.; call with B. Tannenbaum and F. Tayar of Fred Tayar & Associates Professional Corporation re retaining F. Tayar as independent counsel to the Interim Receiver; review and edit information request to the Debtor; draft email to the Debtor re request for information and discuss same with B. Tannenbaum.
10/8/2024	Nisan Thurairatnam	Review of Interim Receivership Order; review of Endorsement of Justice Osborne; review of Motion Record (Notice of Motion and Fourth Report of Fuller Landau); review Fourth Report of Balboa CCAA Monitor; prepare information request; prepare bank letter; attend to several meetings with J. Berger and T. Irshad.
10/8/2024	Tanveel Irshad	Meeting with J. Berger and N. Thurairatnam re next steps; prepare letter to banks; correspond with D. Nishimura re webpage; review Appointment Order, Endorsement of Justice Osborne, Application Record and Responding Motion

Date	Professional	Description
		of Debtor; prepare summary of pertinent information to J. Berger and N. Thurairatnam.
10/8/2024	Bryan Tannenbaum	Teams call with J. Stam , G. Abrahamson and J. Berger following issuance of the interim receivership order; telephone call with F. Tayar and J. Berger to retain as independent counsel; review draft information request letter for J. Berger; review of J. Berger draft letter to D. Suitor.
10/9/2024	Nisan Thurairatnam	Review of D. Suitor's reply and filing materials re notice of motion.
10/9/2024	Jeff Berger	Finalize preliminary request for information and draft email to D. Suitor re same; review and respond to email from D. Suitor re approval of expenses and other matters.
10/10/2024	Jeff Berger	Call with F. Tayar re terms of Appointment Order, upcoming meeting with D. Suitor and his counsel, and registration of the Order on title to the real property set out in Schedule A of the Order; review and sign acknowledgement and direction re registration of Order on title to real property; prepare for October 11 <sup>th</sup> meeting with D. Suitor and counsel; email to T. Pagliaroli of TAP Law re attendance at October 11 <sup>th</sup> meeting; receipt and review of D. Suitor email response to the Interim Receiver's request for information.
10/10/2024	Bryan Tannenbaum	Conference call with F. Tayar and J. Berger to review terms of Order for Interim Receiver disclosure of information.
10/11/2024	Jeff Berger	Prepare for and attend meeting with D. Suitor, TAP Law, F. Tayar, B. Tannenbaum and N. Thurairatnam to review the Interim Receiver's request for information, the monitoring and approval process, etc.
10/11/2024	Bryan Tannenbaum	Attend initial meeting in our offices with D. Suitor, T. Pagliaroli, F. Tayar, J. Berger and N. Thurairatnam.
10/11/2024	Nisan Thurairatnam	Prepare for and attend in person meeting with D. Suitor, counsel, Pagliaroli, F. Tayar, J. Berger and B. Tannenbaum; review notes from meeting.
10/12/2024	Anne Baptiste	Prepare bank reconciliation.
10/13/2024	Jeff Berger	Review application materials re receivership of 1083 Main Street Inc. ("1083"); email to J. Rosekat re stay of proceedings and other concerns regarding the application re 1083; exchange emails with J. Rosekat, B. Tannenbaum, F. Tayar and J. Henechowicz of MNP LLP re same; email to D. Suitor to request information regarding 1083 on an urgent basis, as well as to confirm his intention with respect to opposing the receivership application.
10/13/2024	Bryan Tannenbaum	Receipt and review of J. Rosekat email attaching draft notice of motion for Receiver appointment for 1083 and request for call; response sent; email to S. Mitra re same as he may be acting for Equitable Bank, etc.; discuss with J. Berger and review his response to J. Rosekat re stay of proceedings; review of J. Rosekat email re did not see in Schedule "C"; review of J. Berger email to J. Stam and G. Abrahamson; review of F. Tayar email re same; review J. Rosekat email response to F. Tayar; review of J. Berger email to D. Soutter for information regarding 1083 status and if he will defend this application; receipt and review of J. Henechowicz email requesting a call; review of J. Berger response.
10/14/2024	Jeff Berger	Receipt and review of various emails from T. Dunn re Libro interest and settlement agreement, etc.; review email responses from F. Tayar re same; call with J. Stam re receivership application brought against 1083 and Lion's Share's intentions with respect to same.
10/15/2024	Jeff Berger	Meet with N. Thurairatnam to review outstanding transaction approvals, payment approval protocol, email to D. Suitor re same, and other matters; call with D. Suitor, J. Hutchinson and N. Thurairatnam to review outstanding transactions for approval, as well as the approval protocol and budget

