

**CITATION:** Kingsett Mortgage Corporation v. Churchill Lands United Inc. 2024 ONSC 7127  
**COURT FILE NO.:** CV-24-00718940-00CL  
**DATE:** 20241218

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE  
BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c. B-3, AS AMENDED; AND  
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, RSO 1990, c. C.43, AS AMENDED**

**RE:** Kingsett Mortgage Corporation, Applicant

**AND:**

Churchill Lands United Inc., Respondent

**BEFORE:** Kimmel J.

**COUNSEL:** *Michael Citak/ Baruch Wise*, for the Respondent, Churchill Lands United Inc.

*Sean Zweig/Aiden Nelms*, for KSV Restructuring Inc., in its capacity as Court-appointed receiver

*Gregory Dubecky*, 1001024143 Ontario Inc., Graham Halley, the Purchaser under the proposed AVO

**HEARD:** December 12, 2024

**ENDORSEMENT**

**The Motion: Background**

[1] This motion originally came before the court on December 3, 2024. It was adjourned to December 12, 2024 at the request of the representative of Churchill Lands United Inc. ("Churchill" or the "Debtor"). The court's endorsement from December 3, 2024 contains some of the background to this motion. For ease of reference the relevant background is reproduced below:

[1] The Receiver, KSV Restructuring Inc., was appointed on May 14, 2024 at the request of the applicant (senior secured creditor owed in excess of \$2.5 million at the time of the appointment of the Receiver).

[2] On June 24, 2024 this Court granted an order (the "Sale Process Approval Order"), among other things:

- a. approving the sale process in respect of the Real Property (the "Sale Process"); and
- b. approving the listing agreement dated June 5, 2024 (the "Listing Agreement") between the Receiver and Jones Lang Lasalle Real Estate Services, Inc ("JLL").

[3] The Receiver conducted the Sale Process in accordance with the Sale Process Approval Order, and now brings a motion seeking: (i) an order (the "Approval and Vesting Order"), among other things, approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale between the Receiver and 1001024143 Ontario Inc., as purchaser dated October 11, 2024 (the "Sale Agreement") and vesting in the Purchaser, or as it may direct, all of the Debtor's rights, title and interest in and to the real property consisting of raw industrial land located in the Town of Whitby, Ontario that is subject to the applicant's first mortgage security (the "Real Property"), and (ii) an a "Distribution and Discharge Order", that deals with various matters ancillary to the discharge of the Receiver and seeks a sealing order in respect of the Confidential Appendices to the Receiver's Second Report dated November 27, 2024 (the "Confidential Appendices").

...

[5] JLL summarized the Sale Process and its recommendation with respect to the Transaction in its marketing report dated November 12, 2024 (the "JLL Report") . The Sale Process included a preliminary bid deadline of August 7, 2024. As is further discussed in the JLL Report, no offers were received by that date and JLL continued to market the Real Property and discuss the opportunity with prospective purchasers. The Purchaser subsequently submitted an offer on October 11, 2024. The purchase price in the offer was negotiated and eventually the Sale Agreement was signed, which is conditional upon court granting the requested Approval and Vesting Order.

[6] The Receiver has filed redacted copies of the JLL Report and the Sale Agreement with the Second Report. In each case, the only redactions concern the purchase price or the value of the Real Property. The Receiver has filed unredacted copies of the JLL Report and the Sale Agreement as Confidential Appendices to the Second Report. For the reasons detailed in the Receiver's factum at paragraphs 45-52, I am satisfied that the requesting [*sic*] sealing order is necessary and appropriate in the circumstances and I am granting it now so as to ensure that the Confidential Appendices to the Second Report are under seal.

...

