

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

PEAKHILL CAPITAL INC.

Applicant

and

1000093910 ONTARIO INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C. 43, AS AMENDED**

**MOTION RECORD
OF 2557905 ONTARIO INC.
(returnable June 12, 2024 at 9:30 a.m.)**

May 10, 2024

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Lawyers for 2557905 Ontario Inc.

TO: **SERVICE LIST**

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

PEAKHILL CAPITAL INC.

Applicant
(Respondent in Appeal)

and

1000093910 ONTARIO INC.

Respondent
(Appellant)

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**SERVICE LIST
As at March 15, 2024**

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Court File No. CV-23-00004031-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

PEAKHILL CAPITAL INC.

Applicant

and

1000093910 ONTARIO INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C. 43, AS AMENDED**

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Tab 1

Court File No. CV-23-00004031-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

PEAKHILL CAPITAL INC.

Applicant

and

1000093910 ONTARIO INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C. 43, AS AMENDED**

2557904 ONTARIO INC. will make a Motion to the court on **Wednesday, June 12, 2024**
at 9:30 a.m., or as soon after that time as the Motion can be heard at Newmarket, Ontario.

PROPOSED METHOD OF HEARING: The Motion is to be heard (*choose appropriate option*)

☐ In writing under subrule 37.12.1(1) because it is;

☐ In writing as an opposed motion under subrule 37.12.1(4);

☐ In person;

☐ By telephone conference;

☒ **By video conference.**

at the following location

50 Eagle Street West, Newmarket, Ontario, L3Y 6B1, Via Zoom – link to be provided

*(Courthouse address for in person hearing or telephone conference or video conference details,
such as a dial-in number, access code, video link, etc. if applicable)*

THE MOTION IS FOR *(State here the precise relief sought)*

- (a) An Order that deposit monies in the sum of \$1,000,000.00, currently held in trust by Ren/Tex Realty Inc. ("**Ren/Tex**") (the "**Deposit**"), shall be immediately released to 2557904 Ontario Inc. ("**255**"), together with all accrued and/or applicable interest;
- (b) Interest in the amount of \$29,767.12 accordance with s. 128 of the *Courts of Justice Act*, R.S.O. 1990, c C.43, as amended from November 20, 2023 to the date of this order following Ren/Tex's refusal to remit the Deposit to the Intervener;
- (c) Costs of this motion on a substantial indemnity basis, or as this Honourable Court may otherwise determine appropriate; and
- (d) Such further and other Relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE *(Specify the grounds to be argued, including a reference to any statutory provision or rule to be relied on)*

- (a) On September 7, 2023, 255 made an unconditional offer to the Respondent, 1000093910 Ontario Inc. (the "**Debtor**") to purchase the property located at 20 Regina Road, Vaughan, Ontario (the "**Property**") for \$20,000,000. The original offer was not accepted. The parties negotiated the price that 255 would be willing to pay, with several counter-offers being signed back to each respective party;
- (b) On September 9, 2023, 255 made a final counter-offer to purchase the Property for \$31,000,000.00, which included the payment of a deposit of \$1,000,000.00 to be held in trust by Ren/Tex pending the closing of the sale (the "**Deposit**") (the "**Original APS**");

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- (c) The Debtor accepted 255's offer on September 15, 2023. At the time, 255 was not aware that the Debtor had already consented to the appointment of a Receiver to take possession and exercise control over all of its assets, including the Property (the "**Receivership Order**"). Justice Lavine of the Superior Court of Justice issued the Receivership Order on September 13, 2023;
- (d) Certain representations made by the Debtor in the Original APS were false when the Original APS was agreed upon, including the representation made by the Debtor that the Debtor was duly authorized to enter into the Original APS. As of the date that the Debtor executed acceptance of the Original APS, the Debtor was fully aware that he lacked the capacity to close the transaction;
- (e) The Receiver took control of the property in early October 2023;
- (f) On October 23, 2023, the Receiver wrote to counsel for 255 and provided 255 with a draft "Amending Agreement" (the "**Amending Agreement**"). According to the Receiver, it could not proceed with the Original APS in its current form. The Amending Agreement was necessary in order to, amongst other things, reflect the fact that the Original APS needed to be completed by the Receiver, rather than the Debtor;
- (g) On October 31, 2023, 255 advised the Receiver that it was not prepared to enter into the amending agreement and that it considered the Original APS "null and void". 255 did not pay any further deposit as required by the Original APS and neither the Receiver nor 255 tendered on the date scheduled for closing;
- (h) Following the termination of the Original APS, the Receiver and 255 discussed that 255 was prepared to purchase the Property at a significantly reduced purchase

price. 255 and the Receiver engaged in further discussions and a stalking horse agreement was entered into on November 13, 2023 (the “**Stalking Horse Agreement**”);

