Court File No. CV-24-00095337-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

ASHCROFT HOMES – 101 RICHMOND ROAD INC., ASHCROFT HOMES – 108 RICHMOND ROAD INC., AND ASHCROFT HOMES – 111 RICHMOND ROAD INC.

Respondents

COMPENDIUM OF THE RECEIVER
(Motion returnable September 3, 2024)

August 26, 2024

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TO: SERVICE LIST

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as at August 15, 2024

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TAB 1

Court File No. CV-24-00095337-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR.	)	THURSDAY, THE 16TH
	)	
JUSTICE C. MACLEOD	)	DAY OF MAY, 2024

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

ASHCROFT HOMES – 101 RICHMOND ROAD INC., ASHCROFT HOMES – 108 RICHMOND ROAD INC., AND ASHCROFT HOMES – 111 RICHMOND ROAD INC.

Respondents

ORDER
(Appointing Receiver)

THIS APPLICATION made by the Applicant, DUCA Financial Services Credit Union Ltd. ("**DUCA**"), for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing BDO Canada Limited as receiver (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and properties of Ashcroft Homes – 101 Richmond Road Inc., Ashcroft Homes – 108 Richmond Road Inc.("**108 Richmond**"), and Ashcroft Homes – 111 Richmond Road Inc. (collectively, the "**Debtors**" and individually, a "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Application Record of DUCA, which includes the affidavit of Ivan Bogdanovich, sworn April 23, 2024 and the Exhibits thereto, the Responding Record of the Debtors, and on hearing the submissions of counsel for DUCA and the Debtors, no one appearing for any other party although duly served as appears from the affidavits of service of

Russell Crawford affirmed May 1, 2024, and Ariyana Botejue affirmed May 2, 2024, and on reading the consent of BDO Canada Limited to act as the Receiver,

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, BDO Canada Limited is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "**Property**"), save and except for the real property municipally known as 114 Richmond Road, Ottawa, Ontario and bearing legal description PART OF LOT 13 PLAN 449 AND PART OF BLOCK C PLAN 152, BEING PARTS 2, 3 AND 7 ON PLAN 4R-28155.; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 2 AND 3 ON PLAN 4R-28155 AS IN OC1430889; SUBJECT TO AN EASEMENT IN GROSS OVER PART 3 ON PLAN 4R-28155 AS IN OC1455884; SUBJECT TO AN EASEMENT AS IN OC1455885; SUBJECT TO AN EASEMENT AS IN OC1457862; SUBJECT TO AN EASEMENT IN GROSS AS IN OC1595888; CITY OF OTTAWA, all of which is PIN 04021-0451 (LT) (being the "**114 Richmond Property**").

3. **THIS COURT ORDERS** that this Order is without prejudice to any security, priority, or other claims DUCA may have to the personal property assets of 108 Richmond as the same relate to the 114 Richmond Property or otherwise.

RECEIVER'S POWERS

4. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, on and after the 17th day of June, 2024, the Receiver is hereby

expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

(a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

(b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of a Debtor;

(d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

(e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of a Debtor or any part or parts thereof;

(f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;

(g) to settle, extend or compromise any indebtedness owing to the Debtors;

(h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of a Debtor, for any purpose pursuant to this Order;

(i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to a Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding $50,000.00, provided that the aggregate consideration for all such transactions does not exceed $250,000.00; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.

(l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of a Debtor;

(p) to enter into agreements with any trustee in bankruptcy appointed in respect of a Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by a Debtor;

(q) to exercise any shareholder, partnership, joint venture or other rights which a Debtor may have; and

(r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person. In the interim, being as of the date of this Order until June 16, 2024 (the "**Interim Period**"), prior to exercising these powers, the Receiver may monitor the business and affairs of the Debtors in such manner as the Receiver may consider to be appropriate, and the Debtors shall fully cooperate in a timely manner with the Receiver to fulfill its monitoring role. The Receiver, in its monitoring role during the Interim Period, shall be afforded all protections otherwise afforded to it in this Order, and without limiting the generality of the foregoing, including the limitation of liability as set out in paragraph 18 of this Order.

TAB 2

ASHCROFT HOMES – 101 RICHMOND ROAD INC., ASHCROFT HOMES – 108 RICHMOND ROAD INC., ASHCROFT HOMES - 111 RICHMOND ROAD INC.

FIRST REPORT OF THE RECEIVER

August 21, 2024

The Receiver has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided, and in consideration of the nature of the evidence provided to this Court, in relation to the relief sought therein. The Receiver has not, however, audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the Chartered Professional Accountants of Canada Handbook and, as such, the Receiver expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information. An examination of the Company's financial forecasts in accordance with the Chartered Professional Accountants of Canada Handbook has not been performed. Future-oriented financial information reported on or relied upon in this First Report is based upon assumptions regarding future events; actual results achieved may vary from forecast and such variations may be material.

4. Unless otherwise noted, all monetary amounts contained in this First Report are expressed in Canadian dollars.

IV. BACKGROUND & EVENTS LEADING TO THE APPOINTMENT OF THE RECEIVER

Company Overview & Corporate Structure

5. Ashcroft is a privately-owned Ontario corporation which owns residential and commercial condominium units and development lands located in Ottawa, ON. The Company does not have any employees.

6. On March 1, 2022, 101RR and 111RR amalgamated and continued as 111RR**.**

7. The Property includes eighteen (18) residential condominium units and approximately 38,400 square feet of commercial condominium space located in Ottawa, Ontario (the "**Real Property**"), as more particularly described in **Appendix "B".** The Real Property is located within the following buildings (collectively, the "**Richmond Buildings**"):

    a) A 9-story building comprised of three interconnected towers with the municipal addresses 88, 90, 98, 100, 108 Richmond Road, Ottawa, ON; and

    b) Two 6-story buildings with the municipal addresses 91, 95, 97, 103, 101, 111, 113, 115, 117, 119, 121 Richmond Road, Ottawa, ON and 360 Patricia Avenue, Ottawa, ON.

8. Each of the Richmond Buildings have a ground floor consisting exclusively of commercial retail space. The remaining levels of each of the buildings consist of residential units, the majority of which are not owned by the Company.

9. As a result of searches conducted by the Receiver's counsel, Dentons Canada LLP ("**Dentons**"), the Receiver has recently become aware of a number of additional real properties (the "**Additional Real Properties**") owned by the Company, as more particularly described in **Appendix "C".** The Additional Real Properties are not subject to the DUCA Charges (defined below), and the Receiver was previously unaware of them. Based on the Receiver's review of the legal descriptions, the Additional Real Properties are located within the Richmond Buildings and most of them appear to be lockers or parking spaces, however the Receiver has not yet confirmed same. The Receiver notified counsel to DUCA Financial Services Credit Union Ltd. ("**DUCA**") of the Additional Real Properties and the Receiver is considering appropriate next steps.

10. The Company also owns development lands located at 114 Richmond Road, Ottawa, ON (the "**114 Richmond Property**"). Pursuant to the terms of the Receivership Order, the 114 Richmond Property does not form part of the Property over which the Receiver has been appointed.

Events Leading to Appointment of a Receiver & Causes of Insolvency

11. The Receiver understands that DUCA provided a non-revolving five-year term loan to the Company in the maximum principal amount of $8.8 million (the "**Loan**") pursuant to a commitment letter dated October 30, 2018, between DUCA, as lender, and the Company, as borrower. The Loan was advanced on November 30, 2018, and matured on November 30, 2023. As security for the Loan, among other things, on December 21, 2018, DUCA registered mortgages/charges in the principal amount of $8,800,000 (the "**DUCA Charges**") against the Real Property.

12. In November 2023, Ashcroft was noted in default by DUCA because the loan matured but was not repaid. On December 4, 2023, DUCA and Ashcroft entered into a forbearance agreement. Ashcroft did not repay the Loan by the end of the forbearance period, which constituted an event of default under the forbearance agreement, and DUCA subsequently delivered a demand letter and a notice of intention to enforce security. On April 9, 2024, DUCA commenced the application seeking the appointment of the Receiver.

13. On May 16, 2024, the Honourable Justice MacLeod issued the Receivership Order, however, the Court determined that the Receiver's powers and authorizations would not take effect until on or after June 17, 2024 to afford the Company additional time to complete a full refinancing of the indebtedness owing to DUCA, which the Company had represented to the Court at that time it was in the process of obtaining. In the interim period, the Receiver would monitor the business and affairs of the Company in such manner as the Receiver considered appropriate. The

31. A commercial tenant, Ashcroft Homes – Monocle Inc. ("**Monocle**"), whom is a related party to the Company, requested the termination of their lease which was set to expire in July 2026. As this related party tenant had historically not paid rent in cash and informed the Receiver of its inability to pay cash rent going forward, the Receiver and this tenant agreed to mutually terminate the lease and the early surrender of the commercial unit to the Receiver. It was also agreed upon that the Receiver would, among other things, continue to retain all rights and remedies available to the Receiver on behalf of the landlord, including the recovery of arrears or other tenant defaults under the lease.