Date	Professional	Description
		submission for D. Suitor's personal expenses; call with J. Rosekat, F. Tayar, B. Tannenbaum and J. Henechowicz re motion for the appointment of a Receiver over 1083; emails to J. Stam and T. Pagliaroli re same.
10/15/2024	Bryan Tannenbaum	Attend to a call with J. Rosekat, F. Tayar, J. Berger and J. Henechowicz re motion for the appointment of a Receiver over 1083.
10/15/2024	Nisan Thurairatnam	Receipt and review application record to appoint a Receiver over 1083; review several emails between J. Berger and F. Tayer; review emails from J. Rosekat re lifting stay for 1083 and several other emails re same; review email from J. Henechowicz re 1083 receivership order; review email from J. Berger re call with J. Stam re application to appoint Receiver over 1083; review request from D. Suitor to make certain payments; attend a meeting with J. Berger re all aspects of mandate; attend a call with D. Suitor and J. Berger re payment approval process; preparing a payment approval process and corresponding Excel workbook; review of all payments to be approved this week.
		To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing.

**FEE SUMMARY**

Professional	Level	Hours	Rate	Fees
Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT	Managing Director	3.30	\$ 695	\$ 2,293.50
Jeff Berger, CPA, CA, CIRP, LIT	Managing Director	23.80	\$ 575	13,685.00
Nisan Thurairatnam, CPA	Manager	10.60	\$ 425	4,505.00
Tanveel Irshad	Associate	4.40	\$ 295	1,298.00
Anne Baptiste	Estate Administrator	0.20	\$ 150	30.00
<b>Total hours and professional fees</b>		<b><u>42.30</u></b>	<b>\$ 21,811.50</b>	
<b>Disbursements</b>				
PPSA			\$ 17.95	
Reg Fee (tax exempt)			<u>8.00</u>	
<b>Total disbursements</b>				<u>25.95</u>
<b>Total professional fees and disbursements</b>				<b>\$ 21,837.45</b>
HST @ 13%				2,837.83
<b>Total payable</b>				<b>\$24,675.28</b>



To TDB Restructuring Limited  
Court-Appointed Interim Receiver of Thomas Dylan Suitor  
11 King Street West, Suite 700  
Toronto, ON M5H 4C7

TDB Restructuring Limited  
Licensed Insolvency Trustee

11 King St. W, Suite 700  
Toronto, ON M5H 4C7

info@tdbadvisory.ca  
416-575-4440  
416-915-6228

tdbadvisory.ca

Date November 1, 2024

Client File 46-001  
Invoice TDB #2  
No.

For professional services rendered with respect to the appointment of TDB Restructuring Limited as Court-Appointed Interim Receiver of Thomas Dylan Suitor (the "Debtor") for the period October 16, 2024 to October 31, 2024.

Date	Professional	Description
10/16/2024	Jeff Berger	Review expenses for approval; discuss same with N. Thurairatnam; review additional information provided by the Debtor.
10/16/2024	Nisan Thurairatnam	Attend to several emails with D. Suitor re approval of this week's payment request; receipt and review of several documents (org charts, insurance documents, list of employees, mortgage statements, list of bank accounts and others).
10/17/2024	Jeff Berger	Call with G. Abrahamson of Fuller Landau LLP and J. Stam of Norton Rose Fulbright Canada LLP re Interim Receiver's activities to date, the need to clarify what information can be shared by the Interim Receiver, and fees to date; review of various information uploaded by the Debtor prior to a call with the Debtor; call with N. Thurairatnam, D. Suitor and his staff to discuss the status of the Interim Receiver's information request and the anticipated timing of the remaining items.
10/17/2024	Nisan Thurairatnam	Attend a call with D. Suitor, his staff and J. Berger to discuss all outstanding items on the information request; attend a call with the Interim Receiver's IT to install remote server and install QuickBooks to access the Debtor's books and records.
10/18/2024	Jeff Berger	Review information uploaded by D. Suitor re bank accounts, insurance, automatic payments, and other items.
10/18/2024	Nisan Thurairatnam	Review email from J. Berger to J. Rosekat re the Interim Receiver's consent to lift stay on 1083 Main; review email from D. Suitor re second mortgage funding of \$50k to 2710654 Ontario Inc., comments and response sent; correspondence with J. Berger re same; attempt to access QuickBooks.
10/20/2024	Jeff Berger	Review emails re settlement for 1985 Westcott and respond to F. Tayar of Fred Tayar & Associates Professional Corporation re same; review email from D. Suitor re additional information uploaded to portal; review D. Suitor personal net worth statement and other documents pertaining thereto.
10/21/2024	Jeff Berger	Review various emails from D. Suitor re status of information provided, further financing re Collier St. project, and other matters; discuss same with N. Thurairatnam; call with D. Suitor to review financing request re Collier St.

