Court File No.:CV-25-00740748-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

FIRST SOURCE FINANCIAL MANAGEMENT INC. and FIRST SOURCE MORTGAGE CORPORATION

Applicants

-and-

HAMMER & NAILS DEVELOPMENTS LTD. (MAPLE STREET) and HAMMER & NAILS DEVELOPMENTS LTD. (BECKWITH STREET)

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

FACTUM OF THE COURT-APPOINTED RECEIVER, TDB RESTRUCTURING LIMITED

July 22, 2026

ROBINS APPLEBY LLP
Barristers + Solicitors
2600 - 120 Adelaide Street West
Toronto, ON M5H 1T1

David Taub LSO No. 33518M
Email: dtaub@robapp.com
Tel: (416) 360-3354

Anisha Samat LSO No.: 82342Q
Email: asamat@robapp.com
Tel: (416) 360-1901

Lawyers for the Court-Appointed Receiver, TDB Restructuring Limited

TABLE OF CONTENTS

ADDENDA

Court File No.: CV-25-00740748-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

FIRST SOURCE FINANCIAL MANAGEMENT INC. and FIRST SOURCE MORTGAGE CORPORATION

Applicants

-and-

HAMMER & NAILS DEVELOPMENTS LTD. (MAPLE STREET) and HAMMER & NAILS DEVELOPMENTS LTD. (BECKWITH STREET)

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

FACTUM OF THE COURT APPOINTED RECEIVER, TDB RESTRUCTURING LIMITED

PART I - INTRODUCTION

1. TDB Restructuring Limited ("**TDB**") is the Court-appointed receiver and manager (the "**Receiver**") without security, of the real properties municipally known as 7 Maple Avenue North, Smiths Falls, Ontario (the "**Maple Property**") and 161 Beckwith Street North, Smiths Falls, Ontario (the "**Beckwith Property**" and together with the Maple Property, the "**Real Properties**"). The Real Properties are respectively owned by the Respondents Hammer & Nails Developments Ltd. (Maple Street) and Hammer & Nails Developments Ltd. (Beckwith Street), (Hammer & Nails Developments Ltd. (Beckwith Street) is "**Beckwith Street**"). TDB, as Receiver brings this motion for, *inter alia*, the following relief:

(a) an Approval and Vesting Order (the "**Beckwith AVO**") authorizing and directing the Receiver to enter into an agreement of purchase and sale (the "**Beckwith APS**") with Jingjing Gao and Jianquan Yang, or their permitted assignee or nominee (the "**Purchaser**") and vesting in the Purchaser, Beckwith Street's right, title and interest in and to the Beckwith Property, which bears PIN 05269-0273 (LT), free and clear of all claims and encumbrances other than permitted encumbrances;

(b) an Order approving the First Report of the Receiver dated July 17, 2026 (the "**First Report**") and the activities and conduct of the Receiver as described therein;

(c) an Order approving the Receiver's fees and disbursements, and the fees and disbursements of the Receiver's independent counsel as described in the First Report;

(d) an Order approving the Receiver's interim statement of receipts and disbursements (the "**Interim SRD**") as set out in the First Report;

(e) an Order sealing the confidential appendices to the First Report; and

(f) an Order approving the Allocation Methodology (defined herein) as further described in the First Report, and approving the Proposed Interim Distribution of Proceeds as defined and set out in the First Report, including the distribution of the cash allocated to the Beckwith Property pursuant to such methodology.

2. The Beckwith APS is a culmination of extensive discussions between the Receiver and the Purchaser. The Receiver believes that the corresponding transaction (the "**Transaction**") is a commercially reasonable disposition of the Beckwith Property, and recommends that the Court approve the Transaction because:

(a) the Receiver has made reasonable and good faith efforts to sell the Beckwith Property;

(b) a broad marketing of the Beckwith Property was carried out by the Receiver;

(c) the APS represents the highest and best offer for the Beckwith Property; and

(d) it is consistent with *Soundair* principles.[1]

3. The Receiver has also filed Confidential Appendices which contains an unredacted copy of the executed Beckwith APS, and the offers made on the Beckwith Property, and thus contain commercially sensitive information. The Receiver requests that the Confidential Appendices be sealed pending closing of the Transaction, or until further Order of this Court, to avoid prejudice in the event that the Transaction does not close.

