

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

**ROYAL BANK OF CANADA**

Plaintiff

- and -

**1818216 ONTARIO INC., OPERATING AS RAVI KITCHEN AND RAVI  
WRAPS AND SALADS, RAVI SOUPS AND WRAPS INC., 1865994  
ONTARIO INC. AND THARMINI KANDASAMY**

Defendants

**FACTUM OF THE RECEIVER**

December 2, 2024

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TO: **SERVICE LIST**

## PART I - NATURE OF THE MOTION

1. Pursuant to an Order of the Honourable Justice Black of the Ontario Superior Court of Justice (the "**Court**"), dated March 6, 2024 (the "**Appointment Order**"), BDO Canada Limited ("**BDO**") was appointed as receiver and manager (in such capacities, the "**Receiver**") without security, of all the assets, undertakings, and properties (collectively, the "**Property**") of 1818216 Ontario Inc. operating as Ravi Kitchen and Ravi Wraps and Salads (the "**Debtor**"), pursuant to an Application made by the Royal Bank of Canada ("**RBC**").<sup>1</sup>

2. The Receiver seeks:

- (a) An ancillary order ("**Ancillary Order**") which provides amongst other things, approval of the Third Report of the Receiver dated November 27, 2024 ("**Third Report**") and the actions of the Receiver as described therein, approving the fees and disbursements of the Receiver and its counsel, and approving an interim distribution from the sale proceeds of the Coronet Road Property (defined below).

## PART II - SUMMARY OF FACTS

### A. Background

4. The Debtor is the registered owner of the following commercial condominium properties:

- (a) 2855 Markham Road, Units 101 & 102, Toronto, Ontario, (the "**Markham Road Property**"); and
- (b) 27 Coronet Road, Unit 17, Etobicoke, Ontario (the "**Coronet Road Property**").<sup>2</sup>

5. The Markham Road Property and the Coronet Road Property (collectively the "**Real Property**") are subject to various mortgage charges and liens.<sup>3</sup>

6. The Receiver obtained an order approving, amongst other things, a sales process to market both the Coronet Road and Markham Road Properties (the "**Sales Process and Sealing**").

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<sup>1</sup> Appointment Order dated March 6, 2024, attached as Appendix "A" to Third Report of the Receiver dated November 27, 2024 ("**Third Report**"), Motion Record of the Receiver dated November 27, 2024, Tab 2.

<sup>2</sup> Third Report at para 2.

<sup>3</sup> Third Report at paras 13-22.

**Order**”).<sup>4</sup> The Sales Process and Sealing Order also approved the Receiver to retain the services of Colliers Macaulay Nicolls Inc. (“**Colliers**”) as broker to market the properties.<sup>5</sup>

## **B. Sale of the Markham Road Property**

7. The Receiver had entered into an agreement of purchase and sale in respect of the Markham Road Property.<sup>6</sup> Since the filing of these materials, the purchaser in respect of the Markham Road Property has requested additional time to seek financing. As a result, it is anticipated that this will transaction may not close until late February 2025. The Receiver seeks to obtain the approval and vesting order close to that time.

## **C. Canada Revenue Agency Claims**

8. Canada Revenue Agency (“CRA”) has advanced the following claims:

<b>Account Number</b>	<b>Deemed Trust</b>	<b>Balance Unsecured</b>	<b>Total</b>
<b>GST/HST 82369 0466 RT0001</b>	\$95,337.18	\$24,120.82	\$119,458.00
<b>Source Deductions 82369 0466 RP0001</b>	\$39,852.82	\$92,238.20	\$132,091.02

9. The Receiver is presently assessing priority of CRA's deemed trust claims relative to the mortgagees. In order to proceed with an interim distribution to the mortgagees relative to sale of the Coronet Road Property, the Receiver proposes to holdback the deemed trust portion of CRA’s claims totaling \$135,190, as further described below:

- (a) A lien pursuant to instrument AT6432851 on October 3, 2023. In correspondence dated March 26, 2024, the CRA indicated that the lien value as of August 13, 2024

<sup>4</sup> Third Report at para 4 and Sales Process and Sealing Order dated June 26, 2024, attached as Appendix “B” to the Third Report.

