SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

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CV-25-00746514-00CL

DATE: AUGUST 14, 2025

NO. ON LIST: 4, 5, 6, 7

TITLE OF PROCEEDING: **FIERA CANADIAN REAL ESTATE DEBT FUND GP INC. et al v. OXFORD ROAD DEVELOPMENTS 4 INC. et al**

BEFORE: **JUSTICE W.D. BLACK**

PARTICIPANT INFORMATION

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ENDORSEMENT:

[1] Today's case conference in this matter follows from my endorsement relative to a case conference on July 17, 2025, which was convened urgently at the request of the CCAA Proponents (as defined in that endorsement, and I will continue to use that and other definitions from my July 17 endorsement herein).

[2] As of July 17, there was a hearing pending on July 18, which had been scheduled, specifically, for a determination as to whether the receiverships – then ongoing – or an all-encompassing CCAA proceeding would be the preferred vehicle for addressing the circumstances at issue here.

[3] Although the July 18 date had been scheduled to accommodate the CCAA Proponents, counsel for the CCAA Proponents advised at the urgent July 17 conference that the CCAA Proponents were not ready to proceed on July 18, and that in particular the critical DIP facility that would have to be in place for a CCAA proceeding to be viable, was not yet ready. Counsel for the CCAA Proponents acknowledged on July 17 that if forced on the next day (as scheduled), the outcome would be a foregone conclusion and the CCAA Proponents would not succeed.

[4] I nonetheless considered the option of having the hearing proceed on July 18, which was Fiera's primary position as to what should happen.

[5] Given the CCAA Proponents' concession that they could not succeed on July 18, I did not feel it would be a productive use of time to proceed on that day.

[6] Instead I wrote that I would note that the CCAA Proponents had not been ready on a date set to accommodate them, but that I would allow them, as they requested and if they wished, to file materials by August 1. I noted that the case conference scheduled for today (August 14) would be used to hear submissions about "whether or not the hearing to determine the choice of proceeding should proceed."

[7] I also specifically observed that it was my expectation that the receivers for the two developments at issue would continue their activities, including sale processes "without limitation" and advised counsel, as recorded in my endorsement, that the "continuing progress of the receiverships will factor, I expect, into the court's determination of the preferred proceeding."

[8] In other words, I expected that the delay of the hearing to determine whether the two receivership proceedings should be converted into a single all-encompassing CCAA proceeding, which delay was entirely attributable to the CCAA Proponents, would likely work to their detriment in my consideration of their proposed CCAA proceeding. That is, I expected that the receivers, who had already been working on the receiverships, and to whom I had given a green light to commence marketing and any and all other activities, would be working away, incurring significant time and expense, and advancing the receiverships. I warned the CCAA Proponents that I expected this outcome, if it held true, would necessarily factor into my analysis.

[9] As discussed below, that has proven to be the case. Both receiverships have advanced considerably since mid-July.

[10] It is important, in determining whether or not to allow a hearing to determine the choice of proceeding, also to consider the slightly longer-term backdrop here, and the nature of the developments at issue.

[11] There is no dispute that the borrowers – now the CCAA Proponents – have been in default of their obligations to their lender Fiera since the fall of 2024. It is also undisputed that in January 2025 the borrowers entered into Forbearance Agreements with Fiera with respect to both the Woodstock and Sheppard Loans (i.e. loans with respect to each of the two developments at issue). The borrowers then defaulted on their obligations under the Forbearance Agreements. Again these facts are uncontested.

[12] Within the underlying loan documents, and again in the Forbearance Agreements, the borrowers expressly agreed to the appointment of a receiver – in each project – in the event of default.

[13] These events, and the borrowers' repeated defaults, including under the Forbearance Agreements, led Fiera to bring its two receivership applications – one for the Woodstock property and one for the Sheppard property – which, after initial adjournments, were scheduled to proceed before Kimmel J. on June 2, 2025.

[14] On May 30, 2025, with the receivership applications pending in a couple of days, the parties appeared before Her Honour "to address a request by the respondent debtors for time to prepare and file an application under the [CCAA]."

[15] Justice Kimmel wrote at that time:

> "The CCAA application is not ready to proceed. Counsel for the debtors advised that he expects to be ready to proceed in three weeks. A proposed monitor has been identified but DIP financing has not been secured. The applicants opposed the adjournment request. Since the request for the adjournment was rolled up in the proposed CCAA application which also was to be the basis for the debtors' opposition to the Applications for the appointment of a receiver, the court was not inclined to adjourn the applications today but reserve to the respondents the right to renew that request on a proper record."

[16] I pause here to note that, as is evident, as of May 30 the CCAA Proponents advised the court that they expected to have the CCAA application ready by about June 20.

[17] Her Honour granted a short adjournment to allow the parties to finalize their materials relative to the receivership applications, adjourning the receivership applications to June 9.

[18] However, the parties made an agreement arising from their discussions on May 30 that the June 9 hearings would not be required, and that the appointment of the two receivers, one for each project, would be on consent. It was agreed that the Receivership Orders would carve out a restriction that the properties in question would not be "publicly marketed" before July 15, 2025, which restriction would "only apply to going to market and not to any other part of the receivership, including the steps to be taken by the Receiver to be in a position to market and sell the properties after July 15, 2025." Finally, it was agreed that the receivership orders would be "without prejudice to the Respondents right to commence a CCAA Application to bring the companies/respective projects into CCAA protection and to bring a motion to terminate the respective receiverships on or before July 15, 2025."

[19] The parties came back before Kimmel J. on June 6, at which point Her Honour signed the Receivership Orders. Her Honour noted "the possibility that the Debtors might bring an application under the CCAA" and reminded the CCAA Proponents that if they did so, they would still be obliged to follow the required

steps for scheduling a CCAA initial application and comeback hearing dates through the Commercial List Office.

