

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.

)

WEDNESDAY, THE 29TH

JUSTICE C. MACLEOD

)

DAY OF JANUARY, 2025

)

B E T W E E N:



DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

**ASHCROFT HOMES – 101 RICHMOND ROAD INC.,
ASHCROFT HOMES – 108 RICHMOND ROAD INC., AND ASHCROFT
HOMES – 111 RICHMOND ROAD INC.**

Respondents

DISCHARGE ORDER

THIS MOTION, made by BDO Canada Limited (“**BDO**”), in its capacity as the court-appointed receiver (the “**Receiver**”) of the assets, undertakings and properties (the “**Property**”) of Ashcroft Homes – 101 Richmond Road Inc., Ashcroft Homes – 108 Richmond Road Inc. and Ashcroft Homes – 111 Richmond Road Inc. (collectively, the “**Debtors**”), appointed pursuant to the Order of this Court, dated May 16, 2024 (“**Initial Receivership Order**”), as amended and restated by the Amended and Restated Order of this Court, dated September 3, 2024 (the “**Amended Receivership Order**”) for an Order:

- 1) approving the Second Report of the Receiver, dated November 4, 2024, the Supplemental Report to the First Report of the Receiver, dated August 30, 2024, the Supplemental Report to the Second Report dated November 13, 2024, the Second Supplemental Report to the Second Report, dated November 14, 2024, the Third Report of the Receiver, dated January 14, 2024 (the “**Third Report**”) and the Supplemental

Report to the Third Report of the Receiver dated January 27, 2025 (the “**Supplemental Third Report**”) (collectively, the “**Receiver’s Reports**”), and the activities and conduct of the Receiver described in the Receiver’s Reports;

- 2) approving the Receiver’s interim statement of receipts and disbursements, as of January 24, 2025;
- 3) approving the professional fees and disbursements of the Receiver and its counsel;
- 4) approving the transaction detailed in the Commitment Letter with HP ABL Fund 1 GP Inc. (“**New Lender**”), dated September 26, 2024 (the “**Commitment Letter**”), as amended from time to time, in the amount of \$8,750,000 (the “**Refinancing**”) and attached as Appendix “A” to the Supplemental Third Report;
- 5) discharging BDO as Receiver of the undertakings, properties and assets of the Debtors; and
- 6) releasing BDO from any and all liability, as set out in paragraph 28 of this Order,

was heard this 29th day of January, 2025 at 161 Elgin Street, Ottawa, Ontario via videoconference.

ON READING the Third Report, the Supplemental Third Report, the Affidavit of Matthew Marchand, sworn January 13, 2025 (the “**Marchand Affidavit**”), the Affidavit of Sara-Ann Wilson, sworn January 14, 2025 (the “**Wilson Affidavit**”), and on hearing the submissions of counsel for the Receiver, counsel for the Debtors, and counsel for the Applicant, no one else appearing although served as evidenced by the Affidavit of Amanda Campbell sworn January 14, 2025, and January 27, 2025 and the Affidavit of Hanqiong (Joan) Xu affirmed January 27, 2025, filed, and on being advised that the within Motion is on consent of the parties;

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Receiver’s Notice of Motion dated January 14, 2025, Notice of Motion, dated January 27, 2025, Motion Record and

Supplemental Motion Record, is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

REPORTS AND ACTIVITIES

2. **THIS COURT ORDERS** that the Receiver's Reports, and the activities and conduct of the Receiver as described in the Receiver's Reports, be and are hereby approved.

SALES PROCESS TERMINATION

3. **THIS COURT ORDERS** that the sales process approved pursuant to the Order of this Court, dated September 3, 2024, and all steps in respect of the Commercial Sales Process (as defined in the Third Report), shall be immediately terminated and the Receiver shall take all reasonable steps to cease marketing the Property and terminate the listing agreements.

R&Ds

4. **THIS COURT ORDERS** that the Receiver's interim statements of receipts and disbursements as of January 24, 2025, be and are hereby approved.

FEES

5. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period from May 1, 2024 to December 31, 2024 in the amount of \$460,537.98, as set out in the Third Report and the Marchand Affidavit, be and are hereby approved.

