

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE
JUSTICE OSBORNE

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FRIDAY, THE 16TH
DAY OF MAY, 2025

B E T W E E N:

(Court Seal)

CANADIAN WESTERN BANK

Applicant

and

8438048 CANADA INC.

Respondent

AND IN THE MATTER OF AN 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

ORDER
(Auction Sale Approval and Lien Discharge Order)

THIS MOTION, made by BDO Canada Limited (“**BDO**”), in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) over the assets, undertakings, and properties of 8438048 Canada Inc. (the “**Debtor**”), (i) approving the auction agreement between Ritchie Bros.

Auctioneers (Canada) Ltd. (the “**Auctioneer**”) and the Receiver (the “**Auction Agreement**”) to permit the Auctioneer to conduct a sale of the Vehicles (as defined below) in accordance with the procedures described herein, (ii) vesting all the right, title and interest of the Debtor in and to those Vehicles to the purchasers as identified in the bills of sale delivered by the Auctioneer, (iii) discharging any applicable Lien Claims (as defined below) in the Vehicles in accordance with the process described herein, and (iv) sealing the Confidential Appendix to the Second Report of the Receiver dated May 7, 2025 (the “**Receiver’s Second Report**”), was heard this day by videoconference,

ON READING the Motion Record of the Receiver dated May 7, 2025, including the Receiver’s Second Report, and on hearing the submissions of the lawyers for the Receiver and such other counsel as were present, no one else appearing for any other person, although properly served as appears from the Lawyer’s Certificates of Service of Jennifer L. Caruso dated May 7, 2025, May 9, 2025, and May 14, 2025,

SERVICE

1. **THIS COURT ORDERS** that the time for service of this motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS

2. **THIS COURT ORDERS THAT** for the purposes of this Order, the following terms not otherwise defined throughout this Order shall have the following meanings:

- (a) **“Business Day”** means, except as otherwise specified herein, a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (b) **“Discharge Notice”** means notice from the Receiver to the applicable Lien Claimant confirming that Lien Security has been posted with the Receiver in the Lien Security Trust Account with respect to a specified Lien Claim and that the Lien Claim has been discharged in accordance with the terms of this Order;
- (c) **“Lien Claim”** means any claim for a possessory or non-possessory lien, charge, hypothec or other property right under the Lien Legislation in connection with the Vehicles, including any related registration made under the PPSA legislation;
- (d) **“Lien Claimant”** means any party that has made a Lien Claim against a Vehicle;
- (e) **“Lien Legislation”** means, collectively, the *Repair and Storage Liens Act* (Ontario) and any other similar legislation in Canada or any Province or Territory therein that governs, or has the effect of governing, liens registered against title to Vehicles on the basis of repairs or storage;
- (f) **“Lien Security”** means, in respect of a Lien Claim, an amount equal to the lesser of: (i) 105% of the full amount of the Lien Claim(s), and (ii) the Net Proceeds of the applicable Vehicle, which shall be deposited into the Lien Security Trust Account as security for the full claimed amount of a Lien Claim in accordance with this Order;

- (g) **“Lien Security Trust Account”** means a non-interest bearing trust account maintained by the Receiver for the purpose of holding the Lien Security;
- (h) **“Net Proceeds”** means the net proceeds from the sale of the Vehicles;
- (i) **“Net Proceeds Trust Account”** means a non-interest bearing trust account maintained by the Receiver for the purpose of holding the Net Proceeds;
- (j) **“PPSA Claim”** means any claim, lien, hypothec, security interest or other property right evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), other than a Lien Claim;
- (k) **“PPSA Claimant”** means any party that has made a PPSA Claim against a Vehicle;
and,
- (l) **“Trust Accounts”** means the Lien Security Trust Account and the Net Proceeds Trust Account.

TRUST ACCOUNTS

3. **THIS COURT ORDERS** that the Receiver shall open and maintain the Lien Security Trust Account, which shall be a designated non-interest bearing trust account into which the Lien Security payments contemplated hereunder shall be deposited.

4. **THIS COURT ORDERS** that the Receiver shall open and maintain the Net Proceeds Security Trust Account, which shall be a designated non-interest bearing trust account into which the Net Proceeds payments contemplated hereunder shall be deposited.

APPROVAL AND VESTING

5. **THIS COURT ORDERS** that the Auction Agreement and the transactions contemplated thereby are hereby approved, with such minor amendments as the Receiver and the Auctioneer may deem necessary and agree to in writing. Subject to the provisions of this Order, the Receiver is authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable to implement the Auction Agreement and the transactions contemplated therein.

