

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

FIERA CANADIAN REAL ESTATE DEBT FUND GP INC. and FIERA FP REAL
ESTATE FINANCING FUND, L.P.

Applicants

and

2250310 ONTARIO INC., P&H DEVELOPMENT HOLDINGS INC., ZHONG CHEN
a.k.a. LAWRENCE CHEN, and OXFORD ROAD DEVELOPMENTS 4 INC.

Respondents

APPLICATION UNDER: *Bankruptcy and Insolvency Act*, s 243(1);
Courts of Justice Act, s101; *Rules of Civil Procedure*, rr 1.04, 2.03, 3.02,
14.05, 16.04 and 38

AMENDED SUPPLEMENTAL FACTUM OF THE RECEIVER
(returnable December 5, 2025)

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PART I - INTRODUCTION

1. BDO Canada Limited (“**BDO**”), in its capacity as the court-appointed receiver (in this capacity, the “**Receiver**”) of 2250310 Ontario Inc. (“**225**”) and P&H Development Holdings Inc. (“**P&H**” and together with 225, the “**Debtors**”), seeks the relief stated in paragraph 1 of the Receiver’s factum, filed November 24, 2025 (the “**November Factum**”), in support of the Receiver’s motion originally returnable on November 26, 2025.

2. This supplemental factum is to be read in conjunction with the November Factum and specifically seeks to update the Court as to factual developments since November 26, 2025, and to address approval of the Transaction.

3. All capitalized terms used herein and not defined in this supplemental factum shall have the meaning ascribed to them in the November Factum.

PART II - SUMMARY OF FACTS

A. BACKGROUND

4. Paragraphs 3–23 of the November Factum set out the relevant facts as outlined in the Third Report.¹ The facts contained herein relate to events outlined in the Supplement to the Third Report of the Receiver dated December 3, 2025 (the “**Supplemental Report**”).

¹ Factum of the Receiver, November 24, 2025 (“**Factum**”), pp 3-7, paras 3-23

B. SALES PROCESS AND RECOMMENDATION

5. On June 6, 2025, the Court approved a sales process as part of the Receivership Order.² Specifically, paragraph 3(k) of the Receivership Order states that “the Receiver is hereby expressly empowered and authorized...to conduct a sale process in accordance with the timelines set out in the sale process, which was appended to the Receivership Order as Schedule “C” (the “**Sales Process**”).³

6. The public portion of the Sales Process was delayed until the Abeyance Date to permit the Respondents to bring an Application for protection pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA Application**”).⁴ In support of the CCAA Application, the Debtors produced an appraisal from Colliers International dated August 8, 2024 (the “**Colliers Appraisal**”), which has been included in the Supplemental Report at Appendix “C”.⁵

7. In response, the Applicants produced an appraisal from Cushman Wakefield dated April 30, 2025, and signed July 10, 2025 (the “**Cushman Appraisal**”, and together with the Colliers Appraisal are the “**Appraisals**”).⁶ An unredacted copy of the Cushman Appraisal will be provided to the Court as Confidential Appendix “1”.

8. The Receiver marketed the Real Property and Project in accordance with the Sale Process.⁷ Paragraphs 24–27 of the Third Report, outlines the steps taken by the Receiver

² Supplementary Motion Record of the Receiver, December 3, 2025 (“**SMR**”), Tab 1, Supplement to the Third Report of the Receiver, December 3, 2025 (“**Supplemental Report**”), p 3, para 4

³ SMR, Tab 1, Supplemental Report, p 3, para 5; Appendix B

⁴ SMR, Tab 1, Supplemental Report, p 4, para 6

⁵ SMR, Tab 1, Supplemental Report, p 4, para 6; Appendix C

⁶ SMR, Tab 1, Supplemental Report, p 4, para 7

⁷ SMR, Tab 1, Supplemental Report, p 5, para 9

in the Sales Process.⁸ In proceeding with the Sales Process, the Receiver was mindful of both the Appraisals and the Market Survey. However, the Receiver's belief was that the court approved Sales Process would ultimately dictate the value of the Real Property and the Project.