6. **THIS COURT ORDERS** that the fees and disbursements of Dentons Canada LLP for the period from June 6, 2024 to December 31, 2024 in the amount of \$361,721.64, as set out in the Third Report and the Wilson Affidavit, be and are hereby approved.

7. **THIS COURT ORDERS** that the Fee Accrual (as defined in the Supplemental Third Report) be and is hereby approved.

8. **THIS COURT ORDERS** that the total fees and disbursements of the Receiver and its counsel from January 1, 2025, until the Receiver's discharge shall be capped at \$94,100.00.

REFINANCING

9. **THIS COURT ORDERS** that the Receiver is authorized to take any steps which the Receiver determines to be necessary or appropriate to assist with closing the Refinancing.

10. **THIS COURT ORDERS** that the Receiver's estimated refinancing use of funds for the period ending January 31, 2025 (the "**Refinancing Use of Funds**"), attached as Appendix "B" to the Supplemental Third Report, is hereby approved.

11. **THIS COURT ORDERS** that the Debtors are authorized and directed to complete the Refinancing and directs the Debtors to advance, or cause to be advanced, the proceeds of such Refinancing, as directed and outlined in this Order, and detailed in the Commitment Letter.

12. **THIS COURT ORDERS AND DIRECTS** that the net proceeds of the Refinancing, in an amount totaling \$7,964,332.06 (the "**Refinancing Amount**"), held in trust by Mann Lawyers LLP, shall be paid as follows no later than one (1) business day from the date of this Order, and written confirmation of payment provided immediately thereafter to the Receiver (the below payments to be made by Mann Lawyers LLP collectively referred to herein as the "**Refinancing Payments**"):

- (a) to Blaney McMurtry LLP, counsel to the Applicants, the amount of \$7,014,622.42, to pay all indebtedness owing by the Debtors to the Applicant, plus applicable per diem, as set out in the Applicant's payout statement, dated January 27, 2025;
- (b) to Canada Revenue Agency, the amount of approximately \$73,000 on account of the Debtors' HST liabilities owing as of the date of the Initial Receivership Order, plus any accrued interest and penalties thereon (the "**Pre-Filing HST**");
- (c) municipal property taxes owing on the Property, in the approximate amount of \$232,115.61, including amounts owing, if any, as of the date of the Initial Receivership Order and estimated accruals to January 31, 2025, plus penalties and interest (if any) (the "**Property Taxes**");
- (d) to Dentons Canada LLP, the amount of \$401,271.64, to be applied against the fees and disbursements of counsel to the Receiver as approved herein; and

- (e) the balance totaling approximately \$243,322.39 paid to the Receiver, or as the Receiver may direct, for the payment of Priority Payables (defined below).

13. **THIS COURT ORDERS** that the Receiver is hereby authorized to pay from the funds received pursuant to paragraph 12(e) hereof, available cash on hand and any subsequent receipts, in accordance with the Refinancing Use of Funds, and without any need for further Court approval, the following amounts (collectively, with the Pre-Filing HST and the Property Taxes, the “**Priority Payables**”):

- (a) all accrued and unpaid post-receivership obligations of the Debtors and the Receiver in an amount as approved by the Receiver in its sole discretion;
- (b) the remaining administrative and operational costs required to complete the within receivership proceedings;
- (c) all unpaid fees and disbursements of the Receiver and its counsel as approved herein;
- (d) HST owing to Canada Revenue Agency for the post-receivership period, if any; and
- (e) all other amounts payable by the Receiver prior to discharge, as the Receiver may determine, acting reasonably.

In the event that an expense or liability of the Receiver arises that is not contemplated by the Refinancing Use of Funds, or otherwise previously disclosed by the Receiver to the Debtors, the Receiver will consult with the Debtors with respect to the payment of such expense or liability, provided that the Receiver, acting reasonably, will make the final determination as to whether the expense is to be paid by the Receiver prior to discharge.

14. **THIS COURT ORDERS** that the Receiver’s liability to make the payments set forth herein, if any, is limited to the monies held by the Receiver in its capacity as Receiver, and the Receiver shall have no liability for making any payments set forth herein in its personal or corporate capacity.

