

**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**

**SUPPLEMENTARY FACTUM OF THE INTERIM RECEIVER AND
TRUSTEE IN BANKRUPTCY OF THOMAS DYLAN SUITOR
(Motion Returnable June 5, 2025)**

June 1, 2025

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TO THE SERVICE LIST

PART I – OVERVIEW

1. This factum is supplementary to TDB's factum dated May 21, 2025 (the "**First Factum**"), and uses terms defined therein.

2. Libro Credit Union Limited ("**Libro**") is the first mortgagee of 207 Ross Street, St. Thomas ("**207 Ross**").¹ On May 22, 2025, Libro filed a responding affidavit, stating that although it supports the sale of 207 Ross, it opposes the inclusion of 207 Ross within TDB's proposed sales process. Libro did not provide any rationale for its opposition. Moreover, there is no reasonable doubt that Libro's first mortgage will be repaid in full out of the sale proceeds of 207 Ross. TDB, as the Court-appointed interim receiver and bankruptcy trustee in this proceeding, is in the best position to efficiently manage all potential stakeholders' different interests.

3. The Canadian insolvency regime favours the enforcement of stakeholder rights through a centralized judicial process called the "single proceeding model", which favours an orderly collective realization process. TDB's proposed sales process should include as many properties as deemed advisable to facilitate an orderly collective realization process, conserve judicial resources, and obtain the cost advantage associated with selling more properties within the same sales process. Moreover, bankruptcy assets should generally be realized as quickly as possible. TDB's proposed sales process represents the quickest means of putting the properties on the market.

¹ Affidavit of Terena Callard sworn May 22, 2025 (the "**Libro Affidavit**") at para. 4.

4. However, this Court does not lightly interfere with a trustee's discretion as to the time and method of the sale of assets. Although TDB's motion had originally contemplated that ten properties would be included within its proposed sales process, TDB considers it advisable to exclude the following three properties from the sales process: (i) 642 Hamilton Rd., London ("**642 Hamilton**"); (ii) 164-168 Picton St E, Hamilton ("**164-168 Picton**"); and (iii) 267 Leslie Street, Sudbury ("**267 Leslie**") (collectively, the "**Excluded Properties**").

PART II – THE FACTS

Procedural History After Delivery of the Second Report

5. After delivery of the Second Report, Libro served the Libro Affidavit, which states that it opposes the inclusion of 207 Ross within TDB's proposed sales process. To address the Libro Affidavit, TDB filed the Supplement to the Second Report dated May 23, 2025 ("**First Supplement**").

6. TDB's motion first came before Justice Steele on May 26, 2025, at which time Her Honour directed that TDB file further motion materials. Justice Steele adjourned the hearing of the motion to June 5, 2025.² In accordance with Justice Steele's direction, TDB filed the Second Supplement to the Second Report dated May 30, 2025 ("**Second Supplement**").

² Appendix "A" of the Second Supplement.

7. The facts are as stated in the First Factum, Second Report, First Supplement, and Second Supplement. This supplementary factum principally addresses 207 Ross and the Excluded Properties.

8. TDB seeks to market and sell the following seven properties within its proposed sales process (the “**Sales Process Properties**”):

- (a) 775 King Rd., Burlington, Ontario;
- (b) 2298 Fassel Ave., Burlington, Ontario;
- (c) 10 Norfolk Street S, Simcoe, Ontario;
- (d) 133 Prospect Ave. Hamilton, Ontario;
- (e) 38 Duncan Ave. S, Kirkland Lake, Ontario;
- (f) 388 Downie Street, Stratford, Ontario; and
- (g) 207 Ross.

A) 207 Ross

9. The only stakeholder that has filed materials in opposition to this motion is Libro.³ The Libro Affidavit does not provide any rationale for opposing the inclusion of 207 Ross within TDB’s proposed sales process.

³ TDB was advised by Heather Sheridan (a City of St. Thomas (“**City**”) representative) that the City does not oppose its proposed sale of 207 Ross. Second Supplement at para. 27(e).

