SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

COUNSEL SLIP / ENDORSEMENT

COURT FILE NO.: CV-25-00749022-00CL **DATE:** October 8, 2025

REGISTRAR: Damian Hutchinson

NO. ON LIST: 2

TITLE OF PROCEEDING: THE TORONTO DOMINION BANK
v.
SIGMA MOLDERS 2020 INC

BEFORE: JUSTICE FL MYERS

PARTICIPANT INFORMATION

For Plaintiff, Applicant / Moving Party:

Name of Person Appearing	Name of Party	Contact Info

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Samantha Hans	Counsel to the Receiver	shans@airdberlis.com
Kyle Plunkett	Counsel to the Receiver	kplunkett@airdberlis.com
Adam Zeldin	Court Appointed Receiver, Albert Gelman Inc.	azeldin@albertgelman.com

ENDORSEMENT OF JUSTICE FL MYERS:

1. The Receiver seeks approval of the sale of an injection moulding machine and an order vesting title to the machine in the purchaser free and clear in the usual form.

2. The assets of the business were sold prior to the appointment of the Receiver. The purchaser determined that it did not wish to complete the sale of this injection moulding machine at that time. Subsequent negotiations however led the Receiver to agree to sell the machine to the same purchaser for US$175,000. The Receiver is holding in trust the full purchase price that it has already received from the purchaser. The purchaser has taken possession of the machine and is storing it at its own cost.

3. The purchase price agreed upon exceeds the liquidation value of the machine. If its security is valid, TD is the first-ranking secured creditor with general security over the assets and undertaking of the debtor. Concentra has a PMSI on the injection moulding machine. It is owed approximately $118,000 and should therefore be paid in full if it has first priority to the proceeds. The two secured creditors are unopposed to the sale. Their claims will consume the proceeds and leave one or the other under water. Unsecured creditors have no real interest in these proceeds (assuming TD's security is valid as will be determined.) CRA is also investigating whether it may assert trust claims.

4. While the Receiver did not engage in a formal sales process for this machine, it understands that the debtor solicited interest for its assets, including this machine, from five potential buyers. None showed any real interest apart from the purchaser. It does not appear that the injection moulding machine was offered for sale on its own.

5. I am told that the purchaser declined to purchase the injection moulding machine from the debtor as the receivership was pending and the purchaser had concerns about the debtor's ability to close a sale.

6. The court can be satisfied with a "pre-packaged" sale where there is evidence of market exposure and the other requirements to meet the *Soundair* criteria (*Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA)) . It may also be relevant that the equipment is highly specialized with no real market for purchasers. Here the Receiver proposes the sale on the following bases:

> 46. The Receiver recommends that the Court issue the AVO approving the Post-Filing M&E Transaction and vesting title of the Toshiba Machine in and to the Purchaser for the following reasons:
>
> > a. the Toshiba Machine purchase price exceeds its liquidation value pursuant to the Appraisal;
> >
> > b. the Purchaser was already engaged on an arm's-length basis in connection with the Pre-Filing M&E Transaction, making it a logical acquirer;
> >
> > c. the Receiver is satisfied that the parties agreed on terms and pricing through an arm's-length process;
> >
> > d. the Toshiba Machine is subject to depreciation, storage costs, or other carrying costs that erode value if not sold promptly;

e. the purchaser required a timely commitment, and delay risked losing the deal entirely;

f. TD is unwilling to provide funding to further market the Toshiba Machine. In any event, the Receiver is of the view that the ongoing professional and other costs would erode recoveries with no certainty that a superior transaction would be completed;

g. the proceeds of the Post-Filing M&E Transaction, net of amounts owing to Concentra pursuant to the Buyout Statement (inclusive of taxes), provide more than $100,000 in realizations to the estate. The Receiver has been in contact with Concentra who is aware of the Post-Filing M&E Transaction;

h. TD, being the primary secured creditor, supports the Post-Filing M&E Transaction; and the transaction maximizes recoveries available to the estate in a pragmatic and efficient manner.

7. The difficulty with this evidence/argument is that it barely addressed the *Soundair* factors. In its factum, the Receiver acknowledges the legal requirements applicable to the approval of the sale. The court must consider the following:

(a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;

(b) whether the interests of all parties have been considered;

(c) the efficacy and integrity of the process by which offers were obtained; and

(d) whether there has been unfairness in the working out of the process.

8. *Soundair* relies on the breadth of the marketing process as a proxy to give an assurance of maximization of proceeds. Here, the Receiver does not comment at all on the breadth or adequacy of the marketing of the machine. It limits its consideration of interests to the secured creditors - one or the other of whom is at the plimsoll line of recovery. I respect the position of the appointing creditor especially concerning the costs of the process. However, it does not control the cost or funding of a court appointed receivership process. The Receiver has the ability to consume proceeds in its hands and to borrow on a first-priority basis to assure a fair and proper marketing process whether the bank is willing to fund it or not.

9. The other aspect of *Soundair* however, is the recognition by the Court of Appeal that the court must take the advice of its officer absent very good reason to do otherwise. The Receiver is best positioned to make business judgments both due to its expertise and its role on the front lines. That is why it is fundamentally important that every receiver bear in mind its overarching duties to a fair and just process. The court relies on its officer to give advice based on fairness, integrity of the process, and broad consideration of all relevant interests rather than the position of any one creditor.

10. Here the Receiver advises that ongoing professional costs will likely erode recovery rather than supplementing it. It is of the view that the proposed transaction maximizes recovery in a "pragmatic and efficient manner." It might have been preferable if both of those views had been expressed independently by the Receiver

rather than as conclusions to sentences about the position of the bank. Moreover, pragmatism and efficiency are important. But they are not substitutes for a fair and complete process.

11. In all, given that the amounts in issue are modest, the proceeds exceed the liquidation value of the machine, the two secured creditors who will consume the full proceeds are content with the proposed sale, and there is no reason to believe that further marketing would produce anywhere near sufficient proceeds to leave money on the table for others, I accept the Receiver's recommendations despite the limited evidence on the fairness or breadth of the marketing process.

12. In my view, the proposed sale is fair and reasonable in all the circumstances and should be approved as recommended by the Receiver. Order signed as asked.

FL Myers J.

Justice FL Myers

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