



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00723897-00CL

DATE: April 15, 2025

NO. ON LIST: 2

TITLE OF PROCEEDING: National Bank of Canada v. Commcache Asset Management Inc. et al.

BEFORE: Justice Steele

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Birpal Benipal Sara-Ann Wilson	Receiver (BDO)	birpal.benipal@dentons.com sara.wilson@dentons.com
Derek Harland	National Bank of Canada	dharland@tgf.ca

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE J. STEELE:

- [1] The Receiver brings a motion for, among other things, court approval of the Sale Agreement and the Transaction contemplated therein, and an approval and vesting order, and an ancillary order sealing confidential appendices, approving fees, and the Receiver's report. The Receiver also requests approval of an interim distribution of the anticipated sale proceeds of the King Street Property to National Bank of Canada, the first mortgagee.
- [2] No one opposes the relief sought.

[3] National Bank and CMHC, guarantor, support the proposed Transaction.

Should the Court approve the transaction contemplated by the agreement of purchase and sale and approve the AVO?

[4] The Receiver has entered into an agreement of purchase and sale to sell the King Street Property to the Purchaser.

[5] I am satisfied that the Sale Agreement and the Transaction should be approved.

[6] In *Royal Bank v. Soundair Corp.*, 1991 CanLII 2727 (ONCA), the Court of Appeal set out the factors for the Court to consider when determining whether to approve a proposed sale:

- a. Whether the receiver has made a sufficient effort to get the best price and has not acted 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.

[7] For the reasons set out at paras. 17-27 of the Receiver's factum I am satisfied that the *Soundair* test has been met.

Should the Court approve the proposed interim distribution?

[8] The Receiver seeks approval of an interim distribution of the anticipated sale proceeds from the Transaction to National Bank. The Receiver expects to be in a position to make an interim distribution of \$1,475,000 to National Bank.

[9] I am satisfied that the interim distribution should be approved. The Receiver states that National Bank holds valid and enforceable security against the King Street Property. Further, the Receiver states that the interim distribution is appropriate at this time.

Should the Court approve the Receiver's Second Report and Activities

[10] As is commonly done, the Receiver seeks court approval of its Second Report and the activities set out therein.

[11] The Court has the jurisdiction to review and approve the activities of a court-appointed receiver as set out in the receiver's reports: *Bank of America Canada v. Willann Investments Ltd.*, 1996 CanLII 2782 (ONCA).

[12] The Court in *Re Target Canada Co.*, 2015 ONSC 7574, at paras. 22-23, identified several good policy and practical reasons for monitors in CCAA proceedings to routinely seek court approval of their reports and activities. These policy and practical reasons also apply in receivership proceedings where the receiver seeks approval of its report and activities: *Re Hangfen Evergreen Inc.*, 2017 ONSC 7161, at para. 15.

[13] I am satisfied that the activities of the Receiver set out in the Second Report were reasonable, necessary and undertaken in good faith pursuant to the Receiver's duties and powers and should be approved.

Should the Sealing Order be granted?

[14] The Receiver requests that the confidential appendices be sealed pending further court order or the completion of the Transaction pursuant to the sales process. The confidential appendices include the unredacted APS (and unredacted amendments to the APS), the appraisal of the property, a summary of the offers received, and a chart calculating the proposed distribution to National Bank (which shows the Transaction purchase price of the King Street Property).

[15] Subsection 137(2) of the *Courts of Justice Act* provides that the Court may order that any document filed in a civil proceeding be treated as confidential, sealed, and not form part of the public record.

[16] It is common to temporarily seal commercially sensitive material when assets are to be sold under a court process. Courts have acknowledged that there is a public interest in the "general commercial interest of preserving confidential information" and in maximizing recoveries in an insolvency: *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 41.

[17] The requested sealing order is limited in scope and in time. The proposed sealing order balances the open court principle and legitimate commercial requirements for confidentiality in the circumstances. In my view, the benefits of the requested sealing order outweigh the negative impact on the "open court" principle. As noted, the confidential appendices include information regarding the appraised value of the property, as well as the agreed price for the Transaction. I agree with the Receiver that the disclosure of the confidential appendices could have a detrimental impact on any future sale process should one be required if, for example, the proposed Transaction does not close. No stakeholder will be materially prejudiced by the requested sealing order, which applies to only a limited amount of information.

[18] I am satisfied that the limited nature and scope of the proposed sealing order is appropriate and satisfies the *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, at para. 53, requirements, as modified in *Sherman Estate*, at para. 38.

[19] The Receiver is directed to provide the sealed confidential appendices to the Court clerk at the filing office in an envelope with a copy of this endorsement and the signed order (with the relevant provisions highlighted) so that the confidential appendices can be physically sealed. Counsel is further directed to apply, at the appropriate time, for an unsealing order, if necessary.

Should the fees of the Receiver and its Legal Counsel be approved?

[20] The Receiver seeks court approval of its fees and those of its counsel. Fee affidavits have been filed.

[21] When considering whether to approve professional accounts, the court will consider the overall value contributed, taking into consideration (a) the nature, extent and value of the assets, (b) the complications encountered, (c) the degree of assistance provided by the debtor, (d) the time spent, (e) the receiver's knowledge, experience and skill, (f) the diligence and thoroughness displayed, (g) the responsibilities assumed, (h) the results of the receiver's efforts, and (i) the cost of comparable services when performed in a prudent and economical manner: *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at paras. 33 and 44-45.

[22] I am satisfied that the fees and disbursements are fair and reasonable.

[23] Orders attached.

A handwritten signature in blue ink, appearing to be "J. H. H.", is located in the lower right quadrant of the page.