PART II - SUMMARY OF FACTS

Background

4. On May 16, 2025, by Order of the Honourable Justice Osborne (the "**Appointment Order**"), TDB was appointed as Receiver over the Real Properties, pursuant to section 243 of the Bankruptcy and Insolvency Act ("**BIA**") and section 101 of the Courts of Justice Act ("**CJA**").[2]

5. The Debtors are related Ontario corporations that own separate real property development projects in Smiths Falls. The Maple Debtor owns the Maple Property and the Beckwith Debtor owns the Beckwith Property.[3]

6. The Maple Property is a four-storey mixed-use building containing residential apartments and ground-floor commercial space. The Beckwith Property is a sixteen-unit residential apartment building.[4]

7. First Source Financial Management Inc. and First Source Mortgage Corporation

---

[1] *Royal Bank of Canada v. Soundair Corp*., 1991 CanLII 2727 (ON CA) ["***Soundair***"]
[2] Order of Justice Osborne dated May 16, 2025 (the "**Appointment Order**"); First Report of the Receiver dated July 18, 2026 (the "**First Report**") at paragraphs 1, 8.
[3] First Report at para 6.
[4] First Report at para 11.

(collectively, "**First Source**") advanced construction and mortgage financing in respect of the Maple Property and holds a second-ranking mortgage over the Beckwith Property. Caisse Desjardins Ontario Credit Union Inc. ("**Desjardins**") is the first-ranking mortgagee of the Beckwith Property.[5]

8. The Receiver has obtained an independent legal opinion from its counsel that, subject to the usual qualifications and assumptions, Desjardins holds, *inter alia,* a valid and enforceable first mortgage over the Beckwith Property.[6]

Sale Process

9. The Appointment Order, *inter alia*, granted the Receiver the power to market any and all of the Real Properties including advertising, soliciting offers and negotiating terms of sale as the Receiver, in its discretion, may deem appropriate.[7]

10. Shortly after the Appointment Order was granted, the Receiver developed a robust sale process to market the Real Properties (the "**Sale Process**") in an open and transparent manner designed to maximize realizations, which included:

(a) inviting proposals from three experienced commercial real estate brokerages and, in consultation with First Source, selected CBRE Limited ("**CBRE**") as exclusive listing broker for the Real Properties[8];

(b) conferring with CBRE to implement a broad and comprehensive marketing process designed to maximize exposure and recoveries, including:

(i) detailed marketing materials and a confidential electronic data room;

---

[5] First Report at para 7.
[6] First Report at para 51
[7] Appointment Order at para 3(k)
[8] First Report at paras 24-26

(ii) listings on MLS, LoopNet and CBRE's website;

(iii) direct email campaigns to thousands of prospective investors and industry participants;

(iv) promotion on LinkedIn, on-site signage, professional photography and drone videography; and

(v) responses to inquiries, property tours and continuing communications with interested parties.[9]

11. As part of the Sale Process, the Receiver received sixty-two (62) signed Confidentiality Agreements, numerous data-room reviews, multiple tours and several offers, including offers for the Real Properties together and separately.[10]

12. Offers for the Maple Property were insufficient to satisfy the secured indebtedness against that property. The Receiver therefore decided to continue repositioning and leasing Maple before pursuing a sale. The Maple Property is not the subject of the AVO sought on this motion.[11]

13. The Receiver initially entered into a conditional sale agreement for the Beckwith Property. That purchaser did not waive its conditions and the agreement terminated. After consulting CBRE and Desjardins, the Receiver revised its strategy and continued marketing the Beckwith Property, generating further interest and negotiations.[12]

The Beckwith Transaction

14. The salient terms of the Beckwith APS relating to the Transaction are as follows:

---

[9] First Report at paras 27-30.
[10] First report at para 28.
[11] First Report at paras 31-36.
[12] First Report at paras 37-43

(a) the purchased assets include the Beckwith Property;

(b) the Receiver has received the deposit due under the Beckwith APS;

(c) the Beckwith APS is conditional on Court approval and the issuance of an Order vesting title to the respective properties in the Purchaser free and clear of claims and encumbrances, other than permitted encumbrances;

(d) the offer is firm, and the Purchaser has waived all conditions to closing except the issuance of the AVO;

(e) the Purchaser is buying the Beckwith Property on an "as is, where is" basis; and

(f) the closing of the Transaction is scheduled for the later of eleven days after the AVO is granted and such other date as the Receiver and the Purchaser may agree (the "**Closing**").[13]

15. The Receiver considers approval appropriate because:

(a) the Beckwith Property was extensively marketed for approximately ten months;

(b) interested parties had sufficient time for due diligence;

(c) the advertising campaign was extensive, and no other suitable offer emerged despite considerable market exposure;

(d) notice of the sale was sent to more than 3,300 parties;

