

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

FIERA CANADIAN REAL ESTATE DEBT FUND GP INC. and FIERA FP REAL
ESTATE FINANCING FUND L.P.

Applicant

and

OXFORD ROAD DEVELOPMENTS 4 INC., CHEN, ZONG, 2250310 ONTARIO INC.
and P&H DEVELOPMENT HOLDINGS INC.

Respondents

APPLICATION UNDER: *Bankruptcy and Insolvency Act*, s 243(1);
Courts of Justice Act, s101; *Rules of Civil Procedure*, rr 1.04, 2.03, 3.02,
14.05, 16.04 and 38

**FACTUM OF THE RECEIVER, TDB RESTRUCTURING LIMITED
(returnable October 22, 2025)**

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FACTUM OF THE RECEIVER

PART I - INTRODUCTION

1. TDB Restructuring Limited ("**TDB**"), in its capacity as the Court-appointed receiver (the "**Receiver**") of Oxford Road Developments 4 Inc. (the "**Woodstock Debtor**" or the "**Company**"), seeks an order:

(a) authorizing it to contact the Somme Street Purchasers (as hereinafter defined) to negotiate various alternatives with respect to the Somme Street Homes (as hereinafter defined);

(b) approving the Receiver's activities as described in the First Report of the Receiver dated October 15, 2025 (the "**First Report**") and the appendices thereto, and the interim statement of receipts and disbursements as at October 7, 2025 (the "**Interim R&D**");

(c) increasing the Receiver's Borrowing Charge from \$1,000,000.00 to \$2,000,000.00;

(d) approving the fees and disbursements of the Receiver and those of its counsel, as set forth in the First Report; and

(e) sealing the Confidential Appendices (as hereinafter defined) until the earlier of:

(i) the closing of the last transaction in connection with each of the Somme Street Homes (as hereinafter defined); or

(ii) further Order of this Court (the "**Sealing Order**").

2. This factum is filed in support of the Receiver's motion and specifically addresses the Sealing Order.

PART II - SUMMARY OF FACTS

3. TDB was appointed as Receiver pursuant to the Order of Justice Kimmel dated June 6, 2025 (the “**Appointment Order**”) of the Woodstock Debtor including the real property legally described in Schedule “A” to the Appointment Order (the “**Real Property**”).¹

4. The Receiver originally retained the firm of Robins Appleby LLP (“**Robins Appleby**”) as the Receiver’s legal counsel. On the basis that Robins Appleby is also retained by Fiera Canadian Real Estate Debt Fund GP. Inc. and Fiera FP Real Estate Financing Fund, L.P., the Applicants in these proceedings, the firm of Lerner LLP is now acting as the Receiver’s independent legal counsel to avoid any potential conflict.²

A. THE SOMME STREET HOMES

5. The Real Property contains six (6) incomplete residential properties located on Somme Street in the City of Woodstock, Ontario (the “**Somme Street Homes**”).³ Each of the Somme Street Homes is under a separate agreement of purchase and sale with individual buyers (collectively the “**Somme Street Purchasers**”).⁴

(i) Construction Management and Winterization Plan

6. The Receiver contacted three builders to discuss the ability to complete the Somme Street Homes and obtained quotes for the completion of same. After receipt of the quotes and further review, the Receiver selected Kadima Intermanagement Inc. (“**Kadima**”) as the successful builder to complete the Somme Street Homes.⁵

7. The Receiver received a form of construction management agreement (“**Construction Management Agreement**”) and a construction maintenance plan (the “**Construction Maintenance Plan**”) from Kadima. The Receiver is currently in the

¹ Motion Record of the Receiver, returnable October 16, 2025 (“**MR**”), Tab 2, First Report, p 11, para 1, Appendix “A”

² MR, Tab 2, First Report, pp 11-12, para 4

³ MR, Tab 2, First Report, p 12, para 6(b)

⁴ MR, Tab 2, First Report, p 12, para 6(c)

