ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

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TITLE OF PROCEEDING: **MELVYN EISEN, TRUSTEE v. WOODINGTON ESTATES INC.; GOLDY METALS HOLDINGS INC.; SILVIO CONSTRUCTION CO. LTD.; TURF CARE PRODUCTS CANADA LIMITED; 1000736785 ONTARIO LIMITED**

BEFORE: **JUSTICE W.D. BLACK**

PARTICIPANT INFORMATION

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ENDORSEMENT

Overview

[1] On February 10, 2026, I released an endorsement relative to a hearing in this matter on February 4, 2026. In that decision I granted an Approval and Vesting Order (in this endorsement I will continue to use terms as defined in the parties' materials) approving the Transaction contemplated in the Sale Agreement (dated January 14, 2026), and authorizing the Vendor to complete the Transaction.

[2] As confirmed in my endorsement, there was somewhat limited time available for the hearing on February 4, and as a result a number of related matters had to be deferred.

[3] Today I heard the parties' submissions about those various related matters.

Items Before Me Today

[4] AGI, which was originally appointed as the Receiver, and which has since July of 2025 occupied the dual role of Receiver and Sales Officer, proposed in its Aide Memoire for today's hearing that the remaining issues for determination included the question of authorization for AGI to make a proposed distribution to Eisen, the senior secured creditor, from the net proceeds of the transaction. AGI also sought approval of its Reports, activities and conduct, and approval of its fees and those of its counsel, as well as approval of the Interim SRD.

[5] Also before me was a motion by 785 – the Return of Funds motion - which I had adjourned on February 4, seeking repayment of an amount of $234,000 that 785 maintains was inappropriately taken by AGI from 785's operating funds in January (and used without court approval or other legitimate basis to pay AGI's fees and those of its counsel). Relatedly, 785 contests AGI's entitlement to the fees it claims, both on the basis of alleged shortcomings in AGI's conduct (in particular in respect of the $234,000) and on the basis of alleged deficiencies in the evidentiary record relative to the fees claimed.

[6] Finally, counsel who has been newly retained by Mr. John Chetti to appeal my February 10 decision pointed out that my Approval and Vesting Order of that day contained, in paragraph 11, a clause contemplating provisional execution of the order, notwithstanding a discussion during the hearing on February 4 in which it was suggested that the potential availability of provisional execution should be the subject of specific submissions (which were not made before me that day). While an issue was raised as to whether or not Mr. John Chetti's new appeal counsel, having not yet delivered a Notice of Change of Lawyer or a Notice of Appeal, had standing to raise this issue, counsel for 785 (whose standing is undoubted) then joined in this submission.

Error Re Provisional Execution Clause

[7] The submission is accurate and fair. As my notes for the February 4 hearing confirm, paragraph 11 ought not to have appeared in the Approval and Vesting Order without my hearing specific submissions on the proposition. I apologize to the parties for this oversight, and, as suggested by counsel, I strike paragraph 11 from the Approval and Vesting Order, nunc pro tunc, and on the basis that I will hear the parties' submissions on this topic at the appropriate juncture.

Requested Distribution to Eisen

[8] I turn now to the first remaining issue, as to the requested authorization for AGI to make a distribution, from the proceeds of the Transaction, to Eisen. AGI, in its capacity as Receiver of WEI, recommends this approval.

[9] It is uncontested that in January of 2019, Eisen advanced a loan to WEI in the amount of $11.5 million, to finance the purchase of the Golf Course Lands and the Golf Club business. I noted in my February 10 endorsement that, as of February 4, the outstanding accrued amount, in respect of which no payments had been made for some time, stood at approximately $14.3 million (the precise amount at that date was $14,303,966.74).

[10] Eisen's loan is secured by a mortgage on the Golf Course Lands, and a Guarantee given by WMI secured by a GSA.

