Court File No. CV-25-00089290-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CAISSE DESJARDINS ONTARIO CREDIT UNION INC.

Applicant

- and -

B4R PROPERTIES GROUP – SSM INC., 15465737 CANADA INC. and ALEXANDRE MONGEON-LAMBERT

Respondents

APPLICATION UNDER SECTION 243(1) of the *BANKRUPTCY AND INSOLVENCY ACT* R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. c-43, AS AMENDED

FACTUM OF THE RECEIVER

DATE: August 18th, 2026

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Lawyers for the Receiver, BDO Canada Limited

TO: **THIS HONOURABLE COURT**

AND TO: **THE SERVICE LIST**

I N D E X

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PART I – OVERVIEW

1. An Order, if necessary, abridging the time for service and validating service of this Notice of Motion and Motion Record in the manner effected by the Receiver or an Order dispensing with service thereof;

2. An Order, substantially in the form attached hereto as Tab 3 of the Motion Record, for the following relief:

(i) approving the Fourth Report and the actions, activities and conduct of the Receiver as described herein;

(ii) approving the Receiver's Interim Statement of Receipts and Disbursements for the period March 27, 2025 to July 31, 2026;

(iii) authorizing the Receiver to make the Interim Distribution (as defined in the Report) to Desjardins as well as any subsequent distributions to Desjardins from time to time as may in the Receiver's opinion be appropriate provided that the aggregate total amount distributed to Desjardins does not exceed the Desjardins Indebtedness;

(iv) approving the fees of the Receiver and its legal counsel, Spetter Zeitz Klaiman PC (The "**Receiver's Counsel**") for the period January 1, 2026 to July 31, 2026 and July 7, 2026, respectively;

(v) sealing the confidential appendices to this Fourth Report; and

(vi) approving the sale of 4 Lansdowne Avenue, Sault Ste. Marie, Ontario (the "**4 Lansdowne Sale Transaction**") contemplated in the agreement of purchase and sale (the "**4 Lansdowne APS**") between the Receiver, as vendor, and Jeremy Tremblay (the "**4 Lansdowne Purchaser**") dated June 12, 2026, and vesting, upon completion of the 4 Lansdowne Sale Transaction (as evidenced by the Receiver filing a certificate with the Court certifying same), all of 154co's rights, title and interest, in and to the real property located at 4 Lansdowne Avenue, Sault Ste. Marie, Ontario (the "**4 Lansdowne Property**") in the 4 Lansdowne Purchaser.

3. Such further and other relief as to this Honourable Court may seem just.

4. This factum is filed in support of the Receiver's motion, and specifically addresses the relief sought above.

PART II – THE FACTS

5. The facts are brief and detailed well in the Receiver's Fourth Report dated August 11th , 2026.[1]

6. Pursuant to the Order of the Honourable Justice Spurgeon dated March 27, 2025 (the "**Appointment Order**"), the Receiver was appointed receiver and manager, without security, of all the assets, undertakings, and properties of the Debtors, including the Real Properties (as defined below).

[1] Motion Record, Tab 2, Fourth Report of the Receiver, June 16th, 2025 (" Fourth Report")

7. Caisse Desjardins Ontario Credit Union Inc. ("**Desjardins**") brought the application for the Appointment Order. The Debtors were indebted to Desjardins in the aggregate amount of $3,417,933 as of January 31, 2025, not including professional fees (together with accruing interest and costs, the "**Indebtedness**").

8. The Indebtedness is secured by, *inter alia*, collateral mortgages registered on thirteen (13) real properties with municipal addresses in Sault Ste Marie and Sudbury,, Ontario (collectively, the "**Real Properties**").

9. Pursuant to the terms of the Appointment Order, the Receiver was empowered and authorized to market the Real Properties, including advertising and soliciting offers and negotiating such terms and conditions of sale as the Receiver, in its discretion, determined to be appropriate.

10. The 4 Lansdowne Property was listed for sale with Remax on October 3, 2025, at a list price of $264,900. The list price was subsequently reduced to $230,000 on January 3, 2026, and further to $218,500 on May 12, 2026.

11. The first offer for the 4 Lansdowne Property was received from the 4 Lansdowne Purchaser on June 12, 2026. The Receiver negotiated with the 4 Lansdowne Purchaser through a series of three counter offers, culminating in the 4 Lansdowne APS.