<sup>5</sup> Sales Process and Sealing Order dated June 26, 2024, attached as Appendix “B” to the Third Report.

<sup>6</sup> Third Report at para 16.

was \$14,755.57 with interest continuing to accrue and this lien applies to source deductions owing for 2020 and 2022 tax years. This lien is only registered on Unit 101 of the Markham Road Property.

- (b) A lien pursuant to instrument AT6462949 on November 20, 2023. In correspondence dated March 26, 2024, the CRA indicated that the lien value as of March 26, 2024 was \$101,505.13 with interest continuing to accrue, and that this lien covered GST/HST for the periods ending 2020-03-31 through 2023-03-31. This lien is only registered on Unit 101 of the Markham Road Property.<sup>7</sup>

10. Canada Revenue Agency also registered the following lien on Unit 102 of the Markham Road Property, being PIN 76799-0002

- (a) A lien pursuant to instrument AT6516948 on February 21, 2024, with respect to amounts owing for income taxes and other amounts totaling \$6,474.20 as of the date of the issuance of Certificate Court File Number ITA-7313-23.<sup>8</sup>

11. The Receiver is not aware of any liens registered by Canada Revenue Agency with respect to the Coronet Road Property.<sup>9</sup>

#### **D. Distribution of Coronet Road Sale Proceeds**

12. Sale of the Coronet Road Property was completed for consideration of \$1,093,750. The following amounts were paid out of sale proceeds: i) property tax arrears until closing of \$28,598.22 ; ii) condo fee arrears of \$6,621.51; and iii) the realtor's commission of \$49,437.50 inclusive of HST. Further, there were net adjustments totaling \$440.02 on closing related to chattels, property taxes, and common expenses.<sup>10</sup>

13. Following application of the above noted payments, the net amount remitted to the Receiver in respect of the sale proceeds was \$1,009,532.79.<sup>11</sup>

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<sup>7</sup> Third Report at para 13.

<sup>8</sup> Third Report at para 14.

<sup>9</sup> Third Report at para 15.

<sup>10</sup> Third Report at para 17.

<sup>11</sup> Third Report at para 19.

14. The Appointment Order provides the Receiver and its counsel with a first-ranking charge for its fees and disbursements. The Receiver has made certain prior payments for disbursements specific to the Coronet Road Property (insurance, utilities, and appraisals) totaling \$17,070.15, along with an interim draw for receiver fees in the amount of \$52,563.83 inclusive of HST.<sup>12</sup>

15. After accounting for these payments and applying a holdback of \$135,190 in respect of CRA's deemed trust claims, this leaves \$804,708.81 available for an interim distribution

16. The Coronet Road Property was subject to the following mortgage charges:

- (a) first-ranking charge granted in favour of RBC registered in the amount of \$572,000;
- (b) a second-ranking charge granted in favour of Daljit Singh Banga ("**Banga**")

17. The Receiver understands that RBC is seeking a distribution of \$623,759.09 in respect of its claim on Coronet Road Property. The Receiver understands, from its discussions with counsel to RBC, that this amount is comprised of the following:

- (a) Mortgage Principal debt of \$530,539.46;
- (b) Other indebtedness of \$41,460.54;
- (c) Outstanding interest on the mortgage facility of \$23,572.81 to November 20, 2024 plus per diem interest thereafter of \$65.12. On the assumption that the interim distribution order will be granted December 4, 2024, the additional per diem interest amount is \$911.68.
- (d) An estimate of legal fees incurred by RBC as it relates to the Coronet Road Property of \$16,871.09; and
- (e) An estimate of fees incurred by RBC payable to BDO prior to the receivership proceedings of \$10,403.51.<sup>13</sup>

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<sup>12</sup> Third Report at para 19.

<sup>13</sup> Third Report at para 22 and Appendix "L", RBC Payout Letter.

