

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

**1000000152 ONTARIO INC., 2661656 ONTARIO INC., 2485238 ONTARIO INC.,
1000098231 ONTARIO INC., PETER GEE, and KIM NGUYEN aka BACH KIM NGUYEN**

Respondents

**FACTUM OF THE RECEIVER
(Motion returnable May 5, 2025)**

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capacity as Court-Appointed Receiver

TO: THE SERVICE LIST

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PART I – OVERVIEW

1. BDO Canada Limited (“**BDO**”), in its capacity as court-appointed receiver (the “**Receiver**”) of all of the assets, undertakings and properties of 1000000152 Ontario Inc., 2661656 Ontario Inc., 2485238 Ontario Inc., and 1000098231 Ontario Inc. (the “**Debtors**”), including the properties municipally known as 381 and 373 Mosley Street, Wasaga Beach, Ontario (the “**Real Property**”), seeks:

- (a) an Order (“**Sale Process Order**”), *inter alia*:
 - i. if necessary, abridging the time for service and filing of the Notice of Motion and the Motion Record of the Receiver or, in the alternative, dispensing with service thereof;
 - ii. approving the first report of the Receiver dated April 29, 2025 (the “**First Report**”) and the actions, activities and conduct of the Receiver described

therein;

- iii. approving the Receiver's marketing and sale process (the "**Sale Process**") for the Real Property, including, without limitation, the communication to the occupants of the Real Property in connection therewith, together with any amendments thereto deemed necessary and appropriate by the Receiver;
 - iv. approving the Listing Agreement (defined below) and authorizing the execution of the Listing Agreement by the Receiver;
 - v. granting a sealing order over Confidential Appendices "1", "2" and "3" (the "**Confidential Appendices**") to the First Report;
 - vi. approving the fees and disbursements of the Receiver and its legal counsel, Chaitons LLP (the "**Chaitons**") set out in the First Report and the Fee Affidavits (defined below); and
- (b) an Order (the "**Writ of Possession Order**"), *inter alia*:
- i. ordering that the Receiver is entitled to vacant possession of Unit 924, 381 Mosley Street, Wasaga Beach, Ontario ("**Unit 924**") and Unit 925, 381 Mosley Street, Wasaga Beach, Ontario ("**Unit 925**");
 - ii. ordering that Mark Kennedy ("**Kennedy**"), Kelly Teat ("**Teat**"), Robin Delorme ("**Delorme**") and any other occupant of Unit 924 and/or Unit 925 (collectively, the "**Occupants**") shall vacate Unit 924 and/or Unit 925, as applicable, by no later than 4:00 p.m. on May 15, 2025;
 - iii. granting leave to the Receiver to issue a writ of possession against Unit 924 and Unit 925;
 - iv. ordering that the Occupants are prohibited from trespassing on the Real

Property after vacant possession of Unit 924 and Unit 925 is delivered to the Receiver; and

(c) such further and other relief as the Receiver may request and the Court may deem appropriate.

PART II – FACTS

Background

2. 152 is the registered owner of the Real Property. The Real Property formerly operated as a motel and nightclub commonly known in the area as the Dyconia Resort. The Real Property appears to have suffered from a long period of neglect and lack of maintenance. The event facilities are no longer capable of use without significant repairs and remediation work being performed. The motel facilities consist of thirty-eight (38) rental units, twenty-two (22) of which were occupied on the Appointment Date. All of the rental units are situated at 381 Mosley.¹

3. The Receiver understands that 231 was principally involved in management of the occupied units at the Real Property. The Receiver understands that 656 and 238 operated a yacht rental business under the name of “Picture Perfect Marine Rentals” that would match yacht owners with parties seeking to temporarily rent yachts. This part of the business ceased operations in June of 2023.²

4. The directors and officers of 152, 656 and 238 were Peter Gee and Kim Nguyen. Peter Gee is the sole officer and director of 231. The Receiver understands that Chris Gee, son of Peter Gee and Kim Nguyen, was responsible for the day-to-day operations of the businesses.³

5. In advance of the initially scheduled hearing date on October 17, 2024, the Companies and Bank of Montreal (“**BMO**” or the “**Bank**”) agreed upon terms of a consent Order to be issued on

¹ First Report of the Receiver dated April 29, 2025 (the “**First Report**”) at paras. 4-5, Motion Record of the Receiver returnable May 5, 2025 (“**MR**”), Tab 2.

² First Report at para. 4, MR, Tab 2.

³ First Report at para. 4, MR, Tab 2.

October 17, 2024, on terms which would appoint BDO as Receiver but would delay the effective date of the Receiver's appointment for a period of time which the Companies believed would permit them to complete a proposed refinancing and repay the indebtedness owed to the Bank. The effective date established under the terms of the Appointment Order was set as 12:00 p.m. on January 10, 2025 (the "**Appointment Date**"), such that the Receiver's appointment would become effective on that date should no refinancing have been completed in advance of same and the Appointment Order not having been vacated or varied.⁴

Request for Proposals from Realtors

6. Pursuant to the terms of the Appointment Order, the Receiver is authorized to market any or all of the Property (as defined in the Appointment Order), including advertising and soliciting offers in respect of the Property, or any part or parts thereof, and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.⁵

7. The Receiver arranged for Colliers Macaulay Nicolls Inc. ("**Colliers**") and Avison Young Commercial Real Estate Service LP ("**Avison Young**") to prepare appraisals of the Real Property.⁶

8. Shortly after being appointed, the Receiver obtained listing proposals from three (3) commercial realtors with experience in selling properties similar in nature to the Real Property and with the Wasaga Beach market where the Real Property is located. The three real estate brokerages that provided listing proposals were CBRE Limited, Colliers, and Royal LePage RCR Realty ("**Royal LePage**").⁷

9. On the basis of, among other things, the proposed listing price, commission structure and quality of the overall proposal, and with the approval of BMO and subject to Court approval, the

⁴ First Report at para. 6, MR, Tab 2.

⁵ First Report at para. 28, MR, Tab 2; Appendix "A" to the First Report, MR, Tab 2A.

⁶ First Report at para. 27, MR, Tab 2; Confidential Appendices "1" and "2".

⁷ First Report at para. 29, MR, Tab 2; Confidential Appendix "3".

Receiver proposes to engage Royal Le Page as the Listing Broker to list the Real Property for sale on an “as is, where is” basis.⁸

Sale Process

10. The key terms of the recommended Sale Process pursuant to which the Real Property is to be marketed for sale by the Receiver is summarized below:⁹

- (a) List Price – the Real Property will be offered for sale and listed on MLS with an initial listing price of \$5,999,000;
- (b) Upon approval of the Sale Process, the Listing Broker will canvass the market for an initial thirty (30) day period to obtain written expressions of interest (“**EOI**”) from prospective purchasers;
- (c) At the conclusion of the initial 30 day period, parties who have submitted EOIs will be given a further 30 days to conduct further due diligence if required and submit a binding form of offer. The Receiver will provide the form of offer to be used to the Listing Broker to provide to interested parties and that will be in the form of an asset purchase agreement;
- (d) Deposit – prospective purchasers will be required to submit a deposit of not less than 10% of their proposed purchase price;
- (e) Closing – the sale transaction will close as soon as practicable after the issuance of an

⁸ First Report at para. 30, MR, Tab 2.

⁹ First Report at para. 31, MR, Tab 2.

approval and vesting order;

- (f) The Receiver shall have the right to modify the Sale Process as it deems necessary.