12. The Receiver obtained a written opinion of value for the 4 Lansdowne Property from James Clemente of Remax dated October 5, 2025, (the "**4 Lansdowne OOV)**

13. The offer pursuant to the 4 Lansdowne APS only remains subject to Court approval.

14. Considering that the purchase price offered by the 4 Lansdowne Purchaser is reasonable as compared to the value contained in the 4 Lansdowne OOV, the Receiver believes that the 4 Lansdowne APS and the terms therein are commercially reasonable. Between the date the offer was received and the time of writing this Fourth Report, the Receiver has not received a better offer. The Receiver does not believe that a further marketing of the 4 Lansdowne Property would result in superior offers.

15. The Receiver has consulted with Desjardins, the first position secured creditor in this proceeding. Desjardins, as the fulcrum creditor that will suffer a shortfall under its mortgage loan, supports the 4 Lansdowne Sale Transaction. For these reasons, the Receiver recommends that the 4 Lansdowne Sale Transaction be approved.

PART III – THE LAW

Approval and Vesting Order

16. Paragraph 3 of the appointment order granted the Receiver the power to *inter alia* sell property, take control of the proceeds and to report on same to the Court.

17. In *Third Eye Capital Corporation v. Resources Dianor Inc ("Dianor").* [2], the Court of Appeal (Ontario) reiterated that Section 243 of the BIA grants the jurisdiction to make a vesting order. This is in addition to the original Court Order which granted the power to sell. [3] Section 101 and 100 of the *Court of Justice Act* give power to do so.

[2] 2019 ONCA 508, para 72
[3] *Ibid*, para 74

18. *Dianor* says that the BIA receivers have the same powers to do so.[4]

19. A vesting order should only be granted if the facts are not in dispute and there is no other available or reasonably convenient remedy.[5]

20. The application for approval should be served upon the registered owner and all interested parties.

21. However, as Justice Farley said in *Skyepharma PLC v Hyal Pharmaceutical Corp*.[6], " the duty is not to obtain the best price but to do everything reasonably possible in the circumstances to obtain the best price."

22. From the time that the Receiver was appointed, it took all steps to consult with the largest secured creditor, and the debtors, to ensure that all proper steps were taken.

23. The duties of the court in reviewing a proposed sale of assets by a receiver that is opposed by other interested parties are as follows:

(i) it should consider whether the receiver has made a sufficient effort to obtain the best price and has not acted improvidently;

(ii) it should consider the interests of all parties;

(iii) it should consider the efficacy and integrity of the process by which offers have been obtained; and

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[4] *Dianor*, para 76
[5] Lloyd W. Houlden, Geoffrey B. Morawetz & Janis P. Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th ed., loose-leaf (Toronto: Carswell, 2009), at Part XI, LÂ§21, cited in Dianor at note 4
[6] 1999 CanLII 15007 (ON SC) at para 4, affirmed in 2000 CanLII 5650 (ON CA)

(iv) it should consider whether there has been unfairness in the working out of the process.[7]

24. It is apparent that there is over 3 million dollars owing to Desjardins. The distribution of the proceeds, subject to the amount of payment which will go to pay taxes, will be paid to the 1st mortgage.

25. There are no facts in dispute. A vesting Order is necessary so that the properties can be conveyed to the purchaser without any added encumbrances.

26. This was the best that the receiver, and the sales agents, could obtain.

Activities and Fees of the Receiver and Its Counsel

27. The approval of a court officer's activities and reports is relief that is "routinely granted"[8]. The Receiver seeks approval of its activities and conduct, as set out in the Fourth Report.

28. The activities of the Receiver described in the Fourth Report were all necessary and undertaken in good faith pursuant to the Receiver's duties and powers set out in the Appointment Order.

29. The jurisdiction of the Court to pass the accounts of the Receiver and its counsel is confirmed in the Appointment Order, which directs that: "the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a Judge of the Commercial List of the Ontario

[7] *Supra* Note 6 at para 3 and *Royal Bank v. Soundair Corp*. 1991 CanLii 2727 (ON CA)
[8] Target Canada Co. (Re), 2015 ONSC 7574 (CanLII) at para 2 and 23.

Superior Court of Justice".