[11] Eisen's evidence is that at the time of the loan, Eisen inquired of WMI's counsel – Gowlings - whether WMI would be acquiring both the Golf Course Lands and the Golf Club business or if a separate company would be used to acquire the Golf Club business.

[12] Gowlings advised that a separate company would own the Golf Club business, and so Eisen requested and obtained the WMI GSA.

[13] A somewhat unusual set of events played out before me in mid-2025 in relation to this GSA.

[14] That is, at the time of making demand for payment and then commencing these proceedings, Eisen was unable to locate the WMI GSA. He then found the WMI GSA in May of 2025, and proceeded to register financing statements against WMI and 785 to perfect his security interest.

[15] A copy of the WMI GSA together with a covering letter from Gowlings enclosing it were filed before me in the summer of 2025. Given the Gowlings cover letter, there is no reasonable basis to suggest that the WMI GSA is not an authentic document.

[16] Mr. Joe Chetti's evidence at the time was to say that he had forgotten that the WMI GSA had been granted, but that there was an agreement that the WMI GSA would not be relied upon and was invalid. Apart from simply asserting that this was so, Mr. Joe Chetti, who has since passed away, did not provide evidence to confirm or corroborate his assertion. Similarly, while Mr. Joe Chetti's company, Rock Garden, obtained a GSA from 785 to secure payment purportedly advanced to fund 785's operating costs, neither Rock Garden nor anyone on its behalf has provided evidence that any such advance was actually made.

[17] Eisen submits that Mr. Joe Chetti's assertions, in the absence of confirming evidence and in the face of the WMI GSA provided by Gowlings, should be rejected as commercially implausible.

[18] I agree.

[19] As counsel for Goldy and AGI point out in supporting the request to authorize the distribution to Eisen, Eisen's substantial senior secured debt, about the validity of which there can be no doubt, is continuing to accrue interest, and Eisen is continuing to incur legal costs, all of which will erode the value available for the claims of other stakeholders.

[20] In my view delaying payment to Eisen until after a hearing about allocations and distributions sometime after the Transaction closes, as 785 advocated before me today, effectively delays the inevitable, and at a measurable cost to the estate. Even if the Rock Garden claim is ultimately substantiated, which currently seems unlikely, there will be more than ample proceeds from the Transaction to pay the Eisen claim, which is valid and first-ranking and which, again, is diminishing the assets of the estate as it accrues interest. While 785 fairly makes the point that it remains to determine a definitive allocation of the proceeds of the Transaction as between WEI and 785, it makes no submission suggesting that, depending on that allocation, there will be insufficient funds to pay out Eisen's position in full.

[21] In the circumstances I authorize the distribution to Eisen from the proceeds of the Transaction once it closes.

Denial of Adjournment Request

[22] I should note that 785 had also suggested, in its Aide Memoire for today's conference, that, in light of Mr. John Chetti's stated intention to appeal the AVO decision, and given that 785 is also considering doing so, I ought to have adjourned today's hearing (other than 785's Return of Funds motion, which 785's counsel fairly points out was before me, but not addressed, on February 4).

[23] My difficulty with this suggestion was that, although new appeal counsel for Mr. John Chetti was in attendance today (as noted), I was advised that no notice of appeal had yet been delivered. Moreover, it is not clear to me – and counsel appear to disagree – whether some or all aspects of my decision on the February 4 hearing may require leave to appeal. I note in passing in that regard 785's submission, apparently echoed by by Mr. John Chetti's new counsel (not yet officially on the record) that, in referring in my February 10 endorsement to "pressing deadlines, including with respect to a potential appeal period" I should be taken to be endorsing a suggestion of one or more counsel that there would be an appeal as of right and 30 days within which to bring such appeal. To be clear, I was not asked to, and did not turn my mind to those issues, which generally I would leave to counsel.

[24] In the circumstances, notwithstanding the apparent intention for at least Mr. John Chetti to appeal, I saw no basis today to delay the hearing of the remaining matters.