Communications To Occupants Regarding The Sale Process

11. A prospective purchaser that submits an offer for the Real Property may wish to continue to operate the Real Property as residential rental property. It is also possible that the best bid or only bid received in respect of the Real Property may be submitted by a real estate developer and may require vacant possession of the Real Property as a condition of the sale or following closing of the sale transaction.¹⁰

12. As part of the Sale Process, the Receiver proposes to deliver a notice to the tenants and occupants of the Real Property (the “**Sale Process Notice**”), advising the recipients thereof, among other things, (i) that the Court has approved the Sale Process; (ii) the potential effects of the Sale Process on such parties; and (iii) that the Receiver will provide notice of any motion brought by the Receiver seeking an order of the Court approving a sale of the Real Property. As part of the relief sought on this motion, the Receiver seeks approval of the Sale Process Notice, subject to such minor and non-substantive changes as the Receiver deems appropriate.¹¹

Relief Relating to The Occupants Of Unit 924 & Unit 925

13. Immediately upon the Appointment Order becoming effective on January 10, 2025, the Receiver, among other things: (i) took possession of the Real Property; (ii) secured the common areas of the Real Property by changing the locks; and (iii) met with as many occupants as possible to advise them of the receivership. An initial notice (the “**First Notice**”) was provided to occupants which advised of these receivership proceedings and provided initial direction regarding the payment of

¹⁰ First Report at para. 36, Mr, Tab 2.

¹¹ First Report at para. 36, MR, Tab 2; Appendix “G” to the First Report, MR, Tab 2G.

future rent payments.¹²

14. Chris Gee provided the Receiver with a copy of the rent-roll for the Real Property which indicated the following:¹³

- (a) 21 of 38 units were occupied and generating revenue of approximately \$25,000 per month;
- (b) 1 unit was occupied by a group of individuals considered by Chris Gee to be “squatters” (i.e. there was no agreement with such persons pursuant to which occupancy of the unit in question had been either initially permitted or permitted to continue by the Debtors); and
- (c) 1 unit had been damaged by a fire and was boarded up.

15. The Receiver attended the Real Property again on January 27, 2025, to meet with the occupants of the Real Property and provide additional information about the receivership. The Receiver delivered a further notice (the “**Second Notice**”) to all occupants, either in person or by sliding the notice under doors, requesting that all occupants deliver a copy of any agreement between themselves and the Companies for their use or occupancy of the unit, as well as proof of payment of the most recent applicable installment due under same.¹⁴

16. Specifically, on January 27, 2025, the Receiver served the occupants of Unit 924 with the Second Notice by sliding the documents under the front door of Unit 924. Attempts were made by the Receiver to personally deliver the Second Notice to the occupants of Unit 924 but, although the Receiver was able to visually confirm that there were individuals physically present and inside Unit

¹² First Report at para. 15, MR, Tab 2; Appendix “C” to the First Report, MR, Tab 2C.

¹³ First Report at para. 18, MR, Tab 2.

¹⁴ First Report at para. 19, MR, Tab 2; Appendix “D” to the First Report, MR, Tab 2D.

924 at the time, the occupants of Unit 924 refused to answer the door.¹⁵

17. The Receiver has limited information regarding how and when Kennedy and/or Teat obtained access to Unit 924. As discussed further below, the Receiver requested, on multiple occasions, that the occupants of Unit 924 provide information regarding their entitlement to occupy Unit 924. Neither Kennedy nor Teat provided any information to the Receiver evidencing any lawful right to occupy Unit 924. Neither Kennedy nor Teat have responded to the Second Notice.¹⁶

18. Unit 925 was vacant at the time of the Receiver's appointment. On February 24, 2025, Kennedy broke into the vacant Unit 925 using a crowbar, which was confirmed via video footage showing Kennedy breaking into Unit 925 obtained from security cameras located at the Real Property. The Receiver understands that, in the period following Kennedy's forced entry into Unit 925, Kennedy has permitted another individual, Delorme, to occupy same.¹⁷

19. On the morning of February 24, 2025, Kennedy broke into the vacant Unit 925 using a crowbar, the fact of which is confirmed via video footage obtained from security cameras located at the Real Property. Police were called and attended shortly after the break-in occurred, but when they arrived Kennedy produced a document that he purported was a lease in respect of Unit 925 (the "**925 Document**"). After being presented with the 925 Document, the police advised that they would not be removing Kennedy from the Real Property. The Receiver subsequently obtained a copy of the 925 Document, which is a copy of an "additional terms" schedule to a standard OREA lease agreement and has been signed by Kennedy, but has not been signed by any other person.¹⁸

20. The Receiver has been advised by another resident of the Real Property that Kennedy is

¹⁵ First Report at para. 40, MR, Tab 2.

¹⁶ First Report at paras. 41 and 43, MR, Tab 2.

¹⁷ First Report at paras. 44-46, MR, Tab 2.

¹⁸ First Report at paras. 44-46, MR, Tab 2; Appendix "H" to the First Report, MR, Tab 2H.

charging Teat and Delorme rent to live in Unit 924 and Unit 925, respectively.¹⁹

21. On April 17, 2025, the Receiver took steps to identify all persons in actual possession of Unit 924 and Unit 925. Specifically, the Receiver retained the services of a process server to attend Unit 924 and Unit 925 in order to identify the occupants of Unit 924 and Unit 925 (collectively, the “**Occupancy Checks**”).²⁰

22. Also on April 17, 2025, the process server that performed the Occupancy Checks also delivered a notice demanding possession (“**Notice Demanding Possession**”) to the occupants of Unit 924 and Unit 925. Each Notice Demanding Possession advised the recipient thereof, among other things: (i) of these receivership proceedings and the Appointment Order; (ii) to vacate and deliver up possession to the Receiver; (iii) that the Receiver may bring a motion to the Court permitting the issuance of a writ of possession; and (iv) they may bring a motion in these receivership proceedings to dispute the Receiver’s entitlement to possession of the Property.²¹

23. Following delivery of the Notice Demanding Vacant Possession, the Occupants of Unit 924 and Unit 924 did not contact the Receiver or Receiver’s Counsel regarding the substance of the Notice Demanding Vacant Possession and have not applied to this Court for relief.²²

24. The Receiver understands from the Occupancy Check in respect of Unit 924 and based on other inquiries made by the Receiver, that the current occupant of Unit 924 is Teat. Teat is not a party to a tenancy agreement in respect of Unit 924 and has never paid any rent to the Debtors or the Receiver.²³

25. The Receiver understands from the Occupancy Check in respect of Unit 925 and based on

¹⁹ First Report at paras. 42 & 47, MR, Tab 2.

²⁰ First Report at para. 51, MR, Tab 2; Appendix “J” to the First Report, MR, Tab 2J.

²¹ First Report at para. 52, MR, Tab 2; Appendix “K” and Appendix “L” to the First Report, MR, Tab 2K and 2L.

²² First Report at para. 53, MR, Tab 2.

²³ First Report at para. 54, MR, Tab 2.

other inquiries made by the Receiver, that the current occupants of Unit 924 are Kennedy and Delorme. Neither Kennedy nor Delorme are party to a valid tenancy agreement in respect of Unit 925 and they have never paid any rent to the Debtors or the Receiver.²⁴

26. The Receiver further understands from Chris Gee that there was never any verbal agreement between any of the Occupants of Unit 924 and Unit 925 regarding the occupancy of those units.²⁵

27. For the reasons set out above, the Receiver believes that there is no lawful occupant or tenant in Unit 924 and Unit 925, within the meaning of the *Residential Tenancies Act*. Accordingly, the Receiver is seeking: i) an order for vacant possession for Unit 924 and Unit 925; and ii) leave of the court to issue a writ of possession in respect of Unit 924 and Unit 925.²⁶

28. The Receiver further requests that the Court issue an order prohibiting the current Occupants of Unit 924 and Unit 925 from trespassing on the Real Property after vacant possession of Unit 924 and Unit 925 is delivered to the Receiver, so that they may not attempt to occupy any other unit(s) located at the Real Property.²⁷

Activities of the Receiver

29. The activities of the Receiver since the issuance of the Appointment Order are described in the First Report.

Sealing Order

30. The Receiver requests that the appraisals for the Real Property along with the summary of listing proposals attached as Confidential Appendices to the First Report, be filed with the Court on a sealed basis pending completion of a sale of the Real Property. The Confidential Appendices each

²⁴ First Report at para. 55, MR, Tab 2.

²⁵ First Report at para. 56, MR, Tab 2.

²⁶ First Report at para. 58, MR, Tab 2.

