

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

NATIONAL BANK OF CANADA

Applicant

and

THOMAS DYLAN SUITOR

Respondent

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**

August 6, 2026

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## **PART I – OVERVIEW**

1. TDB Restructuring Limited ("**TDB**"), in its capacity as the Court-appointed receiver (the "**Receiver**") of the residential properties municipally known as 2298 King Avenue, Burlington, Ontario (the "**Fassel Property**") and 775 King Road, Burlington, Ontario (the "**King Property**"), seeks an order, among other things, (i) approving the sale transaction ("**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between Humam Alsamawi (the "**Purchaser**") and the Receiver dated on or about June 29, 2026 and vesting in the Purchaser all of the Respondent Thomas Dylan Suitor (the "**Debtor**")'s right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**") upon the closing of the Transaction; (ii) granting a sealing order in respect of the Confidential Appendix (i.e., the Sale Agreement (unredacted)); (iii) approving the Second Report of the Receiver and its activities; (iv) approving the Receiver's interim fees and disbursements and those of its counsel; and (v) authorizing the Receiver's proposed interim distributions from the King Property's sale proceeds.

2. The Purchaser submitted an offer to purchase the King Property with a purchase price that is the highest and best offer received by the Receiver. There were two previous offers that were considered the highest and best offers at the time they were received, and approved by the Receiver, but the purchasers in each of those instances did not pay the deposit contemplated by their respective offers, and consequently, those transactions could not be completed. The Sale Agreement is the culmination of a fair sale process, provides for the greatest recovery available in the circumstances, and is the best option available for the stakeholders. An approval and vesting order is appropriate in the circumstances and is necessary to complete the Sale Agreement.

3. Consistent with standard practice in insolvency proceedings, a sealing order should be made in respect of the Sale Agreement to maintain the integrity of the sale process and prevent potential bidders from using the information to obtain an unfair advantage in any subsequent sale process (if the Sale Agreement does not close).

4. Approval of the Second Report of the Receiver and its activities is appropriate as such activities were reasonable, necessary, undertaken in good faith and in accordance with the Receiver's powers and duties as set out in this Honourable Court's Order dated September 19, 2025 (the "**Appointment Order**"), and were undertaken in the best interests of the stakeholders.

5. The Appointment Order provides that the Receiver shall be paid its reasonable fees and disbursements at its standard rates and charges.

6. The Receiver seeks Court approval for certain proposed interim distributions from the sale proceeds of the King Property.

## **PART II – THE FACTS**

### ***The King Property***

7. The Debtor is the registered owner of the King Property.<sup>1</sup>

8. As at July 17, 2026, realty taxes of \$24,594.13 were payable to the City of Burlington (the "**City**") apropos the King Property.<sup>2</sup>

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<sup>1</sup> Second Report at para. 1

<sup>2</sup> *Ibid.* at para. 47 (a)

9. The Applicant National Bank of Canada ("**NBC**") is the First-ranking and only secured creditor registered on title to the King Property.<sup>3</sup>

***The Appointment Order***

10. Pursuant to the Appointment Order, TDB was appointed as Receiver of the Fassel Property and the King Property (the "**Real Properties**"). The Appointment Order empowered the Receiver to market and, with the Court's approval, sell the Real Properties, apply for a vesting order to convey the Real Properties free and clear of encumbrances, and control the proceeds arising from the Real Properties.<sup>4</sup>

11. The Appointment Order provided that the Receiver shall obtain vacant possession of the King Property from the Debtor at a later time. Accordingly, the sale process for the King Property only commenced on May 7, 2026.<sup>5</sup>

12. The Appointment Order provided that

- i. The Receiver may borrow up to \$250,000 for the purpose of funding the exercise of the powers and fulfilling the duties conferred upon the Receiver by the Appointment Order; any such borrowings are secured by a charge in priority to the interests of all persons except the Receiver. The Receiver is authorized to issue **Receiver's Certificates** to evidence any such borrowings.<sup>6</sup>

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<sup>3</sup> *Ibid.* at para. 17

<sup>4</sup> Second Report, Appendix "A" at para. 3(a), 3(j), 3(k), and 3(l)

<sup>5</sup> Second Report, Appendix "A" at para. 24; Second Report at para. 18

<sup>6</sup> *Ibid.* at paras. 20 and 22

- ii. The Receiver shall be paid its reasonable fees and disbursements at its standard rates and charges.<sup>7</sup>

### ***The Receiver's Activities and Second Report***

#### ***A) The Sale Process Apropos the Fassel Property***

13. On March 6, 2026, The Receiver closed the sale of the Fassel Property. The Receiver subsequently filed with the Court a copy of the completed and signed Receiver's Certificate appended to the Fassel Approval and Vesting Order ("**AVO**"). Thereafter, the Receiver completed the Interim Distribution proposed in the First Report.