18. The Receiver understands RBC's position to be that it is entitled to claim for an additional outstanding indebtedness of \$41,460.54, which is the difference between the amount of the original charge (\$572,000) and the outstanding mortgage principal debt of \$530,539.46. As of the date of this report, the Debtor is indebted to RBC in the aggregate amount of approximately \$1,500,000.<sup>14</sup>

19. The Receiver and its counsel have reviewed Standard Charge Terms 20015, which form part of the Charge. The Receiver is satisfied that that the Standard Charge Terms provide that the charge is continuing collateral security for all obligations owing by the Debtor to RBC.<sup>15</sup>

20. The Receiver seeks an interim distribution as follows:<sup>16</sup>

Item	Amount
Proposed Distribution to RBC	\$623,759.09
Proposed Distribution to Banga	\$50,000
Payment of the Balance of the Estimated Receiver's Fees that would be allocated to Coronet Road Property	\$64,258.59
Payment of Receiver's Legal Counsel's Fees, based on estimated fees allocated to Coronet Road Property	\$42,000
Provision for future professional costs allocated to Coronet Road Property	\$24,691.13
Total	\$804,708.81

## E. Receiver's Activities

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<sup>14</sup> Third Report at para 24.

<sup>15</sup> Third Report at para 25.

<sup>16</sup> Third Report at para 27.

21. The activities of the Receiver are described more fully in in the Third Report. The Receiver has, amongst other things, continued to collect rent from the Tenant at the Markham Road Property. The Receiver's statements of interim fees and disbursements are fully described in the Third Report.<sup>17</sup>

### **PART III - THE ISSUES AND THE LAW**

22. The issues on this motion are:

- (a) Whether the interim distribution should be approved;
- (b) Whether the Ancillary Order should be granted.

#### **A. Whether the Interim Distribution Should be Approved**

23. The interim distribution described at paragraph 27 of the Third Report should be approved.

24. Orders granting interim distributions are routinely granted in insolvency proceedings.<sup>18</sup> with a reserve for undetermined priority claims are routinely granted by Canadian courts in insolvency proceedings and receiverships.

25. In *Re Abitibowater Inc.*, Justice Gascon considered factors as to whether to grant an interim distribution under the *Companies Creditors Arrangement Act*. These include whether: (a) The payee's security is valid and enforceable; (b) The amounts owed to the payee exceed the distribution; and, (c) The distribution would result in interest savings.<sup>19</sup>

26. The Receiver submits that both RBC and Banga hold valid and enforceable security interests in respect of the collateral covered by their respective security. The Receiver's counsel has provided the Receiver with independent security opinions, subject to the usual qualifications assumptions and disclaimers expected with such an opinion, these opinions confirm the validity and enforceability of the charges granted in favour of RBC and Banga on the Coronet Road Property.<sup>20</sup>

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<sup>17</sup> Third Report at para 48.

<sup>18</sup> See e.g., *Ontario Securities Commission v. Bridging Income Fund L.P.*, 2022 ONSC 4472 at paras 8 and 12.

<sup>19</sup> *Re Abitibowater Inc.*, 2009 QCCS 6461 at para 75.

<sup>20</sup> Third Report at para 26.

### **C. The Ancillary Order should be Granted**

#### ***(i) The Third Report and the Activities of the Receiver Should be Approved***

27. The Receiver also seeks an ancillary order approving the Third Report along with the actions, conduct and activities of the Receiver referred to therein.

28. The Court has inherent jurisdiction to review and approve the activities of a court appointed receiver where the receiver has met the objective test that it has acted reasonably, prudently and not arbitrarily.<sup>21</sup> The principles espoused by Justice Morawetz in *Re Target Canada Co*, a case involving proceedings under the *Companies Creditors' Arrangement Act*, are applicable here. He noted that requests to approve a court-appointed officer's reports are not unusual, and that there are good policy and practical reasons for such approval to provide a level of protection.<sup>22</sup> In particular, Justice Morawetz also noted that 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 a prudent and diligent manner;
- (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.<sup>23</sup>

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<sup>21</sup> *Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.*, 2014 BCSC 1855 at para 54.

<sup>22</sup> *Target Canada Co. (Re)*, 2015 ONSC 7574 at para 2 and para 22.

<sup>23</sup> *Target Canada Co. (Re)*, 2015 ONSC 7574 at para 23.