15. **THIS COURT ORDERS** that the Debtors are liable for and assume the obligation to pay any and all unpaid deemed trust obligations of the Debtors and/or the Receiver owing to the Crown, including, without limitation, HST owing to Canada Revenue Agency and other amounts as may become due and owing as a result of an audit by CRA or otherwise.

16. **THIS COURT ORDERS AND DECLARES** that it is satisfied that the implementation of the Refinancing will allow the Debtors to satisfy all pre-receivership obligations, all post-receivership obligations, and that the Refinancing along with the Debtors' normal course operations will afford the Debtors sufficient liquidity to satisfy all post-receivership termination obligations incurred by them in the ordinary course of business.

PROPERTY HANDOVER

17. **THIS COURT ORDERS** that upon the payment of all of the Refinancing Payments, the Receiver will be deemed to no longer be in possession or control of the Property (the "**Property Handover**"), other than the balance of the Refinancing Amount and the Reserve Funds (as defined herein). From and after the date of the Property Handover, the Receiver shall have no obligation or liability in respect of the Property or the business of the Debtors, other than solely in respect of the administration of the monies remaining in the hands of the Receiver. For clarity, after the Property Handover, the Debtors shall be responsible for (a) all outstanding obligations and liabilities of the Debtors whether arising as a result of the Debtors' operations or otherwise, including all liabilities that accrued during the receivership for which the Reserve Funds are insufficient to pay, (b) all Landlord and Tenant Board matters in respect of the Property currently ongoing or that may otherwise arise before the Receiver's discharge, (c) all unsecured creditor payables incurred prior to the receivership, and (d) any inter-company loans between the Ashcroft companies.

18. **THIS COURT ORDERS** that as part of the Property Handover, the Receiver shall provide the Debtors with all physical property, including keys, documents, books and records in the Receiver's possession or control.

19. **THIS COURT ORDERS** that upon the payment of all of the Refinancing Payments, and the Property Handover being completed, the Debtors shall be entitled to market, solicit and sell

the Property to third parties and, in the event a sale transaction in respect of the Property is scheduled to close prior to the filing of the Discharge Certificate, the Debtors are hereby authorized to register a discharge in respect of the Amended Receivership Order against the Property that is subject to the transaction and the Receiver shall execute such documents as may be reasonably required by the Debtors to file such discharge.

RESERVE FUNDS

20. **THIS COURT ORDERS** that, after payment of all amounts set out in the Refinancing Use of Funds and/or otherwise approved herein, the Receiver shall hold \$29,781.07 of the Refinancing Amount and the funds currently held by the Receiver as a reserve (the “**Reserve Funds**”) which shall be applied by the Receiver to satisfy any shortfall in available cash on hand for payment of Priority Payables and any other amounts identified in the Refinancing Use of Funds. For clarity, the Reserve Funds shall continue to be held by the Receiver after the Property Handover and used to pay any Priority Payables, outstanding vendor expenses, and any other amounts identified in the Refinancing Use of Funds prior to the filing of its Discharge Certificate.

21. **THIS COURT ORDERS** that the January 2025 rent payments detailed in paragraph 14 of the Supplemental Third Report shall be paid to the Receiver and added to the Reserve Funds, and the Receiver is authorized to utilize such funds to make payments detailed in the Refinancing Use of Funds.

22. **THIS COURT ORDERS** that, after payment of all Priority Payables, to the satisfaction of the Receiver, including third party vendor expenses, the Receiver shall pay any monies remaining in its hands including the balance of the Reserve Funds to the Debtors or as the Debtors may direct prior to the Receiver’s discharge.

