



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00737791-00CL

DATE: July 29, 2025

NO. ON LIST: 3

TITLE OF PROCEEDING:

THE TORONTO-DOMINION BANK v. JBT TRANSPORT, ET AL

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Matthew Cressatti, Counsel for the Applicant	The Toronto-Dominion Bank	mcressatti@millerthomson.com
Timothy Hogan, Counsel	BDO Canada Limited – Receiver	thogan@harrisonpensa.com
Josie Parisi, Receiver	BDO Canada Limited	jparisi@bdo.ca

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE KIMMEL:

[1] BDO Canada Limited ("BDO"), in its capacity as court-appointed Receiver (the "Receiver"), appointed pursuant to an order dated March 7, 2025 (the "Appointment Order") of the Property (as defined in the Appointment Order) of the Respondents, JBT

Transport Inc. ("JBT"), Waydom Management Inc., Melair Management Inc., Heritage Truck Lines Inc. ("HTL"), Drumbo Transport Ltd., Heritage Northern Logistics Inc., and Heritage Warehousing & Distribution Inc. (collectively, the "Debtors"), seeks:

- a. An Approval and Vesting Order, approving the transaction (the "Transaction") contemplated by the Agreement of Purchase and Sale dated July 15, 2025 (the "Sale Agreement") described in the Second Report of BDO as Receiver dated July 16, 2025 (the "Second Report") and the confidential appendices to the Second Report (the "Confidential Appendices"), for the sale of the Equipment (as defined in the Second Report) and vesting all of the right, title and interest in and to the Equipment absolutely in and to the purchaser, McDougall Auctioneer Ltd. (the "Purchaser"), free and clear of and from any security, charge or other encumbrance; and
- b. An Ancillary Order approving the Second Report, and the activities and conduct of the Receiver set out therein, approving the fees and disbursements of the Receiver, the Receiver's counsel, Harrison Pensa LLP, and of the CCAA Monitor Dodick Landau Inc. and its counsel, Loopstra Nixon LLP, and authorizing payment of same, and temporarily sealing the Confidential Appendices to the Second Report until the Transaction is completed, or until a further order of this Court; and
- c. An Amended Amended Appointment Order increasing the sale limits set out in paragraph 5(k) of the Appointment Order from \$50,000 and \$100,000 to \$200,000 to \$400,000, respectively.

[2] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Receiver's factum filed on this motion.

[3] The Debtors' first secured creditor, the Toronto-Dominion Bank, supports the approval of the Transaction and the granting of the relief sought by the Receiver on this motion. All stakeholders on the service list were served with the Receiver's motion returnable today and no party indicated in advance, or appeared at the hearing, to raise any concerns or opposition to the relief sought.

The AVO

[4] The Receiver's Second Report and Factum detail the sales and marketing efforts, undertaken pursuant to the authority granted to it under the Appointment Order, and reasons for recommending the approval of the Transaction contemplated by the Sale Agreement. Some of those justifications include that:

- a. As a going concern sale was not contemplated as the Debtors had ceased operating, the Receiver contacted seven (7) liquidators and equipment resellers and requested

liquidation proposals for the Equipment, and seven (7) liquidation proposals were received by the Receiver.

- b. The Receiver reviewed all of the liquidation proposals received, and the Receiver considered the outright purchase submitted by the Purchaser to be the best offer received.
- c. The Receiver is satisfied that the sale process in respect of the Equipment was conducted in a commercially reasonable manner, which provided for a sufficient and fair opportunity for interested parties to participate in the process, and maximize recovery for the creditors.

[5] Section 100 of the *Courts of Justice Act*, RSO 1990, c. C.43 authorizes this court to grant an order vesting "in any person an interest in real or personal property that the Court has authority to order be conveyed". Now the court must decide whether to grant approval of the Transaction and Sale Agreement and grant the AVO order, by applying the principles set out in the case of *Royal Bank of Canada v. Soundair Corp.*, 7 CBR (3d) 1: 46 OAC 321; 83 DLR (4th) 76; 4 OR (3d) 1.

[6] For the reasons set out in paragraphs 22 - 44 of the Receiver's factum and supported by the Second Report, I am satisfied that the marketing and eventual sale of the specified assets under the Sale Agreement entered into by the Receiver are consistent with the *Soundair* principles, and that the proposed Sale Agreement and Transaction are fair and reasonable in the circumstances. I am also mindful of the deference that the court affords to the business judgment and recommendations of a court appointed Receiver in cases such as this. Accordingly, the Transaction is approved and I am prepared to exercise my jurisdiction and discretion under s. 100 of the *Courts of Justice Act*, RSO 1990, c. C-43, to grant the requested AVO.

[7] The proposed form of AVO is consistent with the Commercial List Model AVO.

The Ancillary Order

[8] The Confidential Appendices include the unredacted Sale Agreement and a summary of the liquidation proposals that the Receiver has obtained.

[9] The Receiver is of the view that the Confidential Appendices contain commercially sensitive information and documents and should be sealed in order to avoid the negative impact that the dissemination of the confidential information contained therein would have if the Transaction is not completed. As a result, the Receiver is seeking a sealing order in respect of the Confidential Appendices until such time as the Transaction is complete, or until further order of this Court.