10. Libro is owed roughly \$186,000.⁴ The market value of 207 Ross far exceeds that amount.⁵ There is no reasonable doubt that Libro's first mortgage will be repaid in full out of the sale proceeds of 207 Ross.⁶

11. The Libro Affidavit concedes that (i) Libro's loan has been kept current as the borrower has made all scheduled payments and (ii) Libro may demand payment only if the borrower defaults in any scheduled payment (which has not happened). The Libro Affidavit deposes:

10. The Loan is payable on demand.

*11. The default provision of the Promissory Note is reproduced below:
If I [the Borrower] default in any scheduled payment under this promissory note, Libro, at its option, may demand immediate payment of all unpaid amounts due hereunder, including without limitation all principal and interest.*

12. The payout and payment history for the Loan are attached hereto to this my affidavit and marked collectively as Exhibit "I". The Loan is current.

12. The Libro Affidavit offers two mutually exclusive proposals for realizing 207 Ross, whereby Libro would either

- a) attorn the rents and sell 207 Ross under power of sale ("**Libro Proposal 1**"); or
- b) commence a new receivership application in the London Ontario Superior Court of Justice ("**Libro Proposal 2**") (collectively, "**Libro's Proposals**").⁷

⁴ Libro Affidavit at para. 7.

⁵ See Second Supplement at para. 27(a); Confidential Appendices "1" and "2" to the First Supplement.

⁶ First Supplement at paras. 11-12.

⁷ Libro Affidavit at para. 16.

13. The costs associated with Libro pursuing a separate proceeding to sell 207 Ross would reduce the funds that would otherwise be available to other stakeholders.⁸

14. A transparent, Court-supervised realization process is warranted for 207 Ross in particular. Aside from Libro, potential stakeholders include the City (which registered a charge on title to 207 Ross of \$960,000 pursuant to its Service Manager Contribution Agreement dated May 16, 2016 ("**SMCA**") and a second charge of \$49,704, securing forgivable loan advances), the crown corporations and ministries referred to in the SMCA, the Canadian Mental Health Association ("**CMHA**") (which holds a lease of 207 Ross), and the low-income tenants who reside at 207 Ross under sub-leases from CMHA. Their respective interests ought to be afforded proper consideration. TDB, as the Court-appointed interim receiver and bankruptcy trustee in this proceeding, is in the best position to efficiently manage the potential stakeholders' different interests.⁹

B) Excluded Properties

15. Although TDB's motion had originally contemplated that ten properties would be included within its proposed sales process, TDB considers it inadvisable for it to market and sell the Excluded Properties.

i. 267 Leslie

16. Before TDB brought this motion, on April 25, 2025, Lift Capital Inc. ("**Lift**"), the first mortgagee of 267 Leslie, requested that TDB consent to lift the stay of proceedings under

⁸ First Supplement at para. 12.

⁹ Second Supplement at para. 27(f).

the Appointment Order to permit Lift to pursue a power of sale process. TDB so consented as it concluded that there was likely little to no equity in 267 Leslie beyond the total mortgage indebtedness and anticipated enforcement costs.¹⁰

ii. 642 Hamilton and 164-168 Picton

17. Upon request of Peakhill Capital ("**Peakhill**"), the mortgagee of 642 Hamilton and 164-168 Picton, TDB consented to carve out 642 Hamilton and 164-168 Picton from its proposed sales process. TDB concluded that there was likely little to no equity in those properties beyond the total mortgage indebtedness and anticipated enforcement costs.¹¹ In addition, TDB was advised that Canada Mortgage and Housing Corporation, which had insured Peakhill's mortgages, had entered agreements with Peakhill which may restrict any third-party control over the realization process.¹²

PART III – THE LAW AND ARGUMENT

TDB's Proposed Sales Process Should Include 207 Ross

18. Justice Osborne's reasoning for appointing an interim receiver in this bankruptcy proceeding was that "*the chaos that will inevitably result . . . from an ad hoc series of efforts by individual creditors . . . can and should be avoided or at least minimized through the interim receivership*".¹³ On the same basis, the Sales Process Properties should be realized within that interim receivership.