#### ***B) The Sale Process Apropos the King Property***

14. The Receiver retained Right at Home Realty, Brokerage (the "**Realtor**") to market the King Property for sale. The King Property was listed on a multiple listing service (MLS). There were 93 showings of the King Property to prospective purchasers.<sup>8</sup> Paid social media advertisements were conducted to promote the King Property to a wider audience.<sup>9</sup> The King Property was exposed to the market on MLS for a period of approximately 2 months, consistent with other sales processes in Ontario for residential homes.<sup>10</sup>

15. The Receiver negotiated with a purchaser and ultimately entered into a Sale Agreement with that purchaser. However, that purchaser did not provide a deposit and did not complete the transaction.

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<sup>7</sup> *Ibid.* at para. 17

<sup>8</sup> Second Report at para. 21

<sup>9</sup> Second Report at para. 20 (d)

<sup>10</sup> Second Report at paras. 33 and 34

16. A second Agreement of Purchase and Sale was entered into with a second purchaser, which again failed to close, because of the failure of the purchaser to deliver the required deposit.

17. On June 29, 2026, two additional offers were received for the King Property of which the Purchaser's offer was accepted by The Receiver, subject to Court approval.

18. The Sale Agreement has a purchase price that is the highest and best serious offer received by the Receiver.<sup>11</sup> The Sale Agreement which the Receiver entered with the Purchaser provides that the King Property is being sold on an "*as is, where is*" basis.<sup>12</sup>

19. The Sale Agreement is conditional upon Court approval of the Sale Agreement and granting the vesting order sought in this motion. The Transaction is scheduled to close within 11 days following the approval and vesting order that is sought in this motion, subject to an extension on mutual consent of the parties.<sup>13</sup>

### ***C) Proposed Distributions After Closing the Transaction***

#### **(i) Repayment of the Receiver's Certificate**

20. The Receiver borrowed \$50,000 from NBC and issued a Receiver's Certificate to NBC. Those funds have been used to cover ongoing expenses relating to the King Property. The Receiver has repaid this borrowing, with interest, in the total amount of \$51,307.47 after closing the Fassel Transaction.<sup>14</sup>

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<sup>11</sup> *Ibid.* at para. 35

<sup>12</sup> *Ibid.* at para. 31 (d)

<sup>13</sup> Second Report, Schedule "C"

<sup>14</sup> Second Report at para. 37

**(ii) Payment of the Realtor's commission**

21. The Purchaser's offer was obtained following the Realtor's marketing of the King Property. The Realtor is entitled to commission.

**(iii) IR Holdback**

22. Pursuant to an order of the Court dated October 7, 2024 (the "**Interim Receivership Order**"), TDB was appointed interim receiver of the Debtor (the "**Interim Receiver**").<sup>15</sup> The Court granted a charge over the King Property, as security for the fees and disbursements of the Interim Receiver and its counsel (the "**Interim Receiver's Charge**").<sup>16</sup>

23. The Receiver proposes to hold back \$700,000 from the proceeds to be received from the sale of the King Property (the "**IR Holdback**"), pending this Honourable Court's determination of the allocation of the fees and disbursements of TDB in its capacity as Interim Receiver of the Debtor's assets and those of the Interim Receiver's counsel and quantification of the Interim Receiver's Charge.<sup>17</sup>

**(iv) Holdback for the Administrative Costs of the Receivership**

24. The Receiver proposes to hold back \$100,000 to address the administrative costs of the receivership including, but not limited to, outstanding and future professional fees, property maintenance, utilities and insurance expenses and as a contingency to close the Transaction.<sup>18</sup>

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<sup>15</sup> Second Report, Appendix "B" at para. 55

<sup>16</sup> Second Report, Appendix "B" at paras. 55 and 56

<sup>17</sup> Second Report at paras. 46 and 47(e)

<sup>18</sup> Second Report at para. 47(f)