(e) the Beckwith Property was listed on MLS, LoopNet and CBRE's website;

(f) sixty-two parties executed confidentiality agreements and six parties submitted offers. [14]

16. The Receiver is satisfied that the Transaction provides the greatest recovery available. Desjardins and First Source support the AVO and the Transaction, although the sale proceeds will

---

[13] First Report at paras 44

[14] First Report at paras 46-48.

not repay Desjardins in full and no proceeds will flow to First Source.[15]

Other Security Interests Registered Against the Beckwith Property

17. The secured interests registered against the Beckwith Property include (in order of priority)[16]:

Date of Registration	**Nature of Registration**	**Registrant**	**Amount**
2024/04/03	Charge	Caisse Desjardins Ontario Credit Union Inc.	$4,255,855
2024/09/25	Charge	First Source Financial Management Inc.	$13,326,300
2022/02/14	Notice of Security Interest	Evolve Services Inc.	$250,000

Proposed Interim Distribution and Allocation Methodology

18. As the Receiver administered both Real Properties through common bank accounts, it developed an Allocation Methodology to identify the cash attributable to each property. It allocates rental revenue and property-specific operating expenses directly and allocates professional fees pro rata by rental revenue. Desjardins and First Source have approved and agreed to that methodology.[17]

19. Upon Closing, the Receiver proposes to distribute the net sale proceeds as follows:

(a) municipal property taxes owing to the Town of Smiths Falls, estimated at $76,613.38 as of April 30, 2026, together with additional interest, penalties and fees

---

[15] First Report at para 48.
[16] First Report at para 50.
[17] First Report at paras 56-58, Appendix "F".

to closing;

(b) the real estate commission payable to CBRE;

(c) the approved fees and disbursements of the Receiver and its counsel, Robins;

(d) a $100,000 holdback for the remaining administration of the Beckwith receivership, including ordinary closing and post-closing adjustments; and

(e) the balance to Desjardins.[18]

20. The Receiver also proposes to distribute to Desjardins the cash allocated to the Beckwith Property under the Allocation Methodology, calculated to Closing, following which no further distribution will be made to Desjardins. No distribution relating to the Maple Property is sought on this motion.[19]

Approval of the First Report and Activities

21. Since its appointment, the Receiver has, among other things, taken control of and administered the Real Properties, retained existing property management and bookkeeping professionals, overseen rent collection and leasing, preserved the properties, addressed environmental and occupancy matters, issued statutory notices, administered bank accounts and tax filings, engaged and monitored CBRE, and responded to creditors, tenants and other stakeholders.[20] These activities are described in a more fulsome manner in the First Report.

Approval of Fees and Disbursements

22. As outlined in the Fee Affidavits of the Receiver and the Receiver's counsel, the Receiver

[18] First Report at para 54.
[19] First Report at paras 55-59.
[20] First Report at paras 10-29.

and its counsel are seeking approval of their fees and disbursements for services rendered[21]:

(a) in the instance of the Receiver, for the period of March 4, 2025 to June 30, 2026;

(b) in the instance of the Receiver's independent counsel, RA, for the period of May 27, 2025 to July 10, 2026.

Approval of Interim SRD

23. Further, the Receiver seeks approval of its Interim SRD for May 16, 2025 to July 15, 2026, which records cash receipts of $951,777 and cash disbursements of $814,401, leaving excess receipts over disbursements of $137,376.[22]

Sealing the Confidential Appendices

24. The Receiver is requesting that the Court seal the Confidential Appendices to the First Report pending the completion of the Transaction or further order of this Honourable Court. Confidential Appendix 1 contains the offer summary for the Beckwith Property. Confidential Appendix 2 contains the unredacted Beckwith APS, including the purchase price and deposit.[23]

25. Public disclosure before closing would prejudice the integrity of the sale process and any further marketing required if the Transaction fails. A redacted Beckwith APS is publicly filed, minimizing the effect of the requested order on the open court record.[24]

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

26. The Receiver's motion raises the following legal issues:

---

[21] First Report at para 66; Appendices "H" and "I".
[22] First Report at para 60; Appendix "G".
[23] First Report at paras 43, 45, 61.
[24] First Report at paras 62-64.

(a) should the Court approve the Transaction contemplated by the Beckwith APS?

(b) should the Court approve the Allocation Methodology and Proposed Interim Distribution?

(c) should the Court approve the fees and activities of the Receiver and its counsel?

(d) is it appropriate for the Court to seal the Confidential Appendices to the First Report, pending closing of the Transaction or further Order of the Court?

