



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00730779-00CL

DATE: October 29, 2025

NO. ON LIST: 3

TITLE OF PROCEEDING: KING CAPITAL MORTGAGE INVESTMENT CORPORATION v.
2353110 ONTARIO LIMITED

BEFORE: JUSTICE J. DIETRICH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Ryan Shah	Counsel for Applicant – King Capital Mortgage Investment Corp	Ryan.shah@paliareroland.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Jason Bogle	Principle of Respondent – 2353110 Ontario Limited	jason@bogleslawoffice.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Catherine Francis	Independent Counsel for the Receiver	cfrancis@foglers.com
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Bryan Tannenbaum Margarita Cargher	Proposed Receiver	btannenbaum@tdbadvisory.ca mcargher@tdbadvisory.ca

ENDORSEMENT OF JUSTICE J. DIETRICH:

Introduction

1. TDB Restructuring Limited (“**TDB**”) in its capacity as the Court-appointed receiver (the “**Receiver**”) over the real property municipally known as 137 Berkeley Street, Toronto, Ontario (the “**Real Property**”), owned by 2353110 Ontario Limited (the “**Debtor**”), seeks two Orders.
2. First, an approval and vesting order (the “**AVO**”) is sought approving an asset purchase agreement (the “**APA**”) dated September 11, 2025 between the Receiver and 16523978 Canada Inc. (the “**Purchaser**”) for a sale of the Real Property free and clear of all claims and encumbrances.
3. Second, an order (the “**Administration and Discharge Order**”) is sought:
 - a. approving the First Report of the Receiver dated October 15, 2025 (the “**First Report**”), the activities and conduct of the Receiver as described therein and the Receiver’s statement of receipts and disbursements to October 8, 2025 (the “**R&D**”) attached thereto;
 - b. approving the Receiver ’s fees and disbursements, and those of its counsel, and the estimated costs to complete the receivership administration as described in the First Report;
 - c. approving the proposed distribution of proceeds from the transaction contemplated by the APA (the “**Transaction**”);
 - d. sealing the confidential appendices to the First Report until closing of the Transaction or until further order of the Court; and
 - e. discharging and releasing the Receiver upon the filing of a certificate (the “**Discharge Certificate**”).
4. The relief sought was originally returnable on October 23, 2025. At that time, motion was adjourned until today at the request of Mr. Bogle and Farrage Developments Inc. (“**Farrage**”). Justice Steele in her endorsement of October 23, 2025 noted that Mr. Bogle indicated at that time he was in the process of retaining new counsel. On that basis and because the Receiver’s material was short served she granted a brief adjournment until today.

5. Farrage did not appear today. Mr. Bogle appeared in person today as a representative of the Debtor. He again requested an adjournment, this time of two weeks so he could obtain counsel and prepare responding material. I declined to grant a further adjournment given that Justice Steele had already granted him an adjournment for that purpose. Further, applicant, King Capital Mortgage Investment Corporation (“**King Capital**”) is expected to suffer a shortfall in repayment of the amounts owed and that loss is growing each day.
6. Mr. Bogle expressed opposition to the relief sought by the Receiver. His submissions indicated that he was hoping to attempt to redeem the first mortgage or develop a redemption transaction of some kind given he now knows the purchase price of the APA for which approval is now sought.
7. Defined terms used but not defined herein have the meaning provided for in the factum of the Receiver filed for use on this motion.

Background

8. TDB was appointed as Receiver by my Order dated February 26, 2024, (the “**Appointment Order**”). At that hearing the Debtor was represented by counsel and opposed the appointment of the Receiver. The Debtor did not dispute that at least \$1.9 million was owing to King Capital at that point, but indicated that the full amount claimed by King Capital was disputed. They were provided an opportunity to bring a motion to address the disputed amounts by Justice Kimmel by January 15, 2025, but failed to do so.
9. The Real Property is the site of a commercial office building in Toronto, Ontario. King Capital is a secured lender of the Debtor, who currently claims to be owed in excess of \$2.4 million in connection with a mortgage loan advanced to the Debtor (the “**Loan**”). A subsequent mortgage is registered in favour of Farrage Developments Inc.
10. The Receiver has obtained an independent legal opinion that, subject to the usual qualifications and assumptions, King Capital holds valid and enforceable security over the Real Property.
11. With respect to the sale of the Real Property, the Receiver retained Lennard Realty Group (“**Lennard**”) to market the Real Property for sale. Lennard launched a marketing campaign for the Real Property on April 21, 2025 which included preparing a brochure and teaser letter that was mailed on a targeted basis, listing the Real Property on Lennard’s website and on MLS, social media posts, emails to Lennard’s distribution list of approximately 3,000 parties, targeted outreach of buyers and listing agents in Toronto, advertisement in the Globe and Mail, and establishment of an electronic data room accessible to parties that executed a confidentiality agreement.