²⁷ First Report at para. 59, MR, Tab 2.

contain commercially sensitive information, including appraisal reports and a summary of the listing proposals, the release of which prior to completion of a transaction in respect of the Real Property could negatively impact the integrity of the Sale Process and be prejudicial to the receivership estate.²⁸

31. The Receiver is not aware of any party that will be prejudiced if the information contained in the Receiver's Confidential Appendices are sealed until a sale transaction in respect of the Real Property closes or further order of the Court.

Fees and Disbursements of the Receiver and its Counsel

32. The Receiver's fees from September 9, 2024 to April 25, 2025 encompass 263.5 hours at an average hourly rate of \$368.61 for a total of \$97,128.50 before disbursements and applicable taxes. The Receiver is therefore requesting that this Honourable Court approve its total fees inclusive of disbursements and applicable taxes in the amount of \$110,435.04.²⁹

33. The Receiver's Counsel's fees from September 27, 2024 to March 31, 2025 encompass 57.8 hours for a total of \$34,115.80, including disbursements and applicable taxes. The Receiver is therefore requesting that this Honourable Court approve the Receiver's Counsel's total fees and disbursements inclusive of applicable taxes in the amount of \$34,115.80.³⁰

34. The Receiver is of the view that the fees and disbursements set out in the Affidavit of Peter Crawley sworn April 28, 2025 and the Affidavit Gary Feldman sworn April 28, 2025 (the "Fee

²⁸ First Report at para. 33, MR, Tab 2.

²⁹ First Report at paras. 60-61, MR, Tab 2; Appendix "M" to the First Report, MR, Tab 2M.

³⁰ First Report at paras. 62-63, MR, Tab 2; Appendix "N" to the First Report, MR, Tab 2N.

Affidavits”) are reasonable.³¹

PART III – ISSUES

35. The issues to be determined on this motion are:

- (a) Should the Sale Process be approved, including the listing agreement with Royal LePage?
- (b) Should a sealing order be granted over the Confidential Appendices?
- (c) Should the activities of the Receiver be approved?
- (d) Should the fees and disbursements of the Receiver and Chaitons be approved?
- (e) Should an order for vacant possession and leave to issue a writ of possession be granted?

PART IV – LAW AND ARGUMENT

Approval of the Sale Process

36. This Court has jurisdiction to approve the Sale Process pursuant to section 243(1)(c) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3.³²

37. In the case of *Royal Bank of Canada v. Soundair Corp.*, the Ontario Court of Appeal held that a court was to consider the following factors when deciding whether to approve the sale of property subject to a receivership:

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted

³¹ First Report at para. 64, MR, Tab 2.

³² [Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, s. 243\(1\)\(c\)](#).

improvidently;

- (b) the efficacy and integrity of the process by which offers are obtained;
- (c) whether there has been unfairness in the working out of the process; and
- (d) the interests of all parties.³³

38. In *CCM Master Qualified Fund Ltd. v. blutip Power Technologies Ltd.*³⁴, the Court held that the criteria identified in *Soundair* also informs the determination of whether to approve a court-appointed receiver's proposed sale process. Specifically, the court is to assess:

- (a) the fairness, transparency and integrity of the proposed process;
- (b) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and
- (c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

39. The Receiver recommends that the Court approve the Listing Agreement between the Receiver and Royal LePage for the following reasons:

- (a) the Receiver engaged two (2) appraisers to prepare appraisals for the Real Property, and commissioned listing proposals from three (3) reputable commercial realtors with experience in selling properties similar in nature to the Real Property and within the Wasaga Beach market where the Real Property is located;³⁵
- (b) based on the Receiver's review of, among other things, the favourable commission structure, listing price and the quality of Royal LePage's overall proposal, the Receiver

³³ *Royal Bank of Canada v. Soundair Corp. (1991)*, 4 OR (3d) 1 (ONCA) at para. 16 [*"Soundair"*].

³⁴ *CCM Master Qualified Fund Ltd. v. blutip Power Technologies Ltd.*, 2012 ONSC 1750 at para. 6.

³⁵ First Report at paras. 27 & 39 MR, Tab 2; Confidential Appendices "1", "2" and "3".

recommends the engagement of Royal LePage as Listing Agent and approval of the Listing Agreement;³⁶

- (c) Royal LePage's team has the credentials and expertise to expose the Real Property to the marketplace, has familiarity with the area where the Real Property is located, and its recommended listing price is supported by the appraisals commissioned by the Receiver;³⁷
- (d) The terms of the Listing Agreement are reasonable, appropriate and will be accretive to efforts to maximize recovery for stakeholders; and
- (e) BMO supports the engagement of Royal LePage as Listing Agent.³⁸

40. The Receiver recommends that the Court approve the proposed Sale Process for the following reasons:

- (a) the Sale Process is a transparent, reasonable, and fair process that will canvass the market in an appropriate and commercially efficacious manner;³⁹
- (b) the Sale Process will be conducted in conjunction with an experienced real estate broker and is designed to encourage a competitive environment for the solicitation of offers in respect of the Real Property;⁴⁰
- (c) the duration of the Sale Process is reasonable and sufficient to allow interested parties to perform due diligence and submit offers. The Receiver will also have the flexibility

³⁶ First Report at para. 30, MR, Tab 2; Appendix "F" to the First Report, MR, Tab 2F.

³⁷ First Report at para. 30, MR, Tab 2.

³⁸ First Report at para. 30, MR, Tab 2.

³⁹ First Report at paras. 32 & 34 (a)-(e), MR, Tab 2.

⁴⁰ First Report at para. 32 (a)-(e), MR, Tab 2.

to modify the milestone dates as it deems necessary;⁴¹ and

- (d) the Sale Process will optimize the chances of maximizing recovery for the stakeholders in a manner that meets the *Soundair* Principles and the factors set out in *CCM Master Qualified Fund*.⁴²

Sealing Order

41. The Receiver seeks a sealing order over the Confidential Appendices to the First Report.

42. The Supreme Court of Canada has held that a sealing order may be granted:⁴³

- (a) where it is necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
- (b) where the salutary effects of the confidentiality outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.

43. This Court has applied the *Sierra* test in court-supervised sale proceedings to ensure that competitors or potential bidders do not gain an advantage if the sale transaction does not close. In *GE Canada Real Estate Financing Business Property Co. v. 1262354 Ontario Inc.*, this Court held that the “integrity of the sales process necessitates keeping all bids confidential until a final sale of the assets has taken place.”⁴⁴

44. In *Sherman Estate v. Donovan*, the Supreme Court of Canada held that a person asking a court

⁴¹ First Report at para. 31 (e), (f) and (j) MR, Tab 2.

⁴² First Report at para. 32, MR, Tab 2.

⁴³ *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at para. 45 [“*Sierra*”].

⁴⁴ *GE Canada Real Estate Financing Business Property Co. v. 1262354 Ontario Inc.*, 2014 ONSC 1173 at para. 34 [“*GE Canada*”].

to exercise discretion in limiting the ‘open court’ presumption must establish that:⁴⁵

- (a) court openness poses a serious risk to public interest;
- (b) the order sought is necessary to prevent the risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

45. The Confidential Appendices contain confidential and commercially sensitive information relating to appraisals obtained by the Receiver for the Real Property and the respective valuations of each real estate brokerage that submitted a listing proposal. If this information was disclosed prior to the completion of a sale transaction in respect of the Real Property, it could negatively impact the integrity of the Sale Process and be materially prejudicial to the receivership estate.⁴⁶

46. The sealing Order is also reasonable as it is limited in scope (in terms of the materials it covers) and in time (it shall remain in effect only until the Real Property is sold or further order of the Court).

The Fees and Disbursements of the Receiver and Chaitons Should be Approved

47. The Receiver is seeking approval of the professional fees and disbursements incurred by it and its legal counsel as described in the Crawley Affidavit, and the Feldmand Affidavit attached to the First Report.

48. The Appointment Order at paragraphs 18 to 20 provide that the Receiver and its counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts.⁴⁷

49. The fees and disbursements are fair and reasonable and have been properly incurred. The

⁴⁵ [*Sherman Estate v. Donovan*, 2021 SCC 25](#) at para. 38.

