



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CL-25-00753599-0000

DATE: Tuesday January 20, 2026

NO. ON LIST: 1

TITLE OF PROCEEDING: 915643 ONTARIO INC. v. 177 CROSS ARGUS DEVELOPMENT INC.  
and DOUBLE DIAMOND CAPITAL INC.

BEFORE: JUSTICE S. Dunphy

**PARTICIPANT INFORMATION**

**For Applicant:**

Name of Person Appearing	Name of Party	Contact Info
Meena Alnajar	915643 ONTARIO INC.	<a href="mailto:malnajar@mccarthy.ca">malnajar@mccarthy.ca</a>

**For Respondents:**

Name of Person Appearing	Name of Party	Contact Info
Sara Jane Erskine	177 CROSS ARGUS DEVELOPMENT INC. and DOUBLE DIAMOND CAPITAL INC.	<a href="mailto:sara@be-law.ca">sara@be-law.ca</a>

**For Others/Third Parties:**

Name of Person Appearing	Name of Party	Contact Info
Danny Nunes	Counsel for the Receiver	<a href="mailto:dn@capstonelegal.ca">dn@capstonelegal.ca</a>
Adam Zeldin	The Receiver	<a href="mailto:azeldin@albertgelman.com">azeldin@albertgelman.com</a>
Derek Ketelaars	Counsel for the Third Mortgagees	<a href="mailto:derek@sclawpartners.com">derek@sclawpartners.com</a>

## **ENDORSEMENT:**

[1] This application seeks approval of (i) the Receiver's activities and of the fees and disbursements of the receiver and its counsel (ii) a Sale and Investment Process Order ("SISP Order"); and (iii) a Priority Claims Procedure Order.

[2] The proposed "Ancillary Relief Order" has been properly served. I have reviewed the referenced First Report and the Fee Affidavits. The secured creditors were both present and represented by counsel and voiced no objection to this proposed order. The fees and disbursements being approved appear fair and reasonable and there is nothing exceptional in the First Report that appears to raise any questions requiring further elaboration. I am satisfied that the order sought is not at all overbroad. It is hereby approved as proposed.

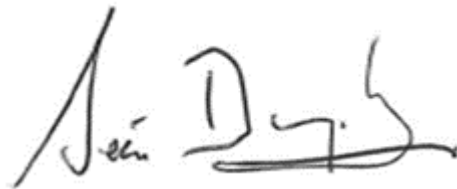
[3] I am also satisfied that the SISP is reasonable in the circumstances. This SISP includes a stalking horse component. While that would normally call for some enhanced scrutiny to assess the benefits to the process of the stalking horse, this particular stalking horse adds little to the process but detracts little from it as well. There is no break fee and the stalking horse does little more than make explicit what is always implicit in a receivership such as this one: if the sales process fails to generate a sufficiently attractive offer, the secured creditor may just bid its debt or convert to a foreclosure. I am satisfied that the stalking horse bid will have no negative impact upon the sales process: it will not dissuade a serious bidder from participating nor chill the process in any way. The fact that the secured creditor has *asked* for a court-supervised sales process instead of a private receiver or foreclosure process up front informs the market that the secured creditor has significant interest in assessing bids.

[4] The only material impact of the proposed trio of orders that raises a concern with me is the treatment of potential priority claims. These are creditors who, if they exist, rank prior to the secured creditor. They do today and will tomorrow. The secured creditor may wish to satisfy its curiosity about the existence or number of such claims, if any. However, disturbing the existing balance of legal rights between secured creditors to give one a leg up on the other that the law does not otherwise provide is something to be done sparingly and with a weathered eye upon the rights of those not present in court before me. The rights of potential prior claims are already bound by the procedures and limitations of the various statutes giving rise to the claims. Lien claimants have deadlines for perfecting liens. Property tax claims can be quantified and there is a process for them. Interfering with expectations and rights as between existing creditors requires cogent reasons.

[5] I have asked the Receiver to make three changes to the Claims Procedure Order to reflect a better balance of the rights of the unknown potential prior claims:

- a. Notify All persons whom the Receiver believes has or may have a Claim and not merely those whom the Receiver believes may have a Prior Claim since that would be a circular notice provision otherwise.
- b. Lengthen the notice period – some categories of creditors, especially tax claims, are notoriously slow in reacting to complex claims packages that arrive unsolicited in a mass mailbox. Forty-five days will provide a greater likelihood of notice being received and placed on the desk of someone able to assess the issue in sufficient time to react.
- c. Exceptions to claims bar orders are not particularly common, but they are not unknown either. There is at least an onus to explain the failure to act in a timely way but in the present case it is hard to see what actual prejudice a junior creditor could point to being placed in the correct legal place it should occupy in the waterfall of priorities at least prior to closing. The cash component of the credit bid remains a condition right up till closing at all events and knowing the “out of pocket” component of a credit bid is the main potential prejudice to the secured creditor here. The claims bar aspect of the order will be explicitly subject to further order (as it implicitly is at all events) which reference will not be an open door to ignoring the claims process but merely brings into play the existing jurisprudence on assessing when leave to file a late claim should be granted.

[6] There were no objections to any of these proposed changes and I approved the draft order as so amended.



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Sean Dunphy

Date: Jan. 20, 2026