[9] Although aware of the court approved Sale Process, neither the Debtor nor any affiliate of the Debtor participated in the Sale Process. Having learned on Friday of the purchase price amount for the Transaction, its representative appeared today to object. Although the burden on the Debtor at this late stage is onerous if it seeks to oppose the approval of the Transaction on the grounds that a sufficient effort was not made by the Receiver to obtain the best price and acted improvidently in negotiating and entering into the Sale Agreement, the court determined that a brief adjournment would be granted to allow the Debtor to bring forward evidence in support of its position so that it can be considered on a proper record. There was no apparent urgency or prejudice to granting a short indulgence to allow for this in the circumstances.

[2] The Sale Agreement is conditional upon court approval.

[3] When the motion was adjourned on December 3, 2024, the court directed that if Churchill intended to oppose the Receiver's motion its responding material (to be delivered by December 6, 2024 at noon) should include evidence of the following matters that its representative had made unsupported representations about on December 3, 2024:

- (a) an explanation for why the Debtor (or its affiliates or affiliates of Mr. Harmandayan) did not participate directly in the Sale Process; and
- (b) firm third-party evidence of a materially higher value of the Real Property that materially exceeds the purchase price in the pending Transaction, that has not been tainted by disclosure to any such third party of what the purchase price is under the pending Transaction.

[4] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Receiver's Second Report.

### **The Evidentiary Record and Request for Partial Sealing Order**

[5] The Receiver's Second Report provides the detailed history of the listing and efforts to sell the Real Property. It also provides an explanation for why the purchase price under the Sale Agreement is significantly less than the list price under the court-approved Listing Agreement and previous offers and appraisals in respect of the Real Property.

[6] The court directed in the December 3, 2024 endorsement that the Confidential Appendices could be filed on a confidential basis and remain sealed pending the earlier of: (i) the closing of the Transaction; and (ii) further Order of the Court. The Confidential Appendices and any redactions in the publicly filed material are solely in respect of the purchase price, deposit and information concerning the value of the Real Property. This discretionary sealing order was

granted pursuant to s. 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, with regard to the balancing of interests that the Supreme Court of Canada has most recently delineated in *Sherman Estate v. Donovan*, 2021 SCC 25, [2021] 2 SCR 75, at para. 38. In this case, those interests include:

- (a) The important public interest of maximizing recoveries in an insolvency that could be compromised by the premature public disclosure of confidential information about the value of a property that a receiver is attempting to sell in a transaction that has not yet closed.
- (b) The fairness and integrity of the Sale Process. Failing to grant such sealing orders can give competitors or other potential bidders in a later round of bidding an unfair advantage as they can obtain sensitive commercial information about the asset up for sale while others have had to rely on their own resources to place a value on the asset when preparing their bids in an approved sale process (see *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.*, 2014 ONSC 1173, at paras. 32-33).
- (c) The lack of any better reasonable alternatives to a temporary and partial sealing order of the confidential information about value (including offers and appraisals) to prevent the risk associated with disclosure pending the closing of a sale.
- (d) The salutary benefits of the sealing request outweigh any deleterious effects. The redacted information is limited and has been narrowly tailored. The only information that is redacted pertains to the purchase price, deposit and value of the Real Property. Moreover, this information will no longer be deemed sensitive or confidential after the close of the Transaction, and as such, the Confidential Appendices will be made publicly available at that time.

[7] It was necessary to grant the limited scope sealing order when the motion was first adjourned because the Debtor had indicated that it would be attempting to solicit an alternative transaction.

[8] The Debtor delivered a responding motion record that contains an alternative bid, and it continues to oppose the Receiver's motion.

[9] The responding motion record explained, among other things, that Mr. Harmandayan had been preoccupied with his spouse's health challenges during the Sale Process and was not engaged in work activities for part of the relevant time. Additionally, the motion record included an offer from Paul Padda Inc. dated December 5, 2024. That offer was later amended following discussions with the Receiver, dated December 8, 2024 (The "Padda Offer"), referenced in the Supplement to the Second Report of the Receiver dated December 9, 2024.