- (i) On November 20, 2023, 255 delivered to Ren/Tex an “Irrevocable Direction to Pay” jointly signed by the Receiver and 255 directing Ren/Tex to remit Deposit to the Receiver by November 17, 2023. The Irrevocable Direction was subsequently amended to require compliance by Ren/Tex by November 22, 2023; however, Ren/Tex did not turn over the funds;
- (j) On December 13, 2023, the Receiver served a motion record for a motion hearing that was to take place on December 20, 2023. The Receiver sought various forms of relief to approve the sale process, bidding procedure, Stalking Horse Agreement, and the entering into a new listing agreement with a realtor and “formally” terminating the Original APS;
- (k) On December 19, 2023, less than 24 hours before the motion hearing, the Debtor served a cross-motion on the Receiver and the Service List in the receivership proceedings;
- (l) The Receiver’s motion and the Debtor’s cross-motion were heard by Justice Valle. Justice Valle granted the Receiver’s motion for approval of the Stalking Horse Agreement and refused to hear the Debtor’s cross-motion for, amongst other things, an order that 255 comply with the Original APS (the “**Order**”);
- (m) On December 29, 2023, the Debtor served and filed a notice of appeal from the reasons and requested that the Order be set aside and in its place an order be

made allowing the Debtor or the Receiver to enforce the terms of the Original APS, including the right to specific performance;

- (n) On January 19, 2024 the Debtor was granted the right to appeal by the Ontario Court of Appeal.
- (o) On March 15, 2024, 255 filed a motion to intervene in the Appeal, which contained an Affidavit from Anthony Marcucci sworn on even date;
- (p) On March 28, 2024, 255 was granted leave to intervene in the appeal by the Ontario Court of Appeal;
- (q) The Appeal was heard on April 2, 2024 and the Debtor's appeal was dismissed ;
- (r) On April 18, 2024, counsel for 255 wrote to counsel for Ren/Tex seeking a return of 255's original deposit. Counsel for 255 advised that the Original APS was not operative and that the deposit had to be returned given the courts decision ;
- (s) On April 27, 2024, counsel for 255 wrote again to counsel for Ren/Tex. Counsel to 255 advised that 255 would be seeking interest on the deposit from the day that it was first requested, and that interest would continue to accrue until the Deposit was returned;
- (t) On April 30, 2024, counsel for Ren/Tex responded that commission was due to Ren/Tex and that Ren/Tex had obligations with respect to a Commission Trust Agreement between the Debtor and Ren/Tex. Counsel for Ren/Tex advised that they had a claim to the funds for commissions and would not release funds without an Order;

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- (u) The original APS was aborted because of the receivership. The trust funds are 255's and they never were a signatory or obliged under the listing agreement as that was always the obligation of the vendor
- (v) Rules 1.04, 2, 3, 19, 19.02(1)(a), 19.05, 19.05(1) - 19.05(2), 37, 37.13(2) and 57 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
- (w) Sections 25, 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and
- (x) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- (y) The Affidavit of Anthony Marcucci sworn March 14, 2024 and the exhibits thereto filed in support of 255's motion for leave to intervene in the Debtor's Appeal;
- (z) The Affidavit of Kayla Sweet sworn May 10, 2024 and the exhibits thereto filed in support of 255's motion;
- (aa) The Costs Outline of the Moving Party, 2557904 Ontario Inc.;
- (bb) The Factum of the Moving Party, 2557904 Ontario Inc.; and
- (cc) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

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May 10, 2024

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Lawyers for 2557905 Ontario Inc.

TO: SERVICE LIST

RCP-E 37B (January 2, 2024)

PEAKHILL CAPITAL INC. et al.
Applicants

Court File No. CV-23-00004031-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at NEWMARKET

NOTICE OF MOTION

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Lawyers for 2557904 Ontario Inc.