30. On a motion to pass accounts, the Courts must consider the "Overriding principle of reasonableness", focusing on the overall value contributed by the Receiver and its' counsel[9]. In *Bank of Nova Scotia v. Diemer,* the Ontario Court of Appeal stated "the focus of the fair and reasonable assessment should be on what was accomplished, and not how much time it took".[10]

31. As detailed in the Fee Affidavits of the Receiver and its counsel, the Receiver seeks the approval of:

    (i) the Receiver's Statement of Receipts and Disbursements,

    (ii) the Receiver's fees

    (iii) the Receiver's counsel's fees

32. The Receiver and its counsel have charged standard hourly rates that are consistent with the market rates for insolvency services of this nature. All steps taken by the Receiver have been in an effort to assess and determine the best options available with respect to maximizing realization for the Debtor and its secured creditors.

<u>Interim Distribution Order Should be Granted</u>

33. The Receiver submits that Desjardins holds valid and enforceable security interest in respect to the collateral covered by its security. The Receiver and its counsel have reached this conclusion after reviewing the applicable loan and security documents, and the Receiver has been provided with security opinions which confirm, subject to the standard

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[9] Nortel Networks Inc., 2022 ONSC 6680 (CanLII) at para 10
[10] Bank of Nova Scotia v. Diemer, 2014 ONCA 851 (CanLII) at para 45

assumptions and qualifications contained therein, the validity of their secured claims.

34. No party will be prejudiced if the requested relief is granted. The Receiver seeks to make the Desjardins Distribution to provide the balance of funds currently held as detailed in the Fourth Report.

The Sealing Order Should be Granted

35. Section 137(2) of the *Courts of Justice Act*[11] provides the Court jurisdiction to issue a sealing order.

36. In *Sherman Estate v Donovan*[12], the Supreme Court of Canada affirmed the test established in *Sierra Club of Canada v Canada (Minister of Finance)*[13]. In *Sherman,* the Supreme Court confirmed that in granting a sealing order, the following considerations must be addressed:

> (1) court openness poses a serious risk to an important public interest;
>
> (2) the sealing order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
>
> (3) as a matter of proportionality, the benefits of the order outweigh its negative Effects

37. In *Sherman,* the Supreme Court noted, as established in *Sierra Club,* a commercial interest in the context of litigation is an important interest requiring protection. [14]

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[11] *Courts of Justice Act*, RSO 1990, c C.43, s 137(2)
[12] *Sherman Estate v. Donovan*, 2021 SCC 25 [***Sherman]***
[13] *Sierra Club of Canada v Canada (Minister of Finance),* 2002 SCC 41 [***Sierra Club]***
[14] *Sherman,* at para 41; *Sierra Club,* at para 53.

38. The information contained in the Confidential Appendices contains commercially sensitive information, which, if made public, could negatively impact a future sale of the Property by the Receiver if the Sale Transaction is not completed.

39. The benefits of the Sealing Order outweigh the negative consequences related to restricting public access to the court record, which will be for a short duration. Further, no parties would be prejudiced by the proposed sealing order.

40. Accordingly, the Receiver requests that the Confidential Appendices be sealed until: (i) the completion of the Transaction; or (ii) further Order of this Court.

PART IV – ORDER REQUESTED

41. The draft Order provided containing:

   a. Approval of the Sale

   b. Vesting Order

   c. Approval of Activities, including fees.

   d. Distribution.

ALL OF WHICH IS RESPECTFULLY SUBMITTED on the 19th day of AUGUST, 2026

Matthew R. Harris
Spetter Zeitz Klaiman
Counsel for the Receiver

SCHEDULE A – AUTHORITIES

A. Bank of Nova Scotia v. Diemer, 2014 ONCA 851 (CanLII)

B. Royal Bank v. Soundair Corp. 1991 CanLii 2727 (ON CA)

C. Skyepharma PLC v Hyal Pharmaceutical Corp 1999 CanLII 15007 (ON SC) at para 4, affirmed in 2000 CanLII 5650 (ON CA)

D. Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc., 2019 ONCA 508 (CanLII)

E. Lloyd W. Houlden, Geoffrey B. Morawetz & Janis P. Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th ed., loose-leaf (Toronto: Carswell, 2009), at Part XI, LÂ§21

F. Target Canada Co. (Re), 2015 ONSC 7574 (CanLII).

G. Nortel Networks Inc., 2022 ONSC 6680 (CanLII)

H. Sherman Estate v. Donovan, 2021 SCC 25

I. Sierra Club of Canada v Canada (Minister of Finance), 2002 SCC 41

SCHEDULE B - STATUTORY AUTHORITY

BIA Section 243
Courts of Justice Act, Section 100 and 101, and 137

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PROCEEDING COMMENCED AT HAMILTON

FACTUM OF THE RECEIVER

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