Return of Funds Versus Approval of Fees

[25] The next of those remaining matters, and the matter occupying the most significant portion of the time today, was the joined issues between 785's Return of Funds motion and AGI's request for approval of its activities and fees, and those of its counsel.

[26] These issues were joined inasmuch as the funds that are the subject of 785's Return of Funds motion – the $234,000 – were taken by AGI on or about January 9, 2026 (which 785 learned on January 12) and used to pay its fees (and those of its counsel).

[27] 785 makes a number of arguments in support of its contention that the $234,000 ought to be returned to its operating account.

[28] First, going in particular to the quantum of fees claimed by AGI and its counsel, 785 makes two arguments – both technical, but also technically correct – relative to the affidavit evidence in support of the fees claimed.

[29] As an initial matter, counsel for 785 pointed out that Mr. Graff, lead counsel for AGI, who made the submissions on behalf of AGI, including, initially, with respect to the quantum of fees claimed, had in fact sworn the underlying fees affidavit in support of his firm's claimed fees.

[30] While there was no challenge asserted in the evidence to this approach nor Mr. Graff's evidence, nor any attempt to cross-examine Mr. Graff, and while the usual rules may apply less forcefully when one is dealing with an officer of the court in a receivership setting, best practice even still does not likely countenance counsel arguing on the basis of his or her own affidavit.

[31] That said, Mr. Graff's colleague Ms. Hans stepped in at a certain point and made brief but appropriate submissions relative to the content of Mr. Graff's fees affidavit (and the quantum of the fees claimed). This in my view rendered moot the force of an argument as to the impropriety of Mr. Graff appearing on his own affidavit, and satisfactorily put any such issue to rest.

[32] The second somewhat technical argument advanced by 785 was that the fees claimed for AGI and its counsel in the fees affidavits were not specifically broken down and accounted as between work in respect of WMI and 785 (the Golf Club entities) on one hand and WEI (the Real Property entity) on the other.

[33] I note that this is not a complaint about overall quantum per se, but rather a claim about an allegedly imprecise allocation of fees as between these two items.

[34] In its submission, 785 emphasizes that the distinction and specific allocation is important, in particular because:

> "….785 and WEI have different creditors and stakeholders. There has been no substantial consolidation of these estates and 785 is not in receivership. In order for the court and 785 to determine its position with respect to the fees to be paid to AGI, this information is required. It has been requested but not yet provided. The Court should seek further affidavits on this issue before any decision is made."

[35] 785 also notes that the Second Report highlights that AGI engaged in an extensive forensic review of the tax status of 785 or WMI and reviewed the financial history of 785 or WMI, complaining that there is no explanation connecting this exercise to AGI's sale process mandate or ensuring ongoing operations, nor precise details as to how much time was spent on this task. 785 says it is not clear why such fees, whatever they amounted to, should be borne by 785.

[36] With respect, I find this latter submission somewhat disingenuous. As I noted in my endorsement for the February 4 hearing, I was concerned about AGI's conclusions in its Second Report about substantial funds within 785 that were not properly accounted for and "not demonstrably connected to the ordinary course of the Golf Club business" and AGI's identification of "significant tax compliance deficiencies."

[37] I accept that, in order to properly discharge its sale process mandate, and in particular to ensure ongoing operations, it was not just prudent but absolutely critical for AGI to identify, control and curtail these problematic activities (which, it appears, implicated each of Ms. Chetti and Mr. John Chetti). As such I have no difficulty with the fees incurred relative to this investigation and the steps taken in the result.

[38] As to the allocation as between the 785/WMI mandate on one hand and the WEI mandate on the other, which is 785's next significant concern, AGI says that "in order to contain costs and avoid time unnecessarily incurred on this matter, the Receiver and Sales Officer and its counsel (A&B) did not review

each of their respective dockets individually when allocating fees as between the WMI/785 mandate and the WEI mandate" and that, in any event, "much of the work related to both mandates."