⁴⁶ First Report at para. 33, MR, Tab 2.

⁴⁷ Appendix “A” to the First Report; MR, Tab 2A.

hourly rates charged by the Receiver and its counsel are consistent with comparable firms practicing in the area of insolvency in the Toronto market.

50. The Receiver respectfully submits that it is appropriate to approve the fees and disbursements of the Receiver and its counsel in the circumstances.

Vacant Possession and Leave to Issue a Writ of Possession in respect of Unit 924 and Unit 925

(a) Order for Vacant Possession

51. The Appointment Order entitled the Receiver to take possession of and exercise control over the Property (as defined in the Appointment Order).⁴⁸

52. This Court has the jurisdiction to grant the relief sought by the Receiver on this motion. Although *Residential Tenancies Act* matters, and the eviction of residential tenants, are subject to the exclusive jurisdiction of the Landlord and Tenant Board, the Receiver submits that there is no lawful occupant or “tenant” of either Unit 924 or Unit 925, within the meaning of the *Residential Tenancies Act* (“RTA”) or otherwise,⁴⁹ because of the following reasons:⁵⁰

(a) Contrary to the definition of “tenant” in the RTA, the Occupant of Unit 924 (i.e. Teat) and the Occupants of Unit 925 (i.e. Kennedy and Delorme) have never paid any rent, nor are they party to a tenancy agreement.⁵¹ Specifically:

(i) In the case of Unit 924, despite repeated requests made by the Receiver, no information has been provided to the Receiver evidencing any lawful right of Kennedy or Teat to occupy Unit 924. No rent has been paid by any Occupant

⁴⁸ Appendix “A” to the First Report, MR, Tab 2A para. 3.a).

⁴⁹ See *Kingsett Mortgage Corporation v 30 Roe Investments Corp.*, 2023 CarswellOnt 8383 at paras. 24, 40-41, 47, 49-50, 52.

⁵⁰ First Report at para. 57, MR, Tab 2.

⁵¹ First Report at paras. 54-55, MR, Tab 2.

of Unit 924 to the Debtors or the Receiver in respect of Unit 924;⁵² and

(ii) In the case of Unit 925, Kennedy gained access to that unit by breaking into it using a crowbar.⁵³ To date Kennedy produced a document that he purported was a lease but which, in fact, was a copy of the “additional terms” schedule to a standard OREA lease agreement that contained only Kennedy’s signature and was not signed by any other person.⁵⁴ No rent has ever been paid by any of the Occupants of Unit 925 (i.e. Kennedy or Delorme) in respect of Unit 925.

(b) The Receiver understands that there was never any verbal agreement between the Companies and any of the Occupants of Unit 924 and Unit 925 regarding the occupancy of those units.⁵⁵

53. In addition, the Receiver believes that: (i) the conduct of Kennedy, including, among other things, the documented forced entry into Unit 925; (ii) the Occupants’ persistent refusal to engage with the receiver or provide any legal basis for the occupation of Unit 924 and Unit 925; and (iii) the costs and delay incurred to date by the receivership estate in connection with the Occupants of Unit 924 and Unit 925, all necessitate the Receiver seeking the relief sought on this motion.⁵⁶

54. For the foregoing reasons, the Receiver also requests that this Court also issue an order prohibiting the current Occupants of Unit 924 and Unit 925 from trespassing on the Real Property after the Receiver obtains vacant possession of Unit 924 and Unit 925, so that they may not attempt to occupy any other unit(s) located at the Real Property.⁵⁷

⁵² First Report at para. 39, MR, Tab 2.

⁵³ First Report at para. 44, MR, Tab 2.

⁵⁴ First Report at paras. 44-46, MR, Tab 2.

⁵⁵ First Report at para. 56, MR, Tab 2.

⁵⁶ First Report at para. 59, MR, Tab 2.

⁵⁷ First Report at para. 61, MR, Tab 2.

(b) Leave to Issue a Writ of Possession

55. Rule 60.03 provides that an order for the recovery or delivery of the possession of land may be enforced by a writ of possession.

56. Ontario courts have held that, for the purposes of Rule 60.03, a receivership order and the vacant possession order (sought on this motion), may be enforced by a writ of possession.⁵⁸

57. A writ of possession may be issued pursuant to Rule 60.10 only with the leave of the court. Rule 60.10(2) provides as follows:

“60.10 (2) The court may grant leave to issue a writ of possession only where it is satisfied that all persons in actual possession of any part of the land have received sufficient notice of the proceeding in which the order was obtained to have enabled them to apply to the court for relief.”

58. It is submitted that the requirements of rule 60.10(2) have been met.

59. On April 17, 2025, the Receiver retained the services of a process server to attend Unit 924 and Unit 925 in order to identify the occupants of Unit 924 and Unit 925.⁵⁹

60. Also on April 17, 2025, a Notice Demanding Vacant Possession was delivered to all of the Occupants of Unit 924 and Unit 925. Each Notice Demanding Vacant Possession advised the recipient thereof, among other things: (i) of these receivership proceedings and the Appointment Order; (ii) to vacate and deliver up possession to the Receiver; (iii) that the Receiver may bring a motion the Court permitting the issuance of a writ of possession; and (iv) they may bring a motion in these receivership

⁵⁸ *Kingsett Mortgage Corporation v 30 Roe Investments Corp.*, 2023 CarswellOnt 8383 at paras. 56-58, and *Kim (Re)*, 2022 ONSC 2731 at paras. 19 – 24.

⁵⁹ First Report at para. 51, MR, Tab 2.

proceedings to dispute the Receiver's entitlement to possession of the Property.⁶⁰

61. Following the delivery of the Notice Demanding Vacant Possession, the Occupants of Unit 924 and Unit 925 did not contact the Receiver or its counsel regarding the Notice Demanding Vacant Possession and have not applied to this Court for relief.⁶¹

PART V – RELIEF SOUGHT

62. The Receiver respectfully recommends and requests that the Court grant the orders sought on this motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of April, 2025.



CHAITONS LLP

Lawyers for the Receiver, BDO Canada Limited

⁶⁰ First Report at para. 52, MR, Tab 2.

⁶¹ First Report at para. 53, MR, Tab 2.

SCHEDULE “A”

LIST OF AUTHORITIES

1. [Royal Bank of Canada v. Soundair Corp. \(1991\), 4 OR \(3d\) 1 \(ONCA\)](#)
2. [CCM Master Qualified Fund v blutip Power Technologies, 2012 ONSC 1750](#)
3. [Sierra Club of Canada v. Canada \(Minister of Finance\), 2002 SCC 41](#)
4. [GE Canada Real Estate Financing Business Property Co. v. 1262354 Ontario Inc., 2014 ONSC 1173](#)
5. [Sherman Estate v. Donovan, 2021 SCC 25](#)
6. [Bank of America Canada v. Willann Investments Ltd., 1996 CanLII 2782 \(ONCA\)](#)
7. [Kingsett Mortgage Corporation v 30 Roe Investments Corp., 2023 CarswellOnt 8383](#)
8. [Kim \(Re\), 2022 ONSC 2731](#)

2023 ONSC 3323

Ontario Superior Court of Justice [Commercial List]

KingSett Mortgage Corporation v. 30 Roe Investments Corp.

2023 CarswellOnt 8383, 2023 ONSC 3323

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-13, AS AMENDED,
AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

KingSett Mortgage Corporation (Applicant) and 30 Roe Investments Corp. (Respondent)

P.J. Osborne J.

