



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00740747- 00CL

DATE: FEBRUARY 26, 2026

NO. ON LIST: 2

TITLE OF PROCEEDING: ICICI BANK CANADA v. 2338486 ONTARIO LIMITED

BEFORE: JUSTICE CAVANAGH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Mitchell Grossell	Counsel for the Applicant - ICICI Bank Canada	mgrossell@tgf.ca
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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
Adam Zeldin	Receiver - Albert Gelman Inc.	azeldin@albertgelman.com
Danny Nunes	Counsel for Receiver - Albert Gelman Inc.	dn@capstonelegal.ca

ENDORSEMENT OF JUSTICE CAVANAGH:

[1] Albert Gelman Inc. ("AGI"), in its capacity as the receiver (the "Receiver"), without security, of the property, assets and undertakings of 2338486 Ontario Limited (the "Debtor"), including but not limited to the real properties owned by the Debtor and municipally known as 392 and 398 Erb Street West, Waterloo, ON (the "Real Properties"), brings this motion seeking Orders, *inter alia*:

- a. approving the agreement of purchase and sale between the Receiver and ARK Investment Holdings Ltd. (the "Purchaser") dated November 6, 2025, as amended (the "APS") and the transaction contemplated therein (the "Transaction") and vesting all of the Debtor's right, title and interest in and to the Real Properties in the Purchaser (the "AVO");
- b. authorizing and directing the Receiver to make distribution(s) to ICICI Bank Canada (the "Bank") from the net sale proceeds of the Transaction, subject to the payment of any prior ranking claims (the "Proposed Distributions");
- c. approving the First Report of the Receiver dated February 19, 2026 (the "First Report") and the conduct and activities of the Receiver described therein;
- d. sealing the confidential appendix to the First Report (the "Confidential Appendix") including the unredacted version of the APS;
- e. approving the fees and disbursements of the Receiver, along with those of the Receiver's legal counsel, as set out in the fee affidavits appended to the First Report (the "Fee Affidavits"), along with the holdback reserve described in the First Report (the "Holdback"); and
- f. approving the discharge of the Receiver upon the Receiver's filing of a discharge certificate in the form substantially attached as a schedule to the Order at Tab 4 of the Receiver's Motion Record (the "Discharge Certificate"), certifying that the Remaining Matters (as defined in the First Report) have been completed by the Receiver.

[2] The facts on this motion are set out in greater detail in the First Report of the Receiver.

[3] The Debtor's principal and only known material asset is the Real Properties which comprise approximately 0.561 acres and upon which are situated a single-family home and a low-rise residential building which are currently tenanted.

[4] As at April 1, 2025, the total amount due and owing by the Debtor to the Bank under the Loan was approximately \$3.0 million, plus accruing interest as well as legal and other fees.

[5] The Bank, as the Debtor's senior secured creditor, sought the Receiver's appointment and pursuant to the Order of the Honourable Justice J. Dietrich dated April 24, 2025 (the "Receivership Order"), the Receiver was appointed. The primary purpose of the receivership proceedings was to conduct an orderly, Court-supervised process for the sale of the Real Properties (the "Sale Process").

[6] The Receiver engaged with a prospective purchaser outside of the Sale Process but this did not result in an acceptable transaction. The Receiver then turned to the Sale Process.

[7] After reviewing the proposals from realtors to act as listing agent, the Receiver elected to retain Lennard Commercial Realty, Brokerage ("Lennard") and entered into a listing agreement for the Real Properties on August 8, 2025. The Receiver's selection of Lennard was approved by the Bank.

[8] The Real Properties were listed on August 11, 2025 on the Kitchener-Waterloo, Hamilton and Mississauga MLS systems and the Toronto MLS system. Lennard also circulated a marketing flyer promoting the acquisition opportunity to approximately 2,900 potential interested parties from its own internal database of developers, investors and brokers. Interested parties were required to sign a non-disclosure agreement ("NDA") to gain access to confidential information regarding the Debtor and the Real Properties.

[9] Two offers were ultimately submitted to the Receiver. The Receiver chose the offer that contemplated a higher purchase price, despite certain conditions in the offer, including vacant possession of the Real Properties

on closing. During the course of Lennard's attempts to engage the prospective purchaser to discuss the offer's terms, the prospective purchaser advised that it was no longer interested in pursuing the acquisition of the Real Properties.

[10] On November 6, 2025, the Receiver and the Purchaser signed the APS with the other offeror.

Should the Court approve the APS and grant the AVO?

[11] I am satisfied that the *Soundair* factors are satisfied and that the APS should be approved and the AVO granted.

Should the Court Approve and Authorize the Receiver to Make the Proposed Distributions?

[12] I am satisfied that the Court should approve and authorize the Receiver to make the Proposed Distributions as the Bank holds a valid and enforceable security interest in respect of the collateral covered by the Mortgage and the GSA. The Receiver has been provided with a security opinion which confirms the validity of the Bank's secured claim, subject to standard assumptions and qualifications contained therein.

[13] Aside from amounts owing under the Receiver's Charge and the Receiver's Borrowing Charge (both of which are defined in the Receivership Order), the Receiver is aware of property tax arrears owed by the Debtor to the City of Waterloo in the amount of approximately \$34,000 and a lien claim in the amount of \$103,640, as at March 17, 2025, that was registered on title to the Real Properties by Masri O Inc. ("Masri").

[14] Masri commenced a claim against the Debtor, among others, after the date of the Receivership Order, which action has not proceeded any further on account of the stay of proceedings contemplated in the Receivership Order. Aside from the property tax arrears and potentially the Masri lien, the Receiver is not aware of any other secured creditors or claims that would rank in priority to the Bank's security interest.

Should the Court Approve the First Report and Activities and Seal the Confidential Appendix?

[15] I am satisfied that the First report and the activities of the Receiver should be approved.

[16] I am satisfied that the request for a limited sealing order should be granted. The test in *Sherman Estate* is satisfied.

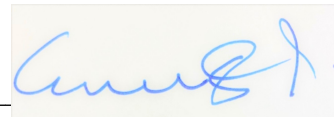
Should the Court Approve the Fees and Disbursements of the Receiver and its Legal Counsel as well as the proposed Holdback?

[17] I am satisfied that the fees and disbursements of the Receiver and its legal counsel should be approved. I approve the proposed holdback in the amount of \$100,000 from the net proceeds of the Transaction as a reserve on account of additional fees. I dispense with the need for the Receiver and its counsel to pass their accounts as provided for under the Receivership Order in these circumstances, where the bank will suffer a shortfall on its secured claim.

Should the Court Discharge the Receiver and Grant the Proposed Release?

[18] In these circumstances, where the remaining matters, other than the lien claim, are minor and administrative in nature, and in the interests of efficiency, I grant the requested discharge order.

[19] Orders to go as signed by me today. These orders are effective from today's date and are enforceable without the need for entry and filing.

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