[10] There are aspects of the Responding Motion Record and Supplement to the Second Report of the Receiver that include or refer to confidential information about the value of the Real Property. This includes an April 15, 2024 offer that pre-dated the receivership, offers and appraisals of the Real Property dating back to 2021 (including one offer that was presented by the broker from JLL who marketed the Real Property under the Listing Agreement), the Padda Offer, and two appraisals dated December 4 and 5, 2024. The court was asked to extend the sealing order to include these.

[11] The reasoning and balancing of interests (of the open court principle with the commercial interests of all parties to this receivership in preserving the confidentiality of non-public information about the value of the Real Property pending the completion of a transaction for the sale of that property) apply equally to the confidential aspects of the Responding Motion Record and Supplement to the Second Report as they did to the Confidential Appendices and redacted information forming part of the Receiver's Second Report that have been sealed.

[12] The sealing order is accordingly extended to include the unredacted Responding Motion Record and Supplement to the Second Report of the Receiver on the same terms, pending the closing of a transaction for the sale of the Property. The redacted version of the responding motion record shall remain in the public record. Granting, and now extending, the sealing order is consistent with the court's practice of granting limited partial sealing orders in conjunction with approval and vesting orders.

**[13] The Receiver shall ensure that the Confidential Appendices to the Second Report, the Confidential Appendices to the Supplemental Report and the unredacted Harmandayan Affidavit that contain this confidential value information are placed in a sealed envelope and physically sealed in accordance with this endorsement and signed order. The Receiver shall further ensure that they are unsealed at the appropriate time upon the earlier of the closing of a sale transaction involving the Real Property or further order of this court.**

#### **The Requested AVO and Approval of the Sale Agreement**

[14] The Respondent takes the position that the Receiver has not made a sufficient effort to obtain the best price for the Real Property, that the Sale Agreement is evidently improvident (based on the purchase price), and that the Transaction should accordingly not be approved. Instead, the Respondent submits that the Property should be re-listed on the Toronto Regional Real Estate Board Multiple Listing Service system for a period of not less than three months. In the alternative, the Respondent asks the court to approve the Padda Offer.

[15] Although the Debtor would prefer to have the benefit of the higher Padda Offer, the Receiver continues to recommend that the court grant the AVO and approve the Transaction and grant the Distribution and Discharge Order. The Receiver defends its actions carried out pursuant to the court approved Sale Process that culminated in it signing the Sale Agreement. It maintains

that the court should grant the AVO and approve the Transaction to preserve the integrity of the Sale Process.

[16] All parties agree that the test that the court must apply in determining whether to grant the AVO is that which the Court of Appeal set out in *Royal Bank of Canada v. Soundair Corp.*, 4 O.R. (3d) 1 (C.A.) (1991), at p. 6, which requires the court to consider:

- (a) whether the party made a sufficient effort to obtain the best price and to not act improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which the party obtained offers; and
- (d) whether the working out of the process was unfair.

[17] The Debtor's opposition to approval of the AVO and Sale Agreement is primarily focused on the first consideration, because the Debtor maintains that the purchase price under the Sale Agreement is improvident.

[18] The Debtor's position is simply that with the benefit of hindsight, the process did not generate an offer that is commensurate with what the Debtor believes the value of the Real Property to be. The purchase price under the Sale Agreement is approximately 10% of the value indicated by various appraisals.

[19] However, there is evidence in the Receiver's Second Report that indicates that the Debtor's view may not be fully informed because the Debtor did not participate in the Sale Process, has not signed a non-disclosure agreement ("NDA"), has not accessed the data room, did not ask to sign an NDA and access the data room after the Receiver's motion was served, and is thus not aware of the specific issues that the Receiver and JLL attribute to the difference between the purchase price under the Sale Agreement and other indications of value. Without signing an NDA and gaining access to the data room where this information would be readily available, the Debtor does not have all of the relevant information about the value of the Real Property that was available to all prospective bidders in the Sale Process and to the purchaser under the Sale Agreement in particular.

