



SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00723987-00CL

DATE: August 5, 2025

NO. ON LIST: 3

TITLE OF PROCEEDING:

**National Bank of Canada vs. Commcache Asset Management Inc. / 52 Lacroix Inc. /
BDO Canada Limited**

BEFORE: Justice J. Dietrich

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Sara-Ann Wilson, Counsel	BDO Canada Limited, The Receiver	Sara.wilson@dentons.com
Birpal Benipal, Counsel		Birpal.benipal@dentons.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Adam Boettger, Receiver	BDO Canada Limited, Receiver of Commcache Asset Management Inc.	aboettger@bdo.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE J. DIETRICH:

Introduction

[1] BDO Canada Limited (“**BDO**”), in its capacity as the court-appointed receiver (the “**Receiver**”) of certain assets, undertakings and properties (the “**Property**”) of Commcache Asset Management Inc. (“**Commcache**”) and 52 Lacroix Inc. (“**52 Lacroix**”) seeks:

- a. an Approval and Vesting Order, among other things, approving the sale transaction (“**Transaction**”) contemplated by the Agreement of Purchase and Sale, dated July 9, 2025 (the “**Sale Agreement**”), between the Receiver and Sudbury Rentals Limited (the “**Purchaser**”), and vesting Commcache’s right, title and interest to the Hartman Property (as defined below) in and to the Purchaser;
- b. approving the proposed interim distributions to the National Bank of Canada (“**National Bank**”), the first mortgagee on the Hartman Property and the King Street Property (as defined below);
- c. approving the fees and disbursements of the Receiver and its counsel, as detailed in the Third Report to the Court dated July 24, 2025 (the “**Third Report**”); and
- d. sealing the Confidential Appendices to the Third Report.

[2] The relief requested by the Receiver is not opposed.

[3] Defined terms used by not defined herein have the meaning provided for them in the factum of the Receiver filed on this motion.

Background

[4] Upon the application of National Bank, by Order of Justice Conway dated August 14, 2024 (the “**Receivership Order**”), BDO was appointed as the Receiver of the Property.

[5] At the date of the Receivership Order, the Property consisted primarily of five residential, multi-plex apartment buildings located in various cities in Ontario, two of the buildings have been sold including the King Street Property and another has been refinanced.

[6] What remains is (i) a 2.5-story, 12-unit apartment building located at the municipal address 45 Hartman Avenue, Sudbury, ON (the “**Hartman Property**”); and (ii) a 3.5-story, 18-unit apartment building located at the municipal address 800 Howard Avenue and 581 Cataraqui, Windsor, Ontario.

[7] The Hartman Property is in need of substantial repairs, including a complete roof replacement and the remediation of significant mold and ceiling damage in certain units. Only four of the 12 units are currently occupied. The Receiver attempted to address these repairs prior to listing the property for sale. However, when it became apparent that the issues with the property and the costs of repairs were greater than originally contemplated, the Receiver determined that in order to prevent potential further deterioration to National Bank’s recovery, it would be prudent to list the Hartman Property for sale.

[8] The Receiver solicited listing proposals from three realty listing brokerages and on June 19, 2025, engaged Royal LePage North Heritage Brokerage (“**Royal LePage**”) as the listing agent for the Hartman Property. The marketing of the Hartman Property commenced on or about June 23, 2025 and was conducted over an approximately 2-week period.

[9] Over that period, thirty-three interested parties conducted site visits, and thirteen offers were received for the Hartman Property. At the request of Royal LePage, seven offerors presented revised “best and final offers”.

[10] The Receiver reviewed the offers and entered into the Sale Agreement with the Purchaser, which represented the highest purchase price among all the offers received. The Sale Agreement contains standard limited conditions to closing for a receivership sale.

Issues

[11] The issues to be addressed are whether the Court should:

- a. grant the Approval and Vesting Order in respect of the Hartman Property;
- b. approve the interim distributions of the sale proceeds of the Hartman Property and the King Street Property;
- c. approve the fees of the Receiver and its counsel; and
- d. grant a sealing order in respect of the confidential appendices to the Third Report?

Analysis

[12] The principles to be applied when determining whether to approve a sale transaction were articulated by the Ontario Court of Appeal in *Royal Bank of Canada v Soundair Corp.* (“**Soundair**”): (a) whether the receiver has made sufficient effort to obtain the best price and has not acted improvidently; (b) the efficacy and integrity of the process by which offers have been obtained; (c) whether the interests of all parties have been considered; and (d) whether there has been unfairness in the working out of the process.

[13] I am satisfied that the *Soundair* principles have been met.