IX. AMENDMENTS TO RECEIVERSHIP ORDER

32. The Receiver, through its counsel, attempted to register the Receivership Order against title to the Real Property in the Ottawa land registry office. It is customary in receivership proceedings that involve real property assets that the Receivership Order be registered against title to any real property owned by the debtor in order to provide notice of the pendency of the receivership.

33. The land registrar declined to register the Receivership Order because the Receivership Order does not expressly contain the real property legal descriptions, including property identification numbers, for the Real Property over which the Receiver has been appointed. The primary purpose behind the Amendments to the Receivership Order is to include the real property descriptions, including property identification numbers.

34. As of the date of this First Report, the Receiver is investigating the Additional Real Properties and whether further amendments to the Receivership Order and the descriptions of the Real Property will be necessary or appropriate.

35. Additionally, at paragraph 21 of the Receivership Order, there is text reading "issuance on 16, 2024" which appears to have been inserted inadvertently and should be removed. The Receiver requests the Receivership Order also be amended to remove this stray text.

X. REALIZATION PROCESS

Accounts Receivable

36. As at the Date of Appointment, the Company's books and records reported there were no rent arrears. However, upon review, the Receiver determined that each of a residential tenant, Ashcroft Homes – Central Park Inc., and a commercial tenant, Monocle, both of which are related parties to the Company, had historically not paid rent in the form of cash. Rather the rents for these units were recorded as a related party receivable.

37. The Receiver was unable to collect 100% of the July rents from 4 residential tenants and certain August rents also remain outstanding. Sleepwell will pursue the collection of rent arrears for all current tenants.

38. The books and records identify significant accounts receivable owing from related companies. Specifically, it is reported that 111RR is owed approximately $22.5 million from ten related parties, including 108 RR, while 108RR is owed approximately $32.1 million from twenty-four related parties. The Receiver has sent collection notices to each of the related parties requesting payment for the balances owing and documentation supporting the nature of the transactions with the Company. Additionally, the Receiver has requested management for the Ashcroft Group of Companies to provide the Receiver with documentation detailing the nature of the transactions and debts owing to the Company. As at the date of this First Report, neither management for the Ashcroft Group of Companies nor any of the related parties with balances reported as owing to the Company have responded to the Receiver.

Sales Process

39. The Receiver determined that it needs to engage the services of a licensed real estate broker to assist with the marketing and sale of the Real Property. The Receiver approached nine (9) real estate brokers to solicit listing proposals for the Real Property. The real estate brokers approached included a combination of regional and national brokerage agencies with a mix of experience in residential or commercial real estate (or both). The Receiver received a total of six (6) listing proposals; five (5) of which were solicited and one (1) from an unsolicited party.

40. The listing proposals suggested a variety of strategies in realizing on the Real Property. The variety of strategies was, in part, prompted by the unique composition of the Real Property which includes:

    a) Residential units occupied by tenants (18 units at the Date of the Appointment, which will be reduced to 14 units given the termination notices received) (the "**Occupied Residential Units**");

    b) Residential units not occupied (zero units at the Date of the Appointment, but four (4) vacated or soon to be vacated units given the termination notices received) (the "**Vacant Residential Units**");

    c) Commercial units occupied by tenants (which consisted of 11 units at the Date of the Appointment and approximately 24,000 square feet, which has been reduced to 10 units

and approximately 19,600 square feet given the Monocle lease termination) (the "**Occupied Commercial Units**"); and

d) Commercial units not occupied (which consisted of 10 units at the Date of the Appointment and approximately 14,200 square feet, which has been increased to 11 units and approximately 18,700 square feet given the Monocle lease termination) (the "**Vacant Commercial Units**").

41. In determining the optimal marketing and sales strategy, the Receiver considered a variety of factors, including:

a) The pricing recommended within the listing proposals received and the estimated gross sale(s) proceeds of selling the Property as individual units or en-bloc;

b) Making efforts to launch the Sales Process, at the recommendation of the realtors which submitted listing proposals, after the labour day long weekend in September to take advantage of the late summer/early fall selling season;

c) The number of Court appearances required, and associated costs, with obtaining Court approvals and other matters related to completing the sale(s);

d) The impact of the resulting sale(s) on tenants;

e) The estimated timeframe for completing the sale(s); and

f) The support of DUCA for the selected sales strategy.

42. In balancing the aforementioned factors, the Receiver has selected, subject to Court approval, Colliers Macaulay Nicolls Inc., Brokerage ("**Colliers Brokerage**") to lead the proposed Sales Process, which given the unique mix of Property, will consist of:

a) Listing the Occupied Residential Units and the Vacant Residential Units, in three (3) 'small blocks' of five (5) to seven (7) units per block, with each block being comprised of units within the same building, where possible;

b) Listing the Occupied Commercial Units as a single bloc of units; and

c) Listing each of the Vacant Commercial Units separately.

43. Summarized in the table below are certain other key aspects of the Sales Process:

Term / Event	Description
Occupied Residential Units and Vacant Residential Units	
Pricing Strategy	• Listings will be priced.

Term / Event	Description
	• Based on the estimated investment value.
Offer Deadline	• The Receiver will utilize a bid-after date, which is estimated to be set for 2-weeks following the launch of marketing efforts by Colliers Brokerage. After the bid-after date, offers will be reviewed on a first-come, first-serve basis.
Occupied Commercial Units	
Pricing Strategy	• Listing will be unpriced (although presented as $1 on MLS system).
Offer Deadline	• An offer date will be set at a time after sufficient market interest has been obtained and will not be set within the first 30-days following the launch of marketing efforts by Colliers Brokerage. • Once determined, offer deadline date will be set to 10-days and communicated to all parties which have expressed an interest in submitting an offer.
Vacant Commercial Units	
Pricing Strategy	• Listings will be priced. • Pricing range will be based on square footage.
Offer Deadline	• No offer deadline. • Offers will be considered as received after listing on a first-come, first-serve basis.
Common Terms to the Sales Process	
Solicitation	• Marketing materials created by Colliers Brokerage at the cost of Colliers Brokerage. • Notification to potential interested parties performed by Colliers Brokerage. • Listing on website of Colliers Brokerage. • Listing on the MLS system.
Due Diligence	• Interested parties shall be required to execute a non-disclosure agreement and return it to Colliers Brokerage in order to gain access to confidential information maintained in a data room.
Deposit	• A deposit of 10% of the purchase price is required with each offer.

Term / Event	Description
	• Deposits for all unsuccessful offers will be returned. • Deposits for successful offers are non-refundable.
Court Approval	• All sale transactions will be subject to Court approval.
Closing Date	• As mutually agreed upon between the Receiver and purchaser(s).
Commission	• 3.5% (cooperating at 1.5%) for the Occupied Residential Units and Vacant Residential Units. • 3.0% (cooperating at 1.5%) for the Occupied Commercial Units and Vacant Commercial Units.
Break Fee	• No break fees.
Listing Term	• 6-months.
Receiver's Reservation of Rights	• The Receiver reserves the right in its reasonable discretion to, among other things: o waive strict compliance with any one or more of the Sales Process parameters detailed herein; o create or extend any deadline set forth in the Sales Process; o reject any or all offers; o not be bound to accept the highest or any offer; o consult with DUCA and other stakeholders as it determines necessary or appropriate, in its sole discretion; o terminate the Sales Process in consultation with DUCA and other stakeholders; and o adopt such ancillary and procedural rules not otherwise set out in the Sales Process.

44. Additionally, certain parties have expressed an interest in leasing vacant residential and vacant commercial units. To the extent leasing vacant units will benefit the Sales Process, the Receiver, together with Colliers Brokerage may lease vacant units and include the newly leased units within the Occupied Residential Units or Occupied Commercial Units, as applicable.

45. It is the Receiver's opinion that the proposed Sales Process represents a public and transparent process under which potential purchasers will be marketed and given the opportunity to provide offers. The proposed Sales Process will balance the need to complete a sale(s) in a reasonable time and adequately expose the Real Property to the marketplace to maximize recovery for stakeholders.

