ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CL-26-00000319-0000 **DATE: 15 September 2026**

NO. ON LIST: 5

TITLE OF PROCEEDING: Findev Lending Inc. and 1682 Victoria Park Avenue Inc

BEFORE: JUSTICE MYERS

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT OF JUSTICE MYERS:

[1] The Applicant seeks approval of a transfer of the business of the debtor to it by means of an RVO. That means the corporate existence of the debtor will survive with its old shares cancelled and new shares owned by the Applicant. It will be removed form the CCAA proceeding. But some of the debts owing by the debtor will first be transferred to a new company to be incorporated that will replace the debtor as *CCAA* debtor (and eventually a bankrupt).

[2] This is an odd plan because in many ways it affects only the Applicant. Everyone else is being protected or being treated as they would be treated in a bankruptcy.

[3] The Applicant is the creditor at the "Plimsol line" of recovery. In a liquidation, the mortgagees ahead of the Applicant will likely be paid all or nearly all of what is due to them. The Applicant's $25 million mortgage will get what is left.

[4] Instead of a trustee in bankruptcy or a receiver selling the remaining 65 units owned by the debtor, the Applicant prefers to take its chances at realizing more on them in an organized marketing effort under its control over time. Whether the Applicant stands to profit or to limit its losses, it wishes to do so on its terms.

[5] The secured mortgagee behind the Applicant acknowledges that it is out of the money. It does not oppose the transaction.

[6] Creditors being stranded in a bankrupt new ResidueCo include the CRA for HST. Its priority will be reversed in a bankruptcy of the ResidueCo.

[7] Lien claimants unsecured claims are also being left behind. Mr. Fridmar's lien claimant clients make the point expressly that while the Monitor has suggested that their claims are capped at a holdback amount of $153,000, it may be that their entire claims will be characterized as "holdback" so that the Monitor's suggested "cap" may not be correct. In any event, their priority claims are being recognized by the ongoing debtor business.

[8] The CRA and the lien claimants have had input into the drafting of the proposed approval order. They are content with its terms.

[9] Unsecured claims in the main are being left behind. Based on the appraisal evidence, including one particularly optimistic appraisal, there are simply no proceeds ever likely to be available to pay unsecured creditors whether in this proceeding or in a bankruptcy.

[10] The unsecured claim by one creditor who obtained and registered a writ of execution after the *CCAA* order stayed all enforcement proceedings is also being stranded in the residue company.

[11] Unsecured potential claims by existing unit owners against the developer/debtor are also being stranded in the ResidueCo. But they have claims against Tarion and through their condominium corporation. The existing unit holders are being treated no differently than if the debtor survived with no money or if it went bankrupt. Unsecured claims have no value against the developer/debtor. Leaving them behind causes no prejudice.

[12] The questions asked by Mr. Khan are valid questions. He should follow up with Tarion and the debtor in its new ownership. But they do not affect the approval of the transaction proposed.

[13] The RVO structure is said to be helpful and necessary here for a few reasons. None of them individually seems like a great reason to invoke the power of the *CCAA* to help a creditor singularly enhance its own recovery. The RVO is an exceptional transaction structure. At minimum, there should be a good reason to use it.

[14] Here, the Applicant says that by keeping the debtor company intact, there is no need to sell the remaining units to an intermediate buyer who will then sell individual units. That means that land transfer tax and HST are avoided. Taxes will still be exigible on the ultimate sales by the developer/debtor to the public. But there will be only one round of taxation on the liquidation of the debtor's assets.

[15] I agree with the BC Court of Appeal that saving tax is a legitimate deal strategy whether inside or outside of bankruptcy. See: *British Columbia v. Peakhill Capital Inc.*, 2024 BCCA 246. But that alone does not mean that an RVO is needed just to help a single creditor save a single tax on a single transaction. The creditor may want that outcome. But that is a long way from showing that an RVO is "necessary" or a fair and proper use of the restructuring laws in the public interest.

[16] The Applicant also submits that under s. 47 of the *New Home Construction Licensing Act*, 2017, S.O. 2017, c. 33, Sched 1, only a licensed builder can sell new homes in Ontario. If the Applicant were to foreclose on its mortgage, it would not be a licensed builder.

[17] Under s. 47 (2) of the statute, insolvency officers (trustees, receivers, and monitors under the *CCAA*) are treated as licensed for the purposes of the *Act*. So the Applicant is not left without a remedy to enforce its mortgage. But leaving the debtor intact preserves its license so as to eliminate the need for fancy workarounds. I expect, for example, that a mortgagee could team up with a licensed builder to structure a transaction so that the builder is available to perform Tarion warranty work or otherwise take on the duties of a licensee. There was no evidence before me of whether parties can work with Tarion to protect the intention of the statute while allowing a mortgagee flexibility in its realization structure.