⁵ MR, Tab 2, First Report, p 16, paras 10-12

process of negotiation the terms of the Construction Management Agreement with Kadima and will return to Court regarding same at a later date.⁶

8. The Receiver's current priority is to winterize the Somme Street Homes in order to protect and preserve these properties. Kadima has provided a quote to winterize the structures and properties (the "**Winterization Plan**"), as further outlined as Confidential Appendix "1" to the First Report. The Receiver has discussed the Winterization Plan with the Applicant who is supportive and is prepared to advance funds to complete same. The Receiver will return to Court at a later date for approval of the Winterization Plan.⁷

(ii) Receiver' Analysis

9. The Receiver has completed an analysis regarding completion of the Somme Street Homes (the "**Receiver's Analysis**"), which is fully outlined in Confidential Appendix "2" to the First Report. The Receiver's Analysis shows that the total costs expended to date and costs to complete each of the Somme Street Homes exceeds the net purchase price to be paid to the Receiver by the Somme Street Purchasers for each home.⁸

10. The Receiver believes that it should engage with the Somme Street Purchasers to determine if there is mutually agreeable path forward to completing the Somme Street Homes for some, or all, of the Somme Street Purchasers.

11. As such, the Receiver seeks the Court's authorization to contact each of the Somme Street Purchasers to discuss their respective agreement of sale and purchase with a view to renegotiating the purchase price.⁹

12. Alternatively, if these negotiations are unsuccessful, the Receiver intends to return to Court to provide an update and seek termination of those sale and purchase agreements that cannot be renegotiated to the Receiver's satisfaction.¹⁰

⁶ MR, Tab 2, First Report, p 16, para 12

⁷ MR, Tab 2, First Report, p 17, paras 13-16

⁸ MR, Tab 2, First Report, pp 17-18; paras 17-18

⁹ MR, Tab 2, First Report, p 18, para 21

¹⁰ MR, Tab 2, First Report, p 18, para 22

B. CONFIDENTIAL APPENDICES AND THE SEALING ORDER

13. Confidential Appendix “1” and Confidential Appendix “2” (collectively the “**Confidential Appendices**”) contain commercially sensitive information that could impact the closing of the Somme Street Homes and any future efforts of the Receiver relating to the marketing and sale of the Real Property.¹¹

14. The Receiver requests that the Confidential Appendices be sealed until the earlier of:

(a) the closing of the last transaction in connection with each of the Somme Street Homes; or

(b) further order of this Court.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

15. The issue on this motion is whether the Confidential Appendices should be sealed.

A. THE CONFIDENTIAL APPENDICES SHOULD BE SEALED

16. Section 137(2) of the *Courts of Justice Act*¹² (“**CJA**”) provides the Court jurisdiction to issue a sealing order.

17. In *Sherman Estate v Donovan*,¹³ the Supreme Court of Canada affirmed the test established in *Sierra Club of Canada v Canada (Minister of Finance)*.¹⁴ In *Sherman*, the Supreme Court confirmed that in granting a sealing order, the following considerations must be addressed:

(1) court openness poses a serious risk to an important public interest;

¹¹ MR, Tab 2, First Report, pp 18-19, para 25

¹² *Courts of Justice Act*, [RSO 1990, c C.43, s 137\(2\)](#)

¹³ [2021 SCC 25](#) [*Sherman*]

¹⁴ [2002 SCC 41](#) [*Sierra Club*]

- (2) the sealing order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
- (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.¹⁵

18. In *Sherman*, the Supreme Court noted that, as established in *Sierra Club*, a commercial interest in the context of litigation is an important interest requiring protection.¹⁶

19. Further, courts have granted sealing orders in a variety of commercial contexts, not just for the purpose of preserving the integrity of a sales process.¹⁷ While the Receiver is seeking the Sealing Order, in part, to preserve a future sales process, it also seeks it in order to preserve the confidential business information relating to Somme Street Homes and the Winterization Plan.¹⁸

20. The information contained in the Confidential Appendices is commercially sensitive and could negatively impact the Receiver's discussions with the Somme Street Purchasers, and the Winterization Plan. The benefits of the Sealing Order outweigh the negative consequences related to restricting public access to the court record.