46. DUCA is supportive of the Sales Process.

XI. RECEIVER'S INTERIM STATEMENTS OF RECEIPTS AND DISBURSEMENTS

47. The Receiver's interim statements of receipts and disbursements for each of 108RR and 111RR for the period from the Date of Appointment to August 18, 2024 (the "**Interim R&D(s)**") are illustrated in the chart below:

Receiver's Interim Statements of Receipts and Disbursements For the period June 17, 2024 to August 18, 2024		
	108RR	**111RR**
Receipts		
Rental Income	$ 64,530	$ 74,219
Cash in bank accounts	50,797	66,518
HST collected	3,446	7,943
Interest income	131	294
Total receipts	**118,904**	**148,974**
Disbursements		
Condo fees	18,901	12,805
Repairs and maintenance	12,390	9,225
Insurance	10,092	9,086
Appraisal	3,076	3,223
HST Paid	2,011	1,618
Bank charges	34	17
Total disbursements	**46,503**	**35,973**
Net receipts over disbursements	**$ 72,401**	**$ 113,001**

a) As detailed in the table above, between the Date of Appointment and August 18, 2024 the Receiver has collected total receipts of $118,904 and $148,974 for 108RR and 111RR, respectively. The majority of the receipts relate to the collection of rent and funds from the Company's bank accounts. Total disbursements over the same period amounted to $46,503 and $35,973 for 108RR and 111RR, respectively, the majority of which relate to condo fees, repairs and maintenance and insurance. The Interim R&Ds report net receipts over disbursements of $72,401 and $113,001 for 108RR and 111RR, respectively.

b) The Interim R&Ds do not include receipts and disbursements of Sleepwell or other accrued disbursements.

TAB 3

COURT OF APPEAL FOR ONTARIO

CITATION: Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc., 2019 ONCA 508
DATE: 20190619
DOCKET: C62925

Pepall, Lauwers and Huscroft JJ.A.

BETWEEN

Third Eye Capital Corporation

Applicant
(Respondent)

and

Ressources Dianor Inc. /Dianor Resources Inc.

Respondent
(Respondent)

and

2350614 Ontario Inc.

Interested Party
(Appellant)

Peter L. Roy and Sean Grayson, for the appellant 2350614 Ontario Inc.

Shara Roy and Nilou Nezhat, for the respondent Third Eye Capital Corporation

Stuart Brotman and Dylan Chochla, for the receiver of the respondent Ressources Dianor Inc./Dianor Resources Inc., Richter Advisory Group Inc.

Nicholas Kluge, for the monitor of Essar Steel Algoma Inc., Ernst & Young Inc.

not find that the absence of the express language found in s. 65.13 of the BIA and s. 36 of the CCAA from s. 243 forecloses the possibility that the broad wording in s. 243 confers jurisdiction to grant vesting orders.

Section 243 – Jurisdiction to Grant a Sales Approval and Vesting Order

[72] This brings me to an analysis of the broad language of s. 243 in light of its distinct legislative history, objective and purposes. As I have discussed, s. 243 was enacted by Parliament to establish a receivership regime that eliminated a patchwork of provincial proceedings. In enacting this provision, Parliament imported into s. 243(1)(c) the broad wording from the former s. 47(2)(c) which courts had interpreted as conferring jurisdiction to direct an interim receiver to do not only what "justice dictates" but also what "practicality demands". Thus, in interpreting s. 243, it is important to elaborate on the purpose of receiverships generally.

[73] The purpose of a receivership is to "enhance and facilitate the preservation and realization of the assets for the benefit of creditors": *Hamilton Wentworth Credit Union Ltd. v. Courtcliffe Parks Ltd.* (1995), 23 O.R. (3d) 781 (Gen. Div.), at p. 787. Such a purpose is generally achieved through a liquidation of the debtor's assets: Wood, at p. 515. As the Appeal Division of the Nova Scotia Supreme Court noted in *Bayhold Financial Corp. v. Clarkson Co. Ltd. and Scouler* (1991), 108 N.S.R. (2d) 198 (N.S.C.A.), at para. 34, "the essence of a

receiver's powers is to liquidate the assets". The receiver's "primary task is to ensure that the highest value is received for the assets so as to maximise the return to the creditors": *1117387 Ontario Inc. v. National Trust Company*, 2010 ONCA 340, 262 O.A.C. 118, at para. 77.

[74] This purpose is reflected in commercial practice. Typically, the order appointing a receiver includes a power to sell: see for example the Commercial List Model Receivership Order, at para. 3(k). There is no express power in the BIA authorizing a receiver to liquidate or sell property. However, such sales are inherent in court-appointed receiverships and the jurisprudence is replete with examples: see e.g. *bcIMC Construction Fund Corp. v. Chandler Homer Street Ventures Ltd.*, 2008 BCSC 897, 44 C.B.R. (5th) 171 (in Chambers), *Royal Bank v. Fracmaster Ltd.*, 1999 ABCA 178, 11 C.B.R. (4th) 230, *Skyepharma PLC v. Hyal Pharmaceutical Corp.* (1999), 12 C.B.R. (4th) 87 (Ont. S.C.), aff'd (2000), 47 O.R. (3d) 234 (C.A.).

[75] Moreover, the mandatory statutory receiver's reports required by s. 246 of the BIA direct a receiver to file a "statement of all property of which the receiver has taken possession or control that has not yet been sold or realized" during the receivership (emphasis added): *Bankruptcy and Insolvency General Rules*, C.R.C. c. 368, r. 126 ("BIA Rules").

TAB 4

CITATION: 2056706 Ontario Inc. v. Pure Global Cannabis Inc., 2021 ONSC 5533
COURT FILE NO.: CV-20-00638503-00CL
DATE: 20210816

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

RE: 2056706 ONTARIO INC., KOZO HOLDINGS INC., CANCOR DEBT AGENCY INC., Applicants

AND:

PURE GLOBAL CANNABIS INC., PURESINSE INC., 237A ADVANCE INC., 237B ADVANCE INC., SPRQ HEALTH GROUP CORP. AND THE GREAT CANADIAN HEMP COMPANY, Respondents

BEFORE: S.F. Dunphy J.

COUNSEL: *Jeffrey Levine,* for the Secured Debenture Holders

Ryan Atkinson and *Saurabh Singhal*, for TS Pharmaceuticals Ltd.

Leanne M. Williams and *Mitchell W. Grossell*, for the Receiver, Thornton Grout Finnigan LLP

Hylton Levy and *Paul Denton,* for the Court-Appointed Receiver, A. Farber & Partners Inc.

HEARD at Toronto: June 28, 2021

REASONS FOR DECISION

[1] On June 28, 2021, I heard the motion of TS Pharmaceuticals Ltd., the purchaser of certain assets from A. Farber & Partners Inc. as court-appointed Receiver of the Respondents. The moving party sought damages arising from the claimed failure of the Receiver to perform its obligations under an Asset Purchase Agreement (or "APA") in good faith. I dismissed the motion from the bench with reasons to follow. These are those reasons.

Overview of conclusions

[2] At its core, this dispute comes down to conflicting views of the parties as to what it was the Receiver undertook to do when it entered into the APA. It ought to have been abundantly clear to the moving party Purchaser that the Receiver was not in a position to

assets. The Receiver was directed in paragraph 2 of the Receivership Order not to take possession of any "Excluded Assets". These were defined as "any asset of the Respondents for which any permit or license issued in accordance, or in connection, with" the listed Federal and Ontario statutes governing cannabis is required.

[7] Subsequent paragraphs reinforced this exclusion to avoid all possible doubt. Paragraph 3 declared the Receiver to have no authority over the undertaking of the Respondents as it relates to the Excluded Assets. Paragraph 4 ordered the Receiver not to manage, operate or carry on any business of the respondents in relation to the Excluded Assets.

[8] The Excluded Assets were expressly left in the possession of the respondents. Indeed, the CCAA process (a "debtor in possession" process) remained in place with the principal of the respondents remaining as the designated "Responsible Person in Charge" (or "RPIC") under the regulations in order to remain in charge of the cannabis assets and the destruction of the cannabis inventories on hand. There were thus parallel proceedings left in place for a time.

[9] The intent of the initial order to constrain the scope of the receivership so as to give a wide berth to the regulated cannabis business and its strict regulatory regime was clear and unmistakable.

[10] The RPIC remained in place after the appointment of the Receiver although the individual's employment with the Respondents was not continued by the Receiver after the cannabis on hand was disposed of later in May 2020. The RPIC was the only person authorized to give directions to Health Canada in relation to the Cannabis License and to monitor and renew same. The Receiver neither controlled nor directed the actions of the RPIC.

[11] As is usual in such cases, a sales process was undertakne by the Receiver in order to obtain the highest and best price for the assets being sold. A data room was established that contained, among other documents, the Cannabis License. Prospective purchasers, including the Purchaser, were given access to the data room to perform such due diligence as they thought necessary. The Cannabis License clearly indicated on its face that it had an effective date of October 22, 2019 and an expiry date of December 28, 2020. The license and its terms were also public documents available on line.

