COURT FILE NO.: CV-24-00000693-0000
DATE: 20260212

SUPERIOR COURT OF JUSTICE – ONTARIO
IN THE MATTER OF SECTION 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, C. B-3 and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43.

RE: Royal Bank of Canada, Applicant

AND

2162538 Ontario Inc. and 2202227 Ontario inc., Respondents

BEFORE: Justice Spencer Nicholson

APPEARANCES: B. McRadu (D. Flett (non-lawyer)) for the Receiver, BDO Canada Limited

V. Adams and T. Hogan for Royal Bank of Canada

No one appearing for the Respondents

No one appearing for the City of London

D. Marcovitch (observing) for Olympia Trust

HEARD: January 23 and February 12, 2026

REASONS ON MOTION FOR COURT APPROVAL OF SALE UNDER RECEIVERSHIP ORDER

NICHOLSON J.:

Nature of the Motion:

[1] BDO Canada Limited ("BDO") has been appointed Receiver by the Court, pursuant to an order of McArthur J. dated March 22, 2024, in respect of the Respondent 2202227 Ontario Inc.("the Debtor").

[2] BDO applies for an Approval and Vesting Order in respect of the sale of a certain property located in the City of London. BDO also seeks an Order approving the Second Report of the Receiver dated December 31, 2025 and the Confidential Supplement to the Second Report dated December 31, 2025, as well as a sealing order in respect of that Confidential Supplement. Additionally, BDO seeks approval of its Statement of Receipts and Disbursements for the period March 22, 2024 to December 15, 2025, its accounts for fees, and the fees and disbursements of its

legal counsel. Lastly, BDO seeks authorization to distribute funds to the CRA for unpaid taxes owing and then the secured creditor, RBC.

[3] The Creditor, Royal Bank supports the Receiver's position. No one appeared for the Debtor. Olympia Trust is another creditor, ranking behind the Royal Bank. After the initial hearing on January 23, 2026, it was determined that, through inadvertence, Olympia Trust had not been served with the application. The matter was adjourned to February 12, 2026 to give Olympia Trust an opportunity to take a position. Mr. Marcovitch attended today, but made no submissions on behalf of Olympia. I note that some individual investors with Olympia attended and I accept, although no evidence was filed, that this proposed transaction will result in losses to Olympia investors.

[4] The subject property is located at 252 Dundas Street in London, Ontario. It is a downtown, heritage designated, mixed-use commercial building which up until December 2025 housed a restaurant on the main level and shared common area residential tenants on the second and third floors.

[5] On August 9, 2024, Carnegie J. granted a Listing Approval Order which approved a form of agreement of purchase and sale for the subject property and authorized BDO to enter into a listing agreement with Colliers Southwestern Ontario for the sale of the property at an initial listing price of $1,150,000.

[6] The material provided with the Application details BDO's efforts with respect to both a Phase I and Phase II environmental assessment. The material also details the difficulties that the Receiver had with respect to the residential tenancies, the collection of rent and the eviction process of those tenants for non-payment of rent. As of November 4, 2025, all of the residential tenants had been evicted.

[7] The tenant occupying the space as a restaurant continued to operate pursuant to a lease until June 1, 2025. Although that restaurant lease was assigned on consent, no new restaurant was ever opened. Rent was collected from the former lessee through September 2025 and will be pursued through to the termination of the lease in December.

[8] The material submitted sets out the efforts to market and sell the property, with an initial listing price of $1,150,000. The property was listed starting May 12, 2025. The listing price was reduced to $950,000 on August 28, 2025 due to a dearth of reasonable offers received for the property.

[9] The Debtor submitted two offers to redeem RBC's security but they were rejected by BDO as they were insufficient to fully satisfy the indebtedness of RBC and did not address the fees associated with the receivership.

[10] On December 12, 2025, through its legal counsel, the Debtor advised BDO's counsel that it had arranged a potential purchaser who was prepared to exceed the offer submitted by the Purchaser. It is noted that the Purchaser's offer had never been disclosed to the debtor.

[11] The Purchaser's offer was submitted on November 21, 2025 and is contained in the Confidential Supplement to the Second Report, which shall be sealed as set out below. There were some ongoing negotiations between BDO and the Purchaser and on December 4, 2025, an APS was entered into pending court approval.