Date	Professional	Description
		and certain amounts noted on the personal statement of net worth provided; call to F. Tayar to discuss Collier St. financing.
10/21/2024	Nisan Thurairatnam	Meeting with J. Berger to discuss D. Suitor's request for \$50k increase in second mortgage on Collier St; email response to D. Suitor re same; attend a call with D. Suitor's finance department to get online access to all QuickBooks files; review personal net worth statement and email to D. Suitor on cashflow projections.
10/22/2024	Nisan Thurairatnam	Review this week's payment request; response sent to D. Suitor and his finance team.
10/23/2024	Jeff Berger	Conference call with D. Suitor, his staff, and N. Thurairatnam re weekly payables listing and other transactions being contemplated by D. Suitor with respect to the disposition of certain properties; review payables and correspond with N. Thurairatnam re same.
10/23/2024	Nisan Thurairatnam	Prepare for meeting with D. Suitor and finance team; review updated personal net worth statements; review projected personal expenses; review response regarding this week's payment approval; review rent rolls and lease agreement; attend a call with D. Suitor, his staff and J. Berger; approve this week's payment request.
10/24/2024	Jeff Berger	Review emails from D. Suitor and N. Thurairatnam re payment approval; review and respond to email from creditor re ability to assert a claim.
10/24/2024	Nisan Thurairatnam	Email correspondence with a creditor.
10/25/2024	Nisan Thurairatnam	Review urgent payment request; approve same.
10/29/2024	Jeff Berger	Receipt and review of weekly payables list and N. Thurairatnam's response to same; review emails from counsel re timing of bankruptcy application hearing and next steps for Interim Receivership.
10/29/2024	Nisan Thurairatnam	Receipt and review of this week's payment request; email to D. Suitor re questions on payment request.
10/30/2024	Jeff Berger	Call with F. Tayar, B. Tannenbaum and N. Thurairatnam to discuss the status of information provided to date, the Interim Receiver's ability to share information with other interested parties, and other matters pertaining to this administration; attend a call with N. Thurairatnam to discuss D. Suitor's personal net worth statement.
10/30/2024	Bryan Tannenbaum	Receipt and review of F. Tayar letter regarding status and our position vis a vis bankruptcy hearing, disclosure of information gathered, etc.; call with F. Tayar, N. Thurairatnam and J. Berger re disclosure issue.
10/30/2024	Nisan Thurairatnam	Receipt and review letter from F. Tayar to J. Berger; attend a call with J. Berger re D. Suitor's personal net worth statement; review response from D. Suitor's finance team re this week's payment request; respond sent re same; attend a call with F. Tayar, J. Berger and B. Tannenbaum re all aspects of mandate; attend late call with D. Suitor's employee re several concerns the employee has.
10/31/2024	Nisan Thurairatnam	Attend a call with a creditor of D. Suitor regarding the interim receivership; inform creditor re the Interim Receiver's mandate and that we are not asking for proof of claims.
		To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing.



**FEE SUMMARY**

<b>Professional</b>	<b>Level</b>	<b>Hours</b>	<b>Rate</b>	<b>Fees</b>
Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT	Managing Director	0.40	\$ 695	\$ 278.00
Jeff Berger, CPA, CA, CIRP, LIT	Managing Director	11.50	\$ 575	6,612.50
Nisan Thurairatnam, CPA	Manager	13.20	\$ 425	5,610.00
<b>Total hours and professional fees</b>		<b><u>25.10</u></b>		\$ 12,500.50
HST @ 13%				1,625.07
<b>Total payable</b>				<b>\$ 14,125.57</b>

GST/HST: 80784 1440 RT0001

**THIS IS EXHIBIT "B" REFERRED TO IN THE  
AFFIDAVIT OF JEFFREY BERGER SWORN BEFORE ME  
THIS 19<sup>th</sup> DAY OF NOVEMBER, 2024**

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

---

A Commissioner, etc.

