

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)**

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

**SECOND SUPPLEMENTARY FACTUM OF THE INTERIM RECEIVER
AND TRUSTEE IN BANKRUPTCY OF THOMAS DYLAN SUITOR
(Motion Returnable June 18, 2025)**

June 15, 2025

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Interim Receiver and Trustee in
Bankruptcy of Thomas Dylan Sutor

TO THE SERVICE LIST

PART I – OVERVIEW

1. This factum is supplementary to TDB’s factum dated May 21, 2025 (the “**First Factum**”) and supplementary factum dated June 1, 2025 (the “**Second Factum**”), and uses terms defined therein.
2. This Court’s judicial precedent, statutory authority, and inherent authority establish its jurisdiction to make the Order sought by TDB.
3. This Court has previously appointed and empowered an interim receiver to market and sell a debtor’s property.

PART II – THE FACTS

Procedural History After the Hearing on June 5, 2025

4. After the appearance before Justice Steele on June 5, 2025 respecting TDB’s pending motion, Her Honour issued an Endorsement of the same date directing the parties to schedule a further appearance to make submissions on certain issues—being, this Court’s jurisdiction and judicial precedent relevant to the Order sought by TDB.

PART III – THE LAW AND ARGUMENT

Judicial Precedent Concerning the Order Sought

5. In the Bankruptcy of Royal Crest Lifecare Group Inc.,¹ this Court appointed an interim receiver pursuant to section 46 of the *BIA*, with the power to sell the debtor’s

¹ Court file number 31-OR-206980-T.

property and operating businesses. The Order of The Honourable Mr. Justice Farley states in relevant part:

*2. THIS COURT ORDERS that ... EYI is hereby appointed interim receiver pursuant to section 46 of the BIA (the "Interim Receiver") ... with power to act at once to administer, manage, take control of, receive, preserve, protect, lease, **dispose of, deal with and sell** the Property or any part or parts thereof as it sees fit subject to further Order of this Court...*

...

5. THIS COURT ORDERS that, without limiting the generality of paragraphs 2 and 3 above, the Interim Receiver shall be at liberty and is hereby authorized and empowered, but is not obligated, to take such steps on behalf of and in the name of the Debtor as it deems appropriate in respect of the Property, including, without limitation, any or all of the following, without the necessity for any further Order of the Court except in respect of transactions referred to in paragraph (f) hereof:

...

*(c) carry on any of the businesses pertaining to the Property, including, without limiting the foregoing, the **power to sell**, lease, mortgage, manage and operate the businesses at the Property or any part or parts thereof;*

...

*(f) **sell**, transfer or assign, whether on credit, by private tender, public auction or otherwise, or to lease or mortgage the whole of the Property or any part or parts thereof out of the ordinary course of business, with the approval of this Honourable Court first having been obtained in respect of any sale in which the gross sale price exceeds Five hundred thousand dollars (\$500,000) in the aggregate, no approval of this Honourable Court being required for any such transactions in which the aggregate gross sale price is less than or equal to \$500,000 and in any case without compliance with the provisions of Part V of the Personal Property Security Act, R.S.O. c.P-10 or the provisions of the Mortgages Act, R.S.O. 1990 c. M-40, as amended, or any other notice, statutory or otherwise, which a creditor or other party may be required to issue in order to dispose of the collateral of a debtor, in respect of which notices the Interim Receiver be and is hereby relieved;²*

6. Furthermore, in the Order, the Court granted super-priority charges to secure the interim receiver's fees and disbursements and its borrowings:

26. THIS COURT ORDERS that the Interim Receiver's fees and remuneration and any disbursements, expenditures, out-of-pocket expenses, operating costs,

² Order of The Honourable Mr. Justice Farley dated November 13, 2002: Tab 1 of TDB's Book of Authorities ("**BoA**") [Emphasis added]. No endorsement relating to the Order has been found.

expenses and costs of realization made or incurred from and after October 21, 2002 and from and after the date of this Order, which shall be properly made or incurred by the Interim Receiver in connection with the exercise of its powers and the performance of i[t]s duties hereunder, including without limitation any fees and disbursements of its counsel on a solicitor and its own client basis and the fees of the Operator, shall be allowed to the Interim Receiver and its counsel in the passing of their accounts and shall form a first ranking charge on the Property ranking in priority to any and all other charges or claims of The Bank of Nova Scotia and National Trust Company or any other Person and all encumbrances subsequent thereto (the "Interim Receiver's Charge").

