

Court File No. CV-25-00034903-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

WINDSOR FAMILY CREDIT UNION LIMITED

Applicant

- and -

1000200839 ONTARIO INC., GASPER GALIFI and HEMANSHU
PATHAK also known as MARTIN PATHAK

Respondents

APPLICATION UNDER section 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 RECEIVER,
TDB RESTRUCTURING LIMITED**

(hearing on December 16, 2025)

December 5, 2025

FOGLER, RUBINOFF LLP

Lawyers
Scotia Plaza
40 King Street West, Suite 2400
P.O. Box #215
Toronto, ON M5H 3Y2

Catherine Francis (LSO# 26900N)

cfrancis@foglers.com
Tel: 416-941-8861

Lawyers for the Receiver, TDB
Restructuring Limited

TO: **THE SERVICE LIST**

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FACTUM OF THE RECEIVER

PART I - INTRODUCTION/OVERVIEW

1. Pursuant to an order made on May 20, 2025 (the "**Appointment Order**"), TDB Restructuring Limited was appointed as receiver ("**Receiver**") of the property of 1000200839 Ontario Inc. (the "**Debtor**") attached as Schedule "A" to the Appointment Order (the "**Real Property**" or the "**Trinity Woods Properties**").¹

2. The Receiver has entered into an Agreement of Purchase and Sale to sell the Real Property (the "**APS**"). The Receiver seeks an Approval and Vesting Order, deletion of certain restrictive covenants registered on title, approval of its fees and activities, distribution of funds to Windsor Family Credit Union Limited ("**WFCU**"), the first mortgage of the Real Property, and discharge of the Receiver.²

PART II - SUMMARY OF FACTS

3. The Debtor is the registered owner of the Real Property, consisting of 30 fully serviced semi-detached residential lots (the "**Phase 1 Lots**") and 11 fully serviced single family residential lots (the "**Phase 2 Lots**"), both located within the Trinity Woods development in Lasalle, Ontario.³

4. The Debtor purchased the Real Property from the developer, Trinity Woods Inc. (the "**Developer**") for a total purchase price of \$14,812,175.00.⁴

¹ First Report of the Receiver dated November 28, 2025 ("Receiver's First Report"), paras 1-3; Appendix 1 and 2

² Receiver's First Report, paras 5 and 6

³ Receiver's First Report, paras 10 and 11; Appendix 2

⁴ Receiver's First Report, para 12

5. The financing for the purchase was provided by WFCU.⁵
6. The Debtor's obligations under the WFCU Commitment Letter were secured by, among other things, collateral mortgages over the Real Property and personal guarantees from Gasper Galifi ("**Galifi**") and Martin Pathak ("**Pathak**"). The Debtor provided vendor take back mortgages to the Developer for part of the purchase price.⁶
7. During the two-year period following the Debtor's purchase of the Trinity Woods Properties, the Debtor constructed homes on and sold only two semi-detached homes on the Phase 1 Lots, one to an arm's length purchaser and one to a related party.⁷
8. Due to the Debtor's default under the WFCU credit facilities, WFCU brought an application to appoint the Receiver.⁸

Receiver's Activities

9. Upon its appointment, the Receiver:
 - (a) Wrote to Pathak and Galifi requesting information and obtained various books and records pertaining to the Debtor and the Real Property;⁹
 - (b) Arranged insurance;¹⁰
 - (c) Issued statutory notices;¹¹

⁵ Receiver's First Report, para 15

⁶ Receiver's First Report, paras 16-21

⁷ Receiver's First Report, paras 22 and 23

⁸ Receiver's First Report, para 24; Appendix 3

⁹ Receiver's First Report, paras 25-27

¹⁰ Receiver's First Report, paras 28-31

¹¹ Receiver's First Report, para 32

- (d) Obtained details of property taxes.¹²
10. The Receiver carried out other tasks, including:¹³
- (a) Registering the Appointment Order against title to the Real Property;
 - (b) Directly coordinating and managing the marketing and sale process of the Real Property;
 - (c) Liaising with Rocco Tullio, the Principal of the Developer;
 - (d) Engaging with the Town and addressing deficiencies identified by the Town;
 - (e) Arranging for property maintenance;
 - (f) corresponding with Canada Revenue Agency; and
 - (g) drafting the First Report.

