



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-25-00742866-00CL

HEARING DATE: June 6, 2025

CV-25-00743191-00CL

NO. ON LIST: 1 & 2

**TITLE OF PROCEEDING:**

Fiera Canadian Real Estate Debt Fund GP Inc. et al. v. Oxford Developments 4 Inc. et al.

Fiera Canadian Real Estate Debt Fund GP Inc. et al. v. 2250310 Ontario Inc. et al.

**BEFORE: JUSTICE KIMMEL**

**PARTICIPANT INFORMATION**

**For Applicants:**

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**For Other:**

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## **ENDORSEMENT OF JUSTICE KIMMEL:**

- [1] Fiera Canadian Real Estate Debt Fund GP Inc. and Fiera FP Real Estate Financing Fund LP (collectively, the “Applicants”) seek Orders 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”):
- a. appointing TDB Advisory Limited (“TDB”) as receiver and manager, without security, of all of the assets, undertakings and property of Oxford Road Developments 4 Inc. (the “Oxford”), including the real property located on Oxford Road and Somme Street identified in the Notice of Application (in court file CV-25-00742866-00CL) and all other property, assets and undertakings relating thereto, or acquired for, or used in relation to a business carried on by Oxford; and
  - b. appointing BDO Canada Limited (“BDO” or the “Receiver”) as the receiver and manager (in court file CV-25-00743191-00CL), without security, of all of the assets, undertakings and property of 2250310 Ontario Inc. (“225 Ontario”) and P&H Development Holdings Inc. (“P&H”), including the real Property municipally known as 270 Sheppard Avenue West, Toronto, Ontario (“270 Sheppard”) and 5 Addington Avenue, Toronto, Ontario (“5 Addington”), and all other property, assets and undertakings relating thereto, acquired for, or used in relation to a business carried on by 225 Ontario and P&H,
- Oxford, 225 Ontario and P&H being collectively referred to as the “Debtors” or the “Respondents”.
- [2] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Notices of Application in each court file number, respectively.
- [3] An agreement was reached at the last return of these receivership applications that is reflected in the court’s endorsement of May 30, 2025. The participating parties were directed to appear today with their proposed consent orders appointing a receiver that reflect the conditions that they have agreed to. They did so.
- [4] The court requested one change to the proposed orders, in which the portion of the applications seeking judgment on certain guarantees is being adjourned on consent *sine die*. The court observed that it remains to be determined, if and when that relief is brought back on, the manner in which it would be adjudicated, whether by motion or some other procedure. That will remain subject to the court’s direction at a scheduling conference to be arranged if appropriate. The Applicants will also be responsible for arranging for the dismissal or discontinuance of this remaining relief in their applications if they determine not to proceed with it.

- [5] The court also noted, in relation to the paragraph in each of the proposed orders dealing with the possibility that the Debtors' might bring an application under the CCAA, that this does not circumvent the required steps for scheduling a CCAA initial application and comeback hearing dates through the Commercial List Office. Those dates must be canvassed with the scheduling office at least one week in advance of when it is expected the applicants will be ready to deliver their application record and factum, and the CCAA applicants must be prepared to commit to do so and have their materials into the court in advance of the date that they are seeking for the initial order.
- [6] Particularly in a situation such as this where the entire service list is expected to be served with any CCAA application, it should not be served at the last minute, as it is important that all interested parties have the opportunity to respond and put their positions and supporting material before the court prior to the hearing. A copy of this endorsement shall be provided and referred to with any future CCAA scheduling request.
- [7] In terms of the other aspects of these receivership orders that the Applicants and Debtors are consenting to, I am satisfied that it is just and convenient to appoint the BDO and TDB as the receivers in the two applications, respectively. The test to appoint a receiver under section 101 of the CJA and section 243(1) of the BIA is whether it would be just or convenient to do so. In assessing whether it is just and convenient to appoint a receiver, the question is whether it is more in the interests of all concerned to have the receiver appointed or not.
- [8] When there is a contractual power of appointment, the court assesses "the potential costs, the relationship between the debtor and the creditors, the likelihood of maximizing the return on and preserving the subject property and the best way of facilitating the work and duties of the [Receiver]. See: *Royal Bank of Canada v. CENDRS Inc.*, 2017 ONSC 7661, at para. 9, citing *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CanLII 8258 (Ont. Gen Div.), at para, 12.
- [9] The service list was on notice of the orders sought and no other stakeholder raised any concerns or objected to the orders. The general provisions of the orders are consistent with the Commercial List Model Receivership Order.
- [10] BDO has prepared a pre-filing report dated May 24, 2025 in which it recommends that the court pre-approve a Sale Process in respect of the Toronto properties already under development that are owned by 225 Ontario and P&H (the "Sale Process"). For the Woodstock properties owned by Oxford, TBD expects to come back to court once it is in a position to make recommendations.
- [11] While not typical, it is not unheard of for a Sale Process to be approved at the time of the appointment of a receiver, when the circumstances warrant it. In this case, albeit subject to the agreement of the applicants and respondents that the marketing and listing will not start until after July 15, 2025 to allow the Debtors to bring their CCAA application, BDO

recommends that the court approve its proposed Sale Process for the Toronto properties now so that the first preliminary step can be taken and so that it will be ready to proceed with it in mid-July 2025 if there is no CCAA proceeding that overtakes the receivership.

- [12] The reasonableness and adequacy of a Sale Process that the court is being asked to approve in advance is assessed only at a high level at this stage, but with regard to the same factors that a court will eventually take into account when considering the approval of a proposed sale (see also *CCM Master Qualified Fund Ltd. v. blutip Power Technologies Ltd.*, 2012 ONSC 1750, at para. 6). BDO has provided the justification for the court's pre-approval of the Sale Process in its Pre-Filing Report, which explains why the Sale Process is a fair, reasonable and commercially efficient process that would allow for a sufficient opportunity to optimize the chances of securing the best possible price for the Property for the benefit of all creditors and other stakeholders of the Debtors. The Debtors have agreed to the Sale Process, subject only to the prospect of a CCAA proceeding overtaking it.
- [13] Notably, any transaction arising out of the Sale Process will still be subject to court approval, on notice to the Debtors, other secured creditors and any other participating stakeholders. At that time, the court will still need to be satisfied in respect of any proposed transaction coming out of the Sale Process that the test for the approval of the transaction has been met, having regard to the factors identified by the Court of Appeal in *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727.
- [14] Accordingly, I have signed the consent orders both dated and effective June 6, 2025.



KIMMEL J.  
June 9, 2025