Served by Email:
TO SERVICE LIST

RCP-F 4C (September 1, 2020)

Tab 2

Court of Appeal File No. COA-23-CV-1357
Court File No. CV-23-0000403-000

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

PEAKHILL CAPITAL INC.

Applicant
(Respondent in Appeal)

and

1000093910 ONTARIO INC.

Respondent
(Appellant)

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

AFFIDAVIT OF ANTHONY MARCUCCI

I, ANTHONY MARCUCCI, of the City of Vaughan, in the Regional Municipality of York,
MAKE OATH AND SAY:

1. I am the President, Director and Shareholder of 2557904 Ontario Inc. ("**255**"), the purchaser of the property located at 20 Regina Road, Vaughan, Ontario (the "**Property**") from the Respondent, 1000093910 Ontario Inc. (the "**Debtor**"). As such, I have personal knowledge of the matters to which I hereinafter depose.

2. I provide this affidavit for the assistance of the Court in respect of the Debtor's appeal of the decision of the order of the Honorable Madam Justice Vallee dated December 20, 2023 (the "**Order**"). This affidavit sets out the background surrounding the negotiation of an Agreement of Purchase and Sale dated September 15, 2023 (the "**Original APS**"), the Receiver's proposed "Amending Agreement" as well as the subsequent execution of a new Stalking Horse Agreement of Purchase and Sale on

-2-

November 13, 2023. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all cases, believe it to be true.

The Original APS

3. While 255 was not substantively involved in the motion of KSV Restructuring Inc., in its capacity as Court-appointed receiver and manager (in such capacity, the “**Receiver**”) dated December 13, 2023 or the Debtor’s cross-motion dated December 19, 2023 (the reasons for which I address below), having reviewed these motions and the Order, those previous motions which are the subject of this appeal appear to be premised on a misconceived notion that the Original APS is somehow still operative. It is not, as I explain below.

4. 255 originally executed the Original APS in what I would suggest are misleading circumstances perpetrated by the Debtor.

5. On September 7, 2023, 255 made an unconditional offer to the Debtor to purchase the Property for \$20,000,000.00. The original offer was not accepted. The parties negotiated the price that 255 would be willing to pay, with several counter-offers being signed back to each respective party. Eventually, on September 9, 2023, 255 made a final counter-offer to purchase the Property for \$31,000,000.00 and pay a deposit of \$1,000,000.00 to Ren/Tex.

6. 255’s offer was accepted by the Debtor on September 15, 2023. At the time, 255 was not aware that the Debtor had already consented to the appointment of a Receiver to take possession and exercise control over all of its assets, including the Property (the

-3-

“Receivership Order”). The Receivership Order was issued by Justice Lavine of the Superior Court of Justice on September 13, 2023.

7. As a result of the Receivership Order, certain representations by Debtor in the Original APS were not true, including Schedule ‘A’, s 4(e), that the Debtor was *“duly authorized to enter Into the Agreement with power and capacity to complete the transaction provided herein in accordance with the terms, thereof”*. As of the date that the Debtor executed acceptance of the Original APS, the Debtor was fully aware that the Receiver would take possession and control of the Property and that the Debtor potentially lacked the capacity to close the transaction.

8. As of September 15, 2023, I believed that the Debtor was fully authorized to enter into the Original APS and that it was able to freely deal with the Property as it saw fit. Attached as **Exhibit “A”** is a copy of the Original APS. As it turns out, this was not accurate.

The Receivership Order

9. On September 13, 2023, some two days before the Original APS was accepted, Peakhill Capital Inc. (the **“Applicant”**) proceeded with an application seeking to appoint KSV Restructuring Inc. as receiver (the **“Receiver”**) over all the assets, undertakings and properties of the Debtor (which resulted in the issuance of the Receivership Order). I understand from my review of the motion materials filed in this appeal that the Applicant had given the Debtor notice of its intention to appoint a receiver long before the Applicant made its application to Court.

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10. The Debtor's financial difficulties, and the possibility that a receiver could be appointed, was never disclosed to me at any point by the Debtor during the course of our negotiations. I question how the Debtor could have been able to close the transaction given its financial difficulties. Moreover, I would have expected that, at the minimum, the Debtor would have at least disclosed the possibility that a receiver might have been appointed during the negotiation process, especially considering that the Original APS required a lease back of the Property by the Debtor concurrently when the sale closed. I never would have purchased the Property had I known of the Debtor's financial difficulties. I had no interest getting tied up in a dispute between the parties and the complications that go with such trouble.