¹⁵ *Sherman*, *supra* note 13 at [para 38](#)

¹⁶ *Sherman*, *supra* note 13 at [para 41](#); *Sierra Club*, *supra* note 14 at para 53

¹⁷ See *Choice Properties Limited Partnership v Penady (Barrie) Ltd*, [2020 ONSC 3517](#) at [para 10](#); *Toronto Dominion Bank v Hockey Academy Inc*, [2016 ONSC 4898](#) at [para 35](#) (wherein a sealing order was granted regarding the appraised value of rink equipment pending its sale);

¹⁸ *Babra v Acquisitions SL LLC*, [2012 ONSC 609](#) at [para 27](#)

21. As such, the Receiver requests that the Confidential Appendices be sealed until the earlier of:

- (a) the completion of sale efforts with respect to the Somme Street Homes; or
- (b) further Order of this Court.

PART IV - ORDER REQUESTED

22. The Receiver respectfully requests an Order in the form attached at **Schedule "C"** hereto.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20th day of October, 2025.


Chelsea McKee

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**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Sherman Estate v Donovan*, [2021 SCC 25](#)
2. *Sierra Club of Canada v Canada (Minister of Finance)*, [2002 SCC 41](#)
3. *Choice Properties Limited Partnership v Penady (Barrie) Ltd*, [2020 ONSC 3517](#)
4. *Toronto Dominion Bank v Hockey Academy Inc*, [2016 ONSC 4898](#)
5. *Babra v Acquisitions SL LLC*, [2012 ONSC 609](#)

SCHEDULE "B"
TEXT OF STATUTES, REGULATIONS & BY - LAWS

Courts of Justice Act, RSO 1990, C c.43

Sealing documents

137 (2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

SCHEDULE "C"
DRAFT ORDER

- d) approving the Receiver's Interim Statement of Receipts and Disbursements;
- e) sealing the Confidential Appendices until the earlier of: (i) the sale of the Somme Street Homes; or (ii) further order of this Court; and
- f) approving the fees and disbursements of the Receiver and its counsel;

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report, the affidavits of the Receiver and its counsel as to fees (the "**Fee Affidavits**"), and on hearing the submissions of counsel for the Receiver, counsel to the Applicant, with no one else appearing although served as evidenced by the Affidavit of Victoria Gifford, sworn October 16, 2025, filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all terms not defined in this Order shall have the meaning ascribed to them in the First Report.
3. **THIS COURT ORDERS** that the First Report, and the activities of the Receiver described therein, are hereby approved.
4. **THIS COURT AUTHORIZES** the Receiver to engage in discussions with the Somme Street Purchasers regarding their respective purchase agreements relating to the Somme Street Homes, including possible increases in the purchase price for said homes.
5. **THIS COURT ORDERS** that the limit of the Receiver's Borrowing Charge, as contained at Paragraph 21 of the Order of Justice Kimmel dated June 6, 2025, is hereby increased from \$1,000,000 to \$2,000,000.
6. **THIS COURT ORDERS** that the Receiver's interim statement of receipts and disbursements from June 6, 2025, to October 7, 2025, is hereby approved.

7. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, as set out in the Report and the Fee Affidavits, are hereby approved.

8. **THIS COURT ORDERS** that the Confidential Appendices to the Report be and are hereby sealed until the earlier of: (i) the closing of the last transaction in connection with each of the Somme Street Homes; or (ii) further order of this Court.

9. **THIS COURT ORDERS** that this Order, and all of its provisions, are effective as of the date hereof, without any need for entry or filing.

FIERA CANADIAN REAL ESTATE DEBT FUND
GP INC., et al.
Applicant

-and-

OXFORD ROAD DEVELOPMENTS 4 INC., et al.

Respondents

Court File No. CV-25-00742866-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

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