[20] It was from these circumstances that the July 18 appointment was booked for the initial CCAA application. I note that this date was already beyond the date (July 15) by which Kimmel J. had indicated the application would have to be brought, but it nonetheless appeared to be the case the matter would proceed on that date. In my view it is also clear, given the understanding that public marketing of the properties could begin on and after July 15, that July 15 was intended as a meaningful deadline by which the CCAA alternative had to be fully formulated and presented.

[21] My purpose in reviewing this background is to note that, by July 18, the borrowers had already received considerable dispensations from the consequences, to which they had agreed, in the circumstances of their defaults on the loans.

[22] They had been allowed to enter into Forbearance Agreements, which they proceeded to breach.

[23] As a consequence of those breaches, and the borrowers' specific agreements as to the receiverships that would ensue, the receivership applications were brought.

[24] The borrowers, contrary to their agreements, initially sought to oppose the applications and ultimately advised, in response to and on the eve of the receivership applications, of their plans to seek CCAA protection in lieu of receiverships.

[25] That the borrowers agreed, at the last minute, to consent to the receivership orders was frankly not much of a concession on their parts, given their specific and repeated contractual agreements that they would consent to that relief in the event of their default.

[26] Even so, the borrowers announced their intention to seek to supplant the receiverships to which they consented, by way of their competing CCAA application.

[27] Within the putative CCAA proceeding, the CCAA Proponents have enjoyed still more concessions. Although they advised Kimmel J. that they expected to have their CCAA application in final form by June 20, they were ultimately given until July 15 to do so.

[28] For reasons that are not clear to me, even that deadline slipped a little (which may have related to court availability, so I base no conclusions on this additional three-day delay other than to note that it gave the CCAA Proponents three more days that the deadline to which they had agreed and which Kimmel J. ordered), such that the CCAA Proponents in fact ended up having until July 18 to complete their materials.

[29] In my view, when the CCAA Proponents failed to be ready by July 18 they had to expect, as cautioned in my July 17 endorsement, that their chances of persuading the court thereafter that a CCAA proceeding remained the preferable route would diminish as time passed. By August 1, and certainly by today, the receiverships have advanced considerably, and, again, Fiera and its receivers have invested considerable time, money and resources in those efforts.

[30] As counsel for Fiera put it, the "prejudice to the Lender, if these applications are to be heard, will be substantial. The Receivers have already engaged in construction and sales processes that cannot simply be paused and restarted without additional cost." In the record before me for today's case conference

were the Second Reports of BDO and TDB, respectively, concerning their work to date and the progress to date in the two receiverships.

[31] In addition to potentially wasting much of the work and resources that have gone into the two receiverships to date, Fiera points out, fairly in my view, that to pull the rug out from under the ongoing receiverships at this stage would also create uncertainty in the market, and "undermine the credibility of the sale process and risk diminishing the Property's market value and result in lower recovery."

[32] Moreover, as Fiera also points out, again fairly, the CCAA proposal that the CCAA Proponents have now provided remains in part speculative. The DIP funding within the proposal remains subject to certain conditions, and the CCAA Proponents have not provided evidence that all such conditions have been met.

[33] Fiera submits that, in the case of the Woodstock development, there is not yet a restructuring plan that contemplates repayment of the debts owed to it, and that other assumptions evident in the plan presented to date are flawed and/or speculative, including the assumption that Tarion will permit the release and reallocation of security deposits in the amount of about $1.2 million to the Woodstock Debtor, and the assumption that the Woodstock Debtor can resume construction by September 1, 2025.

[34] Fiera also points out that the revised cash flow analysis now provided by the CCAA Proponents also excludes major creditors such as the CRA (ignoring the statutory super-priority attached to those obligations) and does not account for an additional $600,000 owing to Tarion in additional deposits.

[35] With respect to the Sheppard property, Fiera points out that the revised cash flow analysis presented again ignores amounts owing to the CRA – in this case over $1.3 million (which is again subject to the statutory super-priority), amounts owed to the City of Toronto for unpaid taxes, and wage arrears in the amount of approximately $170,000.

[36] In the case of the Sheppard development, required zoning applications have yet to be submitted, such that zoning approval is likely many months away.

[37] Finally, Fiera points out that, even if the CCAA Proponents were in a position to advance the CCAA application, various factors confirmed in the relevant case law, and in particular in this court's decision in Clover, would tend to support receivership as the vehicle of choice for these single-purpose real estate developments.

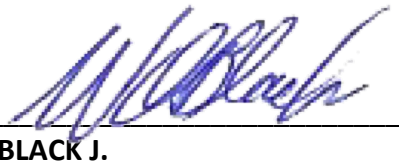
[38] I believe there is merit in that last submission, though I note that recent case law is clear that, while in most single-purpose real estate developments a receivership offers certain advantages over a CCAA proceeding, that proposition is by no means absolute.

[39] However, in my view, I need not get to the stage of considering the competing attributes of a receivership on one hand versus a fully-formed CCAA application on the other.

[40] Despite the many dispensations and chances they have had to assemble a CCAA application in a timely fashion, the CCAA Proponents have not done so. They missed the July 15 court-ordered deadline for which they had pushed, and have essentially run roughshod over Fiera's contractual rights.

[41] In my view, given the work that has been done of the receiverships, and given that even now the proposed CCAA application has deficits, it would not be fair to Fiera to put it to the time and expense of answering a proposed competing application now.

[42] In the circumstances, I decline to allow the proposed motion, to choose a preferrable proceeding, to proceed.



W.D. BLACK J.

DATE: AUGUST 14, 2025