[39] In response, AGI says, "the Receiver and Sales Officer and A&B reviewed and discussed their dockets and time spent generally. After such review, the decision was made to allocate the professional fees of both the Receiver and Sales Officer and A&B in a manner that reflected a thoughtful assessment of the time spent on each aspect of the proceeding…"

[40] More specifically, as detailed in the Second Report and explained in AGI's Reply Aide Memoire:

> "Specifically, with respect to invoices issued by the Receiver and Sales Officer and A&B, as at December 2025, A&B was owed approximately $103,000 and the Receiver and Sales Officer was owed approximately $229,000 (totalling $332,000). Of their respective fees, A&B allocated 60% towards 785/WMI and 40% towards WEI, and the Receiver and Sales Officer allocated 75% towards 785/WMI and 25% towards WEI, all based on an intentional assessment of the time that had been spent on each of the respective mandates."

[41] As such, AGI explains, "A&B was paid approximately $62,000 from the 785 bank account and the Receiver and Sales Officer was paid approximately $172,000 from the 785 bank account (for clarity, WMI has no bank account). The remainder of the fees owing to A&B and the Receiver and Sales Officer were left unpaid and funds currently remain in the 785 bank account for operational purposes."

[42] In determining what flows from these circumstances, I start by agreeing with 785's submission that, rather than simply "scooping" funds from 785's bank account, AGI ought to have put its fee affidavit, and that of its counsel, before this court for approval. Allowing receivers (and/or sales officers) to dip into a debtor's accounts, without advance authorization and confirmation of amounts from the court, bespeaks a "slippery slope" that is not to be encouraged.

[43] That said, while I do not condone AGI's order of operations here, I am satisfied on balance (subject only to 785's demonstrable operational needs, discussed below) that the amounts taken by AGI for its fees were reasonable, and that, in the circumstances, it was reasonable that those funds should come from the only available account in the receivership/sale process setting, being the 785 account.

[44] While in a perfect world it also would be preferable for AGI and A&B's dockets to precisely delineate as between 785/WMI-related activities on one hand and WEI-related activities on the other, I can understand why, as a practical matter, given that both AGI and its counsel were simultaneously dealing with both matters, and overlap between both matters in much of their work, the delineation in the docketing was somewhat imprecise.

[45] I should note that in this context, counsel for 785 sent to me, after the conclusion of the hearing, the decision of the Court of Appeal for Ontario in *Confectionately Yours, Inc*. 2002 CanLII 45059, drawing my attention in particular to paragraphs 30-40 of the endorsement of Borins JA therein.

[46] Justice Borins, in those passages, emphasizes that, contrary to various other activities of a Receiver, for which a report to the court provides a sufficient basis for the court to make determinations and to act, when a Receiver (which I would say encompasses a Sale Officer as well) asks the court to approve its compensation, it is necessary for the Receiver to verify its accounts by way of affidavit evidence. In doing so, it must also be subject to cross-examination if a party objects to the compensation claimed. Justice Borins confirmed that the same holds true for a solicitor's account(s).

[47] I accept without reservation these propositions.

[48] However, I do not think they have particular application to the circumstances at hand. Here, the complaint is not that no affidavit evidence was provided, but rather that – initially – it was inappropriate for counsel to argue based on his own affidavit, and that the affidavit evidence was insufficiently precise about the breakdown of the time spent and fees incurred as between the two relevant entities. For the reasons set out above, I am satisfied that the issue concerning argument by the deponent of an affidavit was solved before me by the intervention of Ms. Hans.

[49] I am also satisfied, again as set out above, that AGI and its counsel made a good faith effort to assess the overall extent of their respective activities involving one entity or the other. Ultimately, absent evidence of bad faith or negligence, neither of which is evident here, the court necessarily places considerable trust in its officers to provide practical advice and recommendations as to what steps and practices are reasonable and appropriate in the circumstances at hand.

