

Court File No. CV-20-00636059-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

**BETWEEN:**

**TANDIA FINANCIAL CREDIT UNION LIMITED**

Applicant

- and -

**2571279 ONTARIO INC.**

Respondent

**APPLICATION UNDER** Subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) and (h) of the *Rules of Civil Procedure*

**FIRST REPORT TO THE COURT  
SUBMITTED BY BDO CANADA LIMITED,  
IN ITS CAPACITY AS RECEIVER**

**July 24, 2020**

# ***Listing of Appendices***

- Appendix A - Appointment Order Dated February 20, 2020
- Appendix B - Newspaper Advertisement
- Appendix C - Non-Disclosure Agreement and Asset Purchase Agreement
- Appendix D - Confidential Information Memorandum
- Appendix E - Sales Agreement (Redacted)
- Confidential Appendix 1 - Summary of Bids
- Confidential Appendix 2 - Sale Agreement

## 1.0

# INTRODUCTION AND PURPOSE OF REPORT

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### 1.1 Introduction

1.1.1 By way of an order of the Honourable Justice Hailey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated February 20, 2020 (the “**Appointment Order**”), BDO Canada Limited was appointed as the receiver (the “**Receiver**”), without security, of all the Property (as defined in the Appointment Order) of 2571279 Ontario Inc. (“**257**”). Attached as **Appendix A** is copy of the Appointment Order.

### 1.2 Purpose of this Report

1.2.1 This report is the Receiver’s first report to the Court (the “**First Report**”) and is filed in respect of a motion for an order (the “**Approval and Vesting Order**”):

- a) approving this report and the actions of the Receiver described herein;
- b) approving the agreement of purchase and sale between the Receiver, as vendor, and 2012870 Ontario Inc. (“**201 Ontario**” or the “**Purchaser**”), as purchaser, dated July 3, 2020, (the “**Sale Agreement**”) and authorizing the Receiver to complete the transaction contemplated thereby (the “**Transaction**”); and
- c) upon completion of the Transaction (as evidenced by the Receiver filing a certificate certifying same), vesting the Purchased Assets (as defined in the Sale Agreement) in the Purchaser; and
- d) sealing Confidential Appendix 1 and Confidential Appendix 2 to this First Report.

1.2.2 In preparing this First Report, the Receiver has relied upon records that could be located by the Receiver, certain financial information obtained from third parties, and discussions with various individuals (collectively, the “**Information**”). The Receiver has not audited, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CAS**”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of the Information.

1.2.3 This First Report has been prepared for the use of this Court in respect of the above-noted relief. This First Report should not be relied upon for any other purpose. The Receiver will not assume responsibility or liability for losses incurred as a result of the circulation, publication, reproduction or use of this First Report contrary to the provisions of this paragraph.

1.2.4 All references to dollars are in Canadian currency unless otherwise noted.

**1.2.5** In accordance with the Appointment Order, copies of unsealed materials and prescribed notices delivered and/or filed in the receivership proceedings are available on the Receiver's case website at <http://www.bdo.ca/en-ca/extranets/2571279ontario>.

## **2.0 RECEIVER'S ACTIVITIES**

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### **2.1 Introduction**

2.1.1 This Section is intended to provide the Court with a summary of the Receiver's activities.

### **2.2 Debtors' Business and Operations**

2.2.1 257 is the principal Debtor. The Company is not an operating company and is an insolvent corporation.

2.2.2 The Receiver has identified the only asset of 257 is the real property of industrial land, located at Pt Lot 11 Con 11 ND Toronto Gore as in VS104662, City of Brampton, Ontario, at the intersection of Highway 50 and Old Castlemore Road.

### **2.3 Mortgages on Real Property**

2.3.1 The Receiver identified a mortgage on the real property identified above held by Tandia Financial Credit Union Limited ("**Tandia**"), the applicant in the within proceeding. The principal mortgage amount was \$7,573,500 on February 28, 2020.

2.3.2 The Receiver identified two further mortgages on the real property identified above held by Gurcharan Bajwa ("**Bajwa**"). The principal mortgage amounts were \$1,550,000 and \$2,000,000 respectively according to the registered mortgages. The Receiver understands that the \$2,000,000 mortgage to Bajwa has been repaid in full through the sale of other secured assets owned by another related company, but there may be claims for indemnity that remain to be dealt with by the Receiver in this proceeding.