**Bryan Allan Tannenbaum,  
a Commissioner, etc., Province of Ontario,  
for TDB Restructuring Limited.  
Expires March 6, 2027.**

**In the Matter of the Receivership of  
 Thomas Dylan Suitor  
 Summary of Interim Receiver's Fees  
 For the Period July 21, 2024 to October 31, 2024**

<b>Invoice #</b>	<b>Invoice Date</b>	<b>Period</b>	<b>Hours</b>	<b>Fees</b>	<b>Disburse - ments</b>	<b>Subtotal</b>	<b>HST</b>	<b>Total</b>	<b>Average Hourly Rate</b>
TDB #1	31-Oct-24	July 21, to October 15, 2024	42.3	\$ 21,811.50	\$ 25.95	\$ 21,837.45	\$ 2,837.83	\$ 24,675.28	\$ 515.64
TDB #2	1-Nov-24	October 16 to October 31, 2024	25.1	\$ 12,500.50	\$ -	\$ 12,500.50	\$ 1,625.07	\$ 14,125.57	\$ 498.03
<b>Total</b>			<b>67.4</b>	<b>\$ 34,312.00</b>	<b>\$ 25.95</b>	<b>\$ 34,337.95</b>	<b>\$ 4,462.91</b>	<b>\$ 38,800.85</b>	<b>\$ 509.08</b>

# **APPENDIX G**

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF THOMAS DYLAN SUITOR,  
an individual with a locality of Burlington, Ontario**

**AFFIDAVIT OF MINDY TAYAR**

I, MINDY TAYAR, of the City of Toronto, in the Province of Ontario, lawyer, **AFFIRM  
AND SAY AS FOLLOWS:**

1. I am a lawyer with the law firm of Fred Tayar & Associates Professional Corporation ("**FTAPC**"), counsel to TDB Restructuring Limited (the "**Interim Receiver**") in its capacity as court-appointed Interim Receiver of the assets, undertakings and properties of Thomas Dylan Sutor, and as such have knowledge of the matters hereinafter deposed to, except where stated to be on information and belief and where so stated I verily believe it to be true.

2. The Order of the Honourable Mr. Justice Osborne dated October 7, 2024 provides at paragraph 15 that the Interim Receiver, and counsel to the Interim Receiver, shall be paid their reasonable fees and disbursements at their standard rates and charges.

3. FTAPC's fees and disbursements for the period October 8, 2024 to November 10, 2024 are summarized in the interim account (the "**Account**") rendered to the Interim Receiver. Attached and marked as **Exhibit "A"** is the Account.

4. The Account is a fair and accurate description of the services provided, the disbursements incurred, and the amounts charged by FTAPC. The Account sets out the total billable hours per lawyer and their respective hourly rates. Fred Tayar and Colby Linthwaite, the lawyers acting for the Interim Receiver, were called to the Bar in 1984 and 2004, respectively.

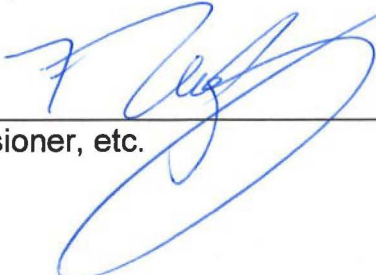
5. The Accounts consist of fees of \$12,867.50, disbursements of \$723.75, and HST of \$1,766.87, totaling \$15,358.12.

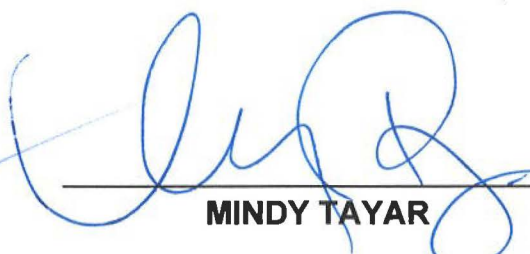
6. To the best of my knowledge, FTAPC's hourly billing rates are comparable to or less than the rates charged by other law firms in the Toronto market for the provision of similar services. The hourly billing rates charged by FTAPC are comparable to the rates charged by FTAPC for services rendered in similar proceedings.

7. Attached as **Exhibit "B"** is a summary of the time of the lawyers whose services are described in the Account, including their position, hourly rate, the fees and the hours billed.

8. I make this affidavit in support of the Interim Receiver's motion for, among other things, approval of its fees and disbursements and those of its legal representatives, and for no other or improper purpose.

AFFIRMED before me at the City of )  
Toronto, in the Province of Ontario )  
This 18<sup>th</sup> day of November, 2024 )  
)

  
\_\_\_\_\_  
A Commissioner, etc.

  
\_\_\_\_\_  
**MINDY TAYAR**

This is **Exhibit "A"** referred to in  
the Affidavit of Mindy Tayar  
Affirmed before me this 18<sup>th</sup>  
day of November, 2024

A handwritten signature in blue ink, appearing to read 'F. Long', is written over a horizontal line.

