

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE TORONTO-DOMINION BANK

Plaintiff

and

IMAGES LIFE MEDIA INC., 2531509 ONTARIO INC., and JOAO PAUL
HENRIQUES also known as JOHN PAUL HENRIQUES

Defendants

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**FACTUM OF THE MOVING PARTY RECEIVER
(Approval and Discharge Motion - Returnable May 6th, 2024)**

May 2, 2024

GARFINKLE BIDERMAN LLP

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Lawyers for the Receiver,

Albert Gelman Inc.

PART I - OVERVIEW

1. This motion is made by Albert Gelman Inc. (“**AGI**”) who was appointed Receiver of the assets, undertakings and property of the defendants Images Life Media Inc. (“**Images**”) and 2531509 Ontario Inc. (“**253**”), (collectively the “**Debtors**”), by Order of the Honorable Madam Justice Steele dated July 18th, 2023 (the “**Appointment Order**”) for the following:

- (a) If necessary, abridging the time for service and filing of this notice of motion and the motion record, authorizing service via electronic mail and dispensing with further service of same;
- (b) Approval of the Receiver’s Second Report dated April 16th, 2024 (the “**Second Report**”) and the Receiver’s conduct and activities described therein;
- (c) Approval of the Receiver’s Final Statement of Receipts and Disbursements dated April 16th, 2024;
- (d) Approval of the fees and disbursements of the Receiver and its counsel Garfinkle Biderman LLP (“**Garfinkle**”) and Fogler, Rubinoff LLP (“**Fogler**”), as set out in the Affidavit of Bryan Gelman sworn April 15th, 2024 (“**Gelman Affidavit**”), the Affidavit of Alex Hora sworn April 16th, 2024 (the “**Hora Affidavit**”) and the Affidavit of Jonathan Gross, sworn April 12, 2024 (the “**Gross Affidavit**”), (which Affidavits are collectively referred to as the “**Fee Affidavits**”) for the period of time set out therein, plus an accrual to complete the Remaining Duties (as defined below);

- (e) Terminating these proceedings and discharging Albert Gelman from the powers, duties and obligations attendant to its appointment as Receiver upon the filing of the Receiver's Discharge Certificate; and
- (f) such further and other relief as the Receiver may request and this court may grant;

PART II – FACTUAL SUMMARY

2. The relevant facts are fully detailed in the Second Report.
3. AGI was appointed as Receiver of the assets, undertakings and property of the Debtors, by Order of the Honourable Madame Justice Steele dated July 18th, 2023 (the “**Appointment Order**”).¹
4. The Receiver has filed a Second Report of its activities dated April 16th, 2024, to report to the court as to its activities to date, all of which have been in accordance with the Appointment Order. The Second Report also includes a Final Statement of Receipts and Disbursements as of April 16th, 2024, (“**Final SRD**”), which accurately sets out the receipts and disbursements of the Receiver to date².

APPROVAL OF FEES AND DISBURSEMENTS

5. Paragraph 18 of the Appointment Order provides that the Receiver and its counsel be paid their reasonable fees and disbursements at their standard rates and charges.³

¹ Order of Justice Steele dated July 18, 2023 – Tab 2 [Appendix A - Appointment Order.pdf](#) of the [Motion Record – Receiver's Discharge.pdf](#)

² [Second Report of the Receiver.pdf](#) – Tab 2 Appendix H of the [Motion Record – Receiver's Discharge.pdf](#)

³ Para. 18 of the Order of Justice Steele dated July 18, 2023 – Tab 2 [Appendix A - Appointment Order.pdf](#) of the [Motion Record – Receiver's Discharge.pdf](#)

6. The Receiver and its counsel have been required to perform extensive services and request the court's approval for their accounts, as detailed in the Receiver's Affidavit of Fees⁴, the Affidavit of Alex Hora of Garfinkle Biderman⁵ and Affidavit of Jonathan Gross of Fogler, Rubinoff⁶.

7. The fees of the Receiver and its counsel are fair and reasonable and justified in the circumstances.

8. The estimated fees to complete this motion and the Remaining Duties (as defined in the Second Report) are estimated to be no more than \$25,425.00, inclusive of HST, comprised of \$16,950.00 inclusive of HST for the Receiver, \$5,000.00 plus HST for the Receiver's independent counsel, Garfinkle, and \$2,825.00, inclusive of HST, for administrative disbursements.

PART III - LAW and ARGUMENT

A. The Court's Procedural Powers

9. The Court may, by order, extend or abridge any time prescribed by the *Rules* on such terms as are just. Further, the Court may dispense with compliance with any *Rule* at any time where and as necessary in the interest of justice. Finally, the Court may dispense with service where it is impractical to effect prompt service and/or it may validate service where it is satisfied that the document came to the notice of the person to be served.⁷

B. Approval of the Receiver's Activities

10. This Court has the jurisdiction to approve such activities. The "court has the inherent jurisdiction to review and either approve or disapprove of the activities of a court appointed

⁴ [Appendix I - Receiver's Fee Affidavit.pdf](#) - Tab 2 Appendix I - of the [Motion Record - Receiver's Discharge.pdf](#)

⁵ [Exhibit J - Fee Affidavit of Counsel for the Receiver.pdf](#) - Tab 2 Appendix J - of the [Motion Record - Receiver's Discharge.pdf](#)

⁶ [Appendix K - Fee Affidavit of Jonathan Gross.pdf](#) - Tab 2 Appendix K - of the [Motion Record - Receiver's Discharge.pdf](#)

⁷ [Rules 2.03, 3.02, 16.04 and 16.08, Rules of Civil Procedure, R.R.O. 1990, Reg. 194.](#)

receiver” and “it would be unusual and illogical [if] the receiver could come to court prior to approval but not post approval.”⁸

11. All of the Receiver’s activities in this matter were conducted in a manner consistent with the powers granted by the Receivership Order and each of the activities were necessary to ensure that the receivership proceedings were as orderly, effective and fair to all stakeholders as possible. The Receiver therefore respectfully submits that its activities to date should be approved by this Court.