[50] Again, it would have been preferable for there to have been better communications from AGI and its counsel concerning the proposed payment of their fees, and, as noted, preferable for approval to have been sought in the ordinary course before payment. I understand that, in particular in the last few months, there has been considerable activity and mounting tensions over an array of issue, but to be clear that does not obviate, and in fact underlines, the need for court officers to be transparent as to their activities.

Proviso – 785's Operational Needs Pending Transaction and Golf Season

[51] The other proviso, as noted above, relates to the question of just what 785 needs in its operating account in order to get from here to the pending start of the 2026 golf season, and the interplay between 785's activities on that front and the pending Transaction (and resulting change in control of the Golf Club).

[52] 785 says that, given that the golf season is just around the corner, it needs to stock up the pro shop, acquire additional golf carts, and otherwise incur expenditures with a view to ensuring that the Golf Club can operate seamlessly going into that season.

[53] AGI responds that, while some of that activity is or may be necessary, it is unwise for 785 to assume that it knows what acquisitions the Purchaser will want to make, and that incurring a full array of expenditures in anticipation of the golf season (in keeping with 785's past practices) risks wasting at least some of the money spent in that effort.

[54] Counsel for each of 785 and AGI have emphasized at various points, and continued to do so before me on this motion, the benefits of open communication.

[55] Obviously, I agree that transparency and clarity are important.

[56] To that end, I direct that 785 and AGI, and their respective counsel, compare notes as to 785's proposed operational expenditures to see what can be agreed. It may be helpful on this front for AGI to determine from the Purchaser (Purposeful Golf) what its preferences are in terms of expenditures to ready the Golf Club for use. As 785's counsel pointed out, there is a mechanism in the Sale Agreement for a reconciliation of such costs; in my view it makes sense for the parties to compare notes and to jointly develop, to the extent possible, an agreed plan for necessary expenditures in the near term.

[57] If it proves to be the case that 785 has inadequate funds to pay for whatever is agreed to be necessary, then I expect AGI to take steps to return, temporarily, such funds as are necessary to bridge whatever gap becomes evident.

785's Counsel's Fees

[58] On that note, counsel for 785 noted in the course of his submissions on this topic that AGI/A&B have recently balked, or at least hesitated in relation to 785's counsel's own accounts. Mr. Ullman fairly expressed concern about AGI/A&B seeing to their own accounts without advance approval, on one hand, and taking issue with Mr. Ullman's accounts, on the other.

[59] Based on AGI's submissions before me, it seemed that the issue was more related to timing than substantive concerns, but to be clear I expect that in the forthcoming discussion that I am directing the issue of Mr. Ullman's firm's account(s) also be addressed. While Mr. Ullman has not entirely succeeded with all of his submissions before me, it is evident, including in the discussion above, that he has raised a number of points meriting careful consideration, and has thus assisted the court in this proceeding.

AGI's Conduct and Activities

[60] 785 also expressed reservations about AGI's conduct – in relation to the request before me with respect to AGI and A&B's accounts. The concerns are as discussed above.

[61] While I do not find that AGI's conduct, or that of its counsel, has been perfect and above reproach at every turn, I do find, again as discussed above, that on balance that conduct has been reasonable and helpful and therefore, just as I am approving the fees at issue (subject to the parties' assessment of 785's operational needs between now and closing, discussed just above), I am also prepared to approve AGI's conduct and activities, and its Second Report, Supplement to the Second Report, and Prior Reports.

No Opposition to Interim SRD

[62] The last remaining item, for now, is a request to approve AGI's Interim SRD. There is no opposition to this request, and I approve it.

[63] Finally, counsel agreed that it remains to determine the remaining allocation of the proceeds of the Transaction – apart from that to Eisen – once those proceeds are in hand.

[64] At the appropriate juncture, if no agreement is reached, counsel should set up a scheduling appointment to establish a date for that remaining hearing.

W.D. BLACK J.

DATE OF RELEASE: February 23, 2026