A Commissioner, etc.

In Account With:

**FRED TAYAR & ASSOCIATES**  
PROFESSIONAL CORPORATION

DATE: November 11, 2024

Barristers & Solicitors  
65 Queen St. West, Suite 1200  
Toronto, Canada M5H 2M5

Telephone: (416) 363-1800  
Facsimile: (416) 363-3356

HST Registration No. 847141454

Jeffrey Berger  
TDB Restructuring Limited  
11 King Street West  
Suite 700  
Toronto, ON M5H 4C7

Inv #: 11192

File No. 24-3258

**Re:** In the matter of the Bankruptcy of Thomas Dylan Suitor

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Oct-08-24	telephone conference with Jeff Berger and Bryan Tannenbaum to discuss problem; commenced review of documents;	0.60	375.00	FT
Oct-09-24	read Order and Endorsement of Justice Osborne and Application Record; telephone conversation with J. Berger; received and read copy of preliminary request for information from Dylan;	1.20	750.00	FT
Oct-10-24	correspondence from D. Suitor to Trustee; correspondence to and from J. Berger about October 11 schedule and registering order on title; email to J. Berger; telephone conversation with B. Lamba to arrange registration; emails with and telephone conference with J. Berger and B. Tannenbaum about disclosures to Receiver/Monitor; correspondence with client about registration of Orders; correspondence with D. Suitor, his Financial Dept. about approval payroll; prepared response from Interim Receiver; read Application Record of Fuller Landau; several emails with D. Suitor, Tanya, Interim Receiver;	3.10	1,937.50	FT
Oct-11-24	correspondence from Hutchinson; correspondence from J. Berger to Hutchinson; attendance at TDB's office to meet client followed by a meeting with D. Suitor; his lawyers and B. Tannenbaum and J. Berger;	2.80	1,750.00	FT
Oct-13-24	received correspondence from J. Berger with Paradise Media application; received	0.80	500.00	FT



	correspondence from J. Berger and J. Rosekat and correspondence to Interim Receiver about adding to his request of Rosekat; correspondence from B. Tannenbaum, J. Berger, J. Henechowicz; correspondence to Rosekat and Interim Receiver;			
Oct-14-24	correspondence from Rosekat about meeting; correspondence from J. Berger about Stam agreeing to lift stay re Main Street; correspondence to Interim Receiver about seeking written consents from Stam and D. Sutor's lawyer; correspondence from T. Dunn about sale of Tecumseth Road, Windsor; continued file review;	1.50	937.50	FT
Oct-15-24	correspondence from Tanya Pagliaroli saying that Receiver Landau will not oppose the appointment of MNP on Main Street; received correspondence from T. Dunn with statement of claim and Minutes of Settlement on Tecumseh Road, Windsor contemplating a sale of Tecumseh at arm's length; numerous emails with T. Dunn and J. Berger; telephone conversation with T. Dunn; Zoom conference with J. Berger, B. Tannenbaum; J. Rosekat and J. Henechowicz about Hamilton apartment building;	0.70	437.50	FT
Oct-16-24	reporting email to Interim Receiver on sale of Tecumseh Windsor settlement with Tim Dunn;	0.10	62.50	FT
Oct-18-24	reading recent correspondence; telephone conversation with T. Dunn;	0.30	180.00	CL
Oct-20-24	received correspondence from Jennifer Stam to the interim receiver J. Berger stating no opposition to lifting stay; correspondence from J. Stam to Tanya Pagliaroli about scheduling bankruptcy application, trial; correspondence from TDB about scheduling conference; correspondence from T. Dunn seeking response; correspondence from J. Berger to Jeff Rosekat about lifting stay; correspondence from T. Pagliaroli; correspondence from Norton Rose to T. Pagliaroli; correspondence from T. Pagliaroli; correspondence from J. Berger to J. Rosekat about lifting stay; correspondence from T. Pagliaroli; correspondence from Norton Rose to Tanya; further correspondence from Tanya; correspondence from Bryan Tannenbaum to Sanj Mitra; correspondence from Jeff Berger to send to S. Mitra; correspondence from S. Mitra;	1.50	937.50	FT

