Court File No. CV-26-00104135-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

B E T W E E N:

HILLMOUNT CAPITAL MORTGAGE HOLDINGS INC.

Applicant

\- and -

ONASSA CORPORATION

Respondent

FACTUM OF THE COURT-APPOINTED RECEIVER, TDB RESTRUCTURING LIMITED

June 24, 2026

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PART I - OVERVIEW

1. The Court-appointed Receiver, TDB Restructuring Limited (the "**Receiver**") of the property, assets and undertakings of Onassa Corporation ("**Onassa**" or the "**Debtor**"), including but not limited to the real property municipally known as the Onassa Springs Subdivision, Ottawa, Ontario, comprised of 26 residential lots (the "**Real Property**"), each individual lot forming part of the Real Property being a "**Lot**" and collectively, the "**Lots**" (together, the "**Property**"), seeks:

   (a) an Approval and Vesting Order authorizing and directing the Receiver, in the name of and on behalf of the Debtor, to ratify the execution of and carry out the terms of the Agreement of Purchase and Sale executed by the Debtor on May 27, 2026 (the "**APS**"), together with such further amendments thereto as may be deemed appropriate by the Receiver or to conform the APS to a sale by a court-appointed receiver, and vesting title to Lots 6, 7 and 8 forming part of the Onassa Springs subdivision in Ottawa, Ontario (collectively, the "**Purchased Assets**") in Cars 4 Cost Plus 499 Inc. (the "**Purchaser**") upon closing of the transaction contemplated by the APS (the "**Transaction**"); and

   (b) an Order sealing Confidential Appendix "1" to the First Report of the Receiver dated June 23, 2026 (the "**First Report**"), being the CBRE Memorandum, pending further Order of this Court.

PART II - THE FACTS

Background

2. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the First Report.

3. Pursuant to an Order dated June 9, 2026 (the "**Receivership Order**"), the Receiver was appointed receiver and manager of all of the assets, undertakings and properties of the Debtor, including the Purchased Assets.[1]

4. Prior to the appointment of the Receiver, the Debtor entered into the APS with the Purchaser in respect of the Purchased Assets.[2]

5. Following its appointment, the Receiver obtained and reviewed the APS, investigated the circumstances surrounding the transaction and obtained independent input from CBRE Limited ("**CBRE**") regarding the value of the Purchased Assets and the reasonableness of the purchase price.[3]

6. The Receiver understands that the APS was negotiated on an arm's-length basis and that the Purchaser is not related to the Debtor.[4]

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[1] First Report, Receiver's Motion Record, Tab 2, at para 1 ["First Report"].

[2] *Ibid*, at para 21.

[3] *Ibid*, at para 20.

[4] *Ibid*, at para 23.

7. CBRE advised the Receiver that the purchase price under the APS is commercially reasonable in the current market and reflective of the value that the subject Lots can reasonably achieve in present market conditions.[5]

8. The Receiver has concluded that the Transaction is fair and reasonable and recommends approval of the APS and completion of the Transaction.[6]

9. All due diligence and conditions pursuant to the APS have been satisfied, other than the obtaining of the Approval and Vesting Order.[7] The Transaction is expected to close upon the granting of the Approval and Vesting Order.

10. The Receiver recommends that this Court approve the APS, authorize the Receiver to carry out the corresponding terms thereof, and grant an Order vesting title to the Purchased Assets in the Purchaser upon the closing of the Transaction, in accordance with the terms of the draft Approval and Vesting Order sought by the Receiver.

11. The Receiver also seeks a sealing order in respect of the CBRE Memorandum.[8] The CBRE Memorandum contains confidential valuation analyses, pricing information and commentary relating to the remaining lots comprising the Real Property.[9] Public disclosure

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[5] *Ibid*, at para 26.

[6] *Ibid*, at para 31.

[7] *Ibid*, at para 27(e).

[8] *Ibid*, at para 33.

[9] *Ibid*, at para 34.

of that information may prejudice the Receiver's efforts to maximize value through future sales of the remaining lots.

PART III - ISSUES

12. The issue on this application is as follows:

(a) whether this Court should approve the APS and grant the Approval and Vesting Order; and

(b) whether this Court should grant the sealing order requested by the Receiver.

