

Boettger, Adam

From: Lonergan, Clark
Sent: Tuesday, January 12, 2021 10:49 AM
To: Boettger, Adam
Subject: FW: [EXT] The Bank of Nova Scotia and 1854313 ONTARIO LIMITED Court File No. CV-20-00650239-00CL
Attachments: CV-20-00650239-00CL_Bank of Nova Scotia v. 1854313 Ontario Limited_Order (January 11 2021 Motion).pdf

Can you please pdf email and save to the website with the Order please

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 Before you print think about the environment

From: Cavanagh, Justice Peter (SCJ) <Peter.Cavanagh@scj-csj.ca>
Sent: January 12, 2021 10:45 AM
To: Tim Hogan <thogan@harrisonpensa.com>; matthew@moyalandassociates.com; Ian Klaiman <iklaiman@lzwlaw.com>; Lonergan, Clark <clonergan@bdo.ca>
Cc: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>
Subject: [EXT] The Bank of Nova Scotia and 1854313 ONTARIO LIMITED Court File No. CV-20-00650239-00CL

Counsel:

Tim Hogan for Receiver
Matthew Moyal for Touchstone Group Inc.

Endorsement:

The Receiver was appointed by order made on October 29, 2020 (the "Appointment Order") as receiver of the property (the "Property") of 1854313 Ontario Limited. The Receiver brings this motion for an order approving the Receiver's First Report dated December 22, 2020 and approving the sale process detailed in the First Report. The Receiver also seeks direction with respect to the payment to the Receiver of all monies collected or earned from the Property following October 29, 2020 and received by Touchstone. The Receiver seeks an order directing Touchstone to pay to the Receiver all monies collected or earned from the Property following October 29, 2020.

The Appointment Order required Touchstone to provide a complete accounting of all rents collected or earned from the tenants of the Property subsequent to the date of appointment and to remit same to the Receiver. On taking possession of the Property, the Receiver provided notice to tenants of the Property of their obligation to pay all future rents to the Receiver, including rents for November, 2020. Despite this notice, several tenants of the Property paid rents to Touchstone which was in possession of the Property at the time of the appointment order as second mortgagee. The amount of such rents known to the Receiver totals the sum of \$57,855.09 representing six tenant payments for November and one tenant payment for December, 2020.

Touchstone takes the position that it is not required to remit to the Receiver the rents collected from tenants of the Premises prior to November 3, 2020 as such rents were collected prior to the Receiver notifying the service list that it took possession of the Property. Touchstone asserts that it is entitled to apply such rents in payment of its expenses for managing the Property while it was in possession.

The Appointment Order, in para. 3(f), authorizes the Receiver to "receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies". Paragraph 5 of the Appointment Order requires Touchstone to "forthwith provide the Receiver with ... remittance of any rent collected from tenants of the Debtor in connection with the [Premises]". The Appointment Order clearly provides that Touchstone is to remit all rents to the Receiver collected upon the Appointment Order becoming effective.

I therefore make an order requiring Touchstone to remit the rents it received after the effective date of the Appointment Order to the Receiver.

I am satisfied that the Receiver's activities were conducted within the ambit of its powers granted by the Appointment Order and that each of the activities were necessary to ensure that the proceedings were orderly, effective and fair to all stakeholders. I approve the First Report. I am also satisfied that the sales process should be approved. Any sale resulting from the sales process would be in accordance with the principles in *RBC v. Soundair Corp.* (1991) 4 O.R. (3d) 1 (ONCA), at para. 16.

The Receiver is also seeking additional books, records, and an accounting from Touchstone. This information is required to be provided pursuant to the terms of the Appointment Order. At the hearing of this motion, I asked counsel for the Receiver and counsel for Touchstone to have further discussions to ensure that all required documents and information are provided to the Receiver. If this is not done, a separate motion may be brought.

Order to issue in form of attached order signed by me.



Cavanagh J.