...
30. *THIS COURT ORDERS that the Interim Receiver shall be at liberty and is hereby empowered to borrow monies without personal liability from time to time as it may consider necessary, not to exceed five (\$5) million dollars in principal amount in the aggregate, at such rate or rates of interest as it deems advisable and for such period or periods as it may be able to arrange, for the purpose of exercising its powers and performing its duties. The monies authorized to be borrowed and interest thereon shall form a charge on the Property and/or its proceeds ranking in priority to the charge of The Bank of Nova Scotia and National Trust Company, and all encumbrances subsequent thereto, on the Property and/or its proceeds, but subject to the Interim Receiver's Charge and the Interim Receiver's Indemnity Charge.*

7. In [*Precision Péga Inc., Re*](#),³ an interim receiver who had been appointed under section 46 of the *BIA*⁴ with the authority to market – but not sell – the debtor's assets, later brought a motion authorizing it to sell the assets which consisted of manufactured aircraft parts. As here, the debtor agreed that the assets ought to be sold without delay. The Superior Court of Quebec authorized the interim receiver to sell the assets.⁵

8. Where, as here, the order appointing a receiver does not grant the receiver any sale powers, this Court may issue further orders to expand the powers of the receiver to

³ [2007 QCCS 1301, 45 CBR \(5th\) 12](#) [*Précision Péga*]. Unofficial English translation found at Tab 2 of the BoA.

⁴ See [Ferme des Hautes Collines \(Séquestre de\) c. Banque Nationale du Canada](#), 2008 QCCS 1495 ([CanLII](#)) at para. 44. Unofficial English translation found at Tab 3 of the BoA.

⁵ *Précision Péga* at para. 72.

permit it to market and sell property. See, for example, *Galanda Properties Inc. v. Tiercon Industries Inc. (Receiver of)*⁶ to this effect:

19 *Although paragraph 3(c) of the Appointment Order granted the Receiver the power to manage, operate and carry on the business of the debtor, it did not contain the usual provision in an order which permits a receiver to sell the property or assets of the debtor out of the ordinary course of business.*

...

21 *The original appointment of the Receiver was for the purpose of permitting the manufacturing of parts for sale to G.M. and to avoid G.M. suffering enormously expensive disruption to its operations. ...*

22 *By the Order of Mr. Justice Lederman dated October 6, 2005, the Receiver's sale powers were expanded and the sale of certain assets was approved. By a further order of Mr. Justice Lederman dated October 31, 2005, the Receiver's sale powers were further expanded and an auction services agreement with Maynards Industries Ltd. with respect to the sale of certain assets was approved.*

This Court has Jurisdiction to Grant the Order Sought

9. This Court has jurisdiction to grant TDB the power to sell the Sales Process Properties pursuant to both (i) subsection 46(2) of the *BIA* and (ii) the Court's inherent jurisdiction.

A) Statutory Authority to Make the Order Sought – Subsection 46(2) of the *BIA*

10. Through subsection 46(2) of the *BIA*, Parliament has conferred statutory authority upon this Court to authorize an interim receiver to market and sell a debtor's property, by the following expansive terms:

*The interim receiver appointed under subsection (1) may, under the direction of the court, ... **exercise such control over the business of the debtor as the court deems advisable.***⁷

⁶ 2007 CarswellOnt 6810, 38 C.B.R. (5th) 142 (Ont. S.C.J. [Commercial List]), found at Tab 4 of the BoA, affirmed [36 C.B.R. \(5th\) 289](#).

⁷ Subsection 46(2) of the *BIA* [Emphasis added].

11. Suitor has been in the business of renovating, leasing, and selling distressed residential real estate in undervalued markets throughout Ontario.⁸ The expansive wording of s. 46(2) quoted above (“*exercise such control over the business ... as the court deems advisable*”) should be interpreted as express statutory authority for authorizing TDB to sell the Sales Process Properties.

B) The Court’s Inherent Authority to Make the Order Sought

12. The *BIA* is not an exhaustive code. From time to time, this Court’s inherent jurisdiction must be exercised to address practical difficulties which arise. This Court has inherent authority in the absence of statutory authority. In [*Cheerio Toys & Games Ltd., Re*](#), Houlden J. (as he then was) held as follows:

I would be loath to believe that the Court is powerless to give relief in these circumstances. Section 140(1) [now s. 153 (1)]⁹ of the Bankruptcy Act invests this Court with original, auxiliary and ancillary jurisdiction in bankruptcy. Bankruptcy Courts have always had an inherent jurisdiction to provide a remedy in circumstances such as exist in this case and this power is confirmed by the provisions of s. 144(9) [now s. 157(9)]¹⁰ of the Bankruptcy Act.

In the case of Re Tlustie (1923), 23 O.W.N. 622, 3 C.B.R. 654 at p. 655, the Registrar, Mr. Holmested, said:

I am of the opinion that for the purpose of carrying out the Act there must be deemed to be vested in the Court the necessary power and jurisdiction to authorize and sanction acts necessary to be done by the trustee for the due administration and protection of the estate even though there be no specific provisions in the Act expressly conferring such power and jurisdiction.¹¹

13. Subject to the discretion of the Court, section 46 of the *BIA* prohibits an interim

⁸ Affidavit of Dylan Suitor affirmed November 29, 2024 at para. 3, found at tab 2 of the motion record for the motion heard on December 3, 2024.