11. I did not know about the appointment of the Receiver until October 3, 2023, when I received a phone call from Mr. Noah Goldstein of the Receiver who informed me that the Debtor has been placed in receivership. This was after the suspension of the Receivership Order had expired and the Receivership Order came into force in early October 2023.

The Receiver's Proposed "Amending Agreement"

12. On October 3, 2023, my then counsel, Mr. Michael Mancini of Mancini Law, was approached by Mr. Goldstein of the Receiver and his counsel, Mr. Sean Zweig of Bennett Jones LLP, regarding the Original APS. Mr. Zweig informed Mr. Mancini that the Receiver needed some comfort that 255 had the financial backing to close the transaction and asked for a number of financial documents evidencing my ability to do so. These discussions continued along this vein over a number of weeks starting in the beginning

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of October 2023. Considerable amounts of financial information were provided to the Receiver throughout October 2023. A copy of an email chain between, amongst others, Mr. Mancini, Mr Zweig and Mr. Goldstein starting from October 3, 2023 to November 1, 2023 is attached as **Exhibit “B”**.

13. On October 23, 2023, Mr. Zweig again contacted Mr. Mancini regarding the Original APS. In his email, Mr. Zweig attached what he described as an “Amending Agreement” (the “**Amending Agreement**”) which had been drafted to reflect the fact that the Original APS needed to be completed by the Receiver, rather than the Debtor. Mr. Zweig requested that we review the draft Amending Agreement and let him know if we had any comments. A copy of Mr. Zweig’s email of October 23, 2023, together with the draft Amending Agreement, is attached as **Exhibit “C”**.

14. On October 27, 2023, Mr. Zweig wrote to Mr. Mancini again with respect to the proposed draft Amending Agreement. Mr. Zweig confirmed to Mr. Mancini that, if the parties could not agree on the Amending Agreement, the Receiver would need to “go back to the market” for the sale of the Property. A copy of Mr. Zweig’s email of October 27, 2023 is attached as part of the email chain attached as **Exhibit “B”**.

15. The Receiver’s Amending Agreement included a number of material changes that were not acceptable as they altered the deal that had been negotiated with the Debtor. For instance, the Amending Agreement removed the lease back provision. This change represented a departure from the Original APS and was not something that I wanted to entertain. The lease back provision in the Original APS was a significant benefit to me as a buyer, as it ensured that there would be a tenant already in place who would be making

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rental payments as soon as the sale took place for a portion of the building. The removal of the lease back provision increased 255's risk and costs associated with the sale given that there wouldn't be immediate rental income and, further, 255 would be required to incur additional costs of finding a new tenant following the sale.

16. I was also concerned that the Amending Agreement required the assignment of the Original APS to the Receiver, as vendor, as well as the proposed Vesting Order that the Receiver was requiring to be issued by the Court as part of the sale closing. I understand from my professional advisors that the assignment and Vesting Order would potentially relinquish certain rights and remedies that would have otherwise been available to 255 in the event that the vendor breached certain warranties and representations under the Original APS and potential statutory remedies post-closing.

17. In light of changes proposed by the Receiver, on October 31, 2023, my new counsel, Mr. Louis Raffaghello of Concorde Law, under no uncertain terms advised the Receiver and its counsel that 255 would not be signing any amendment to the Original APS and given that the Receiver would not proceed with the Original APS, the parties agreed at that point the Original APS was at an end and Mr. Raffaghello requested our deposit back. I attach hereto as **Exhibit "D"** a copy of Mr. Raffaghello's email to Mr. Zweig dated October 31, 2023. Because the Original APS was at an end, 255 did not make any further deposit payments required under the APS.

18. Following the termination of the Original APS, we engaged in further discussions with the Receiver to see if a new agreement could be reached with respect to the purchase of the Property. These discussions were concluded on November 13, 2023

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when the stalking horse agreement was signed by the parties. I attach as **Exhibit “E”** a copy of the executed stalking horse agreement.

19. Given that the Original APS was terminated by the parties on October 31, 2023 and a new stalking horse agreement was executed on November 13, 2023 (the “**Stalking Horse Agreement**”), I really don’t see the point of the appeal.