**(v) Payment to NBC Pursuant to its First Mortgage**

25. The Receiver received an independent security opinion from Goldberg, Lamba & Ghannoum LLP and, subject to the usual qualifications and assumptions expected with such an opinion, the opinion confirms that NBC holds a valid and enforceable First mortgage against the King Property.<sup>19</sup> The Receiver proposes to distribute any remaining net proceeds from the sale of the King Property to NBC following completion of the payments and holdbacks described above, up to and including the amount of principal and interest owing to NBC in respect of its First mortgage.<sup>20</sup>

***D) Interim Statement of Receipts and Disbursements***

26. The Receiver's interim statement of receipts and disbursements for the period from February 10, 2026 to July 31, 2026 shows an excess of receipts over disbursements of \$308,943.00.<sup>21</sup>

***E) Receiver's Interim Fees and Those of its Counsel***

27. The affidavits of Jeffrey Berger, Mindy Tayar, and Bhupinder Lamba as to fees (the "**Fee Affidavits**") set out the hourly rates of representatives of the Receiver and its counsel, time they expended, and fees being claimed relating to the within receivership proceedings. Collectively, those fees, plus HST, total \$87,481.69.<sup>22</sup>

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<sup>19</sup> Second Report at para. 41

<sup>20</sup> Second Report at para. 47(g)

<sup>21</sup> Second Report at para. 48 and Appendix "F"

<sup>22</sup> Second Report at paras. 52-54 and Appendices "G" – "I"

### **PART III – THE ISSUES AND THE LAW**

28. This motion raises the following issues:

- 1) Should this Court approve the Sale Agreement and vest title in the Purchaser?
- 2) Should a sealing order be made in respect of the Confidential Appendix (i.e., the Sale Agreement (unredacted))?
- 3) Should this Court approve the Second Report of the Receiver and its activities?
- 4) Should this Court approve the Receiver's interim fees and disbursements and those of its counsel?
- 5) Should this Court authorize the Proposed Interim Distributions?

#### **ISSUE 1: The Court Should Approve the Sale Agreement and Vest Title in the Purchaser**

29. In the leading case, [Soundair](#), the Ontario Court of Appeal held that only in “exceptional circumstances” will a Court proceed contrary to the recommendation of a Court-appointed receiver.<sup>23</sup> The Court should be “*loathe to interfere with the business judgment of a Receiver and refuse to approve a transaction recommended by the Receiver acting properly in the fulfillment of its obligations as an officer of the court.*”<sup>24</sup> If the Court were to reject the recommendation of its receiver “*in any but the most exceptional circumstances*” it would have “*immensely damaging results to the disposition of assets by court-appointed receivers*”:

*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. It would lead to the conclusion that the decision of the Receiver was of little weight and that the real decision was always made upon the motion for approval. That would be a*

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<sup>23</sup> [Royal Bank of Canada v. Soundair Corp.](#), 1991 CanLII 2727 (ON CA) [Soundair] at paras. 14, 21, 29, 58

<sup>24</sup> [Morgante Canada Corp v Wolfhollow Properties Inc.](#), 2003 CanLII 7759 at para. 7 (ON SC)

*consequence susceptible of immensely damaging results to the disposition of assets by court-appointed receivers.*<sup>25</sup>

30. In determining whether to approve a transaction proposed by a receiver, the Court will consider the following four factors set out in [Soundair](#)<sup>26</sup>:

- a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- b) the efficacy and integrity of the process by which offers are obtained;
- c) whether there has been unfairness in the working out of the process; and
- d) the interests of all parties.

31. The “interests of all parties” include the Purchaser’s interests.<sup>27</sup> The “interests of all parties” here are served by completing the Sale Agreement.

32. Courts have held that sale processes in the context of receiverships are not to be held to a standard of perfection. Rather, a receiver will be found to be acting properly and making an appropriate effort to get the best price if the receiver carefully considers the available information and uses its expertise to determine how best to maximize value in the particular circumstances.<sup>28</sup> Here, the Receiver retained the Realtor to market the King Property for sale. The King Property was listed on a multiple listing service (MLS). There were 93 showings of the King Property to prospective purchasers.<sup>29</sup> Paid social media advertisements were conducted to promote the King Property to a wider audience.