	correspondence from Jeff Berger; correspondence to Tim Dunn; correspondence from T. Dunn;			
Oct-28-24	received copy of correspondence from Norton Rose to Dylan's lawyer re scheduling bankruptcy hearing; received correspondence from Tanya Pagliaroli	0.20	125.00	FT
Oct-29-24	received correspondence from Norton Rose to Tanya Pagliaroli about schedule; correspondence from J. Rosekat re scheduling of Hamilton motion; email from J. Berger about definition of "Person" in Interim Receivership Order; voicemail to J. Stam; correspondence from J. Stam about trial date; email from and reply to J. Rosekat; telephone conversation with J. Rosekat about further enforcement proceedings in London and St. Catharines; correspondence from J. Stam about case conference today scheduling trial and Interim Receiver's ongoing role; letter to J. Berger about ongoing investigations and other matters;	1.40	875.00	FT
Oct-30-24	email from and reply to J. Stam re disclosure matter; worked on letter to J. Berger; email from and reply to J. Berger; Teams meeting with J. Stam;	1.90	1,187.50	FT
Nov-01-24	Main St., London and Collier St. Catharines: received and reviewed applications and supporting affidavits from J. Rosekat; email from J. Rosekat; email to J. Berger; telephone conversation with J. Berger; correspondence to Tanya Pagliaroli about same; correspondence to J. Rosekat;	0.80	500.00	FT
Nov-04-24	email from Tanya Pagliaroli; telephone conversation with J. Berger about Paradise Media Receivership application; correspondence to J. Rosekat;	0.30	187.50	FT
Nov-05-24	reviewed Endorsement of Justice Osborne about entitlement to require D. Suitor to provide cash flow statement; telephone conference with J. Berger and Nisan about (a) cash flow; (b) tax returns and (c) working papers from accountant; memorandum to file;	0.80	500.00	FT
Nov-06-24	prepared for and attended Teams meeting with George Benchetrit, KSV, K. Plunkett and clients; Zoom conference with J. Berger and Nisan;	1.90	1,187.50	FT

prepared draft letter to Tanya Pagliaroli about disclosure; correspondence to clients;

Nov-08-24	worked on letter to T. Pagliaroli about disclosure information; email from J. Berger; sent out letter to T. Pagliaroli;	0.20	125.00	FT
Nov-10-24	correspondence from J. Berger about registration of lien on Simcoe Ontario property on Norfolk Street; examined Order to see whether a lien is registerable without Interim Receiver's consent or leave of the Court; ditto re commencing action to enforce the lien;	0.50	312.50	FT
	Totals	20.60	\$12,867.50	
	Total HST on Fees		\$1,672.78	

**TIME:**

Fred Tayar - 20.3 hours @ \$625.00 = \$12,687.50  
 Colby Linthwaite - 0.3 hours @ \$600.00 = \$180.00

**DISBURSEMENTS**

Oct-08-24	Print Three-photocopies, tabs and cerlox binding	80.20
Oct-10-24	Goldberg, Lamba & Ghannoum LLP (Invoice 2930) - (real estate firm registering Order on Suitor's properties)	621.12
	Quicklaw Research	2.68
Oct-31-24	Photocopies	19.75
	Totals	\$723.75
	Total HST on Disbursements	\$94.09
	<b>Balance Now Due</b>	<b>\$15,358.12</b>

Total HST: \$1,766.847

THIS IS OUR STATEMENT OF ACCOUNT

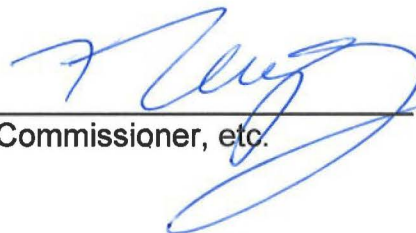
**FRED TAYAR & ASSOCIATES**  
 PROFESSIONAL CORPORATION

Per:

Fred Tayar  
 FT/mt  
 E. & O.E.

Disbursements which are not posted at the time of preparation of this account will be billed at a later time. Accounts due when rendered. All amounts overdue 30 days or more will bear interest at the rate of 1.3% per annum as provided for in Section 138 of the Courts of Justice Act, pursuant to the Solicitors Act.

This is **Exhibit "B"** referred to in  
the Affidavit of Mindy Tayar  
Affirmed before me this 18<sup>th</sup>  
day of November, 2024



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A Commissioner, etc.