Marketing and Sales Process

11. The Receiver engaged in a sales process for the Real Property.¹⁴
12. Prior to the Receiver's appointment, the Debtor had retained the services of three agents to market the Real Property, with no exclusive listings.¹⁵

¹² Receiver's First Report, paras 33-34; Appendix 4

¹³ Receiver's First Report, para 35

¹⁴ Receiver's First Report, para 36

¹⁵ Receiver's First Report, paras 37-38

13. The Receiver was advised that the Real Property was formally listed for sale on the Multiple Listing Service in or about December 2024 with Nadia Khalaf, who advised that she conducted a comprehensive marketing strategy.¹⁶

14. Following consultation with WFCU, the Receiver determined that the most practical initial step would be to conduct an Expression of Interest (“**EOI**”) process, as detailed in the First Report.¹⁷

15. The Receiver sourced targeted builder lists, prepared marketing materials, and established a process to facilitate due diligence and engagement with qualified parties.¹⁸

16. WFCU actively supported the marketing process by providing relevant property information, assisting with feedback on the marketing materials, and reaching out to potential contacts to help generate interest in the Real Property.¹⁹

17. Details of the marketing activities undertaken by the Receiver as part of the EOI process are set out in the First Report.²⁰

18. As a result of the marketing efforts described above, the Receiver received inquiries from 17 interested parties, including builders, developers, and real estate agents. Of these, 11 executed Confidentiality Agreements and were granted access to the Receiver’s secure electronic data room.²¹

¹⁶ Receiver's First Report, para 39

¹⁷ Receiver's First Report, paras 40-45

¹⁸ Receiver's First Report, para 46

¹⁹ Receiver's First Report, para 47

²⁰ Receiver's First Report, para 48; Confidential Appendix 1; Appendices 5, 6, 7 and 8

²¹ Receiver's First Report, para 49

19. Between July 4 and October 17, 2025, the Receiver received four offers for the Real Property, as detailed in the First Report.²²

20. The Receiver proceeded to execute the APS with the Purchaser on November 24, 2025, effective as of October 17, 2025.²³

Title Restrictions

21. Each of the Trinity Woods Properties is subject to restrictive covenant instruments registered on title, as well as an option to purchase in favour of the Developer which impose various limitations on the use and development of the lands and require consent from the Developer for various matters including the plans for dwellings to be built on the Real Property (the "**Title Restrictions**").²⁴

22. The Title Restrictions were identified as a material concern by prospective purchasers of the Real Property.²⁵

23. The Receiver was involved in discussions with the Town and the Developer regarding Letters of Credit ("**LC's**") and deficiencies. The Developer requested that the Receiver replace the LCs and assume responsibility for rectifying the deficiencies, but the Receiver determined that a portion of the deficiencies related to lots that were not part of the Real Property.²⁶

²² Receiver's First Report, paras 50-66; Confidential Appendices 2 and 3

²³ Receiver's First Report, paras 67-69; Appendix 9 and Confidential Appendix 4

²⁴ Receiver's First Report, para 70; Appendix 10

²⁵ Receiver's First Report, paras 71-75

²⁶ Receiver's First Report, paras 77-79

24. The Receiver's ongoing communication and negotiations relating to the Title Restrictions and deficiencies contributed to delays in finalizing the sale process for the Real Property.²⁷

Valuation Considerations

25. In assessing the reasonableness of the purchase price under the APS, the Receiver considered results of the marketing process as well as informal market input obtained from experienced real estate brokers active in Southwestern Ontario.²⁸

26. The Receiver reviewed comparable market data for similar development projects, including lots in the Silver Leaf subdivision (the "**Silver Leaf Lots**") which were owned by the same Debtor and sold at a significantly higher price.

27. Notably, the purchaser of the Silver Leaf Lots, Sun Built Custom Homes Ltd., was approached by the Receiver early in the marketing and sale process for the Trinity Woods Properties and advised that it had no interest in the Trinity Woods Properties. The Receiver concluded that the Silver Leaf Lots are considered to be in a much superior location with greater intensification of infrastructure and amenities.²⁹

28. The Receiver is satisfied that multiple local agents as well as all builders who may be interested in the Real Property were fully aware of the opportunity and declined to submit offers. In the circumstances, the APS falls within a reasonable market range for

²⁷ Receiver's First Report, para 80

²⁸ Receiver's First Report, para 81

²⁹ Receiver's First Report, paras 82-83

serviced residential land, considering current market conditions, absorption rates, and the results of the competitive process.³⁰

Real Property Sale Approval

29. The Receiver believes that the marketing process undertaken was appropriate considering the nature and location of the Real Property. The Receiver believes that the marketing process allowed for sufficient market exposure of the Real Property for the reasons set out in the First Report.³¹

Receiver's Borrowings

30. The Receiver was empowered to borrow up to \$250,000 at any time for the purpose of funding the exercise of the Receiver's powers and duties.³²

Secured Creditors

31. WFUC holds first mortgages over all of the Phase 1 and Phase 2 Lots comprising the Real Property. The Receiver has obtained an independent opinion as to the validity of WFCU's security. According to a payout statement received by the Receiver, the amount owing to WFCU in respect of its first charge/mortgages is \$7,341,166.40 as of October 3, 2025.³³

