



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CL-26-00000005-0000

DATE: March 31, 2026

NO. ON LIST: 3

TITLE OF PROCEEDING: WINDSOR PRIVATE CAPITAL LIMITED PARTNERSHIP v. 2352107
Ontario Inc.

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Stephanie Fernandes	Counsel for National Bank of Canada	sfernandes@tgf.ca
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Tom McElroy	Representative of Receiver, Albert Gelman Inc	tmcelroy@albertgelman.com

ENDORSEMENT OF JUSTICE STEELE:

- [1] The Receiver seeks an order approving the marketing and sale process for the Retail Plaza, including the engagement of JLL as the listing agent, authorizing the Receiver to make the Interim Distributions, and approving the First Report, the First Supplement, and the Second Report, and the activities therein, and approving professional fees (supported by fee affidavits).
- [2] Capitalized terms used in this endorsement that are not defined herein have the meaning set out in the Receiver's factum.
- [3] The only other party that filed materials was McQueen Maintenance Inc., ("McQueen") a construction lien claimant with a claim registered against the Real Property in the amount of \$98,762. Among other things, McQueen seeks information from the Receiver to determine the amount of the holdback that is required to be held by the Receiver pursuant to the *Construction Act*.
- [4] The Receiver is directed to provide the lien claimants with documents and information that are reasonably requested, provided that such documents and information are in the possession or control of the Receiver. The lien claimants are directed to provide the Receiver with documents and information that are reasonably requested, provided that such documents and information are in the possession or control of the applicable lien claimant.
- [5] McQueen also made submissions to oppose the Interim Distributions until such time as full disclosure has been provided. After hearing submissions from McQueen and the Receiver I was satisfied that the proposed Interim Distributions (set out at para. 18 of the Receiver's factum) could be made. However, I instructed that the proposed order be amended such that the amount authorized for distribution to Windsor II (as assignee of the NBC Term Loan and security) be reduced to coincide with funds currently available for distribution. I am satisfied that there is no prejudice to McQueen if the Interim Distributions are made. As noted by the Receiver, the Receiver intends to set aside \$250,000. In addition, the construction liens continue to be registered against any unsold properties (4 unsold condo units, the Retail Plaza, and development lands). The Receiver has obtained an independent legal opinion from Weirfoulds confirming that the NBC security, as assigned to Windsor II, is valid and enforceable.
- [6] In *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727, at para. 16, the Court of Appeal set out the following factors for the court to consider when determining whether to approve the sale of property subject to a receivership:
- (a) Whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
 - (b) The efficacy and integrity of the process by which offers are obtained;
 - (c) Whether there has been unfairness in the working out of the process; and
 - (d) The interests of all parties.
- [7] In *CCM Master Qualified Fund Ltd. v. blutip Power Technologies Ltd.*, 2012 ONSC 1750, at para. 6, the Court held that the *Soundair* factors also inform the court's determination of whether to approve a proposed sale process. The court is to assess:

- (a) The fairness, transparency and integrity of the proposed process;
- (b) The commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and
- (c) Whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

[8] I am satisfied that the Court should approve the Retail Plaza Sale Process. The recommended Retail Plaza Sale Process is summarized in the Second Report, at para. 50. The proposed listing agent, JLL, is an established real estate brokerage with extensive experience dealing with the sale of similar properties. The proposed process is fair, open and transparent. It is designed to canvass the market broadly with the goal of obtaining the highest and best price in a reasonable time period.

[9] The Court has the jurisdiction to review and approve the activities of a court-appointed receiver as set out in the receiver's reports: *Bank of America Canada v. Willann Investments Ltd.*, 1996 CanLII 2782 (ONCA).

[10] The Court in *Re Target Canada Co.*, 2015 ONSC 7574, at paras. 22-23, identified several good policy and practical reasons for monitors in CCAA proceedings to routinely seek court approval of their reports and activities. These policy and practical reasons also apply in receivership proceedings where the receiver seeks approval of its report and activities: *Re Hangfen Evergreen Inc.*, 2017 ONSC 7161, at para. 15.

[11] I am satisfied that the activities of the Receiver set out in the First Report, the First Supplement, and the Second Report were reasonable, necessary and undertaken in good faith pursuant to the Receiver's duties and powers and should be approved. However, approval of the Reports is not deemed an approval of the amount of the holdback that is required to be held by the Receiver pursuant to the *Construction Act*.

[12] The Receiver seeks approval of its fees and disbursements and those of its counsel. Fee affidavits have been filed.

[13] When considering whether to approve professional accounts, the court will consider the overall value contributed, taking into consideration (a) the nature, extent and value of the assets, (b) the complications encountered, (c) the degree of assistance provided by the debtor, (d) the time spent, (e) the receiver's knowledge, experience and skill, (f) the diligence and thoroughness displayed, (g) the responsibilities assumed, (h) the results of the receiver's efforts, and (i) the cost of comparable services when performed in a prudent and economical manner: *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at paras. 33 and 44-45.

[14] The Receiver is of the view that its fees and disbursements, and those of its counsel, are fair and reasonable and are consistent with the rates charged by law firms in the Toronto area practicing in insolvency. I am satisfied that the fees and disbursements are fair and reasonable and should be approved.

[15] Order to go in the form signed by me today, with immediate effect.

Date: Mar 31, 2026


Justice J. Steele