¹⁰ Second Supplement at para. 17.

¹¹ Second Supplement at para. 25.

¹² Second Supplement at para. 24.

¹³ Appendix "B" of the Second Report at para. 90.

19. The Supreme Court of Canada has repeatedly held that the Canadian insolvency regime favours the enforcement of stakeholder rights through a centralized judicial process called the "single proceeding model", which avoids "inefficiencies and chaos" by "favouring an orderly collective process":

(a) Single Proceeding Model

54 *The central role of courts in ensuring the equitable and orderly resolution of insolvency disputes is reflected in the "single proceeding model".*

55 ***This model favours the enforcement of stakeholder rights through a centralized judicial process. The legislative policy in favour of "single control" is reflected in Canadian bankruptcy, insolvency, and winding-up legislation (Century Services , at paras. 22-23). The single proceeding model is intended to mitigate the inefficiency and chaos that would result if each stakeholder in an insolvency initiated a separate claim to enforce its rights. In other words, the single proceeding model protects the clear "public interest in the expeditious, efficient and economical clean-up of the aftermath of a financial collapse" (Sam Lévy & Associés Inc. v. Azco Mining Inc., 2001 SCC 92, [2001] 3 S.C.R. 978, at para. 27, citing Stewart v. LePage, (1916), 53 S.C.R. 337). This Court has held that s. 183(1) of the BIA confers a "broad scope of authority" on superior courts to deal with most bankruptcy disputes, as "[a]nything less would unnecessarily complicate and undermine the economical and expeditious winding up of the bankrupt's affairs" (Sam Lévy , at para. 38).***

...
62 *Likewise, the raison d'être of the single proceeding model in Canadian insolvency law is the "expeditious, efficient and economical clean-up of the aftermath of a financial collapse". To maximize global recovery for creditors, this model avoids "inefficiencies and chaos" by "favouring an orderly collective process" (Alberta (Attorney General) v. Moloney, 2015 SCC 51, [2015] 3 S.C.R. 327, at para. 33; Husky Oil Operations Ltd. v. Minister of National Revenue, [1995] 3 S.C.R. 453, at para. 7).*¹⁴

20. No one disputes that the Sales Process Properties should be sold. Libro has not given, and does not have, any basis to oppose TDB's proposed sale of 207 Ross.

¹⁴ [Peace River Hydro Partners v. Petrowest Corp., 2022 SCC 41](#) at paras. 54, 55, 62 [Emphasis added].

21. First and foremost, as stated above, there is no reasonable doubt that Libro's first mortgage will be repaid in full out of the sale proceeds of 207 Ross.

22. Second, Libro's own evidence demonstrates that it has no right to demand payment of its loan, as the borrower has not defaulted in making any scheduled payments. Without the right to demand payment, Libro presently has no right to sell 207 Ross.

23. Third, even if Libro did presently have the right to sell 207 Ross, both of Libro's (mutually exclusive) proposals for realization are inferior to TDB's proposed sales process.

24. The major disadvantages of Libro's Proposals are expressed in the Supreme Court of Canada authorities cited above and Justice Osborne's reasoning upon appointing TDB interim receiver—"an *ad hoc* series of efforts by individual creditors . . . will have the further effect of increasing costs and risking prejudice to other creditors."¹⁵ In addition, under either of Libro's Proposals, the realization of 207 Ross would of course be delayed, as only TDB's proposed sales process is presently before the Court.

25. Libro Proposal 1 is not a Court-supervised process. In power of sale proceedings concerning 207 Ross, the legitimate interests of stakeholders other than Libro would not be afforded proper consideration. Given the number of potential stakeholders and

¹⁵ Appendix "B" of the Second Report at para. 90.

agreements relating to 207 Ross (which are referred to above), "chaos" would be the expected result within standalone power of sale proceedings. Moreover, TDB's proposed sales process allocates realization fees and expenses across seven properties. The quantum of such fees and expenses which are ultimately allocated to 207 Ross should be expected to be less than the fees and expenses incurred in standalone power of sale proceedings pursued by Libro.