Receipts and Disbursements

32. The Interim R&D for the period from May 20, 2025 to November 30, 2025, sets out cash receipts of \$175,543, including advances made by the Secured Lender pursuant to

³⁰ Receiver's First Report, paras 85-87; Appendix 11; Confidential Appendix 2

³¹ Receiver's First Report, paras 88-91

³² Receiver's First Report, paras 92-93

³³ Receiver's First Report, paras 94-98 and 100; Appendices 12 and 14

the Receiver's Certificates, and cash disbursements of \$148,685, resulting in an excess of receipts over disbursements of \$26,856.³⁴

Sealing

33. The Receiver is of the view that the Confidential Appendices should remain sealed due to the commercially sensitive nature of the information contained therein, pending further order of the Court or the completion of the transaction contemplated in the Amended APS.³⁵

34. Confidential Appendix "1" contains detailed contact information for third-party builders, developers, and other prospective purchasers identified through industry associations and WFCU. Public disclosure of this information could compromise the privacy of the individuals and entities listed, disclose WFCU's commercially sensitive client information, and impede the Receiver's ability to obtain candid input and cooperation from market participants in this and other proceedings.³⁶

35. Confidential Appendix "2" and Confidential Appendix "3" contain detailed information regarding the offers received, including offer structure, pricing, and bidder identities, the disclosure of which could prejudice ongoing or future sale negotiations and materially affect the Receiver's ability to maximize recovery.³⁷

36. Confidential Appendix "4" contains an unredacted copy of the APS. The inclusion in the public record of the unredacted Amended APS (which discloses the purchase price and deposit amount) would be prejudicial to, among other things, the integrity of the sale

³⁴ Receiver's First Report, para 101; Appendix 15

³⁵ Receiver's First Report, para 102; Confidential Appendices 1 through 4

³⁶ Receiver's First Report, para 103; Confidential Appendix 1

³⁷ Receiver's First Report, para 104; Confidential Appendices 2 and 3

process and any additional marketing efforts that may be needed for the Real Property if the Transaction for the Real Property fails to close for any reason.³⁸

37. Public disclosure of the unredacted versions of these appendices could materially prejudice the Receiver's ability to re-market the Real Property and maximize sale proceeds in the event that the transaction contemplated by the Amended APS does not close and would therefore not be in the best interests of stakeholders.³⁹

Proposed Distribution

38. The Receiver seeks to distribute the proceeds upon closing of the transaction as follows, subject to the establishment of a reserve in the amount of the Remaining Fees and Disbursements:⁴⁰

- (a) payment to the Town for the property taxes;
- (b) payment of the fees and disbursements of the Receiver and Foglers;
- (c) repayment to WFCU of the Receiver's borrowings of \$175,000 plus interest;
- (d) payment to WFCU of all amounts owing by the Debtor to WFCU's first-ranking mortgages.

³⁸ Receiver's First Report, para 105; Confidential Appendix 4

³⁹ Receiver's First Report, para 106

⁴⁰ Receiver's First Report, para 107

Professional Fees

39. The Appointment Order provides that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges.⁴¹

40. The Receiver seeks to have its fees and disbursements, and those of its counsel, approved by the Court. The Receiver and its counsel have maintained detailed records of their professional time and costs.⁴²⁴³⁴⁴⁴⁵⁴⁶⁴⁷

Discharge of the Receiver

41. As the Receiver's administration is substantially complete, and in order to avoid the costs of making a further motion to the Court to obtain the Receiver's discharge, the Receiver respectfully recommends that, after the completion of the remaining duties, the Receiver shall be discharged and the receivership administration will terminate.⁴⁸⁴⁹

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

Approval and Vesting Order

42. The Receiver's authority to market the Real Property is set out in paragraph 3 of the Appointment Order, which provides in part as follows:

3. **THIS COURT ORDERS** that the 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 Receiver is

⁴¹ Receiver's First Report, para 108

⁴² Receiver's First Report, para 109

⁴³ Receiver's First Report, para 110; Appendix 16

⁴⁴ Receiver's First Report, para 111; Appendix 17

⁴⁵ Receiver's First Report, para 112; Appendix 18

⁴⁶ Receiver's First Report, para 113

⁴⁷ Receiver's First Report, para 114

⁴⁸ Receiver's First Report, para 115

⁴⁹ Receiver's First Report, para 116

hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

...

(d) 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 Receiver's powers and duties, including without limitation those conferred by this Order;

...

(j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

...

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause ...

(l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(m) to report to, meet with and discuss with such affected Persons (as defined below) as the 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 Receiver deems advisable;

...