[12] On November 26, 2020, the Receiver and Purchaser entered into the APA. The APA was expressly subject to court approval to be obtained in the form of an "Approval and Vesting Order". It contemplated a two-step transaction to recognize the limitations in the Receiver's authority while permitted the Purchaser latitude to attempt at least to retain the benefit of the existing Cannabis License. In the first instance, the Purchaser would purchase certain designated assets under the control of the Receiver but excluding the Excluded Assets. In the second step, the Purchaser would acquire all of the shares of the holder of the Cannabis License (the respondent PureSinse Inc.) pursuant to a subsequent share transaction but *after* PureSinse had been purged of its unwanted liabilities through

TAB 5

CITATION: CCM Master Qualified Fund v. blutip Power Technologies, 2012 ONSC 1750
COURT FILE NO.: CV-12-9622-00CL
DATE: 20120315

SUPERIOR COURT OF JUSTICE – ONTARIO

COMMERCIAL LIST

RE: CCM Master Qualified Fund, Ltd., Applicant

AND:

blutip Power Technologies Ltd., Respondent

BEFORE: D. M. Brown J.

COUNSEL: L. Rogers and C. Burr, for the Receiver, Duff & Phelps Canada Restructuring Inc.

A. Cobb and A. Lockhart, for the Applicant

HEARD: March 15, 2012

REASONS FOR DECISION

I. Receiver's motion for directions: sales/auction process & priority of receiver's charges

[1] By Appointment Order made February 28, 2012, Duff & Phelps Canada Restructuring Inc. ("D&P") was appointed receiver of blutip Power Technologies Ltd. ("Blutip"), a publicly listed technology company based in Mississauga which engages in the research, development and sale of hydrogen generating systems and combustion controls. Blutip employs 10 people and, as the Receiver stressed several times in its materials, the company does not maintain any pension plans.

[2] D&P moves for orders approving (i) a sales process and bidding procedures, including the use of a stalking horse credit bid, (ii) the priority of a Receiver's Charge and Receiver's Borrowings Charge, and (iii) the activities reported in its First Report. Notice of this motion was given to affected persons. No one appeared to oppose the order sought. At the hearing today I granted the requested Bidding Procedures Order; these are my Reasons for so doing.

II. Background to this motion

[3] The Applicant, CCM Master Qualified Fund, Ltd. ("CCM"), is the senior secured lender to Blutip. At present Blutip owes CCM approximately $3.7 million consisting of (i) two

convertible senior secured promissory notes (October 21, 2011: $2.6 million and December 29, 2011: $800,000), (ii) $65,000 advanced last month pursuant to a Receiver's Certificate, and (iii) $47,500 on account of costs of appointing the Receiver (as per para. 30 of the Appointment Order). Receiver's counsel has opined that the security granted by Blutip in favour of CCM creates a valid and perfected security interest in the company's business and assets.

[4] At the time of the appointment of the Receiver Blutip was in a development phase with no significant sources of revenue and was dependant on external sources of equity and debt funding to operate. As noted by Morawetz J. in his February 28, 2012 endorsement:

> In making this determination [to appoint a receiver] I have taken into account that there is no liquidity in the debtor and that it is unable to make payroll and it currently has no board. Stability in the circumstances is required and this can be accomplished by the appointment of a receiver.

[5] As the Receiver reported, it does not have access to sufficient funding to support the company's operations during a lengthy sales process.

III. Sales process/bidding procedures

A. General principles

[6] Although the decision to approve a particular form of sales process is distinct from the approval of a proposed sale, the reasonableness and adequacy of any sales process proposed by a court-appointed receiver must be assessed in light of the factors which a court will take into account when considering the approval of a proposed sale. Those factors were identified by the Court of Appeal in its decision in *Royal Bank v. Soundair*: (i) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently; (ii) the efficacy and integrity of the process by which offers are obtained; (iii) whether there has been unfairness in the working out of the process; and, (iv) the interests of all parties.[1] Accordingly, when reviewing a sales and marketing process proposed by a receiver a court should assess:

(i) the fairness, transparency and integrity of the proposed process;

(ii) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and,

(iii) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

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[1] (1991), 7 C.B.R. (3d) 1 (C.A.).

TAB 6

Royal Bank of Canada v. Soundair Corp., Canadian Pension Capital Ltd. and Canadian Insurers Capital Corp.

Indexed as: Royal Bank of Canada v. Soundair Corp. (C.A.)

4 O.R. (3d) 1
[1991] O.J. No. 1137
Action No. 318/91

ONTARIO
Court of Appeal for Ontario
Goodman, McKinlay and Galligan JJ.A.
July 3, 1991

Debtor and creditor -- Receivers -- Court-appointed receiver accepting offer to purchase assets against wishes of secured creditors -- Receiver acting properly and prudently -- Wishes of creditors not determinative -- Court approval of sale confirmed on appeal.

Air Toronto was a division of Soundair. In April 1990, one of Soundair's creditors, the Royal Bank, appointed a receiver to operate Air Toronto and sell it as a going concern. The receiver was authorized to sell Air Toronto to Air Canada, or, if that sale could not be completed, to negotiate and sell Air Toronto to another person. Air Canada made an offer which the receiver rejected. The receiver then entered into negotiations with Canadian Airlines International (Canadian); two subsidiaries of Canadian, Ontario Express Ltd. and Frontier Airlines Ltd., made an offer to purchase on March 6, 1991 (the OEL offer). Air Canada and a creditor of Soundair, CCFL, presented an offer to purchase to the receiver on March 7, 1991 through 922, a company formed for that purpose (the 922 offer). The receiver declined the 922 offer because it contained an unacceptable condition and accepted the OEL offer. 922 made a

IN AGREEING TO SELL TO OEL?

Before dealing with that issue there are three general observations which I think I should make. The first is that the sale of an airline as a going concern is a very complex process. The best method of selling an airline at the best price is something far removed from the expertise of a court. When a court appoints a receiver to use its commercial expertise to sell an airline, it is inescapable that it intends to rely upon the receiver's expertise and not upon its own. Therefore, the court must place a great deal of confidence in the actions taken and in the opinions formed by the receiver. It should also assume that the receiver is acting properly unless the contrary is clearly shown. The second observation is that the court should be reluctant to second-guess, with the benefit of hindsight, the considered business decisions made by its receiver. The third observation which I wish to make is that the conduct of the receiver should be reviewed in the light of the specific mandate given to him by the court.

The order of O'Brien J. provided that if the receiver could not complete the sale to Air Canada that it was "to negotiate and sell Air Toronto to another person". The court did not say how the receiver was to negotiate the sale. It did not say it was to call for bids or conduct an auction. It told the receiver to negotiate and sell. It obviously intended, because of the unusual nature of the asset being sold, to leave the method of sale substantially in the discretion of the receiver. I think, therefore, that the court should not review minutely the process of the sale when, broadly speaking, it appears to the court to be a just process.

As did Rosenberg J., I adopt as correct the statement made by Anderson J. in Crown Trust Co. v. Rosenberg (1986), 60 O.R. (2d) 87, 39 D.L.R. (4th) 526 (H.C.J.), at pp. 92-94 O.R., pp. 531-33 D.L.R., of the duties which a court must perform when deciding whether a receiver who has sold a property acted properly. When he set out the court's duties, he did not put them in any order of priority, nor do I. I summarize those duties as follows:

1. It should consider whether the receiver has made a sufficient effort to get the best price and has not acted improvidently.

2. It should consider the interests of all parties.

3. It should consider the efficacy and integrity of the process by which offers are obtained.

4. It should consider whether there has been unfairness in the working out of the process.

I intend to discuss the performance of those duties separately.

1. Did the receiver make a sufficient effort to get the best price and did it act providently?

Having regard to the fact that it was highly unlikely that a commercially viable sale could be made to anyone but the two national airlines, or to someone supported by either of them, it is my view that the receiver acted wisely and reasonably when it negotiated only with Air Canada and Canadian Airlines International. Furthermore, when Air Canada said that it would submit no further offers and gave the impression that it would not participate further in the receiver's efforts to sell, the only course reasonably open to the receiver was to negotiate with Canadian Airlines International. Realistically, there was nowhere else to go but to Canadian Airlines International. In doing so, it is my opinion that the receiver made sufficient efforts to sell the airline.

When the receiver got the OEL offer on March 6, 1991, it was over ten months since it had been charged with the responsibility of selling Air Toronto. Until then, the receiver had not received one offer which it thought was acceptable. After substantial efforts to sell the airline over that period, I find it difficult to think that the receiver acted improvidently in accepting the only acceptable offer which it had.