REGISTRATIONS

23. **THIS COURT ORDERS** that upon receipt by the Applicant of the amount set out in paragraph 12(a) hereof, the Debtors are authorized to discharge any registrations made by the Applicant on title to the Property, namely the registrations listed on **Schedule “A”** hereto (the “**DUCA Registrations**”) in favour of the Applicant against the Property. The Applicant is directed

to execute all documents reasonably requested by the Debtors, at the Debtors' expense, to effect the discharge of the DUCA Registrations, including:

- (a) A signed discharge statement confirming the amounts payable as set out at paragraph 12(a) above in full satisfaction of all principal, interest, legal fees, administration and/or discharge fees;
- (b) A signed acknowledgment and direction re: discharge of all DUCA charges, including instrument numbers OC1706469, OC2066793, OC2066800 and OC2066810 (the "**DUCA Charges**") and any related instruments relating to the Property, including the general assignment of rents having instrument numbers OC1706477, OC2066797, OC2066806, and OC2066813 (the "**Notices**");
- (c) A registered discharge of the DUCA Charges and Notices; and
- (d) A solicitor's undertaking to discharge and release all of the Lender's security related to the indebtedness of the Debtors to the Lender prior to releasing the Funds to the Lender, including all instruments registered on title to the Property as well as any and all registrations made pursuant to the *Personal Property Security Act* and other agreements, registrations, and/or instruments.

24. **THIS COURT DIRECTS** that upon the filing of the Discharge Certificate (defined below) the Debtors are authorized to discharge the Amended Receivership Order having instrument numbers OC2702189 and OC2723920 from title to the Property. The Receiver is directed to execute all documents reasonably requested by the Debtors, at the Debtors' expense, to effect the discharge of the Amended Receivership Order from title to the Property.

25. **THIS COURT ORDERS** that upon registration of the Discharge Certificate in the Land Registry Office for the Registry Division of Ottawa-Carleton (No. 4) (the "**Land Registrar**"), the Land Registrar is hereby directed to delete and expunge from title to the Property instrument numbers OC2702189 and OC2723920 in connection with the Amended Receivership Order.

26. **THIS COURT ORDERS** that upon payment of all of the Refinancing Payments, and the removal of the DUCA Charges, the New Lender shall be entitled to register its security to the title of the Property, namely a first ranking charge/mortgage and a first ranking notice of assignment of rents, which registration shall rank in priority to the charges contained in the Amended Receivership Order, and the stay of proceedings in respect of the Property as contained in the

Amended Receivership Order is hereby lifted solely for that purpose. The Receiver is directed to execute all documents reasonably requested by the Debtors, at the Debtors' expense, to effect the New Lender's first ranking charge and notice, including postponements to the Receiver's registrations.

DISCHARGE AND RELEASE

27. **THIS COURT ORDERS** that upon payment of the amounts set out herein and upon the Receiver filing a certificate (the "**Discharge Certificate**") substantially in the form attached hereto as **Schedule "B"**, certifying, among other things, that the Priority Payables have been paid in full, the indebtedness owing by the Debtors to the Applicant has been repaid in full, the balance of the Reserve Funds (if any) have been paid to the Debtors, and the Receiver has completed the Remaining Matters (as defined in the Supplemental Third Report), the Receiver shall be discharged as Receiver of the assets, undertakings and properties of the Debtors, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of BDO in its capacity as Receiver.

28. **THIS COURT ORDERS AND DECLARES** that BDO is hereby released and discharged from any and all liability that BDO now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of BDO while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, BDO is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, including, without limitation, all pre-receivership liabilities, any accrued and/or unpaid liabilities from and after the commencement of these proceedings which any alleged creditor in that regard asserts a claim after the date hereof, and any liabilities for which the Debtors may become liable after the Property Handover has occurred, save and except for any gross negligence or wilful misconduct on the Receiver's part.

29. **THIS COURT ORDERS** that, for the purposes of filing the Discharge Certificate, the Receiver may rely on, (a) written confirmation from the Applicant or counsel to the Applicant that the indebtedness owing by the Debtors to the Applicant has been repaid in full, and (b) written confirmation from the Debtors or counsel to the Debtors that the payments in paragraphs 12(b) and (c) have been paid in full.