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<sup>25</sup> [Soundair](#) at para. 21, citing with approval [Crown Trust Co. et al. v Rosenberg et al.](#), 1986 CanLII 2760 (ON SC). See also [Vector Financial Services v. 33 Hawarden Crescent](#), 2024 ONSC 1635 at para. 67

<sup>26</sup> [Soundair](#) at para 16. See [Vector Financial Services v. 33 Hawarden Crescent](#), 2024 ONSC 1635 at paras. 59-60

<sup>27</sup> [Reciprocal Opportunities Incorporated v Sikh Lehar International Organization](#), 2018 ONCA 713 at paras. 55-56, 61-62

<sup>28</sup> [1117387 Ontario Inc. v. National Trust Company](#), 2010 ONCA 340 at paras. 44, 50

<sup>29</sup> Second Report at para. 20(d)

The King Property was exposed to the market on MLS for a period of approximately 2 months. Two earlier offers, acceptable to the Receiver, failed to close. The Receiver negotiated with the Purchaser and ultimately entered into the Sale Agreement, which is conditional upon this Honourable Court approving the Sale Agreement and vesting title in the Purchaser.

33. The “facts” section of this factum, together with the more detailed analysis in the Second Report of the Receiver, reflect the significant effort undertaken by the Receiver and its agents to obtain the best price possible for the King Property.

## **ISSUE 2: A Sealing Order Should be Made in respect of the Confidential Appendix**

34. Pursuant to the *Courts of Justice Act*, this Court may order that any document filed in a civil proceeding be treated as confidential, sealed, and not form part of the public record.<sup>30</sup> In addition, this Court has inherent jurisdiction to issue sealing orders.<sup>31</sup>

35. The Receiver is seeking an order sealing the Confidential Appendix comprising the Sale Agreement (unredacted).

36. A redacted copy of the Sale Agreement, which omits only the purchase price and deposit amount, is in the motion record being filed in the public record.

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<sup>30</sup> *Courts of Justice Act*, R.S.O. 1990, c C. 43, s. 137(2)

<sup>31</sup> [Fairview Donut Inc. v. The TDL Group Corp., 2010 ONSC 789](#) at para. 34

37. “*There is a public interest in maximizing recovery in an insolvency*” weighing in favour of sealing orders.<sup>32</sup> In insolvency proceedings, it is standard practice to keep all aspects of the bidding and sale process confidential to maintain the integrity of the process and prevent potential bidders from using the information to obtain an unfair advantage in any subsequent sale process (if the initial agreement fails to close).<sup>33</sup>

38. This Court has held that it is appropriate to seal documents filed in support of a motion to approve a court-supervised sale where such documents “*disclose the 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*”.<sup>34</sup>

39. The Confidential Appendix, if disclosed to the public, could detrimentally impact the Receiver’s sale efforts for the King Property if the Sale Agreement does not close. The requested sealing order complies with [Sierra Club](#) and [Sherman Estate](#).<sup>35</sup>

40. The sealing order sought is limited in time and will expire upon the closing of the Transaction or further order of the Court.

### **ISSUE 3: The Second Report of the Receiver and its Activities Should be Approved**

41. This Court has inherent jurisdiction to approve a receiver’s activities as set out in its reports.<sup>36</sup>

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<sup>32</sup> See [Springer Aerospace Holdings Limited, 2022 ONSC 6581](#) at para. 30; [Danier Leather Inc., Re, 2016 ONSC 1044](#) at para. 84

<sup>33</sup> [Yukon \(Government of\) v Yukon Zinc Corporation, 2022 YKSC 2](#) at para. 39

<sup>34</sup> [GE Canada Real Estate Financing Business Property Co. v. 1262354 Ontario Inc., 2014 ONSC 1173](#) at para. 32

<sup>35</sup> [Sierra Club of Canada v. Canada \(Minister of Finance\), \[2002\] 2 S.C.R. 522](#) [*Sierra Club*] at para. 53; [Sherman Estate v. Donovan, 2021 SCC 25](#) [*Sherman Estate*] at para 38

<sup>36</sup> [Lang Michener v. American Bullion Minerals Ltd., 2005 BCSC 684](#) at para. 21

42. All the Receiver's activities, as set out in its Second Report, were reasonable, necessary, and undertaken in good faith and in accordance with the Receiver's powers and duties set out in the Appointment Order. Accordingly, it is respectfully submitted that the Second Report of the Receiver and its activities should be approved.

#### **ISSUE 4: The Receiver's Interim Fees and Disbursements and Those of its Counsel Should be Approved**

43. Pursuant to the Appointment Order, the Receiver and its counsel are entitled to be paid their reasonable fees and disbursements.