TAB 7

CITATION: Choice Properties Limited Partnership v. Penady (Barrie) Ltd., 2020 ONSC 3517
COURT FILE NO.: CV-20-00637682-00CL
DATE: 20200610

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
CHOICE PROPERTIES LIMITED PARTNERSHIP, by its general partner, CHOICE PROPERTIES GP INC.	*Michael De Lellis* and *Shawn Irving*, for the Applicant
Applicant	
– and –	
PENADY (BARRIE) LTD., PRC BARRIE CORP. and MADY (BARRIE) INC.	*Tim Duncan* and *Michael Citak*, for the Respondents
Respondents	*Eric Golden* and *Chad Kopach*, for RSM Canada Limited, in its capacity as Court-appointed Receiver
	HEARD: June 2, 2020

APPLICATION UNDER SECTION 243 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

ENDORSEMENT

MCEWEN J.

[1] This motion is brought by RSM Canada Limited (the "Receiver"), in its capacity as the Court-appointed Receiver of all of the rights, title and interest of Penady (Barrie) Ltd. ("Penady"), PRC Barrie Corp. ("PRC") and Mady (Barrie) Inc. ("MBI") (collectively, the "Respondents") for an order, amongst other things, approving the Sale Procedure outlined in the First Report of the Receiver which features an asset purchase agreement by way of a credit bid (the "Stalking Horse Agreement") with the Applicant.

[11] I also wish to deal with the issue of the affidavit filed by the Respondents that was prepared by Mr. Josh Thiessen. Mr. Thiessen is a Vice-President, in client management, at MarshallZehr Mortgage Brokerage. As I noted at the motion, the Respondents, in my view, were putting forward Mr. Thiessen as an expert witness to provide evidence on the issue of the Sale Procedure. The Respondents failed, however, to provide a curriculum vitae so that I could determine whether Mr. Thiessen had any experience in sale procedures in distress situations or insolvency proceedings. Further, no attempt was made to comply with the requirements of r. 53 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, concerning experts' reports. Mr. Thiessen was also involved in a previous attempt to sell the Barrie Property and had a financial interest in that potential transaction. The Applicant submits that Mr. Thiessen's involvement makes him a partial witness.

[12] In all of the circumstances I advised the parties that while I had reviewed Mr. Thiessen's affidavit, I was giving it very limited weight. In short, however, I do not believe that much turns on Mr. Thiessen's affidavit since I granted relief to the Respondents with respect to most of Mr. Thiessen's concerns, for my own reasons.

[13] Last, the Respondents, in support of their position, sought to draw comparisons between the Barrie Property and a Brampton Property in which CHP has a 70 percent controlling interest. I accept the Receiver's argument that such a comparison is of little, if any, use given that the Brampton Property is vacant land, currently zoned as commercial, but being marketed with a potential to rezone for residential use. Further, it bears noting, that CHP has a sales process well underway with respect to the Brampton Property, which refutes the Respondents' submission that CHP has meaningfully delayed that sale.

THE LAW

[14] The issue on this motion is whether the Sale Procedure is fair and reasonable.

[15] The parties agree that the criteria to be applied are set out in the well-known case of *Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (C.A.), as follows:

(a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;

(b) whether the interests of all parties have been considered;

(c) the efficacy and integrity of the process by which offers are obtained; and

(d) whether there has been an unfairness in the working out of the process.

[16] As further explained by D. Brown J. (as he then was) in *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750, 90 C.B.R. (5th) 74, the approval of a particular form of Sale Procedure must keep the *Soundair* principles in mind and assess:

(a) the fairness, transparency and integrity of the proposed process;

(b) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and

(c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

ANALYSIS

Introduction

[17] Before I begin my review of the Sale Procedure, it bears noting that the Sale Procedure is being contemplated during the COVID-19 crisis. In this regard, however, it further bears noting that the financial difficulties encountered by Penady pre-date the COVID-19 pandemic. Prior to the Receivership Order being granted, Penady had been attempting to sell or refinance the Barrie Property for approximately 16 months. It was in default on its indebtedness to CHP. There were also substantial unpaid realty taxes on the Barrie Property from late 2018 up until the time of the Receivership.

[18] At the time the COVID-19 crisis hit, there were 27 tenants at the Barrie Property. Since COVID-19, 16 tenants have temporarily suspended operations, with another 6 tenants offering limited services. The major Barrie Property tenants include TD, Tim Hortons, McDonalds, Dollarama, Cineplex, LA Fitness, and State & Main.

[19] It also bears noting that Penady had previously retained Mr. Cameron Lewis of Avison Young Commercial Real Estate (Ontario) Inc. ("AY") to market and sell the Barrie Property. The Receiver agreed to retain Mr. Lewis to continue to market the Barrie Property. Mr. Lewis is well experienced in the area and his previous involvement will allow him to utilize the information he has gathered, including potential bidders. Similarly, the Receiver has retained the existing property manager, Penn Equity, to continue to manage the Barrie Property during the Receivership.

The Disputes Between the Parties

[20] I will now deal with the various disputes between the parties, first dealing with the objections that the Respondents have with respect to the Stalking Horse Agreement and then with the Respondents' complaints concerning the Sale Procedure.

<u>The Stalking Horse Agreement</u>

[21] The first complaint of the Respondents concerns the credit bid contained in the Stalking Horse Agreement as being significantly below appraisals obtained for the Barrie Property by the Respondents (all amounts are subject to the Sealing Order).

[22] I do not accept this argument. The Receiver has obtained an estimate on the Barrie Property from a reputable commercial real estate company, Cushman & Wakefield ULC ("CW"). The valuation was prepared by CW on March 25, 2020. It is comprehensive and

TAB 8

SUPREME COURT OF YUKON

Citation: *Yukon (Government of) v. Yukon Zinc Corporation*, 2020 YKSC 17

Date: 20200526
S.C. No. 19-A0067
Registry: Whitehorse

BETWEEN

GOVERNMENT OF YUKON
as represented by the Minister of the Department of Energy, Mines and Resources

PETITIONER

AND

YUKON ZINC CORPORATION

RESPONDENT

Before Madam Justice S.M. Duncan

Appearances:

John T. Porter and Laurie A. Henderson	Counsel for the Petitioner
No one appearing	Yukon Zinc Corporation
Kibben Jackson	Counsel for Jinduicheng Canada Resources Corporation Limited
H. Lance Williams	Counsel for Welichem Research General Partnership
John Sandrelli and Cindy Cheuk	Counsel for PricewaterhouseCoopers Inc.

REASONS FOR JUDGMENT
(Application of the Receiver re: SISP)

INTRODUCTION

[1] This is an application by PricewaterhouseCoopers Inc. (the “Receiver”) appointed as receiver by Order dated September 13, 2019, in the matter of the insolvency of Yukon Zinc Corporation (“YZC”), whose main asset is the Wolverine Mine, a lead-zinc-

at the time of discharge of the trustee that the trustee satisfy the court that all the property of the bankrupt for which the trustee was accountable has been sold, realized or disposed of in the manner described in the final statement of the trustee's receipts and disbursements. As noted by the Court of Appeal in *Third Eye*, para. 76:

> It is thus evident from a broad, liberal, and purposive interpretation of the BIA receivership provisions, including s. 243(1)(c), that implicitly the court has the jurisdiction to approve a sale proposed by a receiver and courts have historically acted on that basis.

[61] The Court in *Royal Bank of Canada v. Soundair Corp.*, [1991] 4 O.R. (3d) 1 (O.N.C.A.) (*"Soundair"*), set out the factors to be considered by a court in determining whether to approve a sale by a receiver:

i) Has the receiver made a sufficient effort to get the best price and not acted improvidently;

ii) Has the receiver considered the interests of all the parties;

iii) Has the receiver considered the efficacy and integrity of the process by which offers are obtained; and

iv) Has there been unfairness in the working out of the process.

[62] Courts have also held that these factors should be considered in the determination of the court's approval of a sale process proposed by a receiver. The Court in *CCM Master Qualified Fund, Ltd. v. Blutip Power Technologies Ltd.*, 2012 ONSC 1750, at para. 6, described the *Soundair* factors that a court should consider when assessing a sale process as follows:

i) The fairness, transparency and integrity of the proposed process;

ii) The commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and

iii) Whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

This was followed by *Walter Energy Canada Holdings Inc. Re*, 2016 BCSC 107, at para. 20.

Application of Principles to Proposed SISP

[63] In this case, I find that the proposed sale process meets the legal requirements.

[64] First, the Receiver is empowered and authorized by s. 3(k) of the Receivership Order "to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate."