2.3.3 The Receiver has obtained legal opinions from its counsel, Flett Beccario ("**Flett**") with respect to the security held by Tandia and Bajwa. Subject to the usual qualifications and exclusions, Flett has opined that the security appears to represent valid charges against the real property identified above, with Tandia in first position, and Bajwa in second and third position.

### **2.4 Canada Revenue Agency Correspondence**

2.4.1 The Receiver received confirmation from the Canada Revenue Agency ("**CRA**") on July 16, 2020 advising that no payroll account(s) were established under 257 and concluded there are no outstanding payroll deductions owing.

2.4.2 CRA informed the Receiver that 257 filed GST/HST returns annually, commencing 2017. CRA advised the annual returns for January 1, 2017 to December 31, 2017 and January 1, 2018 to December 2018 were filed, each with NIL balances. The annual returns for January 1, 2019 to December 2019 and January 1, 2020 to February 20, 2020, Receivership date, remain unfiled.

2.4.3 The Receiver has not seen any copies of the documentation filed by 257 in support of the GST/HST remittances previously filed.

- 2.4.4 CRA has advised no corporate tax returns have been filed since the incorporation date of 257.
- 2.4.5 The Receiver intends to work cooperatively with the CRA and file both outstanding GST/HST returns once the Receiver has received the appropriate remittance documentation from CRA.

## **3.0 SALE PROCESS**

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### **3.1 Introduction**

**3.1.1** The Appointment Order, dated February 20, 2020, gave the Receiver the authority to make any or all of the Property (as defined therein). Pursuant to that authority, the Receiver established a sales process (“**Sales Process**”) over the property (as defined below).

**3.1.2** The Property subject to the Sale Process is as follows:

- a) the real property being PIN 14213-0053 (LT), PT LT 11 CON 11 ND TORONTO GORE AS IN VS104662; CITY OF BRAMPTON (the “**Real Property**”)

**3.1.3** The timeline for the bidding procedures is set out in the table below:

<b>Date</b>	<b>Description of Bidding Procedures</b>
Week of May 18, 2020	Receiver begins marketing the Real Property
Week of May 25, 2020	Interested parties sign NDA and access Data Room
Friday, June 19, 2020	Bid Deadline
Friday, July 3, 2020	Successful Bidder identified, APA and transaction documents finalized
Week of August 3, 2020	Court attendance regarding sale
By Friday, September 3, 2020	Close of sale transaction

### **3.2 Sale Process**

**3.2.1** Pursuant to the bidding Procedures, the Receiver began marketing the Real Property during the week of May 18, 2020, including by:

- a) maintaining and developing lists of (i) parties that had inquired regarding a sale of the Real Property; and (ii) prospective buyers (the “**Prospective Purchasers**”);
- b) listing the Real Property on the online property listing service ([www.realtor.ca](http://www.realtor.ca)) website;
- c) publishing a notice in the Globe and Mail, a copy of which is attached hereto as **Appendix B** to this First Report;
- d) directly emailing the Prospective Purchasers; and
- e) sending a form of non-disclosure agreement (the “**NDA**”) to parties identified as having an interest in the Real Property, along with a form of a template

asset purchase agreement (the “APA”), both of which are attached as **Appendix C** to this First Report.