26. Under Libro Proposal 2, substantial legal expenses would be pointlessly incurred in a new receivership application brought in the London Ontario Superior Court of Justice, and additional professional fees would be pointlessly incurred because Libro would have the Court appoint yet another Court officer—one in respect of 207 Ross alone.

TDB's Proposed Sales Process Should Not Include the Excluded Properties

27. Bankruptcy assets should generally be realized as quickly as possible, but this Court does not lightly interfere with a trustee's discretion as to the time and method of sale:

*The Bankruptcy and Insolvency Act contemplates that assets will be disposed of as quickly as possible. The court will, therefore, do all in its power to assist in the expeditious sale of the assets and to discourage litigation that will prevent the sale from happening: Re Ashcroft Steel Co. (1962), 5 C.B.R. (N.S.) 239 (Que. S.C.). **The trustee and inspectors have, however, a discretion as to the time and method of sale, and unless they act unreasonably, the court will not interfere: Re Peters; Ex parte Lloyd (1882), 47 L.T. 64 (C.A.).***¹⁶

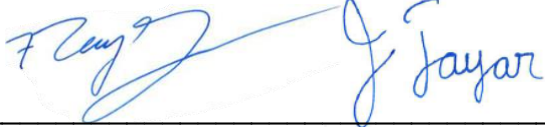
¹⁶ Lloyd Houlden, Geoffrey Morawetz, Janis Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th Edition, § 2:76 [Emphasis added] [Attached Hereto].

28. TDB carefully considered whether including the Excluded Properties within its proposed sales process would benefit the estate and accord with its mandate as interim receiver and trustee in bankruptcy. Ultimately, TDB considered it inadvisable to oppose carve-out requests made by mortgagees of the Excluded Properties given the absence of anticipated equity therein, among other reasons set out in the Second Supplement (and referred to above). TDB exercised discretion prudently in that regard.

PART IV – ORDER SOUGHT

29. 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 1, 2025

SCHEDULE “A”
AUTHORITIES CITED

1. [Peace River Hydro Partners v. Petrowest Corp., 2022 SCC 41](#)
2. Lloyd Houlden, Geoffrey Morawetz, Janis Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th Edition, § 2:76 [Attached Hereto].

Bankruptcy and Insolvency Law of Canada, 4th Edition § 2:76

Bankruptcy and Insolvency Law of Canada, 4th Edition

The Honourable Mr. Justice Lloyd W. Houlden, Mr. Justice Geoffrey B. Morawetz, Dr. Janis P. Sarra

Part I. The Bankruptcy and Insolvency Act

Chapter 2. Part I Administrative Officials

IX. Section 30

§ 2:76. Sale of Assets—Generally

By s. 30(1)(a), a trustee, with the permission of the inspectors, may sell or otherwise dispose of, for such price or other consideration as the inspectors may approve, all or any part of the property of the bankrupt, including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt, by tender, public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels. The trustee must take possession of the assets of the bankrupt and realize them for the benefit of the estate unless they are exempt from seizure, or the cost of realization would exceed their realizable value: Directive No. 25 of the Superintendent of Bankruptcy, “Realization of Estate Assets.” The assets of a bankrupt estate are frequently of considerable value, and there may be keen competition for their acquisition. It is of the utmost importance that the trustee should deal fairly and impartially with their sale. Directive No. 25 deals specifically with the realization of motor vehicles, and life insurance. The Directive requires the trustee to maintain records of receipts, disbursements and actions taken in realizing assets; the official receiver may, in its discretion, request from the trustee a copy of such documentation.

Section 30(4) requires that the trustee obtain court approval before selling or disposing of the bankrupt's property to a person who is related to the bankrupt. This new provision is aimed at preventing possible abuse involving the sale of assets to related parties through the bankruptcy process. Section 30(5) expands the definition of “related person” for the purposes of the section to address corporations. Section 30(6) sets out the factors the court must consider before granting an order to sell the property to a person related to the bankrupt.