[12] The day prior to the second return date, February 12, 2026, an offer was submitted that contained several conditions but would exceed the offer made by the Purchaser. Those conditions were removed before the hearing on February 12, 2026. Notwithstanding that this was a higher offer, the Receiver deemed it unacceptable, primarily because it had come in so late.

[13] The property, through November 24, 2025 was listed for sale for 196 days, with 6 confidentiality agreements signed, 3 showings and 3 offers received.

[14] Accordingly, BDO is of the view that the property was appropriately exposed to the relevant marketplace and that the transaction represents fair market value for the property. RBC supports the transaction. As noted, Olympia made no formal objection, but it is clear that individual Olympia investors opposed the transaction.

[15] The closing is scheduled for 7 business days' following court approval.

Legal Analysis—Court Approval:

[16] The leading case is *Royal Bank of Canada v. Soundair Corp*., 1991 CanLII 2727 (ON CA). Galligan J.A., noted therein that the sale of the airline in that case was a very complex process and the best method of selling an airline at the best price was "something far removed from the expertise of a court". Thus:

> "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 viewed in the light of the specific mandate given to him by the court."

[17] Galligan J.A., then set out the duties of the court in deciding whether a receiver is acting properly when selling a property, 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.

Sufficient Effort and Improvident Sale:

[18] The Confidential Supplement describes the marketing efforts with respect to the property, as does the Second Report from BDO. I am satisfied that the Receiver exposed the property to the market at large and that there was simply little interest garnered, at least until the very last minute. I also accept that the difficulties with the tenancies negatively impacted the ability to market the property.

[19] In *Soundair*, Galligan J.A. quoted from *Cameron v. Bank of Nova Scotia* (1981), 1981 CanLII 4762 (NS CA), 38 C.B.R. (N.S.) 1, 45 N.S.R. (2d) 303 (C.A.), at p. 11, per MacDonald J.A., as follows:

> In my opinion if the decision of the receiver to enter into an agreement of sale, subject to court approval, with respect to certain assets is reasonable and sound under the circumstances at the time existing it should not be set aside simply because a later and higher bid is made. To do so would literally create chaos in the commercial world and receivers and purchasers would never be sure they had a binding agreement.

[20] *Soundair* had some factual similarity to the case before me given the Debtor's indication that it had a buyer willing to exceed the Purchaser's (undisclosed) offer and then the late submission of a higher offer. The Court of Appeal noted that the subsequent offer for the airline in that case, at a higher price, "is relevant only if it shows that the price obtained by the Receiver in the OEL offer was not a reasonable one". Accordingly, unless the disparity between offers is so great as to call into question the adequacy of the mechanism which had produced the offer, the 11th hour offer adds little to the issue before me. Of course, the mystery offer that the Debtors referred to cannot be taken into consideration because it has not been disclosed.

[21] In any event, the higher offer that has now been received does not make the Purchaser's offer unreasonable. As noted in *Soundair*, to allow the Debtor to thwart a good faith bargain entered into between the Purchaser and the Receiver after the expense and time expended on negotiations would be unfair to the Purchaser.

[22] The 11th hour offer, or an earlier offer that might have been presented by an undisclosed buyer arranged by the Debtor, is, in my view, too late and, while perhaps higher. I also consider that it is difficult to determine if it is a "substantially higher bid" given the expenses that would likely be incurred during the extended closing.

[23] I have reviewed the appraisals contained in the Confidential Supplement. I do not accept one appraisal over the other, but take note of the range. I also accept the explanations in the report for why the lower appraisal is likely more reflective of the current condition of the property and surrounding area. I have also considered the summary of comparable listings and sales.

[24] I note the other earlier offers that were made on the property. The Debtors communicated offers are disclosed. I do not find the proposed purchase price to be improvident. Here, the Receiver received no competing offer that suggests that the proposed purchase price to the Purchaser is improvident. Rather, I find that the proposed purchase price is commercially reasonable.

Interests of All Parties:

[25] In considering the interests of the various parties, *Soundair* makes it clear that while the primary interest is that of the creditors, "it is not the only or overriding consideration".

[26] As noted, I accept that other investors from the Olympia Group will be negatively impacted by this sale, as their interests will not be fully satisfied. Lenders who are in a subservient position to a secured creditor accept the risks associated with that position. While the investors' losses are unfortunate, I am satisfied that Olympia had ample opportunity over the nearly six months that the property was for sale to tender a competitive offer but did not do so. There is no explanation offered for their late entry into the bidding process.