12. The Receiver received three offers for the purchase of the Real Property and the Receiver selected the highest offer, which was subject to conditions. The conditions were not satisfied/waived and the Receiver then re-engaged with the next highest bidder – being the Purchaser. After a period of negotiations the Receiver entered into the APA with the Purchaser.
13. No submissions were made before me that the sale process was improvident in any way.
14. Following closing of the Transaction, Receiver proposing the following distribution of Proceeds, more particularly described at paragraph 68 of the First Report:
- a. Payment to Canada Revenue Agency (“**CRA**”) on account of unpaid HST remittances by the Debtor in respect of which CRA claims a deemed trust under the Excise Tax Act;
 - b. Payment to the City of Toronto of property taxes owing by the Debtor;
 - c. Payment to Lennard of commissions owing upon closing of the Transaction;
 - d. Payment of the unpaid fees and disbursements of the Receiver and its counsel;
 - e. Payment of the Receiver’s borrowings secured by the Receiver’s Borrowing Charge; and
 - f. Payment to the Lender, up to the amount owing by the Debtor to King Capital.
15. As noted above, King Capital is expected to suffer a significant shortfall in repayment on its Loan.
16. As set out in the First Report, along with closing of the Transaction, the Receiver's remaining duties include, making the distributions discussed above, issuing further notices under section 245(2) of the BIA; preparing the Interim and Final Statements of the Receiver pursuant to sections 246(2) and 246(3) of the BIA; filing HST returns in respect of the Receiver's administration, as required; and attending to other administrative matters, as necessary.

Issues

17. The following issues are to be determined today should the Court:
- a. approve the Transaction contemplated by the APA;
 - b. approve the requested Distributions;

- c. approve the First Report, the activities of the Receiver set out therein, the R&D and the fees and activities of the Receiver and its counsel
- d. grant the limited sealing order requested; and
- e. approve the discharge of the Receiver, upon the filing of the Discharge Certificate?

Analysis

18. The principles to be applied when determining whether to approve a sale transaction were articulated by the Ontario Court of Appeal in *Royal Bank of Canada v Soundair Corp.* 1991 ONCA 2727 (“**Soundair**”): (a) whether the receiver has made sufficient effort to obtain the best price and has not acted improvidently; (b) the efficacy and integrity of the process by which offers have been obtained; (c) whether the interests of all parties have been considered; and (d) whether there has been unfairness in the working out of the process.
19. I am satisfied that the *Soundair* principles have been met.
20. There was an extensive marketing process undertaken that included a public listing on MLS for approximately 21 weeks in total. After the first offeror withdrew its offer, the APA represents the highest offer received for the Real Property. The APA is only subject to court-approval. The Receiver does not believe that further exposure to the market would result in a superior offer.
21. As noted in *Soundair*, a Court should defer to a Receiver’s recommendation in respect of a sale, only in exceptional circumstances: see *Soundair* at para 21. I am not persuaded any such exceptional circumstances exist in this case. There is no evidence before me that the sale process was not sufficient, fair or that it was improvident. Accordingly, the requested AVO, with the amendments discussed during the hearing is substantively consistent with the form of Commercial List Model Order is approved.
22. I am satisfied that the requested amounts to be paid as part of the Distribution appropriate in the circumstances. They include amounts to be paid in priority to the Loan, including to CRA, tax amounts, Receiver’s costs and repayment of Receiver’s Borrowings. As noted, it is expected there will be a significant shortfall in repayment to King Capital of the Loan.
23. The request to approve the First Report is not unusual and there are good policy and practical reasons for doing so. The approval of the First Report is appropriate in the circumstances as the Receiver has acted reasonably and in good faith. The draft order provided contains the typical language that only the Receiver is entitled to rely on the approval. Similarly, the R&D is approved.

24. The Receiver also seeks approval of the fees and disbursements of the itself and its legal counsel, including a fee accrual to complete matters. In this respect, as the Court of Appeal for Ontario held in *Bank of Nova Scotia v Diemer* 2014 ONCA 851 at paras 33 and 45, this Court does not undertake a line-by-line analysis of the invoices. Rather, the guiding principles on fee approvals of this nature are whether the fees are fair, reasonable, and proportionate given the value of the Property and liabilities as well as the complexity of the Proceeding. In considering these guiding principles, subject to the comments below regarding the fee accrual, the fees of the Receiver and its counsel as set out in the First Report are appropriate and are approved.
25. The limited sealing order being sought is necessary to preserve the Receiver's ability to maximize the value of the Real Property in the event of the Transaction does not close. I am satisfied that the requested sealing order for the confidential appendix to the First Report (being an unredacted version of the APS and list of the financial terms of the offers received by the Receiver for the purchaser of the Real Property) meets the test in *Sherman Estate v. Donovan* 2021 SCC 25 at para 38 and that disclosure of this information would pose a risk to the public interest in enabling stakeholders of a company in receivership to maximize the realization of assets. I direct counsel for the Receiver to file a hard copy of the confidential appendices with the Commercial List Office in a sealed envelope with a copy of the relevant order and this endorsement.
26. As for the requested discharge, as discussed at today's hearing, in the circumstances I am not prepared at this time to grant that relief and discharge the Receiver. That relief is adjourned to a further hearing to be scheduled following the closing of the Transaction and completions of the Distribution. Counsel to the Receiver should file a notice of return of motion in respect of such relief when it is brought back on as well as supplemental evidence.

Disposition

27. Orders to go in the form signed by me this day.



Date: Oct 29, 2025

Jane O. Dietrich