- 3.2.2 Additionally, the Receiver obtained two property appraisals for the Real Property (the “Appraisals”).
  - 3.2.3 As a result of the Receiver’s efforts in connection with the Sale Process, the Receiver contacted a total of 89 Prospective Purchasers. Only parties who executed the NDA were granted access to the Confidential Information Memorandum (the “CIM”), a copy of which is attached as **Appendix D** to this First Report.
  - 3.2.4 The CIM included copies of various documents, including the sales process, property particulars including pictures, location details, zoning summary and area economic overview.
  - 3.2.5 The Receiver supplied the materials that were available to the Receiver and which it believed were necessary for prospective purchasers to evaluate the opportunity and put forth their best bid for the assets.
  - 3.2.6 Pursuant to the Sale Process, binding offers (each, a “Bid”), made in the form of the APA accompanied by a deposit in an amount equal to a percentage of the purchase price, must have been submitted to the Receiver by the bid deadline.
  - 3.2.7 The Real Property was marketed on an “as is, where is” basis.
- 3.3 Bids**
- 3.3.1 As of 5:00 p.m. Toronto time on Friday, June 19, 2020 (the “Bid Deadline”), a total of 13 potential bidders had provided Bids. A summary of the Bids received is attached as **Confidential Appendix 1** to this First Report.
  - 3.3.2 The Template APS was consistent with a sale of this nature and Prospective Purchasers were entitled to incorporate amendments for the Receiver’s consideration. No potential bidder raised and issues or concerns regarding the Template Sale Agreement or the Sales Process or Bidding Procedures.
- 3.4 Identification of Successful Bidder**
- 3.4.1 The Receiver considered the Bids that had been submitted in respect of the Real Property, taking into consideration a number of factors, including: (a) the purchase price and how it compares to the Appraisals; (b) evidence of the purchaser’s ability to finance the Transaction; (c) conditions to closing the Transaction; and (d) the provision of a substantial deposit.
  - 3.4.2 The Receiver considered the Bids with a view to selecting the Bid that would have the most certainty of closing and that would maximize the value realized to the estate. After consideration of the Bids and discussions with certain bidders, 2012870 Ontario Inc. was identified as the successful bidder. The Receiver consulted with Tandia, the first secured lender in the proceedings, and Tandia advised that it supports the transaction.



### 3.5 Asset Purchase Agreement

- 3.5.1 As noted above, the Receiver and 2012870 Ontario Inc. ultimately entered into the Sale Agreement, which is dated July 3, 2020. A redacted copy of the Sale Agreement is attached as **Appendix E** to this First Report. A non-redacted copy of the Sale Agreement is attached as **Confidential Appendix 2** to this First Report.
- 3.5.2 As originally submitted by the bid deadline of June 19, 2020, the Sale Agreement was identical to the Template Sale Agreement, with the addition of a Purchase Price being set out.
- 3.5.3 The Sale Agreement dated July 3, 2020, is generally in the form of the Template Sale Agreement. Among other things:
- a) the “Closing Date” is the date that is the first Business Day following the date that is twenty-five (25) days following the date on which the Approval and Vesting Order is issued by the Court;
  - b) the “Purchased Assets” means the lands and premises being PIN 14213-0053 (LT), PT LT 11 CON 11 ND TORONTO GORE AS IN VS104662; CITY OF BRAMPTON, together with all easements, rights-of-way, privileges and appurtenances attaching thereto and ensuring to the benefit thereof;
  - c) the “Purchase Price” is subject to adjustments on the closing date in respect to the following items: i) realty taxes, local improvement rates and changes; ii) water and sewer rates and charges; iii) all other items reasonably capable of and subject to the provisions of the Sales Agreement;
  - d) the Purchase Price is subject to, without limitation, a standard working capital adjustment and any applicable taxes;
- 3.5.4 The Receiver believes that the terms and price of the Sale Agreement are commercially reasonable considering the current state of the economy in Ontario. The purchase price obtained was well above the average appraised values.

For the reasons set out above, the Receiver respectfully requests that the Court issue an order:

- a) approving this report and the actions of the Receiver described herein;
- b) approving the Sale Agreement and authorizing the Receiver to complete the Transaction;
- c) sealing Confidential Appendix 1 and Confidential Appendix 2 to this First Report; and
- d) upon completion of the Transaction (as evidenced by the Receiver filing a certificate certifying same), vesting the Purchased Assets (as defined in the Sale Agreement) in the Purchaser, as set out in the draft Approval and Vesting Order.

All of which is respectfully submitted this 24<sup>th</sup> day of July, 2020.

**BDO CANADA LIMITED**, solely in its capacity as Court-appointed Receiver of 2571279 Ontario Inc. and not in its corporate or personal capacity.



Per: \_\_\_\_\_  
Christopher J. Mazur, CIRP, LIT  
Senior Vice President  
National Commercial Practice Leader

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