Heard: May 30, 2023

Judgment: May 30, 2023

Docket: CV-22-00674810-00CL

Counsel: Chris Armstrong, Nargis Fazil, for Receiver

Sean Zweig, for Kingsett Mortgage

Raymond Zar (Agent), for 30 Roe Investment

Darren Marr, for CIBC

Noah Goldstein, Murtaza Tallat, for KSV, Receiver

Subject: Civil Practice and Procedure; Corporate and Commercial; Insolvency; Property

Related Abridgment Classifications

Bankruptcy and insolvency

[IV Receivers](#)

[IV.4 Miscellaneous](#)

Headnote

Bankruptcy and insolvency --- Receivers — Miscellaneous

Table of Authorities

Cases considered by P.J. Osborne J.:

Aim Health Group Inc. v. 40 Finchgate Ltd. Partnership (2012), 2012 ONCA 795, 2012 CarswellOnt 14463, 26 R.P.R. (5th) 169, 300 O.A.C. 130, 113 O.R. (3d) 187 (Ont. C.A.) — referred to

Fisgard Capital II Corp. v. Montgomery (2022), 2022 ONSC 978, 2022 CarswellOnt 1730 (Ont. S.C.J.) — referred to
George Weston Ltd. v. Domtar Inc. (2012), 2012 ONSC 5001, 2012 CarswellOnt 10880, 112 O.R. (3d) 190, 354 D.L.R. (4th) 121, 30 C.P.C. (7th) 252 (Ont. S.C.J. [Commercial List]) — referred to

Kim (Re) (2022), 2022 ONSC 2731, 2022 CarswellOnt 7575, 99 C.B.R. (6th) 202 (Ont. S.C.J. [Commercial List]) — referred to

Royal Bank v. Soundair Corp. (1991), 7 C.B.R. (3d) 1, 83 D.L.R. (4th) 76, 46 O.A.C. 321, 4 O.R. (3d) 1, 1991 CarswellOnt 205 (Ont. C.A.) — followed

Steelback Brewery Inc. v. 2184493 Ontario Ltd. (2012), 2012 ONSC 6510, 2012 CarswellOnt 14949 (Ont. S.C.J.) — referred to

Stevens et al. v. Hutchens et al. (2022), 2022 ONSC 1508, 2022 CarswellOnt 3266, 98 C.B.R. (6th) 246 (Ont. S.C.J. [Commercial List]) — referred to

Statutes considered:

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

s. 243 — referred to

Courts of Justice Act, R.S.O. 1990, c. C.43

s. 100 — referred to

s. 137 — referred to

Residential Tenancies Act, 2006, S.O. 2006, c. 17

Generally — referred to

Rules considered:

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

Generally — referred to

R. 1.04 — referred to

R. 15.01 — referred to

R. 60.03 — referred to

MOTION by receiver for orders with respect to condominium units.

P.J. Osborne J.:

Relief Sought

- 1 KSV Restructuring Inc., in its capacity as Court-appointed Receiver, brings two motions seeking various heads of relief:
 - a. an order declaring that the Receiver is entitled to vacant possession of the PH 07 condominium unit and related parking and storage units, and granting leave to issue a writ of possession and a writ of possession in respect of that unit;
 - b. an approval and vesting order ("AVO") in respect of the proposed sale of the PH 02 condominium unit and related parking and storage units as contemplated in an APS dated March 9, 2023, as amended;
 - c. provisional execution in respect of the above-noted AVO for PH 02;
 - d. an approval and vesting order in respect of the proposed sale of the PH 03 condominium unit and related parking and storage units as contemplated in an APS dated March 9, 2023, as amended;
 - e. provisional execution in respect of the above-noted AVO for PH 03;
 - f. an AVO in respect of the remaining condominium units not as yet sold as listed on Schedule B, subject to the Sale Conditions (as defined in the motion materials and described below);
 - g. an order approving certain Distributions from the proceeds of the above-noted sales;
 - h. an order approving the activities of the Receiver as described in the Fourth Report dated May 16, 2023; and
 - i. a sealing order in respect of the confidential appendices to the Fourth Report.
- 2 The Receiver relies on the Fourth Report dated May 16, 2023. Defined terms have the meaning given to them in the Fourth Report or the motion materials unless otherwise stated.

Background and Preliminary Matters

3 The relief sought today is fully supported by KingSett and CIBC. It is not opposed by any party except as described below. CIBC holds a first mortgage on each of the condominium units. Each of those mortgages secures the indebtedness owing by the Debtor in respect of that particular unit only. As of May 25, 2023, the total indebtedness owing to CIBC by the Debtor is approximately \$4.35 million plus accruing interest fees and expenses.

4 KingSett is the fulcrum creditor. KingSett holds a second mortgage on each of the units, a general security agreement and other security, including a personal guarantee from Mr. Zar. As of May 1, 2023, the total indebtedness owing to KingSett by the Debtors is approximately \$2.95 million plus accruing interest, fees and expenses.

5 The Debtor is also indebted to the Canada Revenue Agency in the amount of approximately \$40,000 on account of unremitted HST. Other creditors include RBC. The Debtor has failed to provide sufficient information to the Receiver to identify additional creditors, or the amounts that may be owed to them, with certainty and precision.

6 Mr. Raymond Zar appears today for 30 Roe Investments Corp. ("30 Roe"). 30 Roe is not represented by counsel. Mr. Zar states that he is the president, secretary and a director of the Corporation, and the personal guarantor of the indebtedness owing to KingSett.

7 No motion for leave has been sought pursuant to Rule 15.01 for relief from the requirement that the corporation be represented by a lawyer. Mr. Zar submitted that this Court in other steps in this proceeding has permitted him to speak for the corporation, that the Court of Appeal for Ontario has permitted him to speak for the corporation in appeals in this proceeding, and that he requested that he be permitted to do so today with respect to these motions. I permitted him to do that.

8 A court reporter was present for the hearing of the motions.

9 Neither 30 Roe nor Mr. Zar served or filed any responding materials. Both were properly served with the motion materials, and service is not contested today. As is set out below, and following the hearing of submissions from counsel and Mr. Zar, much of the relief requested was ultimately on the consent of all parties. Other relief was not opposed by Mr. Zar or 30 Roe.

10 In the end, the only relief that was contested by Mr. Zar was the AVO in respect of condominium units not yet sold, although as explained below his consent with respect to other heads of relief was dependent upon certain terms.

11 I should also observe, particularly with respect to the motion for declaratory vacant possession and a writ of possession in respect of PH 07, that that unit was, apparently, occupied by an individual by the name of Ms. Maryam Rezaee.

12 The affidavit of service, filed, reflects that Ms. Rezaee was properly served with the motion materials in respect of that relief on May 17, 2023, and has been aware of these receivership proceedings since December, 2022. Neither Ms. Rezaee nor any counsel on her behalf has filed any responding materials, and nor did they appear today. Counsel for the Receiver confirms that they have not received any response from Ms. Rezaee or counsel acting on her behalf since the motion materials were served.

13 Ms. Rezaee is Mr. Zar's mother. Mr. Zar confirmed that his mother was aware of this motion and the relief sought, and that she had advised him and he understood that she was retaining counsel to respond to the motion. While he observed that he was surprised that neither she nor counsel on her behalf appeared today, he was very clear that he was here in his capacity as a representative of 30 Roe and in his own capacity as personal guarantor, and did not purport to have any authority to speak on behalf of Ms. Rezaee.

14 This matter has a lengthy history and I have not repeated it all in this Endorsement.

15 As noted, KingSett is the fulcrum creditor. That indebtedness matured on December 1, 2021 and still today, has not been repaid. The Receiver was appointed on May 9, 2022. An appeal by the Debtor from the Receivership Order was quashed on June 13, 2022.

16 On July 20, 2022, this Court approved a Sale Process for the Debtor's nine condominium units. That approval was opposed by the Debtor on the basis that refinancing was imminent and the units should be marketed together as a going concern hospitality business.

17 Amendments to the Sale Process were approved on December 14, 2022, also over the opposition of the Debtor. The Receiver then entered into sale agreements for two units earlier this year and sought court approval of same. That approval was opposed by the Debtor, and when it was granted, the Debtor purported to commence an appeal as of right.

18 The Court of Appeal for Ontario quashed the appeal of the Debtor, finding it was a collateral attack on the prior orders of this Court approving the Sale Process and the amendments thereto, finding also that it was a delay tactic.

19 Other events in the course of this proceeding are set out in the Fourth Report and in the earlier reports of the Receiver filed.