9. The Sales Process contained two phases: (i) Phase One required bidders to submit non-binding purchase agreements that conformed to the parameters in the Sales Process; and (ii) Phase Two required bidders to provide unconditional purchase agreements that complied with the Sales Process's Non-Binding APA terms.⁹

10. Phase One concluded on August 26, 2025, and resulted in two expressions of interest (the "**EOIs**").¹⁰ Neither EOI conformed with the Non-Binding APA terms. Specifically, neither EOI:

- (a) was submitted in the requested form;
- (b) contained the minimum deposit (although one was only modestly below the 5% threshold);
- (c) provided evidence of financial wherewithal to close; and,
- (d) provided written evidence that the bidder's board of directors supported the transaction.¹¹

⁸ Motion Record of the Receiver, November 20, 2025 ("**MR**"), Tab 2, Third Report of the Receiver, November 20, 2025 ("**Third Report**"), pp 19-21, paras 24-27

⁹ SMR, Tab 1, Supplemental Report, p 5, para 10

¹⁰ SMR, Tab 1, Supplemental Report, p 5, para 11

¹¹ SMR, Tab 1, Supplemental Report, p 5, para 11

11. In addition to the foregoing, the proposed purchase prices in the EOIs were insufficient. Given that neither EOI conformed with the requirements of the Sales Process, and that the purchase price was insufficient, the Receiver terminated the Sales Process.¹²

12. With the Sales Process concluded, Fiera engaged with the Receiver on the possibility of a credit bid.¹³ The Receiver engaged in these discussions with the understanding that any credit bid would contain a cash component to address: (a) any priority payable obligations owing to any government authority (including realty taxes, sales taxes, and employee remittances); and (b) all priority obligations under the Receivership Order.¹⁴

13. The negotiations with Fiera concluded with a purchase agreement that is: (a) unconditional; (b) higher than the EOIs; and (c) provides the best opportunity for Fiera to limit its losses.

14. At paragraph 28 of the Third Report the Receiver provided the basis for its recommendation that the Transaction be approved. The Receiver further notes:

- (a) neither EOI would be considered a Phase 2 Qualified Bid;
- (b) while mindful of the appraisals, the Receiver believes that the market was canvassed thoroughly pursuant to the Sales Process and believes the market has spoken in this regard;
- (c) Fiera is the fulcrum creditor, and the Transaction represents its best opportunity for it to mitigate its losses; and

¹² SMR, Tab 1, Supplemental Report, p 6, paras 12 & 13

¹³ SMR, Tab 1, Supplemental Report, p 6, para 14

¹⁴ SMR, Tab 1, Supplemental Report, p 6, para 14

- (d) any continuation of the Sales Process and the Receiver's activities thereto are simply eroding recoveries, as the Receiver would incur additional costs with respect to the Real Property and the Project.¹⁵

15. For the foregoing reasons, and the reasons contained within the Third Report, the Receiver recommends approval of the Transaction and a vesting of title in the assets, including the Real Property, to the Purchaser.

C. VACANT POSSESSION OF 1 ADDINGTON AND 5 ADDINGTON

16. The occupants of 1 Addington and 5 Addington vacated the premises on November 28, 2025, and November 30, 2025, respectively.¹⁶ The Receiver provided each of the Addington Occupants with the Vacancy Payment and has changed the locks at the premises.¹⁷

D. DEPOSIT RETURN PROTOCOL

17. The Debtors had intended to build a mixed use condominium on the Real Property. To that end, it had entered into 17 agreements of purchase and sale (the "**Condo Purchase Agreements**") with respective purchasers, each of which had paid a deposit for their units (the "**Deposits**"). The Receiver did not take possession of the Deposits, which remain in the possession of FIJ Law LLP as Deposit Trustee, and are insured by the Surety.¹⁸

¹⁵ SMR, Tab 1, Supplemental Report, p 6, para 16

¹⁶ SMR, Tab 1, Supplemental Report, p 8, para 27

¹⁷ SMR, Tab 1, Supplemental Report, p 8, para 27

¹⁸ SMR, Tab 1, Supplemental Report, p 7, paras 20, 21, & 22

18. The Transaction excludes the Condo Purchase Agreements. Accordingly, on November 20, 2025, the Receiver served its Motion Record, containing the Third Report, on the stakeholders including the parties who entered into the Condo Purchase Agreements (the “**Condo Purchasers**”).¹⁹ The Motion Record confirmed the Receiver is seeking approval to terminate the Purchase Agreements and proceed with the DRP.²⁰

19. Should the Court approve the termination of the Purchase Agreements and the DRP, the Condo Purchasers will have a protocol for the return of the Deposits.²¹

20. The Receiver has proposed a form of DRP, as found at Appendix “E” to the Supplemental Report.²² At a high level, the DRP requires the Receiver to deliver termination letters to the Condo Purchasers and direct them to the Deposit Trustee for the return of their Deposits.²³ The Receiver understands that both the Surety and Tarion will require certain acknowledgements and releases as part of the DRP.²⁴

21. The Receiver recommends that it be given approval to terminate the Purchase Agreements and proceed with the DRP. The Receiver believes the DRP is similar in many respects to other DRP’s commonly and frequently approved by the courts.