[18] The Applicant also submits that sales of units by the debtor qualify for the current Provincial HST holiday. The Applicant is concerned that an intermediate buyer may not be able to access this benefit for unit buyers. However, there was no evidence before me or even statutory or regulatory material to establish with any certainty that a mortgagee in possession or an owner by foreclosure may not qualify for the important buyers' incentive.

[19] I questioned the Applicants' lawyers at some length as to whether the *CCAA* and the RVO deal structure were intended to be used to effectively get around statutory schemes and taxes. Even if the debtor remains the corporate owner of the unsold units, it will no longer be a developer or builder of homes. Would it qualify in its proposed state for a new home sales license without experienced construction management and an active construction business? To the extent that it performs repairs or Tarion warranty work, for example, it will need to hire or contract with qualified builders and tradespeople.

[20] I questioned whether the RVO structure was being used to get around the statutory and regulatory schemes? It may be lawful, but is it right?

[21] The Applicant submits that the transaction is value-maximizing for the debtor and all its creditors. But, in fact, the only creditor who might obtain greater recovery is the Applicant. The mortgagees ahead of it will be paid what they are due. No one behind the Applicant will receive anything. The transaction is just a form of foreclosure to get the proceeds of sale of the remaining 65 units into the hands of the Applicant.

[22] Mr. Shah for the Monitor phrased it differently, however. He submits that the prospect of increased recovery for the Applicant, while everyone else's' positions are preserved, is a superior outcome economically from the perspective of the community as a whole. The Applicant has invested in the order of $15 million in protective disbursements in the debtor and it wants to control the liquidation in a tax and structurally efficient manner. If it works, the Applicant has enhanced its recovery. If it fails to yield more than a receivership or bankruptcy might have yielded, only the Applicant will be affected.

[23] Mr. Shah submits that the Applicant's willingness to invest in protective disbursements over and above its mortgage loan advance is a positive step that should not be dissuaded. It took a business risk. By credit bidding its debt, it reduces the debt stack likely by more than the value of the remaining units. Proceeding with an RVO now avoids further interest accrual on the prior secured claims and avoids the cost and uncertainty of a receivership.

[24] I agree with Mr. Shah that viewed at a higher level of abstraction there is much positive about the proposed manner of proceeding.

[25] I am also satisfied that the proposed RVO produces at least as good a result as any other structure. In fact the risk of double taxation in an *en bloc* sale and the risk of loss of the Provincial license and buyers' tax holiday practically take an *en bloc* sale off the table. Yet the creditor at the Plimsol line invested funds, took risk, helped keep the debtor alive, and sees a potential for increased recovery by using the RVO.

[26] No one is worse off using the RVO proposed as compared to the assured failure of the debtor once the stay expires.

[27] The debtor has no money. It has not been able to sell a single unit since March of this year. In June, the debtor and Applicant retained a recognized and experienced real estate broker who did not receive a single formal offer despite sending thousands of targeted ads and making literally hundreds of follow-up calls. There were 16 NDAs signed by prospective *en bloc* buyers and not one made an offer.

[28] There is no reasonable alternative available with the October 15, 2026 deadline to the superior mortgagees' forbearance and expiry of the CCAA stay.

[29] I am satisfied that the factors in s. 36.3 of the *CCAA* and those in *Soundair*, if different, are readily met. While there was no formal sales process approved, there was very public marketing with significant involvement by the Monitor both in the sale effort and in negotiating the terms of the RVO. As noted above, other creditors whose interests might have been affected have been consulted and were made comfortable with wording changes in the proposed draft order. There is broad support for the transaction and no reason to delay it further. No one suggests that another sales effort could realistically produce anywhere near the total value of the Applicant's debt which it is credit bidding.

[30] The Applicant and the Monitor have filed confidential appendices to their evidence that contain negotiation details and financial analysis of the real estate broker's sales efforts as well as analysis of the proposed RVO terms as compared to other potential outcomes. They ask for these appendices to be sealed pending the closing of the transaction in a few days or weeks.

[31] The case law is clear that there is a public interest in protecting the integrity of the insolvency process and, especially, fair sales efforts. In the event that the RVO does not close and a liquidation, receivership, or bankruptcy were to occur, the unsold 65 units would be put up for sale again. It would impair the sale and unfairly skew the sale process were buyers to have the information that the parties here have provided the court to show the economics of their recommended deal. In a value-maximizing effort to replicate fair market value, buyers cannot know what the seller will agree to accept or how it values various deal attributes.

[32] In my view the harm to the fairness of a subsequent sales process is far greater than the harm to the Open Courts principle if financial information is kept confidential for just long enough to allow a fair sale process to be held and close. Sealing order to issue as asked.

[33] Order signed as asked.

Date: Sept. 15, 2026

FL Myers J

Justice FL Myers Digitally signed by Justice FL Myers
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