PART IV - LAW & ARGUMENT

(a) The Court should grant the Approval and Vesting Order

13. Section 100 of the *Courts of Justice Act* authorizes the Court to grant an order vesting "in any person an interest in real or personal property that the Court has authority to order be conveyed."[10]

14. Similarly, subsection 243(1) of the *Bankruptcy and Insolvency Act* vests the Court with the jurisdiction to "grant a vesting order vesting property in the purchaser."[11]

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[10] *Courts of Justice Act*, R.S.O 1990, c. C.43, section 100.

[11] *Bankruptcy and Insolvency Act,* R.S.C., 1985, c. B-3, section 243(1).

15. Paragraph 3(l) of the Receivership Order empowers and authorizes the Receiver to "apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof, including any one or more Lots, to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property".[12]

16. In assessing whether to approve a proposed sale of assets by a Court-appointed receiver, Ontario courts have consistently applied the criteria identified by the Ontario Court of Appeal in *Royal Bank v Soundair Corp*,[13] encompassing:

(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.[14]

17. In making this assessment, the Court must also uphold the business judgment of the receiver and 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."[15]

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[12] First Report, *supra* note 1, Appendix "A" para 3(l).

[13] 1991 CanLII 2727 (ONCA), 1991 CarswellOnt 205 [*Soundair*].

[14] *Ibid*, at para 16.

[15] *Morganite Canada Corp v Wolfhollow Properties Inc*, 2003 CanLII 7759 (ONSC) at para 7; See also *Eddie Bauer of Canada, Inc (Re),* 2009 CanLII 48527 (ONSC) at para 22.

18. The *Soundair* test has been met. First, the Receiver has undertaken an independent assessment of the APS and the purchase price. Following its appointment, the Receiver reviewed the APS and consulted with CBRE concerning the value of the Purchased Assets and prevailing market conditions. Based upon that investigation, the Receiver concluded that the purchase price is commercially reasonable and reflective of current market conditions.[16]

19. Second, while the APS was entered into prior to the Receiver's appointment and was not the product of a formal marketing process conducted by the Receiver, a formal marketing process is not a prerequisite to approval of a transaction in receivership proceedings.

20. 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.[17]

21. In *Fukiage, Mizue et al v Clearview Garden Estates Inc et al*[18], Justice Kimmel held that the *Soundair* principles may be satisfied where a marketing process was conducted by a party other than the receiver where the process was fair and reasonable and where no

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[16] First Report, *supra* note 1, at paras 23 and 26.

[17] *National Trust Co v 1117387 Ontario Inc,* 2010 ONCA 340 at paras 44 and 50.

[18] *Fukiage, Mizue et al v Clearview Garden Estates Inc et al,* Court File No. CV-25-00736577-00CL [*Fukiage*]

purpose would be served by requiring a further marketing process before completion of the transaction.[19]

22. Similarly, in *Kingsett Mortgage Corporation et al v Maplequest Ventures Inc*[20], the Court approved a transaction notwithstanding the absence of a conventional receiver-led marketing process and emphasized that "the impact of the Receiver's recommendation itself is not to be understated."[21] Justice Black observed that a court should not lightly disregard the recommendation of a receiver charged with determining the most advantageous disposition of assets for stakeholders.

23. The circumstances of this case support the same result. The Receiver has independently assessed the Transaction and determined that it is fair and reasonable. The Purchaser is arm's length to the Debtor. No commission is payable in connection with the Transaction. The first mortgagee, Hillmount Capital Mortgage Holdings Inc., supports the Transaction.

24. Further, the Receiver understands from CBRE that a formal marketing process could take significant time to complete and would provide no assurance of obtaining an offer superior to the APS.[22] The Receiver reasonably concluded that further delay could result in

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[19] *Fukiage, supra* note 18 at para 13 citing *Romspen Investment Corporation v Tung Kee Investment Canada Ltd et al,* 2023 ONSC 5911 at paras 48-49.

[20] *Kingsett Mortgage Corporation et al v Maplequest Ventures Inc,* Court File No. CV-24-00722148-00CL (motion for leave to appeal to ONCA dismissed) [*Maplequest*]

[21] *Ibid,* at para 16.
[22] First report, *supra* note 1, at para 30.

additional carrying costs, continued accrual of property tax arrears and further erosion of value.[23]

25. The APS represents an immediate and certain realization for the benefit of stakeholders. In the circumstances, the Receiver has acted prudently and in accordance with its mandate to maximize recoveries.