[20] The Padda Offer that the Debtor has brought forward is unconditional, but it is not based on any diligence or access to the data room. According to the information provided to the Receiver, it is the number that this purchaser arrived at after speaking with the principal of the Debtor, who owes Padda money (according to what the Receiver has been advised). The purchase price under the Padda Offer is only approximately 17% of the value indicated under the various appraisals that the Debtor has presented and relies upon. In these circumstances, the

Padda Offer cannot be considered to be a true reflection of the fair market value of the Real Property.

[21] It is not clear exactly what information Paul Padda Inc. had when it made (and amended) the Padda Offer. It is higher than the purchase price in the Sale Agreement. The primary focus of the Debtor's opposition to the AVO and approval of the Transaction is very much on the purchase price of the Padda Offer, which is an 80% increase in the purchase price under the Sale Agreement. However, it too is materially less than the other indicators of value that the Debtor points to in its confidential materials and is only approximately 17% of the value indicated in the appraisals relied on by the Debtor, as noted above.

[22] The Debtor says the court should be concerned about the fact that there is a continuum of offers and appraisals from 2021 until the two appraisals it received earlier this month, suggesting a much higher value for the Real Property. The Debtor argues that the value differential is so great, and the purchase price under the Sale Agreement is so much lower than other indications of value, that it does not matter that the current information that the Receiver and JLL attribute to the reduced sale price was not directly taken into consideration by these appraisers or other prospective purchasers. That delta alone should be enough, according to the Debtor, for the court to find: that the first part of the *Soundair* test (whether the party made a sufficient effort to obtain the best price and to not act improvidently) has not been satisfied.

[23] The Debtor suggests that the court (and the Receiver and Applicant) can take comfort that Paul Padda Inc. has said it "intends" to participate and renew its offer if the Sale Process is extended so that will set the floor higher than the current offer for which approval is sought now.

[24] The Alberta Court of Appeal in *River Rentals Group Ltd. v. Hutterian Brethren Church of Codesa*, 2010 ABCA 16, 63 CBR (5th) 26, at para. 13, broke down the first part of the *Soundair* test into the following four more specific considerations that the Debtor urges the court to apply to achieve its desired outcome in this case:

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

[25] Relying on these criteria, the Debtor argues that the Receiver's efforts were inadequate because:

- (a) the purchase price under the Padda Offer is substantially higher than the purchase price under the Sale Agreement;
- (b) the purchase price under the Sale Agreement is so low in relation to the appraised values as to be unrealistic; and
- (c) insufficient time was allowed for the making of bids and the Real Property was not exposed to the market for long enough, or the timing of its exposure was not optimal.

[26] The Receiver has provided an explanation in the confidential materials for the unexpected reduction in the purchase price for the Real Property that the indications of higher value have not accounted for, and that renders the price comparisons that the Debtor so heavily relies upon to be of little value. The bidders in the Sale Process had this confidential information; Paul Padda Inc. and the Debtor do not because they did not sign NDAs. Only one bidder was prepared to make an offer and negotiate with the Receiver and only one Transaction has materialized from a marketing process that began in June 2024.

[27] In all of the circumstances, the reasonable inference to be drawn from the recent appraisals that the Debtor has obtained and put forward as evidence of the fair market value of the Real Property is that those appraisals did not take into account or consider the negative value indicators that the purchase under the Transaction was able to consider and take into account as an active bidder.

[28] The Receiver also points out that there was no court approved sale process in either of the *Soundair* or the *River Rentals* cases. The existence of a court approved Sale Process reduces the risks that the factors considered in those cases were concerned with.