[65] Courts must rely on the business expertise of the receiver, especially in complex or specialized situations such as this one (*Soundair*, at para. 14). In this case, the Receiver has significant experience in the mining sector. Its connections within the industry, combined with its plan to market broadly and publicize clearly the bid evaluation criteria, will ensure that appropriate potential bidders are given notice, and provide transparency and fairness. The timelines of each phase are reasonable and have built in flexibility, a useful inclusion, especially since the contentious nature of these applications and unexpected intervening circumstances that have delayed the Court's decisions, will require adjustment of those timelines. The Receiver is attempting to be as efficient as possible, which is appropriate in the circumstances.

TAB 9

COURT OF APPEAL FOR ONTARIO

CITATION: Marchant Realty Partners Inc. v. 2407553 Ontario Inc., 2021 ONCA 375
DATE: 20210531
DOCKET: M52417, M52418 & M52419

Jamal J.A. (Motions Judge)

DOCKET: M52417

BETWEEN

Marchant Realty Partners Inc., as agent

Responding Party

and

2407553 Ontario Inc., 2384648 Ontario Inc., 2384646 Ontario Inc., 24000196 Ontario Inc. and 2396139 Ontario Inc.

Moving Parties

DOCKET: M52418

AND BETWEEN

Marchant Realty Partners Inc., as agent

Responding Party

and

4544 Zimmerman Avenue LP and 4544 Zimmerman Avenue GP Inc.

Moving Parties

DOCKET: M52419

AND BETWEEN

Marchant Realty Partners Inc., as agent

The Motion Judge's Decision

[8] The Receiver recommended list prices for the sale of Properties based on: (1) independent appraisals from two local appraisers, Humphrey Appraisal Services Inc. and Jacob Ellens & Associates Inc.; (2) recommended list prices for the Properties from three real estate brokerages; and (3) discussions with Jones Lang LaSalle Real Estate Services, the proposed listing brokerage, which has expertise selling properties around Niagara Falls. Even with these list prices, the Lenders will lose money on their loans to the Debtors.

[9] The Debtors opposed the proposed list prices and relied on competing appraisals of Colliers, a commercial real estate firm. Colliers' appraisals — which focussed on the development potential of the Properties — were almost 300% higher than the Receiver's list prices. The Debtors asked the motion judge to direct the Receiver to list the Properties at Colliers' proposed prices for 60 days to see what the market will bear.

[10] By order dated March 25, 2021, the motion judge approved the Receiver's proposed sale process and list prices for the Properties. The motion judge found:

> The Receiver is an officer of the court with duties to all stakeholders. In my view, the Receiver has shown that it is acting in good faith and diligently to discharge its duties to deal with the [Properties] in a commercially reasonable manner. The Receiver has reviewed the Colliers appraisals and the information upon which Colliers relies for its appraisals of the [Properties]. The Receiver has explained why it does not agree with the Colliers

> appraisals, and why it has recommended that the sale process be approved. I have considered the process which the Receiver has followed and the information upon which it relies to support its recommendations. The [Debtors] have not shown that the Receiver followed a flawed procedure. I am not satisfied that this is an exceptional case where it is proper for me to reject the business judgment made by the Receiver.

The Test for Leave to Appeal Under s. 193(e) of the *BIA*

[11] The moving parties seek leave to appeal from the motion judge's orders under s. 193(e) of the *BIA*. This provision provides that, unless an appeal lies as of right or as otherwise expressly provided, an appeal lies to the Court of Appeal "from any order or decision of a judge of the court … by leave of a judge of the Court of Appeal".

[12] In deciding whether to grant leave under s. 193(e) of the *BIA*, this court considers the following principles:

- Granting leave is "discretionary and must be exercised in a flexible and contextual way": *Business Development Bank of Canada v. Pine Tree Resorts Inc.*, 2013 ONCA 282, 115 O.R. (3d) 617, at para. 29.
- In exercising its discretion, the court should examine whether the proposed appeal: (1) raises an issue of general importance to bankruptcy/insolvency practice or the administration of justice, and is one this court should address; (2) is *prima facie* meritorious; and (3) would not unduly hinder the progress

of the bankruptcy/insolvency proceedings: *Pine Tree Resorts*, at para. 29; *McEwen (Re)*, 2020 ONCA 511, 452 D.L.R. (4th) 248, at para. 76.

Should this Court Grant Leave to Appeal?

(1) ***Does the proposed appeal raise an issue of general importance to bankruptcy/insolvency practice or the administration of justice?***

[13] The Debtors assert that the proposed appeal raises an issue of general important to bankruptcy/insolvency practice. They frame the issue on the proposed appeal as "the extent of the deference that the Court owes to a receiver's business judgment when approving a sale process." They claim the appeal "will provide guidance to receivers as they consider the level of scrutiny they may expect from the Court, and to other stakeholders as they consider whether to challenge the actions taken by any given receiver."

[14] The Receiver frames the issue on appeal much more narrowly. It claims the appeal "is highly fact-specific and concerns, in essence, the appropriate list prices" of the Properties. It says no legal principles are in dispute and the appeal will have "no bearing or importance for the practice of insolvency and the administration of receivership proceedings."

[15] I agree with the Receiver. Although on any appeal the court would consider and apply the principles of deference applicable to a receiver's business judgment, those principles are not in dispute. They were correctly stated by the motion judge,

who cited this court's decision in *Regal Constellation Hotel Ltd. (Re)* (2004), 71 O.R. (3d) 355 (C.A.), at para. 23:

> Underlying these considerations are the principles the courts apply when reviewing a sale by a court-appointed receiver. They exercise considerable caution when doing so, and will interfere only in special circumstances — particularly when the receiver has been dealing with an unusual or difficult asset. Although the courts will carefully scrutinize the procedure followed by a receiver, they rely upon the expertise of their appointed receivers, and are reluctant to second-guess the considered business decisions made by the receiver in arriving at its recommendations. The court will assume that the receiver is acting properly unless the contrary is clearly shown. See *Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1, 83 D.L.R. (4th) 76 (C.A.).

[16] On the Debtors' argument, the appeal would involve the application of these settled principles. However, applying settled principles of deference to the Receiver's business decisions here would not raise an issue of general importance to bankruptcy/insolvency practice or the administration of justice.

[17] The Debtors also say the motion judge failed to apply the correct legal test for evaluating whether a receiver has acted properly in selling a property, as stated in *Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (C.A.). This issue relates to the deference issue because the Debtors claim the motion judge failed to cite or apply the *Soundair* test and instead was unduly deferential to the Receiver. I will consider this argument below in evaluating whether the proposed appeal is *prima facie* meritorious.

(2) *Is the proposed appeal* prima facie *meritorious?*

[18] In evaluating whether the proposed appeal has *prima facie* merit, I begin by noting that this court gives substantial deference to the discretion of commercial court judges supervising insolvency and restructuring proceedings and does not intervene absent demonstrable error: *Ravelston Corp. Ltd. (Re)*, 2007 ONCA 135, 85 O.R. (3d) 175, at para. 3.

[19] As already noted, commercial court judges also give substantial deference to the decisions and recommendations of a receiver as an officer of the court. If the receiver's decisions are within the broad bounds of reasonableness and the receiver proceeded fairly, after considering the interests of all stakeholders, the court will not intervene: *Ravelston*, at para. 3; *Regal Constellation Hotel*, at para. 23. A court "will assume that the receiver is acting properly unless the contrary is clearly shown": *Regal Constellation Hotel*, at para. 23.

[20] The Debtors assert, however, that this court would overcome the deference shielding the receiver's business judgments and the motion judge's review of those judgments because the motion judge made an extricable error of law. The Debtors say the motion judge erred in law by failing to state or apply the *Soundair* test for evaluating whether a receiver has acted properly in recommending list prices for the Properties.

[21] The *Soundair* test in the context of a sale involves consideration of:

TAB 10

Court of Queen's Bench of Alberta

Citation: Sanjel Corporation (Re), 2016 ABQB 257

Date: 05162016
Docket: 1601 03143
Registry: Calgary

In the matter of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

And in the matter of the Compromise or Arrangement of Sanjel Corporation, Sanjel Canada Ltd., Terracor Group Ltd., Suretech Group Ltd., Suretech Completions Canada Ltd., Sanjel Energy Services (USA) Inc., Sanjel (USA) Inc., Suretech Completions (USA) Inc., Sanjel Capital (USA) Inc., Terracor (USA) Inc., Terracor Resources (USA) Inc., Terracor Logistics (USA) Inc., Sanjel Middle East Ltd., Sanjel Latin America Limited and Sanjel Energy Services DMCC

Reasons for Decision of the Honourable Madam Justice B.E. Romaine

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I. Introduction

[1] The Sanjel debtors seek orders approving certain sales of assets generated through a SISP that was conducted prior to the debtors filing under the *Companies' Creditors Arrangement Act*. The proceeds of the sales will be insufficient to fully payout the secured creditor, and will generate no return to unsecured creditors, including the holders of unsecured Bonds.