26. The Receiver therefore respectfully submits that the APS and the Transaction satisfy the *Soundair* criteria and should be approved.

(b) The Court should grant the Sealing Order

27. The Receiver seeks an order sealing Confidential Appendix “1” to the First Report, being the CBRE Memorandum.

28. Courts have recognized that sealing orders may be appropriate in insolvency proceedings where disclosure of confidential commercial information could impair a receiver’s ability to maximize realizations for stakeholders.[24]

29. The CBRE Memorandum contains confidential valuation analyses, pricing information and methodology relating to the value of the remaining lots comprising the Real Property.

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[23] *Ibid,* at para 30..

[24] *Romspen Investment Corporation v Hargate Properties Inc*, 2012 ABQB 412 at paras 2, 11 and 13.

30. In *Sherman Estate v Donovan*,[25] the Supreme Court of Canada held that a party requesting that a court exercise its discretion in a way that limits the 'open court' presumption must establish that: (i) the openness poses a risk to an important interest to the public; (ii) the request sought is necessary to prevent the risk to the identified interest as reasonable alternative measures will not prevent said risk; and (iii) the benefits of the request outweigh the negatives as a matter of proportionality.[26]

31. The three core principles established in *Sherman Estate* have been met.

32. Sealing the CBRE Memorandum is necessary to ensure that the Receiver can maximize the value of the Lots for the benefit of all stakeholders.[27]

33. Public disclosure of that information could provide prospective purchasers with insight into the Receiver's pricing expectations and valuation parameters for the remaining lots, thereby impairing the Receiver's ability to obtain the best available price through future sale efforts.[28]

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[25] 2021 SCC 25 [*Sherman Estate*].

[26] *Ibid,* at para 38.

[27] See *GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc*, 2014 ONSC 1173 at paras 32-34.

[28] First Report, *supra* note 1, at para 34.

34. The sealing order sought is limited in scope and duration. The Receiver requests only that the CBRE Memorandum remain sealed pending further Order of the Court and until the Receiver's sale efforts concerning the remaining Lots have been completed.[29]

35. The limited sealing relief sought is necessary to protect legitimate stakeholder interests and will facilitate the Receiver's efforts to maximize value for the estate.[30]

36. For all these reasons, the Court should approve the Approval and Vesting Order including the sealing relief.

PART V - ORDER REQUESTED

37. The Court should grant an order substantially in the form attached as Tab 3 to the Receiver's Motion Record, *inter alia*:

(a) an Approval and Vesting Order substantially in the form included in the Motion Record, including the sealing relief contained therein; and

(b) such further and other relief as this Honourable Court may deem just.

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[29] *Ibid*, at para 33.

[30] *Ibid*, at para 35.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of June 2026.

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SCHEDULE "A"
LIST OF AUTHORITIES

1. *Eddie Bauer of Canada, Inc (Re),* 2009 CanLII 48527 (ONSC).

2. *Fukiage, Mizue et al v Clearview Garden Estates Inc et al,* Court File No. CV-25-00736577-00CL.

3. *GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc*, 2014 ONSC 1173.

4. *Kingsett Mortgage Corporation et al v Maplequest Ventures Inc,* Court File No. CV-24-00722148-00CL (motion for leave to appeal to ONCA dismissed).

5. *Morganite Canada Corp v Wolfhollow Properties Inc*, 2003 CanLII 7759 (ONSC).

6. *National Trust Co v 1117387 Ontario Inc,* 2010 ONCA 340.

7. *Romspen Investment Corporation v Hargate Properties Inc*, 2012 ABQB 412.

8. *Romspen Investment Corporation v Tung Kee Investment Canada Ltd et al,* 2023 ONSC 5911.

9. *Royal Bank of Canada v Soundair Corp*, 1991 CanLII 2727 (ONCA), 1991 CarswellOnt 205.

10. *Sherman Estate v Donovan*, 2021 SCC 25.

I certify that I am satisfied as to the authenticity of every authority listed above.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date June 24, 2026

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Shurabi Srikaruna

SCHEDULE "B"
RELEVANT STATUTES

***Bankruptcy and Insolvency Act*, RSC 1985, c B-3**

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

> (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
>
> (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
>
> (c) take any other action that the court considers advisable.

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

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.

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

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Proceedings commenced at Ottawa, Ontario

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