[29] I agree with the Receiver that the integrity of the court approved Sale Process is important. This is trite. I had occasion to deal with this in a different context in the case of *Rose-Isli Corp. v. Frame-Tech Structures Ltd.*, 2023 ONSC 832, Aff'd *Rose-Isli Corp. v. Smith*, 2023 ONCA 548. In that case, the court had to balance the recognized need to protect the integrity of the sale process with the right of a mortgagor to redeem, and ultimately concluded that once the sale process had run its course and there was an accepted offer, a mortgagor could not step in at the eleventh hour to exercise a right to redeem. The Court of Appeal confirmed this approach and the importance of the integrity of the sale process at para. 10:

[10] We adopt the rationale for those guiding principles articulated in *B&M Handelman Investments Limited v. Mass Properties Inc.* (2009),



2009 CanLII 37930 (ON SC), 55 C.B.R. (5th) 271 (Ont. S.C.), where the court stated, at para. 22:

A mockery would be made of the practice and procedures relating to receivership sales if redemption were permitted at this stage of the proceedings. A receiver would spend time and money securing an agreement of purchase and sale that was, as is common place, subject to Court approval, and for the benefit of all stakeholders, only for there to be a redemption by a mortgagee at the last minute. This could act as a potential chill on securing the best offer and be to the overall detriment of stakeholders.

[30] The Debtor in this case was told when the Receiver's motion was first adjourned that it would have to meet a high bar to go behind the Sale Process and the accepted Sale Agreement. That said, it is routinely accepted that the court must consider the *Soundair* factors on a sale approval motion, even if the sale was made pursuant to a Sale Process. Consistent with this, the Sale Agreement is conditional on court approval.

[31] Having considered all of the evidence and submissions, I find that the proposed Transaction satisfies the *Soundair* principles.

- (a) The court-approved Sale Process was conducted by the Receiver in accordance with the Sale Process Approval Order. It provided for a fair, transparent and thorough canvassing of the market for the Real Property. I was not directed to any authority, nor am I prepared to find on the record before me, that the Receiver did not make a sufficient effort to obtain the best price for the Real Property or acted improvidently by entering into the Sale Agreement that emerged out of the court approved Sale Process.
- (b) The market was widely canvassed using several traditional marketing techniques to sell real estate, including direct solicitation of prospective purchasers by JLL. The Debtor is not complaining or taking issue with how the Sale Process was run. And does not suggest that it was not carried out in accordance with the Sale Process Approval Order. The Sale Process is a full answer to any concerns regarding the time that was available for bids to be made.
- (c) The Sale Agreement was the result of negotiations following the only offer that was presented in the Sale Process, which had to be extended by the Receiver to elicit an offer that could be negotiated. The Sale Agreement is the highest and best offer obtained for the Real Property through the Sale Process.

- (d) JLL, an experienced and reputable real estate broker, is familiar with the local real estate market and is of the view that the Transaction is the best one available in these circumstances. The Receiver believes that the approval of the Sale Agreement and the Transaction contemplated thereunder is in the best interests of the Debtor and all of its stakeholders. KingSett, the Debtor's senior secured creditor and the lone security holder with a charge against the Real Property, remains supportive of the Transaction (even though it would prefer to obtain the higher purchase price contained in the Padda Offer).

[32] The Receiver and JLL are of the view that the market itself is the best indicator of fair market value, and the Transaction, negotiated at arm's length after a reasonable listing period and efforts to market the Real Property is a reflection of the current fair market value. They do not believe that the other indications of value are true reflections of market value given that they do not take into account the negative disclosures that were discovered during the Sale Process.

[33] Mr. Harmandayan has put forward a valid and compelling explanation for why he was not actively engaged during the Sale Process. However, he did not ask to sign an NDA and access the data room to satisfy himself about the circumstances that the Receiver and JLL believe are negatively impacting the market value of the Real Property. Without the full information, the utility of the indicators of market value that the Debtor points to are not reliable. It is unfortunate that Mr. Harmandayan's personal circumstances prevented him from helping to identify prospective purchasers for the Real Property during the Sale Process, but even the purchaser that he has now identified does not appear to value the property at anywhere close to what the Debtor believes it is worth, based on the Padda Offer price.