A. The Court Should Approve the Transaction

27. It is submitted that the Transaction is consistent with the principles set out in *Royal Bank v. Soundair Corp* and the Court should approve it.

28. In assessing whether to approve a sale by a receiver, the Court should consider:

(a) whether the receiver has made a sufficient effort to get the best price, and has not acted improvidently;

(b) the interests of all parties;

(c) the efficacy and integrity of the process, by which offers are obtained; and

(d) whether there has been unfairness in the working out of the process.

29. The Court confirmed in *Soundair* that "if the court were to reject the recommendation of the Receiver in any but the most exceptional circumstances, it would materially diminish and weaken the role and function of the Receiver, both in the perception of receivers and in the perception of any others who might have occasion to deal with them."

30. Taking these into consideration, it is submitted that the Court should approve the Transaction and related relief sought by the Receiver. Specifically:

(a) the Beckwith Property was publicly listed for sale and marketed extensively;

(b) the Beckwith Property was exposed to the market for over ten (10) months and over sixty-two confidentiality agreements were signed, with six (6) offers submitted;

(c) the Purchaser's offer is firm, subject only to the AVO, and provides the greatest recovery available;

(d) Desjardins and First Source, the secured creditors of the Beckwith Property, support the Transaction despite the shortfall to Desjardins and the absence of proceeds for First Source; and

(e) the Receiver is satisfied that fair consideration is being provided in the Beckwith APS, and that this is the best offer the Receiver could expect to obtain in the circumstances.

31. Courts have also emphasized that deference is to be afforded to the Receiver in respect of the Transaction. Unless there is a violation of the *Soundair* principles or other exceptional circumstances, the Court should defer to the Receiver's recommendation to sell a debtor's assets.[25]

32. The Sale Process and its implementation were neither improvident nor unfair. There are no exceptional circumstances that would lead this Court to depart from the Receiver's recommendation.

33. As such, the Receiver respectfully submits that the proposed vesting order be granted.

B. The Allocation Methodology and the Proposed Interim Distribution Should be Approved

34. The Appointment Order authorizes the Receiver to receive and collect income from the Real Properties, to sell them with Court approval, to apply for advice and directions, and to do all things incidental to exercising its powers.[26]

---

[25] *9-Ball Interests Inc. v. Traditional Life Sciences Inc*., 2012 ONSC 2788 at para 28; and *Business Development Bank of Canada et al* v. *1673747 Ontario Inc. et al*., 2013 ONSC 286 at para 38.
[26] Appointment Order at para 3.

35. In *Ontario Securities Commission v. Cacoeli Asset Management Inc. et al. ("**Cacoeli**")*, the receiver administered numerous income-producing properties through common proceedings and was required to allocate general professional costs that could not be attributed to any single property. After considering equal, sale-price and rental-revenue allocation methods, the receiver concluded that each property's proportionate share of rental revenue provided the fairest measure of its relative economic activity and the professional effort required for its administration. The Court accepted that methodology as practical, consistent and objective, and approved it as *prima facie* fair.[27]

36. Although *Cacoeli* concerned the allocation of professional costs, it is submitted that the same reasoning is applicable to the broader Allocation Methodology here. The Receiver administered the Maple Property and Beckwith Property through common bank accounts and must allocate both receipts and disbursements between them. The Allocation Methodology provides a rational and objective means of identifying the net cash attributable to each property, preserves the existing priorities between their respective creditors, and has been agreed to by both Desjardins and First Source.

37. The Proposed Interim Distribution respects priority and protects the estate. It pays municipal taxes, sale costs and approved administration costs, preserves a $100,000 holdback, and distributes only the remaining Beckwith proceeds and Beckwith-allocated cash to the valid first-ranking mortgagee. Desjardins remains under secured, and no distribution is sought from the Maple Property.

---

[27] *Ontario Securities Commission v. Cacoeli Asset Management Inc. et al,* CV-25-00736396-00CL, Endorsement of Justice Cavanagh dated June 17, 2026

38. It is submitted that the Allocation Methodology and Proposed Interim Distribution are fair and reasonable and should be approved.

C. The Fees and Activities of the Receiver and its Counsel, and the Interim SRD, Should be Approved

39. The activities of the Receiver as described in the First Report were necessary and undertaken in good faith, pursuant to the Receiver's duties and powers and in each case were in the best interests of the relevant stakeholders.

40. The Receiver is seeking approval of the professional fees incurred by it and its legal counsel as described in the fee affidavits attached to the First Report and the Interim SRD as set out in the First Report.