20 The Receiver has now sold two additional condominium units.

21 I will address each of the heads of relief in turn.

Declaration of Vacant Possession and Writ of Possession for Condominium Unit PH 07

22 This relief was not opposed, although as explained below Mr. Zar made certain observations and submissions to assist the Court.

23 The basis for this relief is set out in the motion materials and in particular, the Fourth Report and the Second Report and the Supplement thereto.

24 The Receiver submits that there is no lawful occupant or tenant and that it is entitled to vacant possession.

25 In summary, condominium unit PH 07 was previously occupied by Ms. Rezaee, who vacated that unit on or about August 27, 2022. When Mr. Rezaee vacated that unit, the Receiver obtained the keys from her. At the time, the Receiver was not aware that Ms. Raz was Mr. Zar's mother, or that there was any relationship between them. At the outset of the receivership, Receiver was advised by Mr. Zar that rent on PH 07 had been prepaid by its occupant through to July 25, 2022.

26 The records of the Receiver reflect that PH 01 was vacated on or around August 27, 2022 by its prior occupant. The Receiver obtained the keys from the previous occupant.

27 Neither PH 01 nor PH 07 PH 01 was re-let by the Receiver, pending an anticipated sale in this proceeding.

28 On December 7, 2022, representatives of the Receiver and certain creditors conducted a tour of the premises to prepare for the sale process. They observed that PH 01 was occupied, although without the knowledge or consent of the Receiver. Since the Receiver had changed the locks to PH 01 (as well as other units), the Receiver has no knowledge as to how the occupant was able to gain access to that unit.

29 Counsel to the Receiver sent, by process server, a letter to the occupant of PH 01 requesting a response by the next day as to the circumstances by which the occupant came to occupy PH 01. No response was received.

30 Accordingly, a representative of the Receiver attended at the premises on the afternoon of the following day, December 9. An adult woman answered the door although advised she could not speak English and the Receiver's representative left.

31 The individual who answered the door was the same person who the Receiver had previously seen in occupancy of PH 07. Mr. Zar had previously advised the Receiver that the occupant of PH 07 had prepaid rent until July 25, 2022. As noted above, PH 07 had already been vacated by the occupant (save for a suitcase and minor personal belongings).

32 On December 9, 2022, the Receiver wrote to Mr. Zar. The full contents of that correspondence are set out at paragraph 7 of the Fourth Report. In short, the Receiver advised that the female occupant living in PH 01 had previously lived in PH 07 but that, according to the records of the Receiver, should not be living there. The Receiver was concerned that the unit was therefore occupied by a squatter, or occupant with no legal rights. The Receiver advised Mr. Zar that it was considering filing a police report.

33 Mr. Zar replied the next day, on December 9, 2022, to advise that the last time he had been at the property was "around three months ago when you changed all the locks". He stated he did not recall the occupancy status of the units but that if there was a forced entry he could direct property management to intervene. No other details were provided.

34 In the absence of any further information, the Receiver then filed a police report and, on December 9, the police contacted the Receiver and requested that the Receiver attend at PH 01 to meet with the occupant, which occurred. When they arrived, the occupant of PH 01 was moving her belongings back into PH 07. Upon her advising the police that she could not speak English, the police called a translator, another police officer, to communicate with the occupant in Farsi. That translator attended.

35 The Fourth Report reflects that according to information disclosed by the police to the Receiver, the occupant advised that she was not allowed to be in PH 01, but was entitled to live in PH 07. Upon being advised by the police that they required her identification because she was trespassing, the occupant initially refused but then provided it. She advised the police that she did not have a lease for PH 07.

36 While the police were interviewing the occupant, Mr. Zar began speaking to the officers via electronic monitoring equipment located on the ceiling of the penthouse floor hallways in the building. He advised the police officers that they did not have a warrant to enter the premises, that he was a director of the condominium corporation and did not authorize the police to continue their investigation. The police continued nonetheless and refused to communicate with Mr. Zar.

37 The police then advised the Receiver that the occupant was Ms. Rezaee and that she was Mr. Zar's mother. This was the first time that the Receiver became aware of that relationship.

38 On December 19, 2022, counsel for the Receiver wrote a letter to Ms. Rezaee requiring that she explain the basis for any right to occupy PH 07, including any evidence of such right (i.e., a lease or rental agreement) and demanding that she vacate occupancy, absent any such right. She was given until January 15 to find alternative accommodations.

39 That letter was delivered to Ms. Rezaee in the English language together with a courtesy Farsi translation. The Receiver has filed an affidavit of service (Appendix V to the Fourth Report) confirming delivery of that letter. Ms. Rezaee has, as of the date of this motion, not responded in any way whatsoever.

40 Counsel to the Receiver wrote to the Debtor on January 17, 2023 and in the absence of any response, followed up with a letter to the Debtor's then counsel dated January 25, 2023. Both letters inquired as to whether Ms. Rezaee had vacated PH 07, requesting any documents regarding her entitlement to occupy PH 07 and any other information. Neither letter has been responded to.

41 The Receiver believes that Ms. Rezaee still occupies PH 07. In the circumstances, and since: Mr. Zar had previously advised that rent had been paid on that unit only through July 25, 2022; it had been vacated on or about that date by Ms. Rezaee; the locks had been subsequently changed by the Receiver; and the Receiver had not re-let the unit to Ms. Rezaee or anyone else nor received rent from her or anyone else; the Receiver is not aware of any lawful basis upon which Ms. Rezaee or any other person is entitled to occupy that unit, the Receiver seeks the declaratory relief and writ of possession as described above.

42 As stated at the outset of this endorsement, Mr. Zar advised the Court that his mother had consulted counsel and that he was not speaking in any way for her. On behalf of the Debtor, he did however offer submissions on the relief sought.

43 Mr. Zar submitted that he had not physically attended at the premises since the summer of 2022, with the result that he had no knowledge as to whether either of PH 01 or PH 07 were occupied, and if so by whom. He advised that he had no memory of who was in which unit.

44 Mr. Zar drew the attention of the Court to a photograph filed in respect of an earlier motion (Caselines B-1-1079) which appeared to depict a woman, a man and the door of PH 07. Mr. Zar advised that this photograph had been taken in July, 2022, that the woman was his mother, Ms. Rezaee, and that the man was a locksmith changing the locks to that unit (PH 01) on the instructions of the Receiver.

45 Mr. Zar then submitted, without any evidence, that the keys to the units PH 01 and PH 07 were in fact the same, and that he believed that his mother had accidentally gone to the wrong unit (PH 07) and not realized her error when her key opened the door. Even if this were factually correct, and there is no evidence beyond the statement, it would not explain how the occupant "accidentally" moved all of her belongings into a different unit.

46 Mr. Zar submitted that he first learned that his mother was apparently occupying PH 01 in December, 2022, when the police attended at the premises as described above.

47 In any event, Mr. Zar reiterated that he had no current knowledge as to the occupancy of either unit (or indeed any unit in the building), that he has no further information with respect to any lease agreement or rental agreement, or any other particulars or information. Accordingly, as of the date of this motion, the Receiver has still received no materials evidencing any lawful right to occupy either unit, such as a lease or rental agreement.

48 Finally, Mr. Zar submitted that, purely as a matter of efficiency and minimizing cost, this Court should not grant the possessory relief sought, but rather should refer the matter to the Landlord and Tenant Board ("LTB") where it should bring an application to seek declaratory relief as to whether or not the current occupant of PH 01 was a "tenant" within the meaning of the relevant law.

49 *Residential Tenancies Act* matters, and the eviction of residential tenants, are subject to the exclusive jurisdiction of the LTB. However, the Receiver submits, and I accept, that Ms. Rezaee is not a "Tenant" within the meaning of that statute, with the result that this Court has jurisdiction to grant the relief requested by the Receiver.