6. **THIS COURT ORDERS** that subject to the terms of the Auction Agreement, the Auctioneer be and hereby is appointed as agent of the Receiver to dispose of the vehicles which are identified by the vehicle identification numbers (“VIN”) listed on Schedule “A” hereto (the “Vehicles”), which may be supplemented from time to time in accordance with paragraph 7 below.

7. **THIS COURT ORDERS** that upon the Receiver recovering additional vehicle(s) (the “Recovered Vehicle(s)”):

- (a) The Receiver shall, as soon as commercially reasonable after recovering any Recovered Vehicle(s), provide notice in writing to: (i) any PPSA Claimants with a security interest in the applicable Recovered Vehicle(s) (which, for certainty, shall include any PPSA Claimant with a PPSA Claim in all present and after acquired personal property of the Debtor), (ii) any other party who has informed the Receiver that it is asserting an interest in the applicable Recovered Vehicle(s), and (iii) any registered owner or lessor of the Vehicle(s) (other than the Debtor) (collectively, the “Interested Party” or “Interested Parties”), that the Receiver is in possession

of the Recovered Vehicle(s) (the “**Recovered Vehicle(s) Notice**”). The Recovered Vehicle(s) Notice shall identify any Recovered Vehicle(s) by VIN, and shall be deemed to have been sufficiently given by the Receiver if delivered to the last known email address of the Interested Parties or their legal counsel or by forwarding true copies thereof by prepaid ordinary mail, courier, or personal delivery at their respective addresses as recorded in the applicable personal property registry in which any PPSA Claim is recorded, and that any such service or distribution by courier, personal delivery or electronic transmission shall be deemed to be received (a) if sent by courier, on the next Business Day following the date of forwarding thereof, (b) if delivered by personal delivery or electronic transmission, on the day so delivered, and (c) if sent by ordinary mail, on the third Business Day after mailing;

- (b) Interested Parties shall have two (2) weeks from the date of the Recovered Vehicle(s) Notice (the “**Recovery Notice Period**”), to advise the Receiver, in writing, if
 - (i) they consent to the sale of the applicable Recovered Vehicle(s) by the Auctioneer; or
 - (ii) they are seeking the return of the Recovered Vehicle(s), identified by VIN, to the applicable Interested Party, in which case they shall provide to the Receiver within the Recovery Notice Period supporting documentation, including any applicable lease or other agreement, supporting their request

for the return of the Recovered Vehicle(s) (the **“Requested Turn-Over Vehicle(s)”**);

- (c) Upon the expiry of the Recovery Notice Period, the Recovered Vehicle(s) shall be added to Schedule “A” of this Order if:
 - (i) the applicable Interested Party consents to the addition of the Recovered Vehicle(s) to Schedule “A” of this Order; or
 - (ii) the applicable Interested Party has not notified the Receiver that it opposes the addition of the Recovered Vehicle(s) to Schedule “A” of this Order;
- (d) If the Receiver receives a Requested Turn-Over Vehicle(s) request from an Interested Party prior to the expiry of the Recovery Notice Period, the Receiver shall evaluate the information provided in respect of the Requested Turn-Over Vehicle(s), taking into consideration any other claims asserted in respect of the Requested Turn-Over Vehicle(s), and:
 - (i) if the Receiver determines that the Interested Party is entitled to the return of the Requested Turn-Over Vehicle(s), the Receiver shall coordinate such return with the Interested Party, which return shall be at the cost of the Interested Party, including reimbursing the Receiver for any storage, towing or other costs, and the pro rata share of any other asset recovery costs, incurred by the Receiver in respect of the Requested Turn-Over Vehicle(s);
or

- (ii) if the Receiver determines that the Interested Party is not entitled to the return of the Requested Turn-Over Vehicle(s), the Receiver shall return to Court to seek an Order to add the Recovered Vehicle(s) to Schedule “A” of this Order, on notice to the Interested Party.

8. **THIS COURT ORDERS** that the Receiver shall post any updates to Schedule “A” of this Order on the Receiver’s website, and the provisions of this Order, including, without limitation, the approval of the sale of the Recovered Vehicle(s) by the Auctioneer in accordance with paragraph 6 of this Order, and the sale of such Recovered Vehicle(s) free and clear of any Claims and Encumbrances (each as defined below) in accordance with paragraph 9 of this Order, shall apply to the sale of any Recovered Vehicle(s) *nunc pro tunc* and *mutatis mutandis*, without further Order of the Court.

9. **THIS COURT ORDERS** that, effective upon the delivery of a bill of sale by the Auctioneer to a purchaser (each a “**Purchaser**”), any sale of the Vehicles set out in such bill of sale by the Auctioneer to a Purchaser shall be free and clear of and from any and all security interests (whether contractual, statutory or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens (including Lien Claims or PPSA Claims), executions, levies, charges or other financial or monetary claims whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order dated December 4, 2024, as amended by the Amended and Restated Receivership Order dated January 16, 2025; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act*

(Ontario) or any other personal property registry system ((i) and (ii) are collectively referred to as the “**Encumbrances**”), and for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Vehicles set out in such bill of sale shall be deemed expunged and discharged as against such Vehicles and that all of the Debtor’s right, title and interest in and to the Vehicles shall vest absolutely in the applicable Purchaser.

10. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the Net Proceeds shall stand in the place and stead of the Vehicles, and that from and after the delivery of a bill of sale, all Claims and Encumbrances shall attach to the Net Proceeds from the sale of the Vehicles with the same priority as they had with respect to the Vehicles immediately prior to the sale as if the Vehicles had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

11. **THIS COURT ORDERS** that the Receiver shall keep a record of the Net Proceeds deposited into the Net Proceeds Trust Account, together with the identity of the corresponding Interested Parties and the corresponding Vehicle(s) to which the Net Proceeds relates.

12. **THIS COURT ORDERS** that, upon the Receiver confirming receipt of the Net Proceeds into the Net Proceeds Trust Account, the corresponding PPSA Claim is hereby discharged and released, and each of (i) the Purchaser, and (ii) the Receiver, or their respective counsel, shall be and hereby are authorized, without any further formality or authorization, to register a discharge statement in the applicable personal property security registry in respect of the applicable Vehicle, and take any other steps reasonably necessary to discharge the PPSA Claim in respect of which the Net Proceeds were received.

13. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) the assignment in bankruptcy made in respect of the Debtor,

the transactions as contemplated by the Auction Agreement and the vesting of the Vehicles in the Purchasers pursuant to this Order shall be binding on BDO in its capacity as trustee in bankruptcy of the Debtor and any other trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

LIEN SECURITY FOR LIEN CLAIMS AND DISCHARGE

14. **THIS COURT ORDERS** that, as a condition to the closing of the sale of any Vehicle subject to a Lien Claim, the Lien Security shall be deposited to the Lien Security Trust Account and shall constitute security for the full claimed amount of a Lien Claim.

15. **THIS COURT ORDERS** that, upon the Receiver confirming receipt of the Lien Security in respect of such sold Vehicle in writing to the Purchaser (a “**Security Confirmation**”),

the corresponding Lien Claim is hereby discharged and released, and each of (i) the Purchaser, and (ii) the Receiver, or their respective counsel, shall be and hereby are authorized, without any further formality or authorization, to register a discharge statement in the applicable personal property security registry in respect of the applicable Vehicle, and take any other steps reasonably necessary to discharge the Lien Claim in respect of which the Lien Security was posted.

16. **THIS COURT ORDERS** that, immediately upon the discharge of any Lien Claim in accordance with paragraph 15 hereof, all right, title and interest of the affected Lien Claimant against the applicable Vehicle, if any, shall attach to the corresponding Lien Security, with the same nature, priority and entitlement that such Lien Claimant's interests attached to the Vehicle pursuant to applicable Lien Legislation.

17. **THIS COURT ORDERS** that, upon the discharge of a Lien Claim, the Purchaser shall take title to the Vehicle free and clear of such Lien Claim.

18. **THIS COURT ORDERS** that the Receiver shall keep a record of the Lien Security amounts deposited into the Lien Security Trust Account, together with the amount of the corresponding Lien Claim, the identity of the corresponding Lien Claimant, and the corresponding Vehicle(s) to which the Lien Security relates.

19. **THIS COURT ORDERS** that, in the case of a Lien Claim that results in a possessory lien, and upon payment of the Lien Security in relation to the corresponding possessed Vehicle and receipt of a Security Confirmation, the Lien Claimant is required to release the physical Vehicle in its possession to the Receiver, or to a third party on the instructions of the Receiver, as the case may be.

NOTICE OF DISCHARGE

20. **THIS COURT ORDERS** that as soon as commercially reasonable after the discharge of a Lien Claim, the Receiver shall deliver a Discharge Notice, in the manner prescribed in paragraph 22 herein, to the corresponding Lien Claimant.

21. **THIS COURT ORDERS** that no Lien Claimant whose Lien Claim is discharged in accordance with this Order shall be permitted to register or re-register such Lien Claim against the applicable Vehicle to which it relates, or against one or more of the Debtor or the Receiver.

22. **THIS COURT ORDERS** that a Discharge Notice shall be deemed to have been sufficiently given by the Receiver if delivered to the last known email address of the Interested Parties or their legal counsel, or by forwarding true copies thereof by prepaid ordinary mail, courier, or personal delivery at their respective addresses as recorded in the applicable personal property registry in which the Lien Claim is recorded, and that any such service or distribution by courier, personal delivery or electronic transmission shall be deemed to be received (a) if sent by courier, on the next Business Day following the date of forwarding thereof, (b) if delivered by personal delivery or electronic transmission, on the day so delivered, and (c) if sent by ordinary mail, on the third Business Day after mailing.