[34] The Debtor's suggestion that there is no downside to extending the Sale Process by a further three months (or at all) is flawed:

- (a) First, it undermines the court approved sale process to send a message that a bidder that did not participate in it can come after the fact with an offer that will lead to the process being re-opened. The Receiver points out that this could have a chilling effect.
- (b) Second, there is no guarantee of a higher bid. Padda has only said that if the sale process is extended it intends to participate in that process. Counsel for the Debtor concedes that extending the Sale Process and re-listing may not produce a better offer.
- (c) Third, there is prejudice to the secured creditor because interest will continue to accrue on the full loan deficiency, and professional fees will continue to be incurred during the extended sale process. The accrued interest and the professional fees will ultimately be at the expense of the first secured creditor where, in a case such as this, a deficiency is projected. No one has done the math to determine whether the

full amount of the differential between the purchase under the Sale Agreement and the Padda Offer would be used up by these accruing fees and interest, but given that the gross dollar amount of this differential is not significant, certainly some if not all of it will be eliminated through these interim costs – The Debtor is not offering to cover these additional incremental costs if the Sale Process is extended; rather it is hopeful that these incremental costs be covered by any enhanced value received on a subsequent sale (which is not guaranteed).

[35] In JLL's view, it is unlikely that exposing the Real Property to the market for additional time will result in a superior transaction. There is nothing to suggest that this assessment is unreliable; rather, it is the other indications that appear to be unreliable.

[36] I am not confident that re-opening the Sale Process will produce any better outcome than the current Padda Offer, and it comes at a significant potential cost to the secured creditor who has as much to lose as the Debtor (or more, if the costs are factored in). This leaves only two other options: either approve the Transaction, or not approve it and direct the Receiver to accept the Padda Offer now. Faced with these choices, and having regard to the analysis above, the question for the court is whether the personal circumstances that prevented the principal of the Debtor from engaging in the Sale Process when it was running are a sufficient reason for the court to reject the Transaction that was a product of that process, in favour of a higher bid that came in after the Sale Agreement had already been signed.

[37] There was no objective unfairness in the manner in which the Sale Process played out. The unfortunate personal circumstances of the principal of the Debtor here are not enough to supplant the Sale Process. The Debtor's recent involvement has not produced an offer that is so superior to the Sale Agreement that the Sale Process should be disregarded at this late stage.

[38] The court must consider the interests of all stakeholders, and the public interest in the integrity of the court-approved Sale Process. This is especially so given that if the theory of improvident sale advanced by the Debtor is accurate, then the Padda Offer would also be improvident given that it is only 17% of the values of the two most recent appraisals, compared to the purchase price under the Transaction which is 10% of those appraisals.

[39] If these percentages are to be considered a measure of improvidence I am not prepared to replace one allegedly improvident offer for another that would also be improvident based on the measure of improvidence that the Debtor asserts, even if slightly less so.

[40] No compelling reason to undermine the integrity of the Sale Process has been provided. Having found that the *Soundair* principles have been satisfied with respect to the Sale Agreement, the Transaction is approved and the AVO is granted.

[41] Under the Sale Agreement, the Transaction is supposed to close ten days after court approval. This was the topic of some back and forth at the hearing, but it was eventually agreed that the closing date was to be 10 days from the AVO. I am mindful that the timing of the release of this decision could have implications for parties' holiday plans. If there is a preferred effective date for the AVO to, in turn, determine a different closing date, the parties can advise of that when they provide a revised draft AVO.

[42] I require the revised form of order dated the same day as this endorsement but with a specification of any other effective date that the Receiver and the purchaser under the Sale Agreement may mutually agree upon, if different than today, for signing by no later than noon on Friday, December 20, 2024. If it is not provided by then I will not be able to sign it until Monday, December 30, 2024.