**SUMMARY OF FEES**

<b>Lawyer</b>	<b>Position</b>	<b>Year of Call</b>	<b>Rate</b>	<b>Hours</b>	<b>Fees Billed</b>	<b>Time Period</b>
Fred Tayar	Partner	1984	\$625	20.3	\$12,687.50	October 2024-November 10, 2024
Colby Linthwaite	Partner	2004	\$600	0.3	\$180.00	October 2024-November 10, 2024
<b>Total Fees Billed:</b>					<b>\$12,867.50</b>	

**IN THE MATTER OF THE BANKRUPTCY OF THOMAS DYLAN SUITOR,**  
**an individual with a locality of Burlington, Ontario**

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*Ontario*  
**Superior Court of Justice**  
**In Bankruptcy and Insolvency**  
*Proceeding commenced at Toronto*

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**AFFIDAVIT OF MINDY TAYAR**

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**FRED TAYAR & ASSOCIATES**  
**Professional Corporation**  
65 Queen Street West | Suite 1200  
Toronto, ON M5H 2M5

**FRED TAYAR – LSO NO. 23909N**  
T: 416-363-1800  
F: 416-363-3356  
E: [fred@fredtayar.com](mailto:fred@fredtayar.com)

Lawyers for the Receiver/Liquidator

***Media-1-Stop (London) Limited. (1970),***  
**13 C.B.R. (N.S.) 96 (Ont. Sup. Ct.)**

1970 CarswellOnt 71  
Ontario Supreme Court, In Bankruptcy

Media-1-Stop (London) Ltd., Re

1970 CarswellOnt 71, 14 C.B.R. (N.S.) 96

**Re Media-1-Stop (London) Limited**

Houlden J.

Judgment: September 23, 1970

Counsel: *H. Margles* , for the petitioning creditor.

*R. Savage* , for respondent.

Subject: Corporate and Commercial; Insolvency; Civil Practice and Procedure

**Headnote**

Bankruptcy --- Practice and procedure in courts — Discovery and examination — By creditor  
Petition for receiving order — Examination for discovery of an officer or director of debtor —  
Bankruptcy R. 29.

On an application for a receiving order, counsel for the petitioning creditor applied under R. 29 for leave to examine an officer or director of the debtor for discovery prior to the date fixed for hearing. *Held* , the application should be refused.

Although the court should have power to make such order where a corporation debtor is involved, the judgment of the English Court of Appeal in the case of *Re A Debtor (No. 7 of 1910)*, [1910] 2 K.B. 59 , should be followed.

***Houlden J.:***

1 This is an application for a receiving order. The respondent corporation denies that it is insolvent, and I have, therefore, fixed a day for the trial of the issue. Counsel for the petitioning creditor has applied under R. 29 for leave to examine an officer or director of the respondent for discovery prior to the date fixed for hearing.

2 The petition has been filed by Donald E. Clarick, receiver of Media-1-Stop Inc., a company incorporated under the laws of the State of Delaware. Mr. Clarick was appointed receiver pursuant to an order of the Superior Court of New Jersey, Chancery Division.

3 In his affidavit of 26th August 1970, the receiver swears that Media-1-Stop Inc. is the owner of all the issued capital of Media-1-Stop (London) Limited subject to qualifying shares held by nominees. He further states that the respondent acquired merchandise for the operation of its



business from Media-1-Stop Inc. and is indebted for such merchandise in an amount in excess of \$5,000. The full particulars and extent of the indebtedness cannot be ascertained because James H. Davis, president of Media-1-Stop Inc. and an officer of the respondent corporation, is concealing the records of the respondent.

4 Counsel for the petitioning creditor acknowledges that the court will not ordinarily grant discovery in aid of a disputed petition, but he submits that in these circumstances, if discovery is not granted, it may work a substantial injustice.

5 The leading case on this problem is the decision of *Re A Debtor (No. 7 of 1910)*, [1910] 2 K.B. 59. In that case, the English Court of Appeal held that under R. 72 of the English Bankruptcy Act, 1883, which was almost identical to our present R. 29, discovery would not be allowed to enable a petitioner to prove the allegations in a petition. One of the principal grounds relied upon by the Court was that bankruptcy proceedings are in the nature of penal proceedings inasmuch as they involved serious alterations in the status of the debtor. If this were the only ground of the decision, I would be tempted to distinguish *Re A Debtor*, supra, as the present petition is against a corporation and the consequences of making a receiving order are quite different from the case of an individual. It should be remembered that the English Bankruptcy Act, unlike our Act, has no application to corporations.

6 In *Re A Debtor*, supra, there was another ground relied upon which I believe prevents me from granting this application. Vaughan Williams L.J., who gave the principal judgment of the Court, stated that the provisions for discovery relate to proceedings which are taken after a receiving order and not before. This judgment was concurred in by all the other members of the Court.

7 In the present case, if the matter were free of authority, I would construe R. 29 as wide enough to permit the making of the order which is asked. I do not believe that such orders should be freely granted, but where a corporation is involved, as distinct from an individual, I think the Court should have the power in a case such as the present, to permit discovery to take place. However, I do not believe I should differ from an unanimous judgment of six judges of the English Court of Appeal construing an almost identical Rule to our R. 29, and the application for leave to examine for discovery an officer or director of the respondent must therefore be refused.

