

## Taylor Reiners

---

**From:** Cavanagh, Justice Peter (SCJ) <Peter.Cavanagh@scj-csj.ca>  
**Sent:** Friday, May 14, 2021 2:34 PM  
**To:** Tim Hogan; matthew@moyalandassociates.com; Ian Klaiman; dkirwan@lawhouse.ca  
**Cc:** JUS-G-MAG-CSD-Toronto-SCJ Commercial List  
**Subject:** Bank of Nova Scotia v. 1854313 Ontario Ltd.  
**Attachments:** CV-20-00650239-00CL\_ Approval and Vesting Order - Receiver - BDO Canada Limited - 2021-05-14.pdf; CV-20-00650239-00CL\_ Ancillary Order - Receiver - BDO Canada Limited - 2021-05-14.pdf

[EXTERNAL EMAIL]

### Appearances:

Timothy Hogan for BDO, Receiver  
Ian Klainman for BNS  
Matthew Moyal for Touchstone, second mortgagee  
David Kirwan for Glengate Investments, Purchaser  
Mr. Bukhari, principal of 1854313 Ontario Ltd.

### Endorsement:

The Receiver moves for various relief as set out in its notice of motion. The actions and conduct of the Receiver are described in the Receiver's Second Report dated April 30, 2021 and the Confidential Supplementary Report dated April 30, 2021. The Receiver engaged in a sale process for the property (the "Property") that was approved by the court by order dated January 11, 2021. The sale process involve two rounds of bids. After consideration of the second round of bids, Glengate Investments Inc. (the "Purchaser") was identified as the successful bidder and entered into a Sale Agreement with the Receiver. The Sale Agreement includes a purchase price that is considerably higher than the other second round bids received through the sale process. The purchase price is consistent with appraisals obtained by the Receiver. The Receiver recommends that the Sale Agreement and the proposed sale transaction with the Purchaser be approved.

I am satisfied that the Sale Agreement and the proposed transaction should be approved based on the recommendation of the Receiver. The Receiver conducted an extensive sale process which widely exposed the Property to the public. The Property was exposed to the market for a sufficient period of time, and the deadlines imposed by the sale process were sufficient, to provide interested buyers and investors an opportunity to participate in the process. The purchase price is considerably greater than the other second round bids. Bank of Nova Scotia, the first ranking secured creditor, supports the proposed transaction, and is expected to suffer a significant shortfall. I am satisfied that the proposed transaction represents a commercially reasonable transaction which is provident, and will maximize recovery following the sale process. The application of the principles expressed in *Royal Bank Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1, at paras. 21 and 29, support the requested orders.

The Receiver also recommends that concurrent with completion of the proposed transaction, that the Court approve the Receiver's termination and disclaiming of two contracts described in the Receiver's report. The Hart Lease is not registered on title to the Property and is subordinate to the interest of BNS. Notice of the Enercare Contract is registered on title to the Property subsequent to the interest of BNS. The Appointment Order authorizes the Receiver to apply for a vesting order and it also authorizes the Receiver to cease to perform any contracts of the Debtor. I accept the Receiver's recommendation and approve the Receiver's disclaiming the Hart Lease and the Enercare Contract, as these contracts are described in the materials.

I am satisfied that the Receiver's fees and disbursements and those of its counsel are fair, reasonable and are justified in the circumstances. I approve the Receiver's fees and disbursements and those of its counsel.

The Receiver requests a temporary sealing order to seal the Receiver's Confidential Supplementary Report until completion of the sale transaction. The Confidential Supplementary Report contains sensitive and confidential information, the release of which prior to completion of the proposed sale would be prejudicial to the stakeholders of the debtor in the event that the proposed sale does not close. I am satisfied that the requested order is necessary to prevent a serious risk to an important commercial interest and that reasonably alternative measures will not prevent the risk. I am satisfied that the salutary effects of the requested order, including effects on the right to civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression including the public interest in open and accessible court proceedings. The sealing order will be in effect only until completion of the sale transaction.

Orders to issue in forms of attached orders signed by me.

A handwritten signature in blue ink, appearing to read "Cavanagh J.", is displayed within a light gray rectangular box.

Cavanagh J.

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize and can verify the sender and know the content is safe.