[2] The Trustee of the Bonds challenged the process under which the SISP was conducted, and the use of what he characterized as a liquidating CCAA in this situation. He alleged that the use of the CCAA to effect a pre-packaged sale of the debtors' assets for the benefit of the secured creditor was an abuse of the letter and spirit of the CCAA. He also alleged that bad faith and collusion tainted the integrity of the SISP.

[3] After reviewing extensive evidence and hearing submissions from interested parties, I decided to allow the application to approve the sales, and dismiss the application of the Trustee. These are my reasons.

advance. However, in the end, it is the specific details of the SISP as conducted that will be scrutinized.

[72] Similar issues were considered in *Re Nelson Education Ltd.*, 2015 ONSC 5557 at paras 31-32, and in *Re Bloom Lake,* [p.1], 2015 QCCS 1920 at para 21.

[73] The Trustee submits that the SISP was defective in that its timelines were truncated and that it was destined not to generate offers that maximized value for all stakeholders. The Trustee filed an affidavit of a representative of Moelis indicating that it would be typical in a SISP to establish a deadline for non-binding offers one or two months following commencement of the process, while in this SISP, participants had only 12 to 25 days to evaluate the business and provide non-binding indications of interest. This opinion did not address the previous BAML process that identified likely purchasers and thus lengthened the review process for these parties who participated in the first process. The Trustee's advisor was also critical that the SISP provided only 16 days for final offers, suggesting that it is more typical to provide two months.

[74] While likely correct for normal-course SISP's, this analysis does not take into account the high cash burn situation of these debtors, nor the deteriorating market. The Moelis opinion suggests that potential purchaser would have a heightened diligence requirement in the current unfavourable market conditions, requiring extra time for due diligence. However, despite the speed of the SISP, it appears to have generated a range of bids significantly above liquidation value. The process was not limited to the SISP, but included the previous BAML process and the negotiations with the Ad Hoc Bondholders.

[75] The evidence discloses a thorough and comprehensive canvassing of the relevant markets for the debtors and their assets despite the aggressive timelines. The BAML process identified some interested parties and Sanjel's financial advisors built on that process by re-engaging with 28 private equity firms that had already expressed interest in these unique assets as well as identifying new potential purchasers, reaching out to 85 potential buyers.

[76] Of those 85 parties, 37 executed NDAs, 25 conducted due diligence and 17 met with the management team. Eight submitted non-binding indications of interest, five were invited to submit second-round bids and finally the top three were chosen for the continuation of negotiations to final agreements.

[77] While some interested parties may have found the time limits challenging, a reasonable number were able to meet them and submit bids. I am satisfied from the evidence that, despite a challenging economic environment, the process was competitive and robust.

[78] I also note the comments of the Monitor in its First Report dated April 12, 2016. While it was not directly involved in the SISP, the Monitor reports that the financial advisors advised the Monitor, that given the size and complexity of the Sanjel Group's operations and the time frames involved, all strategic and financial sponsors known to the advisors were contacted during the SISP and that it is unlikely that extending the SISP time frames in the current market would have resulted in materially better offers.

[79] Based on this advice and the Monitor's observations since its involvement in the SISP from mid-February 2016, the Monitor is of the opinion that it is highly improbable that another post-filing sales process would yield offers materially in excess of those received.

[80] Finally, I note that the Ad Hoc Bondholders' own March 20 proposal envisaged a pre-packaged CCAA proceedings. A sales process is only required to be reasonable, not perfect. I am

satisfied that this SISP was run appropriately and reasonably, and that it adequately canvassed the relevant market for the Sanjel Group and its assets.

C. The Ad Hoc Bondholders submit that negotiations among them, the Sanjel Group and the Syndicate were a sham conducted by Sanjel to delay the Ad Hoc Bondholders from taking action under Chapter 11 while it finalized the APAs. The Trustee alleges that the SISP has been conducted and the CCAA filing occurred in an atmosphere tainted by manoeuvring for advantage, bad faith, deception, secrecy, artificial haste and excessive deference by the Sanjel Group to the Syndicate.

[81] These are serious allegations, but they are not supported by the evidence.

[82] As the somewhat lengthy history of negotiations establishes, the Ad Hoc Bondholders had almost three months to present and negotiate restructuring proposals, with access to confidential information afforded to their advisors from January 9, 2016, weeks before the SISP participants. They presented four proposals, the last one after final bids had been received in the SISP. Although the final proposal breached the timelines of the SISP process, and could potentially raise an issue with respect to the integrity of the SISP process, Sanjel, the Syndicate and the prospective purchasers are not pressing that argument, as they take the position that the final offer is inferior at any rate.

[83] These proposals received responses from Sanjel and the Syndicate, and counter proposals were received. The evidence discloses that, in all proposals and counter proposals, the parties were far apart on a major issue: the extent to which the Syndicate's debt was to be paid down and how far it was willing to allow a portion to remain at risk.

[84] The Ad Hoc Bondholders were aware of the SISP from its commencement, and aware of the timing of the process. Throughout the SISP, the financial advisors had regular contact with Moelis and Fried Frank and directly with the Ad Hoc Bondholders. Michael Genereux, the lead partner at PJT with respect to the SISP, has sworn that he believes the Ad Hoc Bondholders were aware of the SISP and that it was progressing at a rapid pace. He says that he urged the Ad Hoc Bondholders to accelerate the pace at which they were advancing their restructuring negotiations.

[85] The Ad Hoc Bondholders were aware, or should have been aware, that the Sanjel Group intended a CCAA/Chapter 15 process from at the latest mid-March, 2016. Their representative from A&M was aware of the possibility of a CCAA filing from March 4, 2016. Reference to PWC as Monitor under the CCAA was available through the template APAs from March 4, 2016

[86] The Trustee and the Ad Hoc Bondholders submit that the Ad Hoc Bondholders' April 11, 2016 proposal provides superior recovery to the proposed sales generated by the SISP, that it "implies" a purchase price significantly in excess of the values generated by the APAs. The proposal, which was made directly to the Syndicate, was rejected by the Syndicate. It provides less immediate recovery to the Syndicate, and leaves a substantial portion of the Syndicate debt outstanding in a difficult and highly uncertain economic environment. It fails to address previously-expressed concerns about the need for capital going forward. The implied value of the proposal appears to rest on assumptions about improved economic recovery that the Syndicate does not accept or share.

[87] In addition, the proposal would require at least six months to execute and leaves a number of questions outstanding, not the least being whether a plan that raises some and not all

TAB 11

CITATION: Target Canada Co. (Re), 2015 ONSC 7574
COURT FILE NO.: CV-15-10832-00CL
DATE: 2015-12-11

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: **IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TARGET CANADA CO., TARGET CANADA HEALTH CO., TARGET CANADA MOBILE GP CO., TARGET CANADA PHARMACY (BC) CORP., TARGET CANADA PHARMACY (ONTARIO) CORP., TARGET CANADA PHARMACY CORP., TARGET CANADA PHARMACY (SK) CORP. AND TARGET CANADA PROPERTY LLC.**

BEFORE: Regional Senior Justice Morawetz

COUNSEL: *J. Swartz* and *Dina Milivojevic*, for the Target Corporation

Jeremy Dacks, for the Target Canada Entities

Susan Philpott, for the Employees

Richard Swan and *S. Richard Orzy*, for Rio Can Management Inc. and KingSett Capital Inc.

Jay Carfagnini and *Alan Mark*, for Alvarez & Marsal, Monitor

Jeff Carhart, for Ginsey Industries

Lauren Epstein, for the Trustee of the Employee Trust

Lou Brzezinski and Alexandra Teodescu, for Nintendo of Canada Limited, Universal Studios, Thyssenkrupp Elevator (Canada) Limited, United Cleaning Services, RPJ Consulting Inc., Blue Vista, Farmer Brothers, East End Project, Trans Source, E One Entertainment, Foxy Originals

Linda Galessiere, for Various Landlords

ENDORSEMENT

[1] Alvarez & Marsal Canada Inc., in its capacity as Monitor of the Applicants (the "Monitor") seeks approval of Monitor's Reports 3-18, together with the Monitor's activities set out in each of those Reports.

[2] Such a request is not unusual. A practice has developed in proceedings under the Companies' Creditors Arrangement Act ("CCAA") whereby the Monitor will routinely bring a

motion for such approval. In most cases, there is no opposition to such requests, and the relief is routinely granted.

[3] Such is not the case in this matter.