[14] The Receiver retained Royal LePage to list the Hartman Property for sale. Royal LePage broadly marketed the Hartman Property for approximately two weeks. The marketing process led by Royal LePage included the following: advertising the Hartman Property as available for sale on multiple listing service (MLS) boards, specifically with associations in Sudbury regional real estate boards; advertising the Hartman Property for sale on the local and national websites of Royal LePage; advertising the Hartman Property as available for sale on social media forums relating to real estate advertising and investment; directly contacting potential interested parties to solicit interest in the Hartman Property; and coordinating 33 site visits with interested parties.

[15] Although a two-week period is not lengthy, the marketing efforts resulted in thirteen offers for the Hartman Property. The Receiver instructed Royal LePage to request that all thirteen offerors provide an offer which they consider to be their “best and final offer” by July 9, 2025.

[16] Ultimately, seven offerors presented revised “best and final offers” to the Receiver, which elicited offers higher in cash consideration than their respective initial offers. The Receiver ultimately accepted the offer from the Purchaser, which represented the highest purchase price among all the offers received.

[17] National Bank, the first mortgagee, supports the Transaction even though it is expected to suffer a shortfall in recovery of its indebtedness in relation to the Hartman Property.

[18] The Receiver is of the view that based on the marketing efforts and the seven “best and final” offers received, it is unlikely that additional marketing efforts would result in an offer that would repay National Bank in full.

[19] The terms of the Transaction are typical for a sale by a receiver with respect to real property, and pursuant to the terms of the Sale Agreement, the Purchaser will assume all of the remaining leases/tenants of the Hartman Property.

[20] Accordingly, the Transaction is approved.

[21] The Receiver also seeks authority to make an interim distribution of the anticipated sale net proceeds from the Transaction to National Bank, as the first mortgagee. As well, pursuant to the Order of Justice Steele, dated April 15, 2025, the Court authorized the Receiver to make an interim distribution of the net sale proceeds of the King Street Property to National Bank, first mortgagee on the King Street Property. The Receiver maintained a reserve, and now seeks authority to make a further interim distribution to National Bank in the amount of \$100,000 out of the remaining net sale proceeds from the King Street Property.

[22] Although there are property tax arrears on the Hartman Property, the Receiver advises that it intends to pay those amounts from the sale proceeds at the time the Hartman Property is sold. The Receiver is not aware of any other security interests, liens, charges, encumbrances or other rights of third parties that would have priority over National Bank with respect to the Hartman Property or the proceeds therefrom.

[23] The Receiver's counsel has conducted a review of the security granted by the Debtors in favour of National Bank and, subject to customary qualifications, assumptions and limitations included therein, is of the opinion that the security granted by Commcache in favour of National Bank under Ontario law is valid and enforceable in accordance with its terms.

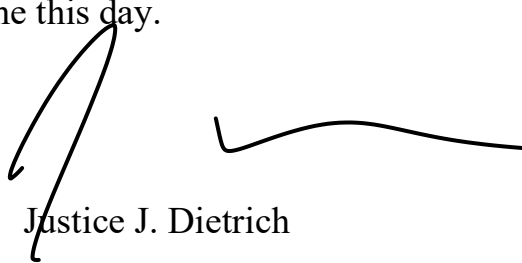
[24] Accordingly, the proposed distributions are approved.

[25] The Receiver also seeks approval of the fees and disbursements of itself and its legal counsel as set out in the Third Report. In this respect, this Court does not undertake a line-by-line analysis of the invoices. Rather, the guiding principles on fee approvals of this nature are whether the fees are fair, reasonable, and proportionate given the value of the Property and liabilities as well as the complexity of the Proceeding. In considering these guiding principles, the fees of the Receiver and its counsel are appropriate and are approved.

[26] The receiver also seeks a sealing order with respect to the Confidential Appendices to the Third Report until the closing of the Transaction or further order of the Court. The limited sealing order being sought is necessary to preserve the Receiver's ability to maximize the value of the property in the event of the Transaction does not close. I am satisfied that the requested sealing order for the Confidential Appendices to the Third Report meets the test in *Sherman Estate v. Donovan* 2021 SCC 25 at para 38 and that disclosure of this information would pose a risk to the public interest in enabling stakeholders of a company in receivership to maximize the realization of assets. I direct counsel for the receiver to file a hard copy of the confidential appendices with the Commercial List Office in a sealed envelope with a copy of the relevant order and this endorsement.

Disposition

[27] Orders to go in the form signed by me this day.

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line with a small hook at the end.

August 5, 2025

Justice J. Dietrich