C. The Receiver’s Fees and Counsel Fees Should be Approved

12. Pursuant to paragraph 18 of the Receivership Order and to section 243(6) of the *BIA*, the Court may make any order respecting the payment of fees and disbursement of the Receiver that it considers proper.⁹

13. The Receiver respectfully submits that the Receiver’s fees and disbursements and those of its counsel, as detailed in the Final Report, should be approved. In determining whether to approve the fees of a Receiver and its counsel, the Court should consider whether the remunerations and disbursements incurred in carrying out the receivership were fair and reasonable and take into consideration, *inter alia*, the factors set out in *Bank of Nova Scotia v. Diemer*.¹⁰

14. It is the Receiver’s submission that the fees and disbursements of the Receiver and its Counsel were incurred at the respective party’s standard rates and charges, and that they are fair, reasonable and justified in the circumstances. Further, the fees and disbursements sought

⁸ *Bank of America Canada v. Willam Investments Ltd.* PDF (1993) 20 CBR (3d) 223 (ONSC), at paras. 3-4

⁹ Section 234(6), *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, Schedule B

¹⁰ *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at paras. 33 and 45

accurately reflect the work done by the Receiver and its counsel in connection with the receivership.

D. The Discharge and Release of the Receiver

15. The Receiver has substantially completed its mandate as contemplated by the Receivership Order, the previous Orders in this matter, and under the *BIA*. Accordingly, the Receiver respectfully submits that it should be discharged and released, following its administration of the assets, undertakings and property of the Debtors (including paying the Receiver's fees and counsel's fees and disbursements) and the activities necessary to conclude the receivership proceedings have been completed.

16. The Receiver also seeks a release from any and all liability that it now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of the Receiver while acting in its capacity as Receiver, save and except for any gross negligence or willful misconduct on the part of the Receiver.

17. The release is a standard term and mirrors the language used in the Commercial List model Discharge Order. The Court has stated that "in the absence of any evidence of improper or negligent conduct, the Release should issue." There is no evidence of improper or negligent conduct in this case. Thus, the Receiver submits that the release should be granted.¹¹

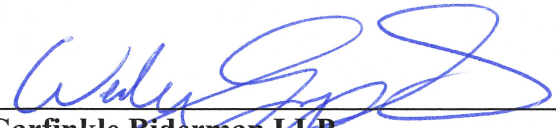
¹¹ [Pinnacle Capital Resources Ltd. v. Kraus Inc., 2012 CarswellOnt. 14138 \(ONSC \[Commercial List\]\),pdf](#) at para 47

PART IV - ORDER REQUESTED

18. The Receiver therefore respectfully recommends and requests an Order:
- a) If necessary, dispensing with service and/or declaring that service of this motion has been validly effected on all necessary parties and declaring that this motion is properly returnable on May 6, 2024 at 10:00 a.m. or as soon after that time as the motion can be heard;
 - b) Approval of the Receiver's Second Report dated April 16th, 2024, and the Receiver's conduct and activities described therein;
 - c) Approval of the Receiver's Final SRD dated April 16th, 2024;
 - d) Approval of the fees and disbursements of the Receiver and its counsel Garfinkle and Fogler as set out in the Fee Affidavits for the period of time set out therein, plus an accrual to complete the Remaining Duties; and
 - e) Terminating these proceedings and discharging Albert Gelman from the powers, duties and obligations attendant to its appointment as Receiver upon the filing of the Receiver's Discharge Certificate;

All of which is respectfully submitted this 2nd day of May 2024.

May 2, 2024



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Lawyers for the Court - Appointed Receiver,
Albert Gelman Inc.

SCHEDULE “A” – AUTHORITIES CITED

1. [*Bank of America Canada v. Willann Investments Ltd.* PDF \(1993\) 20 CBR \(3d\) 223 \(ONSC\)](#)
2. [*Bank of Nova Scotia v. Diemer*, 2014 ONCA 851](#)
3. [*Pinnacle Capital Resources Ltd. v. Kraus Inc.*, 2012 CarswellOnt. 14138 \(ONSC \[Commercial List\]\).pdf](#)

SCHEDULE “B” – LEGISLATION CITED

Rules 2.03, 3.02, 16.04 and 16.08, *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

COURT MAY DISPENSE WITH COMPLIANCE

2.03 The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

EXTENSIONS OR ABRIDGMENT

General Powers of Court

3.02(1) Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.

Section 243(6), *Bankruptcy and Insolvency Act*, RSC 1985, c B-3

Orders respecting fees and disbursements

243 (6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver’s claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

THE TORONTO-DOMINION BANK
Plaintiff

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Defendants

Court File No. CV-23-00701877-00CL

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