¹⁹ SMR, Tab 1, Supplemental Report, p 7, para 19

²⁰ MR, Tab 2, Third Report, p 15, para 9(e)(iii) & (iv)

²¹ SMR, Tab 1, Supplemental Report, p 8, para 26

²² SMR, Tab 1, Supplemental Report, p 7, para 21

²³ SMR, Tab 1, Supplemental Report, p 7, para 21; Appendix E

²⁴ SMR, Tab 1, Supplemental Report, p 7, para 21; Appendix E

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

22. This supplemental factum in is addition to the November Factum and seeks to provide the Court with additional authority regarding the value of an appraisal when juxtaposed against the outcome of a court approved sales process.

A. THE TRANSACTION SHOULD BE APPROVED

23. The Court has held that in considering the providence of a receivership sale, the Court should consider the following, in addition to the principles of established in *Royal Bank of Canada v. Soundair Corp*²⁵:

- (a) whether the offer accepted is so low in relation to the appraised value as to be unrealistic;
- (b) whether the circumstances indicate that insufficient time was allowed in the making of the bids;
- (c) whether adequate notice of sale by bid was given; or
- (d) whether it can be said that the proposed sale is not in the best interest of either the creditors or the owner.²⁶

24. It is submitted that (b) and (c) above are satisfied as the Receiver complied with the terms of the Sales Process, which had been previously approved by the Court.

25. With respect to sub (a) above, the Receiver acknowledges that that the proposed purchase price is less than the value contained in the Appraisals but is not at a point where the sale price is unrealistic.

26. In particular the Receiver notes that the Colliers Appraisal contains two extraordinary assumptions, namely: (i) that the Re-Zoning Applications and increased

²⁵ [1991 CanLII 2727 \(ONCA\)](#) [**Soundair**]

²⁶ *River Rentals Group Ltd. v. Hutterian Brethren Church of Codesa*, [2010 ABCA 16 \(CanLII\)](#) at [para 13](#) [**Hutterian Brethren**]

density are approved; and (ii) that an adjacent property, 7 Addington which the Debtors did not purchase, is included in the appraisal.²⁷ Further, there has been a significant decline in the condominium market as articulated in the Market Report. In any event, it is submitted that the true assessment of value is what a willing purchaser is prepared to pay for an asset. As noted by the Court in *Runco v. Engenherio*²⁸ "...an appraisal is only an opinion or an estimate of an asset's value in the market. Here, the property was exposed to the market and four bids were received. *The market has spoken*" [emphasis added].²⁹ As such, the Transaction is the highest, and best, offer.

27. In *Kingsett Mortgage Corporation v Churchill Lands United Inc*³⁰, the Court was asked to approve a sale where the purchase price was approximately 10% of the appraised value.³¹ In this matter, the Court approved the sale notwithstanding the discrepancy between the appraised value and the purchase price because, among other things, (i) there was a court approved sales process that was followed by the receiver; (ii) there was an explanation for the discrepancy in price; and (iii) there was limited interest in the assets in question.³² It is submitted that these indicia are applicable with respect to the Receiver's proposed sale to the Purchaser.

28. Finally, with respect to paragraph (d) above, the applicant is the fulcrum creditor and stands to incur a significant loss on its credit facility and nonetheless is supportive of the transaction. Furthermore, the purchase price includes a cash portion that is sufficient

²⁷ MR, Tab 2, First Report, p 21, para 28

²⁸ [2023 ONSC 7231](#) [*Runco*]

²⁹ *Runco*, at [para 17](#)

³⁰ [2024 ONSC 7127](#) [*Churchill Lands*]

³¹ *Churchill Lands*, at [para 18](#)

³² *Churchill Lands*, at [para 31](#)

to satisfy all priority claims.³³ Finally, the Sales Process resulted in two EOs which failed to meet the criteria of a Qualified APA.

29. There is no information that has come to the Receiver's attention that indicates that a better result or price could have been achieved. Accordingly, it is submitted that the Transaction should be approved.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of December, 2025.



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³³ SMR, Tab 1, Supplemental Report, p 6, para 14

SCHEDULE "A" - LIST OF AUTHORITIES

1. *Royal Bank v Soundair Corp*, [1991 CanLII 2727](#) (ONCA)
2. *Runco v. Engenheiro*, [2023 ONSC 7231](#)
3. *Kingsett Mortgage Corporation v. Churchill Lands United Inc.* [2024 ONSC 7127](#)
4. *River Rentals Group Ltd. v. Hutterian Brethren Church of Codesa*, [2010 ABCA 16](#)

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