INDEMNITY

30. **THIS COURT ORDERS** that the Debtors and David Choo shall, jointly and severally, indemnify, hold harmless and defend BDO and the Applicant, and each of their respective affiliates, directors, officers, employees, agents, representatives, shareholders, partners, successors, advisors, counsel, and permitted assigns (collectively, the “**Indemnified Parties**”), from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including legal fees, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, incurred by the Indemnified Parties as a result of, relating to or in any way arising out of: (a) the business or affairs of the Debtors; (b) the within proceeding; (c) BDO acting in its capacity as Receiver in the within proceeding; (d) the payments described herein, the Property Handover, or any other matter set forth herein; or (e) the Applicant’s involvement in the within proceedings and in respect of its underlying debt and security documents in connection with the credit facilities the Applicant has granted to the Debtors. For clarity, the indemnity set forth herein shall survive the Receiver’s discharge.

TERMINATION OF CHARGES

31. **THIS COURT ORDERS** that upon the filing the Discharge Certificate by the Receiver, the Receiver’s Charge and the Receiver’s Borrowings Charge (each as defined in the Amended Receivership Order) shall be automatically terminated.



Digitally signed by C. MacLeod RSJ
Date: 2025.01.29 14:48:51 -05'00'

Schedule “A” – DUCA Registrations

OC1706477

OC1706469

OC2066793

OC2066810

OC2066800

OC2066797

OC2066806

OC2066813

Schedule “B” – Discharge Certificate

Court File No. CV-24-00095337-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

**ASHCROFT HOMES – 101 RICHMOND ROAD INC.,
ASHCROFT HOMES – 108 RICHMOND ROAD INC., AND ASHCROFT
HOMES – 111 RICHMOND ROAD INC.**

Respondents

DISCHARGE CERTIFICATE

RECITALS

A. Pursuant to the Order of the Court dated January 29, 2025 (the “**Discharge Order**”), BDO Canada Limited (“**BDO**”) shall be discharged as Receiver, effective upon the Receiver filing a certificate with the Court confirming the payment of all Priority Payables, the repayment of the Applicant and the completion of the Remaining Matters (as defined in the Receiver’s Supplemental Report to the Third Report to the Court, dated January 27, 2025 (the “**Supplemental Third Report**”))), provided however that, notwithstanding the Receiver’s discharge: (a) BDO will remain as Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership, and (b) BDO will continue to have the benefit of the provisions of all Orders made in this proceeding including all approvals, protections and stays of proceedings in favour of BDO, in its capacity as Receiver.

B. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Discharge Order.

THE RECEIVER CERTIFIES the following:

1. all Remaining Matters have been completed to the satisfaction of the Receiver;

2. the Receiver has been advised that the secured indebtedness owing by the Debtors to the Applicant has been paid in full;
3. the Receiver has been advised that all payments to be made by the Debtors or their counsel pursuant to paragraph 12 of the Discharge Order have been made;
4. all Priority Payables have been paid in full to the satisfaction of the Receiver;
5. the Reserve Funds have been paid to the Receiver, and any amounts of the Reserve Funds not required for the payment of Priority Payables have been returned to the Debtors or as the Debtors directed; and
6. the Debtors have not made the Receiver aware of any matter in respect of any pre-receivership liabilities including, without limitation, any intercompany liabilities or post receivership termination obligations which they are unable to satisfy.

THIS CERTIFICATE is dated Jan 29, 2025.

BDO CANADA LIMITED, solely in its capacity as Receiver of Ashcroft Homes – 101 Richmond Road Inc., et al., and not in its personal capacity or in any other capacity

Per:

Christian Kodia

Name: On behalf of J. C. Macleod

Title: Registrar

DUCA FINANCIAL SERVICES CREDIT UNION
LTD.

-and-

ASHCROFT HOMES – 101 RICHMOND ROAD INC.,
ASHCROFT HOMES – 108 RICHMOND ROAD INC., and
ASHCROFT HOMES – 111 RICHMOND ROAD INC.
Respondents

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT OTTAWA

DISCHARGE ORDER

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*Lawyer for BDO Canada Limited, in its capacity as the Court-
appointed Receiver of Ashcroft Homes – 101 Richmond Road Inc.,
Ashcroft Homes – 108 Richmond Road Inc. and Ashcroft Homes –
111 Richmond Road Inc.*