### **The Distribution and Discharge Order**

[43] The Receiver is seeking authorization to make the Proposed Distributions as set out in the Second Report from the net proceeds of the Transaction. Orders granting distributions are routinely granted by Canadian Courts in insolvency proceedings and receiverships: see *AbitibiBowater inc. (Arrangement relatif a`)*, 2009 QCCS 6461, at paras 70-75.

[44] The Proposed Distributions are to KingSett, the Debtor's senior secured creditor and the sole party with a charge against the Real Property. The Receiver's counsel has provided an opinion that KingSett's security is valid and enforceable, subject to the usual qualifications and assumptions.

[45] It has become common practice for court officers to bring motions to seek approval of their reports and the activities set out therein. Court approval, among other things, allows the court officer to bring its activities before the court and presents an opportunity to address concerns of stakeholders, while enabling the court to satisfy itself that the court officer's activities have been conducted in a prudent and diligent manner: see *Target Canada (Re)*, 2015 ONSC 7574, 31 CBR (6th) 311, at paras. 2 and 23; *Triple-I Capital Partners Limited v. 12471300 Canada Inc.*, 2023 ONSC 3400 at paras 65 and 66.

[46] The activities of the Receiver described in the Second Report and Supplement thereto were all necessary and undertaken in good faith pursuant to the Receiver's duties and powers set out in the Receivership Order. I am satisfied that they were in the best interest of the stakeholders of the Debtor, and that the court's discretion should be exercised to approve the Receiver's Second Report, Supplement thereto and the activities described in them. The approval language in the order has been made subject to the standard qualification that has become the Commercial List practice to include in these types of orders.

[47] Throughout these receivership proceedings, the Receiver has acted prudently and contributed substantially to the administration of these proceedings, with the activities of the Receiver having been thoroughly disclosed throughout: see *Pinnacle v. Kraus*, 2012 ONSC 6376, at para. 47. Accordingly, the requested limited release of the Receiver that is sought as part of its discharge (with standard carve outs for any gross negligence or wilful misconduct on the part of the Receiver) is reasonable in the circumstances to provide finality, and is granted.

[48] The Receiver's administration and its duties and responsibilities under the Receivership Order and other Orders made in these proceedings are substantially complete, subject to completing the Transaction and attending to related administrative matters including the distribution of proceeds. To avoid the costs of making a further motion to the court to obtain the Receiver's discharge, the Receiver seeks an order now for it to be discharged upon the filing by the Receiver of a Discharge Certificate after the Transaction closes. This is appropriate in the circumstances, for among other reasons, the cost savings that it will allow for given the level of recoveries from this receivership.

[49] The Receiver is also seeking approval of the professional fees and disbursements incurred by it and its legal counsel as well as the Fee Accrual (for anticipated fees to close the Transaction and attend to any other matters prior to the Receiver's discharge), each as described in greater detail in the Fee Affidavits attached to the Second Report. The Receivership Order provides (at paragraph 17) 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.

[50] Having regard to the applicable factors that are taken into consideration in determining whether to approve the accounts of court officers and their counsel, I am satisfied that the fees and disbursements for which approval is sought are commensurate with the tasks performed and are both fair and reasonable in the circumstances of this case: see *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, 20 CBR (6th) 292, at paras. 33 and 35.

### **Final Disposition and Orders**

[51] No party sought costs of these motions.

[52] The forms of Approval and Vesting Order and Discharge Order are consistent with the Commercial List model orders for this type of relief, with appropriate adjustments to reflect the particular circumstances of this case. Updated orders to reflect the date of this endorsement and any other agreement regarding the effective date of the AVO (discussed above) should be sent to my judicial assistant by email: [linda.bunoza@ontario.ca](mailto:linda.bunoza@ontario.ca) as soon as possible.

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Kimmel J.

**Date:** December 18, 2024