50 Contrary to the definition of "Tenant" in the statute, Ms. Rezaee is not a person who pays rent, or a party to a tenancy agreement. She has never paid rent, there is no evidence she is paying rent presently (it is certainly not being paid to the Receiver and nor has any rent ever been paid by her to the Receiver), and such is a key factor in the determination of whether a landlord/tenant relationship exists: *Aim Health Group Inc. v. 40 Finchgate Ltd. Partnership*, 2012 ONCA 795, at paras. 95 and 97.

51 The Receivership Order entitles the Receiver to take possession of and exercise control over the Property, including all units. This Court has previously authorized the Receiver to pursue the sale of PH 07 as part of the sale process, and that requires that the unit be vacated in order that it can be listed for sale and sold.

52 I am satisfied that there is no evidence upon which I can conclude that Ms. Rezaee (nor anyone else) has any lawful right to occupy PH 07. Again, there is no evidence of any lease or agreement, nor rent paid.

53 Moreover, I am satisfied on the evidence filed that whatever rights Ms. Rezaee may have had, which itself is not clear on the record, such were abandoned and extinguished in July, 2022, when she voluntarily vacated PH 07. I observe as an aside that Mr. Zar's submission that rent had been prepaid (which submission is itself without any evidence of such prepayment) was to the effect that the rent had been prepaid but only until July 25, 2022 in any event, which is consistent with the tenant or occupant not having any legal right to occupy the premises thereafter.

54 There is no evidence that Ms. Rezaee ever had any legal right to occupy PH 01, but in any event she has also vacated that the premises.

55 Ms. Rezaee received formal notice, in English and Farsi, in December through the correspondence of the Receiver noted above. She was served with the motion materials returnable today. She has not responded in any way, to anything, whatsoever, notwithstanding having had almost 5 months to find alternative accommodations (indeed, if she is not already done so), to provide any evidence of a lease or payment of rent, or indeed to oppose the relief sought today in any way.

56 I am satisfied that the Receiver is entitled to an order for vacant possession. The Receivership Order already authorizes that.

57 Rule 60.03 provides that an order for the recovery or delivery of the possession of land may be enforced by a writ of possession. I am satisfied that for the purposes of Rule 60.03, the Receivership Order and the vacant possession order sought on this motion, may be enforced by a writ.

58 I am also satisfied that such relief can be sought by way of application, as has been done here, and that no trial is required: *Fisgard Capital II Corp. v. Montgomery*, 2022 ONSC 978 at para. 15, *Gary Stevens, Linda Stevens and 1174365 Alberta Ltd. v. Hutchens et al*, Commercial List, Toronto CV-18-608271-00CL (ONSC) and *Kim (Re)*, 2022 ONSC 2731 at paras. 19-24.

59 As noted above, this relief is not opposed. The order declaring that the Receiver is entitled to vacant possession and granting leave to issue a writ of possession, together with that writ, is granted.

Approval and Vesting Orders for Condominium Units PH 02 and PH 03

60 The Receiver has sold two additional units, PH 02 and PH 03, pursuant to and consistent with the previously approved Amended Sale Process. The market has been extensively canvassed, the purchase prices for these units are not materially different from the most recent listing prices, the proposed transactions represent the best offers received, and the Receiver is of the view that further time and resources spent marketing units will not result in greater value being realized.

61 Moreover, the proposed sale of these two units is materially consistent, in form and substance, to the sales of PH 04 and PH 09 previously approved by this Court.

62 The Receivership Order authorizes the Receiver to sell the Property with the approval of the Court in respect of any transaction which the purchase price exceeds \$250,000. The Amended Sale Process and the authority of the Receiver to carry it out, have been previously approved.

63 The authority of this Court to grant a vesting order and related relief is clear from [section 100 of the Courts of Justice Act](#) and [section 243 of the Bankruptcy and Insolvency Act](#). The principles set out in *Royal Bank v. Soundair Corp.* (1991), 83 DLR (4th) 76, CBR (3d) 1 (ONCA) have been met.

64 These transactions are supported by the consent of all parties, and in particular KingSett, the fulcrum creditor and Mr. Zar. The approval and vesting orders in respect of PH 02 and PH 03 are approved.

Provisional Execution in respect of the AVOs

65 In my view, provisional execution in respect of the AVOs for the above-noted units is not required, given the consent of all parties, again specifically including Mr. Zar, and his clear statement in court that he would not seek to challenge or appeal those orders notwithstanding his consent today to the relief sought in any event.

66 If there is any challenge, the Receiver may seek an urgent appointment before me to consider the necessity of provisional execution.

Approval and Vesting Orders in respect of Remaining Units subject to Sale Conditions

67 The Receiver seeks approval of the sale of the five Remaining Units and the granting of an AVO now.

68 All principal stakeholders consent to this relief, with the caveat that, as explained below, the consent of Mr. Zar is conditional upon his approval, absent which he opposes this relief.

69 The nature of those Remaining Units are in all material respects similar to the units that have already been sold with Court approval. The Receiver submits, and I accept, that in the circumstances of this case, the market value of the Remaining Units is well known to the Receiver.

70 This receivership proceeding has been lengthy, contentious and expensive. There is no realistic prospect that the fulcrum creditor will recover its indebtedness. It follows that certain other stakeholders, particularly including the Debtor and Mr. Zar, are "out of the money" in the sense that neither is a fulcrum creditor in respect of which their interests are subordinate.

71 The Receiver has not enjoyed the benefit of cooperation from all stakeholders, and in particular the conduct of Mr. Zar, the baseless allegations of misconduct advanced and the failure to provide to the Receiver relevant information and documents, has contributed to the expense and delay. In the circumstances, the Receiver seeks to minimize additional professional costs, delay, and submits that it is appropriate today to approve the sale of the Remaining Units, subject to the Sale Conditions.

72 This Court has approved previously prospective sales and in particular prospective sales of residential housing units in the manner proposed by the Receiver here, in the course of which this Court has emphasized that proportionality and procedure should be a consideration in receiverships particularly when considering the submissions of "out-of-the-money" stakeholders here: *KingSett Mortgage Corporation v. Sunrise Acquisitions (Hwy 7) Inc.* Approval and Vesting Order (Remaining Units) dated October 27, 2021, Commercial List, Toronto CV-21-00663051-00CL (ONSC); and *Re Urbancorp. Toronto Management Inc.* Amended and Restated Approval and Vesting Order (Residential Condominium Units dated March 14, 2017), Commercial List, Toronto CV-16-11389-00CL (ONSC).

73 The Sale Conditions are critical elements of the approval sought. I am satisfied that they ensure that there is no prospect of a sale of a Unit for less than fair market value. The Sale Conditions provide that:

- a. the consent of CIBC and KingSett is required;
- b. the minimum price per square foot is fixed, and it is based on the Transactions entered into by the Receiver to date together with the expectations of the experienced listing agent (Re/Max) as to sale prices for the Remaining Units; and
- c. there is a sunset clause: any sale agreement for an approved Transaction must be entered into within approximately three months.

74 CIBC and KingSett are the two parties whose encumbrances will be vested out upon such sales. Moreover, since KingSett is expected to suffer a shortfall, it is incentivized to consent only to sales that are above fair market value as it is the party that stands to receive every incremental dollar generated from the sale.

75 The minimum price per square foot is an informed and appropriate baseline given the experience of the Receiver to date with respect to units in this building, in the broader experience and expectations of the listing agent.

76 The three-month sunset ensures that the possibility of changing market conditions moving forward is minimized given the relatively short period of time within which the preapproval is effective.

77 I am satisfied that with the imposition of the Sale Conditions, the approval sought is appropriate here. It is informed by the recent sales and the experience of the Receiver and listing agent in their respective areas of expertise. The reasonableness of the prospective sale approval with the Sale Conditions is informed by the consent in support of all economically affected stakeholders.

78 As noted above, Mr. Zar supports the relief sought, but only if the consent of the Debtor, in addition to that of CIBC and KingSett, is required.

79 In the circumstances, I am not prepared to impose that condition and decline to do so. The conduct and progress of this receivership to date suggests that such will serve only to further delay matters and increase costs. I am satisfied that the above noted Sale Conditions, and prospective sales to be conducted by the Receiver with its duties to this Court, adequately and appropriately protect the rights of stakeholders.