⁹ Now subsection 183(1) of the *BIA*.

¹⁰ Now subsection 187(9) of the *BIA*.

¹¹ [\[1971\] 3 O.R. 721, 15 C.B.R. \(N.S.\) 77 \(S.C.J.\)](#), affirmed [\[1972\] 2 O.R. 845, 27 D.L.R. \(3d\) 24 \(Ont. C.A.\)](#)

receiver from unduly interfering with the debtor in the carrying on of his business. Here, Suitor is no longer actively carrying on his residential real estate business. In fact, Suitor has supported TDB's proposed sale of the Sales Process Properties.

14. Moreover, section 46 of the *BIA* contemplates the time period after the filing of an application for a bankruptcy order and before a bankruptcy order is made. Here, the Bankruptcy Order already issued (three months ago).

15. Interim receivers typically do not possess sale powers out of the concern that they should not interfere with the continued operation of the debtor's business before a bankruptcy order is made (due to the possibility that the application for a bankruptcy order may later be dismissed), which concern does not arise here. Here, the Bankruptcy Order was made. But more importantly, Suitor has agreed that the Sales Process Properties should be sold now. This Court should *"be loath to believe that the Court is powerless to give relief in these circumstances"*¹².

PART IV – ORDER SOUGHT

23 TDB respectfully requests an order substantially in the form of the draft order attached as Appendix "C" to the Second Supplement.

ALL OF WHICH IS RESPECTFULLY SUBMITTED BY



FRED TAYAR and JOSHUA TAYAR
OF COUNSEL FOR THE INTERIM RECEIVER / TRUSTEE IN BANKRUPTCY

June 15, 2025

¹² *Ibid.*

SCHEDULE “A”

AUTHORITIES CITED

1. Order of The Honourable Mr. Justice Farley dated November 13, 2002 in the Bankruptcy of Royal Crest Lifecare Group Inc., Court file number 31-OR-206980-T, found at Tab 1 of the BoA.
2. [*Precision Péga Inc., Re*, 2007 QCCS 1301](#). Unofficial English translation found at Tab 2 of the BoA.
3. [*Ferme des Hautes Collines \(Séquestre de\) c. Banque Nationale du Canada*, 2008 QCCS 1495 \(CanLII\)](#). Unofficial English translation found at Tab 3 of the BoA.
4. *Galanda Properties Inc. v. Tiercon Industries Inc. (Receiver of)*, 2007 CarswellOnt 6810, 38 C.B.R. (5th) 142 (Ont. S.C.J. [Commercial List]), found at Tab 4 of the BoA, affirmed [*36 C.B.R. \(5th\) 289*](#)
5. *Cheerio Toys & Games Ltd., Re*, [\[1971\] 3 O.R. 721, 15 C.B.R. \(N.S.\) 77 \(S.C.J.\)](#), affirmed [\[1972\] 2 O.R. 845, 27 D.L.R. \(3d\) 24 \(Ont. C.A.\)](#)

SCHEDULE “B”

STATUTES AND REGULATIONS CITED

1. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, ss. 46, 183(1), 187(9)

Appointment of interim receiver

46 (1) The court may, if it is shown to be necessary for the protection of the estate of a debtor, at any time after the filing of an application for a bankruptcy order and before a bankruptcy order is made, appoint a licensed trustee as interim receiver of the property or any part of the property of the debtor and direct the interim receiver to take immediate possession of the property or any part of it on an undertaking being given by the applicant that the court may impose with respect to interference with the debtor's legal rights and with respect to damages in the event of the application being dismissed.

Powers of interim receiver

(2) The interim receiver appointed under subsection (1) may, under the direction of the court, take conservatory measures and summarily dispose of property that is perishable or likely to depreciate rapidly in value and exercise such control over the business of the debtor as the court deems advisable, but the interim receiver shall not unduly interfere with the debtor in the carrying on of his business except as may be necessary for conservatory purposes or to comply with the order of the court.

Courts vested with jurisdiction

183 (1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

- (a) in the Province of Ontario, the Superior Court of Justice;
- (b) [Repealed, [2001, c. 4, s. 33](#)]
- (c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;
- (d) in the Provinces of New Brunswick and Alberta, the Court of Queen's Bench;
- (e) in the Province of Prince Edward Island, the Supreme Court of the Province;
- (f) in the Provinces of Manitoba and Saskatchewan, the Court of Queen's Bench;
- (g) in the Province of Newfoundland and Labrador, the Trial Division of the Supreme Court; and
- (h) in Yukon, the Supreme Court of Yukon, in the Northwest Territories, the Supreme Court of the Northwest Territories, and in Nunavut, the Nunavut Court of Justice.

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...

Formal defect not to invalidate proceedings

(9) No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of that court.

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Proceeding commenced at Toronto

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