- [10] The Confidential Appendices in respect of which a time limited partial sealing order is sought contain sensitive commercial information which, if publicly disclosed, would pose a serious risk to the ability of the Receiver to later market and sell the Equipment if the Transaction does not close.
- [11] The requested partial sealing order is limited in its scope (only the specifically identified Confidential Appendices) and in time (until the contemplated Transaction closes).
- [12] The proposed partial sealing order appropriately balances the open court principle and legitimate commercial requirements for confidentiality. It is necessary to avoid any interference with subsequent attempts to market and sell the Equipment, and any prejudice that might be caused by publicly disclosing confidential and commercially-sensitive information prior to the completion of the now approved Transaction. These salutary effects outweigh any deleterious effects, including the effects on the public interest in open and accessible court proceedings.
- [13] 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 requirements, as modified by the reformulation of the test in *Sherman Estate v. Donovan*, 2021 SCC 25, at para 38. Granting this order is consistent with the court's practice of granting limited partial sealing orders in conjunction with approval and vesting orders. See for example, *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.*, 2014 ONSC 1173, at para. 34, in which the court held that the "integrity of the sales process necessitates keeping all bids confidential until a final sale of the assets has taken place".
- [14] **The Receiver is directed to ensure that the sealed Confidential Appendices are provided 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 exhibits can be physically sealed. The Receiver is further directed to ensure that the confidential exhibits are "unsealed" at an appropriate time upon the earlier of the closing of the Transaction or further order of this court.**
- [15] The approval of the Second Report and the activities of the Receiver described therein has been made subject to the standard qualification that has become the Commercial List practice to include in these types of orders.
- [16] It has become the practice of the court to periodically approve the activities of its court appointed officers to ensure that their activities are being conducted in a prudent and diligent manner, and it is within the court's inherent jurisdiction to do so: see *Target Canada Co. (Re)*, 2015 ONSC 7574, at para. 23.

- [17] No interested party disputes that the Receiver has acted in good faith and for the benefit of stakeholders generally.
- [18] The fees for which approval is sought are supported by fee affidavits for the following amounts:
- a. BDO Canada Limited (the Receiver) for the period of March 4, 2025 to June 30, 2025 in the sum of \$417,384.42;
 - b. Harrison Pensa LLP (Receiver's Counsel) for the period of March 5, 2025 to July 15, 2025 in the sum of \$88,886.61;
 - c. Dodick Landau Inc. (the CCAA Monitor) for the period of January 20, 2025 to March 3, 2025 in the sum of \$101,212.72 and the payment of the sum owing of \$32,975.23; and,
 - d. Loopstra Nixon LLP (Monitor's Counsel) for the period of February 3, 2025 to March 6, 2025 in the sum of \$31,095.35 and the payment of the sum owing of \$11,025.98.
- [19] The CCAA Professionals are seeking approval of their fees and disbursements (the "CCAA Fees"). Pursuant to the Appointment Order, the Court approved the administrative charge to include the unpaid CCAA Fees incurred prior to the granting of the Receivership Order. Such charge ranks *pari passu* with the Receiver's administrative charge, is limited to \$75,000 of unpaid fees incurred prior to the granting of the Appointment Order and is subject to customary review and taxation by the Court.
- [20] A copy of the detailed time dockets and hourly rates of these professionals are appended to the supporting fee affidavits. The professional fees claimed reflect the work that has been done since the Appointment Order by the Receiver and its counsel, and prior to the Appointment Order by the Monitor and its counsel. The fees are commensurate with the tasks performed and the Receiver considers the fees and hourly rates to be reasonable. I find them to be fair, reasonable and justified in the circumstances. See *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at paras 33 and 44-45.
- [21] Some of the approved amounts have already been paid. Only the balance owing will be paid from the proceeds of the Transaction.

The Amended Amended Appointment Order

- [22] The Appointment Order currently permits the Receiver to sell, convey, transfer, lease or assign the Property or any part thereof without the approval of this Honourable Court in respect of any transaction not exceeding \$50,000, provided the aggregate consideration for

all such transactions does not exceed \$100,000. Following the closing of the Transaction, the Receiver anticipates selling certain Property in the receivership.

- [23] It is anticipated by the Receiver that following the closing of the Transaction certain remaining Property may be available for the Receiver to sell such as passenger vehicles and trailers, which the Receiver would like to sell without the requirement to return to court should the sale amounts slightly exceed the current limits based on the Receiver's understanding of the value of the remaining Property.
- [24] Accordingly, the Receiver is asking that the dollar threshold be increased to \$200,000 for any single transaction and the aggregate of all such transactions does not exceed \$400,000.
- [25] I am satisfied that the requested amendments are appropriate and a logical extension in light of the specific circumstances of this receivership proceeding. They are reasonably necessary for the continued administration of the estate.

Orders

- [26] The three orders (AVO, Ancillary Order and Amended Appointment Order) in the forms signed by me today are approved for issuance and entry.

A handwritten signature in cursive script that reads "Kimmel J.".

KIMMEL J.