[27] *Soundair* indicates that the interests of the debtor should also be considered. However, the Debtor did not attend the hearing of the application. I have already rejected that the price is improvident.

[28] *Soundair* also stated that the interests of the purchaser should be considered. The Purchaser bargained at some length and expense with the Receiver and should not be required to either extend its closing or engage in a further bidding war for the property. There was no concrete competing offer put forward until the very last minute and I find that the Purchaser should not be required to reopen the bidding. Commercial certainty requires that the Court respect good faith negotiations entered into between court appointed receivers and arm's length purchasers.

[29] The interests of the parties do not militate against approving the sale.

The Efficacy and Integrity of the Process:

[30] I have reviewed the Confidential Supplement. The Purchaser is at arm's length and there is no suggestion that the Purchaser is acting with anything but good faith.

[31] As noted, the report describes other offers that were made in respect of the property. I also find that the property was on the market for a reasonable period of time, over 6 months, and was adequately marketed. Certainly no prospective buyers were excluded from the process.

[32] Galligan J.A., in *Soundair*, noted that the court must exercise extreme caution before it interferes with the process adopted by a receiver to sell an asset. "It is important that prospective purchasers know that, if they are acting in good faith, bargain seriously with a receiver and enter into an agreement with it, a court will not lightly interfere with the commercial judgment of the receiver to sell the asset to them".

[33] I have no concerns with respect to the process by which the Property was offered to the market and ultimately sold to the Purchaser.

Was there Unfairness in the Process?:

[34] I am not persuaded that there was any unfairness in the process. As noted, the Debtor had an opportunity and did make two offers with respect to the property that were inadequate. The last minute offer was simply too late given the amount of time that the property was on the market. I also note that the Debtor and Olympia Trust had legal counsel who were in communication with BDO.

Sealing Order:

[35] The importance of the "open court principle", is discussed, for example, in *Sherman Estate v. Donovan*, 2021 SCC 25, [2021] 2 SCR 75.

[36] Court proceedings are presumptively open to the public and court openness is protected by the constitutional guarantee of freedom of expression and is essential to the proper functioning of Canadian democracy (*Sherman*, at para. 1). However, exceptional circumstances do arise where competing interests justify a restriction on the open court principle. In order to infringe on the open court principle, for example, by granting a sealing order, the court must be satisfied that openness presents a serious risk to a competing interest of public importance.

[37] In *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 SCR 522, the Supreme Court of Canada recognized that a commercial interest can be sufficient to justify a confidentiality order.

[38] It is my view that a sealing order, limited in temporal scope, is appropriate in the context of the circumstances before me, with respect to the Receiver's Confidential Supplement.

[39] To permit the court to examine the propriety of the proposed sale, the court must be privy to the offers that have been made on the subject property, including the offer under consideration. However, disclosure of that offer carries a risk of tainting the market in respect of the property in the event that the court does not approve the sale, or the sale falls through.

[40] I note that, like *Sierra Club*, the parties to this proceeding treated the information as confidential.

[41] A sealing order is proportionate, in my view, if it expires at the closing of the transaction involving the property or upon further order of the court. Further, there are no reasonably alternative measures to granting this order.

[42] Accordingly, I grant a temporary sealing order in respect of the Confidential Supplement to the First Report of the Receiver, which expires upon further order of the Court, or the closing

of the agreement of purchase and sale of the Real Property located at 252 Dundas Street, London, Ontario, whichever occurs first.

Disposition:

[43] For the foregoing reasons, I approve the sale of the property to the Purchaser on the terms as set out in their Agreement of Purchase and Sale.

[44] I have reviewed the reports of the Receiver. I am satisfied that the Reports and the conduct and activities of the Receiver are appropriate, are reasonable and are consistent with the duties imposed by the Receivership Order. I therefore approve the reports.

[45] I have also reviewed the fees proposed by the Receiver. I received no objections during the hearing with respect to those fees and I find them to be reasonable. The Receiver's fees, including legal fees incurred, are hereby approved, including the estimate of future fees.

[46] I have executed the Approval and Vesting Order and Administration Order, accordingly.

Justice Spencer Nicholson

Date: February 12, 2026