[4] The requested relief is opposed by Rio Can Management Inc. ("Rio Can") and KingSett Capital Inc. ("KingSett"), two landlords of the Applicants (the "Target Canada Estates"). The position of these landlords was supported by Mr. Brzezinski on behalf of his client group and as agent for Mr. Solmon, who acts for ISSI Inc., as well as Ms. Galessiere, acting on behalf of another group of landlords.

[5] The essence of the opposition is that the request of the Monitor to obtain approval of its activities – particularly in these liquidation proceedings – is both premature and unnecessary and that providing such approval, in the absence of full and complete disclosure of all of the underlying facts, would be unfair to the creditors, especially if doing so might in future be asserted and relied upon by the Applicants, or any other party, seeking to limit or prejudice the rights of creditors or any steps they may wish to take.

[6] Further, the objecting parties submit that the requested relief is unnecessary, as the Monitor has the full protections provided to it in the Initial Order and subsequent orders, and under the CCAA.

[7] Alternatively, the objecting parties submit that if such approval is to be granted, it should be specifically limited by the following words:

> "provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval."

[8] The CCAA mandates the appointment of a monitor to monitor the business and financial affairs of the company (section 11.7).

[9] The duties and functions of the monitor are set forth in Section 23(1). Section 23(2) provides a degree of protection to the monitor. The section reads as follows:

> (2) Monitor not liable – if the monitor acts in good faith and takes reasonable care in preparing the report referred to in any of paragraphs (1)(b) to (d.1), the monitor is not liable for loss or damage to any person resulting from that person's reliance on the report.

[10] Paragraphs 1(b) to (d.1) primarily relate to review and reporting issues on specific business and financial affairs of the debtor.

[11] In addition, paragraph 51 of the Amended and Restated Order provides that:

of a Monitor's report in these circumstances. (See: *Toronto Dominion Bank v. Preston Spring Gardens Inc.*, [2006] O.J. No. 1834 (SCJ Comm. List); *Toronto Dominion Bank v. Preston Spring Gardens Inc.*, 2007 ONCA 145 and *Bank of America Canada v. Willann Investments Limited*, [1993] O.J. No. 3039 (SCJ Gen. Div.)).

[20] The foregoing must be contrasted with the current scenario, where the Monitor seeks a general approval of its Reports. The Monitor has in its various reports provided commentary, some based on its own observations and work product and some based on information provided to it by the Applicant or other stakeholders. Certain aspects of the information provided by the Monitor has not been scrutinized or challenged in any formal sense. In addition, for the most part, no fact-finding process has been undertaken by the court.

[21] In circumstances where the Monitor is requesting approval of its reports and activities in a general sense, it seems to me that caution should be exercised so as to avoid a broad application of res judicata and related doctrines. The benefit of any such approval of the Monitor's reports and its activities should be limited to the Monitor itself. To the extent that approvals are provided, the effect of such approvals should not extend to the Applicant or other third parties.

[22] I recognized there are good policy and practical reasons for the court to approve of Monitor's activities and providing a level of protection for Monitors during the CCAA process. These reasons are set out in paragraph [12] above. However, in my view, the protection should be limited to the Monitor in the manner suggested by counsel to Rio Can and KingSett.

[23] By proceeding in this manner, Court approval serves the purposes set out by the Monitor above. Specifically, Court approval:

(a) allows the Monitor to move forward with the next steps in the CCAA proceedings;

(b) brings the Monitor's activities before the Court;

(c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified,

(d) enables the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners;

(e) provides protection for the Monitor not otherwise provided by the CCAA; and

(f) protects the creditors from the delay and distribution that would be caused by:

(i) re-litigation of steps taken to date, and

(ii) potential indemnity claims by the Monitor.

[24] By limiting the effect of the approval, the concerns of the objecting parties are addressed as the approval of Monitor's activities do not constitute approval of the activities of parties other than the Monitor.

[25] Further, limiting the effect of the approval does not impact on prior court orders which have approved other aspects of these CCAA proceedings, including the sales process and asset sales.

[26] The Monitor's Reports 3-18 are approved, but the approval the limited by the inclusion of the wording provided by counsel to Rio Can and KingSett, referenced at paragraph [7].

_____

Regional Senior Justice G.B. Morawetz

Date: December 11, 2015

TAB 12

CITATION: Hanfeng Evergreen Inc., (Re), 2017 ONSC 7161
COURT FILE NO.: CV-14-10667-00CL
DATE: 20171130

ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. c.C.43 (as amended)

AND IN THE MATTER OF HANFENG EVERGREEN INC.

Applicant

BEFORE: F.L. Myers J.

COUNSEL: *Daniel S. Murdoch and Haddon Murray,* counsel for Ernst & Young Inc., receiver
David C. Moore and Karen M. Mitchell, counsel for the Lei Lo and Xinduo Yu

HEARD: November 20, 2017

ENDORSEMENT

[1] Ernst & Young Inc. moves for approval of its activities as receiver and manager of Hanfeng Evergreen Inc. as described in the Supplement to its First Report, its Fourth Report, and its Fifth Report. It also seeks approval of its fees and disbursements including the fees and disbursements of its counsel here and abroad.

[2] Xinduo Yu, the founder and former CEO of Henfeng Evergreen Inc. and his spouse Lei Li oppose the approval of the receiver's reports at this time. They seek, at minimum, the imposition of conditions to protect their positions in separate litigation that the receiver has brought against them. They also argue that the receiver has failed or refused to deliver sufficient evidence to support its claim for approval of its fees and disbursements. They invite the court to require the receiver to engage in a document disclosure process so as to create a sufficient factual record on which they can make submissions and the court can meaningfully assess the fees and disbursements of the receiver and its counsel.

[3] For the reasons that follow the receiver's motion is granted on the terms set out below.

Brief Background

[4] Hanfeng Evergreen Inc. is an Ontario public corporation. Henfeng was a financing vehicle to raise money from investors who were interested in investing in the fertilizer business operated by a subsidiary in the People's Republic of China. By 2014, Henfeng's sole operations were limited to the fertilizer business.

is properly counted among the funds realized by the receiver. The purchaser has appealed from that decision however and the further appeal is pending.

[14] In this receivership proceeding, Mr. Yu is concerned to ensure that the receiver does not consume the deposit on its own fees and disbursements in case it is required to return the deposit to the purchaser by the ultimate appeal court in China. If the purchaser succeeds in China, there may be a priorities dispute between the purchaser and the receiver over which has a better claim to the deposit funds in the receiver's hands. In any event, Mr. Yu argues that as guarantor of the return of the deposit, he has an interest in protecting the deposit in the receiver's hands and in minimizing or delaying the receiver's use of the deposit to pay its fees and disbursements until the Chinese litigation ends.

Approval of the Receiver's Activities

[15] In *Target Canada Co. (Re)*, 2015 ONSC 7574 (CanLII), Morawetz RSJ discussed the process for approval of the reports of a court officer. In that case the court dealt with a Monitor under the CCAA. The same principles apply in a receivership in my view.

[16] In *Target*, Morawetz RSJ recognized that the effect of the approval of the reports of a court officer varies with the context. Where a report is delivered for a specific purpose, such as a sale transaction, express findings of fact may be required to support the relief being sought. An affidavit may be delivered to support the findings or not. In either case, the court is called up to address squarely specific facts and to make specific findings that will be binding in future.

[17] However, the context of a general approval of activities, such as the motion that is currently before me, is different. As discussed by Morawetz RSJ:

> [20] The Monitor has in its various reports provided commentary, some based on its own observations and work product and some based on information provided to it by the Applicant or other stakeholders. Certain aspects of the information provided by the Monitor has not been scrutinized or challenged in any formal sense. In addition, for the most part, no fact-finding process has been undertaken by the court.
>
> [21] In circumstances where the Monitor is requesting approval of its reports and activities in a general sense, it seems to me that caution should be exercised so as to avoid a broad application of res judicata and related doctrines. The benefit of any such approval of the Monitor's reports and its activities should be limited to the Monitor itself. To the extent that approvals are provided, the effect of such approvals should not extend to the Applicant or other third parties.
>
> [22] I recognized there are good policy and practical reasons for the court to approve of Monitor's activities and providing a level of protection for Monitors during the CCAA process. These reasons are set out in paragraph [12] above. However, in my view, the protection should be limited to the Monitor in the manner suggested by counsel to Rio Can and KingSett.

Court File No: CV-24-0095337-0000

DUCA FINANCIAL SERVICES CREDIT UNION LTD. Applicant	-and-	ASHCROFT HOMES – 101 RICHMOND ROAD INC., ASHCROFT HOMES – 108 RICHMOND ROAD INC., and ASHCROFT HOMES – 111 RICHMOND ROAD INC. Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT OTTAWA

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