29. Subsequent case law has confirmed that these considerations apply equally to the reports and activities of a receiver,<sup>24</sup> and such approval is commonly granted as part of orders in receivership proceedings.<sup>25</sup>

30. The activities of the Receiver have been reported to the court and stakeholders in the Third Report. Its activities were all necessary and undertaken in good faith in accordance with the Appointment Order, further to the best interests of the Debtors' stakeholders generally.

## **(ii) Approval of the Receiver and its Counsel's Fees**

31. The Receiver also submits that the fees of the Receiver and its counsel described therein should be approved.

32. The Court of Appeal in *Bank of Nova Scotia v. Diemer* set out a non-exhaustive list of factors that provide useful guidance in considering fees of a receiver and its counsel. These include:

- (a) the nature, extent and value of the assets;
- (b) the complications and difficulties encountered;
- (c) the degree of assistance provided by the debtor;
- (d) the time spent;
- (e) the receiver's knowledge, experience and skill;
- (f) the diligence and thoroughness displayed;
- (g) the responsibilities assumed;
- (h) the results of the receiver's efforts; and

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<sup>24</sup> *Hanfeng Evergreen Inc., (Re)*, 2017 ONSC 7161 at para 15.

<sup>25</sup> See e.g., *Sale Process Approval Order in Atrium Mortgage Investment Corporation and Door Capital Corporation v. Stateview Homes (Nao Towns II) Inc., et al.*, Court File No. CV-23-00698395-00CL, dated June 4, 2023.

(i) the cost of comparable services when performed in a prudent and economical manner.<sup>26</sup>

33. The Receiver respectfully submits that it and its counsel's fees are fair, reasonable and justified in the circumstances.<sup>27</sup> They accurately reflect the work done in the course of these proceedings. The activities of the Receiver were carried out in accordance with the Appointment Order, and the Receiver has acted reasonably and in good faith throughout the receivership.

**(iii) Approval of the Receiver's Interim Statement**

34. The Receiver's Interim Statement of Receipts and Disbursements as at November 22, 2024 are appended to the Third Report, and it is the Receiver's position that such receipts and disbursements are reasonable and should be approved.

**PART IV - RELIEF SOUGHT**

35. For the reasons set out above, the Receiver requests that this Court grant the proposed Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 2<sup>nd</sup> day of December 2024.




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<sup>26</sup> *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at para 33.

<sup>27</sup> Second Report at paras 27-29.

**SCHEDULE “A”: LIST OF AUTHORITIES**

1. *Ontario Securities Commission v. Bridging Income Fund L.P.*, [2022 ONSC 4472](#)
2. *Re Abitibibowater Inc.*, [2009 QCCS 6461](#).
3. *Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.*, [2014 BCSC 1855](#)
4. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)
5. *Hanfeng Evergreen Inc., (Re)*, [2017 ONSC 7161](#)
6. *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#)
7. *Sherman Estate v. Donovan*, [2021 SCC 25](#)
8. *Romspen Investment Corporation v. Tung Kee Investment Canada Ltd. et al.*, [2023 ONSC 5911](#)
9. *Atrium Mortgage Investment Corporation and Door Capital Corporation v. Stateview Homes (Nao Towns II) Inc., et al.*, Court File No. CV-23-00698395-00CL, dated June 4, 2023.

**SCHEDULE “B”  
TEXT OF STATUTES, REGULATIONS & BY-LAWS**

**Bankruptcy and Insolvency Act, RSC 1985, c B-3**

**PART XI**

**Secured Creditors and Receivers**

**Court may appoint receiver**

**243 (1)** Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

**Restriction on appointment of receiver**

**(1.1)** In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

**Definition of receiver**

**(2)** Subject to subsections (3) and (4), in this Part, **receiver** means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
  - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or

- (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

### **Definition of receiver — subsection 248(2)**

- (3) For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

### **Trustee to be appointed**

- (4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

### **Place of filing**

- (5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

### **Orders respecting fees and disbursements**

- (6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

### **Meaning of disbursements**

- (7) In subsection (6), **disbursements** does not include payments made in the operation of a business of the insolvent person or bankrupt.

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Court File No. CV-24-00714666-00CL

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**Proceedings commenced at Toronto**

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