The trustee can sell the property of the debtor with the approval of the inspectors and no court order is necessary to allow the trustee to do so: [Re Dust & Blast Machine Services Ltd. \(1995\)](#), 30 C.B.R. (3d) 74, 1995 CarswellOnt 40 (Ont. Gen. Div.).

In selling the assets of the bankrupt, the trustee has a wider duty than simply getting the best possible price at any cost: the trustee must also defend the integrity of the bankruptcy process: [Re Hoque \(1996\)](#), 38 C.B.R. (3d) 133, 1996 CarswellNS 51, (*sub nom. Hoque (Bankrupt), Re*) 148 N.S.R. (2d) 142, 429 A.P.R. 142 (C.A.); [Re Keddy Motor Inns Ltd. \(1999\)](#), 15 C.B.R. (4th) 48, 1999 CarswellNS 404, 181 N.S.R. (2d) 120, 560 A.P.R. 120 (S.C.). However, in [Re Sally Creek Environs Corp. \(2003\)](#), 2003 CarswellOnt 2458, 45 C.B.R. (4th) 140 (Ont. S.C.J.), the court held that it should be careful before determining that a trustee's conduct in the sale of assets by tender was improvident unless the objecting tenderer was able to demonstrate to the contrary based on reasonable grounds.

The trustee has a duty to maximize the yield for the assets of the bankrupt estate, subject to practicalities and honesty. The trustee should strive to obtain fair market value, i.e., the price that an arm's length willing vendor and a willing purchaser would probably negotiate. Individual circumstances, such as a thin market, an unusual asset or heavy carrying charges may require the trustee to sell for less than fair market value: [Re Russell \(1999\)](#), 177 D.L.R. (4th) 396, 12 C.B.R. (4th) 316, 1999 CarswellAlta 718, 71 Alta. L.R. (3d) 85, 237 A.R. 136, 197 W.A.C. 136 (C.A.).

The *Bankruptcy and Insolvency Act* contemplates that assets will be disposed of as quickly as possible. The court will, therefore, do all in its power to assist in the expeditious sale of the assets and to discourage litigation that will prevent the sale from happening: [Re Ashcroft Steel Co. \(1962\)](#), 5 C.B.R. (N.S.) 239 (Que. S.C.). The trustee and inspectors have, however, a discretion as to the time and method of sale, and unless they act unreasonably, the court will not interfere: [Re Peters](#); [Ex parte Lloyd \(1882\)](#), 47 L.T. 64 (C.A.).

Provided the price is adequate, proper efforts have been made to get offers, and there is no other good reason to reject an offer, the court should approve the sale. However, the bankruptcy judge has a limited discretion to give the bankrupt time to try and bring forward a better offer: [Re Gray \(1992\)](#), 16 C.B.R. (3d) 251, 75 B.C.L.R. (2d) 107, 1992 CarswellBC 535 (*sub nom. Gray (Bankrupt), Re*) 20 B.C.A.C. 111, 35 W.A.C. 111 (C.A.).

If the trustee is in doubt about the proper course to follow in the sale of assets, it should apply to the court under [s. 34\(1\)](#) for directions: [Re Niagara Glen Products Ltd. \(1950\)](#), 31 C.B.R. 6 (Ont. S.C.). If a trustee disagrees with the decision of the inspectors on the acceptance of tenders, it can apply under [s. 119\(2\)](#) to have the decision of the inspectors reviewed by the court: [Re Adam Burwash Ltd. \(1977\)](#), 24 C.B.R. (N.S.) 81 (Ont. S.C.).

In issuing orders for appointment of an interim receiver and approval of sale agreements and vesting of purchased assets in the purchaser, the New Brunswick Court of Queen's Bench approved a global settlement that compromised claims made against a bankrupt estate entered into by a trustee in bankruptcy where the settlement was commercially reasonable and in the best interests of the bankrupt estate and the bankrupt's stakeholders, including unsecured creditors, preferred

SCHEDULE “B”

STATUTES AND REGULATIONS CITED

1. ***Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s. 183(1)**

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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