(r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

43. The starting point for the analysis of whether to approve a transaction proposed by a Receiver is the decision of the Court of Appeal for Ontario in *Royal Bank v. Soundair*⁵⁰, which requires the court to canvass the following:

⁵⁰ *Royal Bank v. Soundair*, [1991 CanLII 2727](#).

- (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.

44. In this case, The Real Property had been widely exposed to the market through three different agents prior to the receivership, including listing on the Multiple Listing Service, with virtually no market interest.

45. The Receiver ran a robust marketing and sale process that was designed to expose the Real Property to the target market and obtain the best price for the Real Property based on current market conditions.

46. The Receiver believes that the marketing process undertaken was appropriate considering the nature and location of the Real Property. The marketing process allowed for sufficient market exposure of the Real Property because, among other things:

- (a) targeted notice of the sale opportunity was circulated by the Receiver via e-mail blast to the builders and developers identified in the sourced Target List;

- (b) the Windsor-Essex Home Builders Association circulated the Receiver's marketing email to approximately 8,500 member companies through its mailing list;
- (c) direct outreach was conducted by WFCU, who personally contacted selected builders within its network to solicit participation;
- (d) a marketing brochure and due-diligence materials were made available through a secure electronic data room, following execution of a Confidentiality Agreement;
- (e) seventeen parties expressed interest and eleven executed Confidentiality Agreements, accessing the data room and reviewing materials; and
- (f) the Real Property was exposed to the market for a period of approximately fifteen weeks, which the Receiver considers commercially reasonable in the context of comparable land sales and consistent with other receivership processes in Ontario.

47. Pursuant to this process:

- (a) The Receiver undertook lengthy negotiations with potentially interested parties, including significant attempts to increase the purchase prices;
- (b) The Receiver liaised with several local agents to solicit interest in the Real Property;

- (c) The Developer, as second mortgagee, was given ample opportunity either to take out the WFCU mortgages or to submit a credit bid for the Real Property and specifically and repeatedly declined to do so;
- (d) The Receiver deferred finalization of the APS upon being advised by the Developer that a local agent with knowledge of the Real Property being for sale for four months, had another interested purchaser at a higher price, which never materialized;
- (e) The purchaser under the APS has provided satisfactory evidence of its financial capability to close the transaction.

48. As stated in *Soundair*, there are important policy considerations weighing in favour of according a Receiver's recommendation deference and respecting the Receiver's business judgment based on the information available to the Receiver at the time and in the circumstances.

49. 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 perception of receivers and in the perception of any others who might have occasion to deal with them.

50. There is no evidence to suggest that a further marketing process would yield any better or higher offers.

Removal of the Title Restrictions

51. The APS requires removal or amendment to the Title Restrictions.

52. The Appointment Order specifically authorizes the issuance of a Vesting Order vesting the Real Property in the purchaser free and clear of all encumbrances.

53. The Receiver has served a copy of the Motion Record on the owners of all other properties within the Trinity Woods subdivision. In the absence of any objection from other owners, there is no impediment to vesting off the Title Restrictions.

Approval of Activities and Fees

54. The Receiver has set out its activities and fees and those of its legal counsel, which are at or below the rates charged by other firms. The Receiver requests approval of its activities and fees.

Distribution to WFCU

55. WFCU holds a first mortgage over the Trinity Woods Properties. The Receiver obtained an independent legal opinion as to the validity and enforceability of the WFCU mortgages.

Sealing Order

56. Jurisdiction to grant a sealing order is found in s.137(2) of the *Courts of Justice Act*, and in the inherent jurisdiction of the court.: *Fairview Donut Inc. v. TDL Group Corp.*, [2010 ONSC 789 \(CanLII\)](#) at para. [34](#).

57. The test for such a discretionary order to seal all or part of a court file has been articulated by the Supreme Court of Canada in *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#), [2002] 2 SCR 522 at paras. [53-57](#), and refined in *Sherman Estate v. Donovan*, [2021 SCC 25 \(CanLII\)](#), at para. [38](#).

58. The proposed sealing order in this case is limited both in scope and time. The Receiver has filed the entirety of the APS, with only the purchase price redacted. The proposed sealing order over the Confidential Appendices will only be until the closing of the transaction.

59. Sealing orders are typically granted in these circumstances to protect the integrity of the sale process.

PART IV - ORDER REQUESTED

60. The Receiver requests the relief sought in the Notice of Motion

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of December, 2025.



Catherine Francis

FOGLER, RUBINOFF LLP

Lawyers
Scotia Plaza
40 King Street West, Suite 2400
P.O. Box #215
Toronto, ON M5H 3Y2

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40 King Street West, Suite 2400
P.O. Box #215
Toronto, ON M5H 3Y2

Catherine Francis (LSO# 26900N)

cfrancis@foglers.com
Tel: 416-941-8861

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