80 Moreover, Rule 1.04 requires a liberal construction of the Rules to secure the just, most expeditious and least expensive determination on its merits of every civil case. Here, it is appropriate to decrease the number of required future Court attendances and associated costs and use of scarce judicial resources: *George Weston Ltd. v. Domtar Inc.*, 2012 ONSC 5001 (Ont. S.C.) [Commercial List] at paras. 11 and 16-20; *Steelback Brewery Inc. v. 2184493 Ontario Ltd.*, 2012 ONSC 6510 at paras. 44-47.

81 Mr. Zar then submitted that the Court ought not to exercise its discretion to approve the sale of the Remaining Units in advance since the Receiver was not impartial, counsel for the Receiver was in a conflict of interest since that firm has previously acted for KingSett, and the conduct of KingSett has been "poor".

82 None of these issues has been raised previously in this proceeding and there is no evidence or basis to support any of them.

83 I am satisfied that approval of the sale of the Remaining Units is appropriate, that such will not prejudice any party and indeed, through the minimization of costs and further delay in an already massively expensive proceeding, ought to operate to the benefit of all (including the Debtor and Mr. Zar).

84 KingSett is the fulcrum creditor economically affected by the sales and is entirely incentivized to maximize the sale price of the Remaining Units. It supports the relief sought. As has been observed by the Court of Appeal for Ontario, this Court ought to scrutinize with great care opposition of out-of-the-money stakeholders.

85 The sale of the Remaining Units, subject to the Sale Conditions as proposed by the Receiver, is approved.

Distributions and Approval of Receiver's Activities

86 The Receiver seeks authority to make the Distributions as set out in the Fourth Report and the motion materials. There is no issue that this Court has on many occasions approved distributions during ongoing receivership proceedings at the same time as or following approval of a sale which generates proceeds.

87 Such distributions limit the accrual of interest, promote efficiency, and minimize costs.

88 In this case, counsel to the Receiver has reviewed the CIBC and KingSett mortgages and issued opinions that, subject to standard assumptions and qualifications, they constitute good and valid mortgages on the Units. The terms and mechanics of the proposed distributions are set out in the motion materials and the Fourth Report.

89 Mr. Zar submits that there have been errors on payout statements issued to him by KingSett. However, he acknowledged in argument that he does not dispute the principal amount owing nor the fact that if the proposed interim Distributions are made, including to creditors, KingSett will remain in a position of very material shortfall.

90 The proposed Distributions, including for greater certainty the Distribution in respect of the commissions to be paid to Re/Max, the listing agent in respect of the Units to be sold, enjoy the consent of all parties, with the caveat that Mr. Zar opposes the payment to the Canada Revenue Agency of HST payable on the sale of Units. He does so in his capacity as personal guarantor of the indebtedness to the senior creditors.

91 He takes the position that, rather than paying HST upon the closing of the sale of each Unit, the Receiver should be required to file HST returns on behalf of the Debtor, and then pay any amounts assessed as being owing only following those filings, and that the Receiver should hold in trust the amounts in respect of possible HST remittances in the intervening period.

92 Mr. Zar submits that he as personal guarantor, and the Debtor, will be prejudiced by any overpayment to the CRA in respect of HST which he estimates, based on informal tax advice he says he and the Debtor have received from the accountant for the Debtor, BDO Dunwoody, could be as high as \$500,000.

93 I observe the fact to which all parties agree that the Debtor has not filed HST returns nor paid remittances for several years.

94 The Receiver takes the position that HST is payable on the sale of Units since, while sales of condominium units may be generally exempt from HST, that exemption is voided where such units have been used as short-term rentals as is the case here according to the information available to the Receiver. The quantum of HST owing may potentially be affected by whether input tax credits were claimed by the Debtor at the time the units were required, although the Receiver lacks the information to determine whether such credits were in fact claimed since Mr. Zar has not provided that information to the Receiver.

95 The Receiver also objects to any delay in the payment of HST on the basis that the objections and concerns being raised by Mr. Zar are being raised today in court for the first time, and as noted above the information deficiencies would largely be in his power to correct and remedy.

96 The Receiver submits that HST is payable within 60 days of a taxable event, in this case the closing of the sale of a Unit. The Receiver agreed that as the sale of the first Unit in respect of which this is an issue is scheduled to close at the end of May, HST would not in any event be payable before June 30, with the result that there is a brief window in which the objections raised by Mr. Zar and said to be supported by the informal tax advice he has received, can be considered by the Receiver.

97 In the circumstances, I am prepared to allow Mr. Zar, on his own behalf and on behalf of the Debtor, a brief opportunity to provide to the Receiver the relevant documents of the Debtor which he stated today he has, and the informal tax advice from BDO which he says he has received, prior to approving the Distribution in respect of HST payable on the sale of Units.

98 Accordingly, Mr. Zar will provide to the Receiver and its counsel, no later than end of day Friday, June 2, the tax advice he has received from BDO. It need not be in the form of a formal opinion, but rather the substance of the position may be set out in an email or short memorandum from BDO and supported as necessary by relevant primary documents such as those specifically informing the input tax credit issue.

99 If, following that provision of information, the issue is resolved on consent, the parties may advise me in writing and the Receiver will either remit the HST or hold it in trust, as may be agreed. If the issue is not resolved on consent, the Receiver may schedule a 30 minute appointment before me through the Commercial List office to seek an order authorizing the payment of HST. No other issue will be dealt with at that attendance. The Receiver and the Debtor may each file a written submission, not to exceed two pages in length, as to their respective position. If the Receiver is successful on the issue, Mr. Zar shall pay to the Receiver costs in respect of this additional work. If Mr. Zar and the Debtor are successful, the Receiver will pay the costs in respect of this additional work.

100 All parties have agreed to this format and to this schedule and to the payment of costs in respect of this issue.

101 All Distributions are approved, save for the payment of HST which will be addressed as set out above.

102 The activities of the Receiver are set out in the Fourth Report. Approval of those activities is consented to by all parties. Mr. Zar sought to clarify that by so consenting, he was not consenting to the approval of fees of the Receiver in respect of those activities. No such fee approval request is before the Court today, and that is for another day.

103 I am satisfied that the activities of the Receiver as set out in the Fourth Report are appropriate and they are approved.

Sealing Order

104 The Receiver seeks a sealing order in respect of the Confidential Appendices to the Fourth Report. Those contain the minimum price per square foot Sale Condition referred to above, together with the detailed Receiver's waterfall analysis, including the anticipated sale price for each Remaining Unit.

105 The sealing order is to be in effect pending the closing of the sale transactions in respect of Units including the Remaining Units and would not be permanent. It is intended to protect the integrity of the sales process and the marketability of the Units which in turn will maximize recovery for all stakeholders.

106 This Court has the discretion pursuant to [section 137 of the Courts of Justice Act](#) to make such an order. I am satisfied that the sealing relief is appropriate and proportionate.

107 The sealing relief is recognized as potentially posing a serious risk to an important public interest in the openness of the court. The proportionate relief sought here is necessary to prevent a serious risk to the identified interest and there are no reasonably alternative measures that will prevent this risk. As a matter of proportionality, the benefits of the sealing order outweigh its negative effects. The test as set out in *Sierra Club* and *Sherman Estate* is satisfied.

108 The sealing order is granted.

Disposition

109 Orders to go in accordance with these reasons.

110 Each of the draft orders submitted requires housekeeping or clerical amendments. The draft ancillary matters order requires the deletion of [paragraph 3\(b\)](#) which would have authorized a Distribution to the Canada Revenue Agency in respect of HST.

111 Counsel for the Receiver may submit to me directly revised draft orders for signature in accordance with this Endorsement. Once signed, those orders are effective immediately and without the necessity of issuing and entering, although any party may take out any of the orders through the Commercial List Office if necessary.

Order accordingly.

BANK OF MONTREAL
Applicant

-and-

1000000152 ONTARIO INC., et al.
Respondents

Court File No. CV-24-00727540-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

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