RESERVATION OF RIGHTS, ADJUDICATION PROCESS AND DISTRIBUTIONS

23. **THIS COURT ORDERS** that:

- (a) the sale of any Vehicle pursuant to this Order shall be without prejudice to any and all rights of the Receiver, the Interested Parties or any other affected creditor(s)

with an interest in the applicable Vehicle to assert or dispute the priority of and entitlement to Net Proceeds of the applicable Vehicle; and,

- (b) the deposit of any Lien Security into the Lien Security Trust Account and the sale of any Vehicle shall be without prejudice to any and all rights of the Receiver, the Lien Claimant(s) or any other affected creditor(s) with an interest in the applicable Vehicle to assert or dispute the validity, enforceability, priority and quantum of the applicable Lien Claim.

24. **THIS COURT ORDERS** that the Receiver may bring a motion on notice to the Interested Parties and Lien Claimant(s) seeking the approval of a process for reviewing, determining or challenging (i) the validity or quantum of the Lien Claims, (ii) the Lien Claimant's entitlement to the Lien Security, (iii) the entitlement to the Net Proceeds; or (iv) the entitlement to the Recovered Vehicles(s) that are subject to a Requested Turn-Over Vehicle(s) request.

25. **THIS COURT ORDERS** that any distribution of the Net Proceeds shall be subject to further Order of this Court on notice to the parties listed on the Service List, the Interested Parties, and the Lien Claimants.

PROTECTION OF THE RECEIVER

26. **THIS COURT ORDERS** that, in discharging its obligations under this Order, the Receiver (i) shall have all of the protections given to it by the *Bankruptcy and Insolvency Act* (Canada), the Amended and Restated Receivership Order of Justice Black dated January 16, 2025, this Order and any other orders of the Court in these proceedings, (ii) shall incur no liability or obligation as a result of carrying out matters or any act or omission in connection with this Order,

except in the case of gross negligence or wilful misconduct, (iii) shall be entitled to rely on the books, records and information of the Debtor, the PPSA Claimants, the Lien Claimants, search results for the registered owners and/or lessors of VINs obtained from the Ontario Ministry of Transportation (“MTO”) and search results for the registrations under the Registrant Identification Numbers of the Debtor obtained from the MTO, as the case may be, and (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records, public databases, or other information.

SEALING

27. **THIS COURT ORDERS** that the Confidential Appendix to the Receiver’s Second Report be and is hereby sealed and shall be treated as confidential until (a) the Vehicles are sold to the Purchasers, or (b) further Order of this Court.

GENERAL

28. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or any other jurisdiction to give effect to this Order and to assist the Purchasers, the Receiver, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Purchasers and to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Purchasers, the Receiver and their respective agents in carrying out the terms of this Order.

29. **THIS COURT HEREBY REQUESTS**, without limiting the generality of paragraph 28 of this Order, that upon being presented with a copy of the Security Confirmation and a copy of this Order, any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or any other jurisdiction (including, without limitation, the MTO) shall have the authority to discharge the applicable PPSA Claim or Lien Claim, as applicable, and to enter the applicable purchaser (or its designee) as the registered owner of the Vehicle.

30. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

31. **THIS COURT ORDERS** that this Order is effective from today's date and it is made and enforceable without any need for entry or filing.

SCHEDULE “A”

No.	VIN	Year	Make/Model
1.	4V4NC9EH4NN297675	2022	Volvo VVN
2.	527SR5328PL146902	2023	CMC Reefer Trailer
3.	5V8VC5322RT401789	2024	Vanguard VXP 53’
4.	5V8VC5323RT401445	2024	Vanguard VXP 53’
5.	5V8VC5325RT401446	2024	Vanguard VXP 53’
6.	5V8VC5328RT401716	2024	Vanguard VXP 53’
7.	5V8VC532XRT401717	2024	Vanguard VXP 53’
8.	5V8VC532XRT401720	2024	Vanguard VXP 53’
9.	5V8VC5327RT401447	2024	Vanguard VXP53 53 ft Van Trailer
10.	1FUJA6CK55LN90440	2005	Truck
11.	4V4NC9EH6EN162259	2014	Volvo VN VNL Highway Tractor
12.	3AKJGLD62ESFV1682	2014	Freightliner Cascadia
13.	1GRAA0620BW702982	2011	GRE A Freight Van

CANADIAN WESTERN BANK

Applicant -and- 8438048 CANADA INC.

Respondent

Court File No. CV-24-00729834-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(AUCTION SALE APPROVAL AND LIEN DISCHARGE
ORDER)**

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