**3**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE )  
MR. JUSTICE OSBORNE ) THURSDAY, THE 21<sup>ST</sup> DAY  
OF NOVEMBER 2024

IN THE MATTER OF THE BANKRUPTCY OF THOMAS DYLAN SUITOR,  
an individual with a locality of Burlington, Ontario

**ORDER**

**THIS MOTION**, brought by TDB Restructuring Limited (the “**Interim Receiver**”) for advice and directions, was heard this day at 330 University Avenue, Toronto, Ontario.

**UPON READING** the Interim Receiver’s First Report dated November 19, 2024 (the “**First Report**”), and the Fee Affidavits contained therein, and upon hearing the submissions of counsel for the Interim Receiver, counsel for the Applicant Creditor The Fuller Landau Group Inc. (the “**Applicant**”), and counsel for the Respondent Thomas Dylan Suitor (the “**Respondent**”), no one else appearing, although properly served.

1. **THIS COURT ORDERS** that the time for service of the within notice of motion and motion record, be and is hereby abridged, and that service thereof is hereby validated.
2. **THIS COURT ORDERS** that the Interim Receiver’s First Report and the activities of the Interim Receiver described therein be and they are hereby approved.

3. **THIS COURT ORDERS** that the Interim Receiver may implement the following protocol for payments by the Respondent or his companies:

- a. subject to sub-paragraph b, the Respondent will be authorized to pay invoices received from any person, provided that the amount to that person does not exceed a pre-determined threshold to be set by the Interim Receiver (the “**Approval Threshold**”);
- b. the Respondent shall provide a summary of proposed payments during the week preceding the proposed payments, together with bank statements. The Interim Receiver will be at liberty to prohibit payments to payees at its sole discretion; and
- c. any proposed payment exceeding the Approval Threshold must receive the prior written approval of the Interim Receiver.

4. **THIS COURT ORDERS AND DIRECTS** that the Interim Receiver may share information derived from execution of its mandate herein with the Applicant and with KSV Restructuring Inc. (“**KSV**”), in its capacity as the Court-appointed Monitor of the Balboa Group, and with such other persons as the Interim Receiver deems appropriate.

5. **THIS COURT ORDERS AND DECLARES** that the sharing of information aforesaid does not contravene, and shall be deemed not to contravene, the provisions of *The Bankruptcy and Insolvency Act (Canada)* or the Rules thereunder, and that such

information may be utilized by the Parties to the within bankruptcy application, or by parties to any other proceedings involving the Respondent or any of the Suitor Companies (as that term is defined in the First Report of the Interim Receiver).

6. **THIS COURT ORDERS** that the fees of the Interim Receiver for the period October 7, 2024 to and including November 15, 2024, and the fees of its legal counsel, be and they are hereby approved.

7. **THIS COURT ORDERS** that the Interim Receiver shall have its costs of this motion on a full indemnity basis to be paid by the Interim Receiver from the within Estate in accordance with the terms of the Appointment Order dated October 7, 2024

---

**IN THE MATTER OF THE BANKRUPTCY OF THOMAS DYLAN SUITOR, AN INDIVIDUAL WITH A LOCALITY OF BURLINGTON, ONTARIO**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER**

**FRED TAYAR & ASSOCIATES**  
**Professional Corporation**  
65 Queen Street West | Suite 1200  
Toronto, ON M5H 2M5

**FRED TAYAR – LSO No. 23909N**  
T: 416-363-1800 ext. 200  
E: [fred@fredtayar.com](mailto:fred@fredtayar.com)

**Lawyers for TDB Restructuring Limited**  
Interim Receiver of Thomas Dylan Sutor

**IN THE MATTER OF THE BANKRUPTCY OF THOMAS DYLAN SUITOR, AN INDIVIDUAL WITH A LOCALITY OF BURLINGTON, ONTARIO**

ONTARIO  
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

**MOTION RECORD  
(Returnable November 21, 2024)**

**FRED TAYAR & ASSOCIATES**  
**Professional Corporation**  
65 Queen Street West | Suite 1200  
Toronto, ON M5H 2M5

**FRED TAYAR – LSO No. 23909N**  
T: 416-363-1800 ext. 200  
E: [fred@fredtayar.com](mailto:fred@fredtayar.com)

**Lawyers for TDB Restructuring Limited**  
Interim Receiver of Thomas Dylan Sutor