44. The standard of review for the accounts of a court-appointed receiver is "*whether the amount claimed for remuneration and the disbursements incurred in carrying out the receivership are fair and reasonable.*"<sup>37</sup> This Court is to consider all relevant factors in a holistic manner and need not examine "*dockets, hours, explanations, or disbursements line by line.*"<sup>38</sup> The Court must not second-guess the amount of time claimed unless it is clearly excessive.<sup>39</sup>

45. The Receiver's efforts resulted in a very positive result.

46. The respective hourly rates charged for the Receiver's services and those of its counsel are fair and reasonable in the circumstances.

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<sup>37</sup> [Confectionately Yours Inc. \(Re\)](#), 2002 CanLII 45059 (Ont. C.A.) at para. 4.

<sup>38</sup> [Bank of Nova Scotia v. Diemer](#), 2014 ONSC 365 at para. 19, appeal dismissed [Bank of Nova Scotia v. Diemer](#), 2014 ONCA 851

<sup>39</sup> *Ibid.*

**ISSUE 5: The Proposed Interim Distributions Should be Approved**

47. The Proposed Interim Distributions are for payment of Transaction-related expenses, secured indebtedness, and holdbacks relating to future payments of certain Transaction-related expenses and secured indebtedness.

48. NBC supports the completion of the transaction contemplated in the Sale Agreement.<sup>40</sup>

**PART IV – ORDER SOUGHT**

49. The Receiver respectfully requests orders substantially in the form of the draft orders at Tabs 3 and 4 of the motion record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED BY



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**FRED TAYAR**  
**OF COUNSEL FOR THE COURT- APPOINTED RECEIVER**

Date: August 6, 2026

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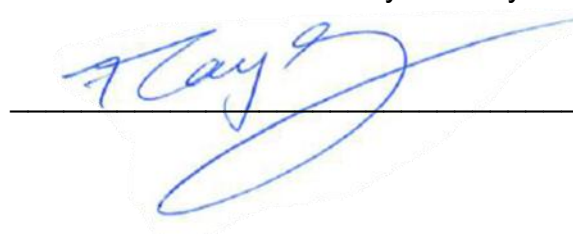
<sup>40</sup> Second Report at para. 35

## **SCHEDULE “A”**

### **Authorities Cited**

1. [Royal Bank of Canada v. Soundair Corp., 1991 CanLII 2727 \(ON CA\)](#)
2. [Morgante Canada Corp v Wolfhollow Properties Inc, 2003 CanLII 7759 \(ON SC\)](#)
3. [Crown Trust Co. et al. v Rosenberg et al., 1986 CanLII 2760 \(ON SC\)](#)
4. [Vector Financial Services v. 33 Hawarden Crescent, 2024 ONSC 1635](#)
5. [Reciprocal Opportunities Incorporated v Sikh Lehar International Organization, 2018 ONCA 713](#)
6. [1117387 Ontario Inc. v. National Trust Company, 2010 ONCA 340](#)
7. [Fairview Donut Inc. v. The TDL Group Corp., 2010 ONSC 789](#)
8. [Springer Aerospace Holdings Limited, 2022 ONSC 6581](#)
9. [Danier Leather Inc., Re, 2016 ONSC 1044](#)
10. [Yukon \(Government of\) v Yukon Zinc Corporation, 2022 YKSC 2](#)
11. [GE Canada Real Estate Financing Business Property Co. v. 1262354 Ontario Inc., 2014 ONSC 1173](#)
12. [Sierra Club of Canada v. Canada \(Minister of Finance\), \[2002\] 2 S.C.R. 522](#)
13. [Sherman Estate v. Donovan, 2021 SCC 25](#)
14. [Lang Michener v. American Bullion Minerals Ltd., 2005 BCSC 684](#)
15. [Confectionately Yours Inc. \(Re\), 2002 CanLII 45059 \(Ont. C.A.\)](#)
16. [Bank of Nova Scotia v. Diemer, 2014 ONSC 365](#)
17. [Bank of Nova Scotia v. Diemer, 2014 ONCA 851](#)

I am satisfied with the authenticity of every Authority.



## **SCHEDULE “B”**

### **Statutes and Regulations**

#### **1. *Courts of Justice Act*, R.S.O. 1990, c. C.43, ss. 100 and 137(2)**

##### **Vesting orders**

**100** A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

##### **137**

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##### **Sealing documents**

(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.

Court File No. CV-25-00751438-00CL

NATIONAL BANK OF CANADA

and

THOMAS DYLAN SUITOR

Applicant

Respondent

**ONTARIO  
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Proceeding commenced at Toronto

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