41. In determining whether compensation sought by a Receiver and its counsel is "fair and reasonable", courts have emphasized the value provided and what was ultimately accomplished.[28]

42. The Receiver submits that the professional fees incurred by it and its counsel, and the Interim SRD set out in the First Report, are fair and reasonable in light of the mandate, and what they were able to accomplish, including running the Sale Process and negotiating the Beckwith APS.

D. The Court Should Seal the Confidential Appendices

43. The Receiver seeks an Order sealing the Confidential Appendices in the First Report, pending closing of the Transaction or further Order of this Court.

---

[28] *Bank of Nova Scotia v Diemer,* 2014 ONCA 851 at paras 44-45.

44. In S*herman Estate v. Donovan*[29]*,* the Supreme Court of Canada affirmed the test as set out in *Sierra Club of Canada v. Canada (Minister of Finance),* for when a court should grant a sealing order:

(a) where it will prevent serious risk to an important public interest, including a commercial interest, in the context of litigation;

(b) where the sealing order is necessary to prevent the serious risk because reasonable alternative measures will not prevent this risk; and

(c) when the salutary effects of the order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.

45. This Court has routinely applied both *Sherman* and *Sierra Club* and held it appropriate to seal information and documentation filed in support of a motion to approve a sale, where the materials "disclose valuations of the assets under sale, the details of the bids received by the court-appointed officer and the purchase price contained in the offer for which court approval is sought".[30]

46. Sealing the Confidential Appendices is necessary to protect the integrity and fairness of the sale process, given that they contain commercially sensitive information.

47. The Confidential Appendices would further only need to be sealed until the Transaction is completed or upon a further Order of this Court, thus limiting the scope of the proposed sealing order.

---

[29] *Sherman Estate v. Donovan,* 2021 SCC 25 [***Sherman]***
[30] *GE Canada Real Estate Financing Business Property Co. v. 1262354 Ontario Inc.,* 2014 ONSC 1173 at para. 32 ["***GE Canada"]***

48. Further, a redacted copy of the Beckwith APS has been included as an appendix to the First Report, and thus forms part of the public record.

49. Finally, the benefits of the sealing order, which include ensuring that the Receiver can maximize value of the Property if the Transaction does not close, outweigh any negative consequences related to restricting public access to the record in the short term.

PART IV - ORDER REQUESTED

50. The Receiver respectfully requests that this Court grant the relief sought in its Notice of Motion dated July 17, 2026.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Date: July 22, 2026	David Taub
Date: July 22, 2026	Anisha Samat

CERTIFICATE RE AUTHORITIES

I, Anisha Samat, Lawyer for the Court-Appointed Receiver, TDB Restructuring Limited, certify:

All authorities are genuine, as required by the Rule 4.06(2.1) of the *Rules of Civil Procedure.*

Date: July 22, 2026

Anisha Samat

SCHEDULE 'A'
LIST OF AUTHORITIES

1. *Bank of Nova Scotia v Diemer,* 2014 ONCA 851
2. *Business Development Bank of Canada et al* v. *1673747 Ontario Inc. et al*., 2013 ONSC 286
3. *GE Canada Real Estate Financing Business Property Co. v. 1262354 Ontario Inc.,* 2014 ONSC 1173
4. *Ontario Securities Commission v. Cacoeli Asset Management Inc. et al,* CV-25-00736396-00CL, Endorsement of Justice Cavanagh dated June 17, 2026
5. *Royal Bank of Canada v. Soundair Corp*., 1991 CanLII 2727 (ON CA)
6. *Sherman Estate v. Donovan,* 2021 SCC 25
7. *9-Ball Interests Inc. v. Traditional Life Sciences Inc*., 2012 ONSC 2788

FIRST SOURCE FINANCIAL MANAGEMENT INC. et al - and- **HAMMER & NAILS DEVELOPMENTS LTD. (MAPLE STREET) et al.**

Applicants *Respondents*

Court File No.: CV-25-00740748-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT **TORONTO**

FACTUM OF THE COURT-APPOINTED RECEIVER, TDB RESTRUCTURING LIMITED

ROBINS APPLEBY LLP
Barristers + Solicitors
2600 - 120 Adelaide Street West
Toronto, ON M5H 1T1

David Taub LSO No. 33518M
Email: dtaub@robapp.com
Tel: (416) 360-3354

Anisha Samat LSO No.: 82342Q
Email: asamat@robapp.com
Tel: (416) 360-1901

Lawyers for the Court-Appointed Receiver, TDB Restructuring Limited