The Receiver’s Motion and the Debtor’s Cross-Motion

20. I understand that, on December 13, 2023, the Receiver served a motion record for a motion hearing that was to take place on December 20, 2023. The Receiver sought various forms of relief to approve the sale process, bidding procedure, Stalking Horse Agreement, and the entering into a new listing agreement with a realtor and formally terminating the Original APS. I really didn’t care about what the Receiver sought at the hearing as 255 had its new agreement with the Receiver, and I didn’t think that 255 needed to take a position at that hearing.

21. On December 19, 2023, less than 24 hours before the motion hearing, I also understand that the Debtor served a cross-motion on the Receiver and the Service List in the receivership proceedings. I am now aware that my real estate lawyer received a digital copy of the Debtor’s cross motion by email on December 19, 2023 at approximately 3:55 p.m. Given the extremely short notice, I did not have an opportunity to retain a commercial litigator to represent 255, nor did I have an opportunity to place an affidavit before the lower court in respect of either of those motions. I am therefore asking the court for leave to be able to introduce this affidavit. While I understand this would normally be a right should the court send it back down to the lower court, I am filing this now so

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the court understands the merit of sending this back to the lower court as the Appellant is under a mistaken impression that somehow the Original APS is alive, which is the fundamental mistaken assumption they are appealing.

The Debtor's Appeal

22. I understand that, on December 29, 2023, the Debtor served and filed a notice of appeal from the reasons and requests that the Order be set aside and in its place an order be made allowing the Debtor or the Receiver to enforce the terms of the Original APS, including the right to specific performance. In the alternative, the Debtor sought an order remitting the matter back to the Superior Court.

23. I also understand that, on January 2, 2024, the Receiver took the position that service of the notice of appeal was improper because the Order was a procedural, not a substantive order, and therefore required leave to appeal. Although I understand that the Debtor disagreed with the Receiver's position, the Debtor subsequently served its motion materials for leave to appeal on counsel for the Receiver on January 3, 2024, with the materials being served on counsel for 255 on January 4, 2024. The Debtor's motion materials for leave to appeal were served on counsel to 255 on or around January 4, 2024. I understand that the Debtor's motion was to be heard by the Court on January 19, 2024.

24. I understand that, on January 19, 2024, the Debtor and the Receiver appeared before Justice Simmons in respect of the Debtor's motion for leave to appeal the Order. I understand that Justice Simmons accepted that the Debtor had a right of appeal as of

-9-

right and ordered that the hearing of the appeal be expedited. A copy of the order of Justice Simmons dated January 19, 2024 is attached hereto as **Exhibit “F”**.

25. I understand that, on January 24, 2024, Mr. Kevin Sherkin of Miller Thomson LLP, wrote to Mr. Gary Caplan, counsel for the Debtor, confirming that it was 255’s intention to intervene in the Debtor’s appeal on the basis that 255’s rights would be affected. Mr. Sherkin asked Mr. Caplan if the Debtor would be prepared to consent to 255 intervening in this appeal and also confirmed that Mr. Jeremy Sacks would be appearing with him at the appeal on behalf of 255. Attached as **Exhibit “G”** is a copy of Mr. Sherkin’s email sent to Mr. Caplan on January 24, 2024.

26. I understand that, on January 30, 2024, Mr. Sacks wrote to Mr. Caplan regarding Mr. Sherkin’s request that the Debtor consent to 255 being granted intervenor status in the Debtor’s appeal of the Order. Mr. Sacks requested that, going forward, 255, through its counsel, should be provided with all appeal materials and asked Mr. Caplan to confirm. Attached as **Exhibit “H”** is a copy of Mr. Sacks’ email sent to Mr. Caplan on January 30, 2024.

27. I understand that, on January 31, 2024, Mr. Caplan responded to Mr. Sacks’ email of January 30, 2024. Mr. Caplan did not confirm that he would be sending Mr. Sacks and Mr. Sherkin all appeal materials going forward as requested. Instead, Mr. Caplan proposed a number of conditions on 255’s participation in the Debtor’s appeal before he would seek the Debtor’s consent to 255 being granted intervenor status by consent of the parties. A copy of Mr. Caplan’s email sent to Mr. Sacks of January 31, 2024 is attached as **Exhibit “I”**.

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28. I understand that, on Friday, March 8, 2024, Mr. Sherkin was served with the Receiver's Responding Materials in the appeal. I understand from Mr. Sherkin that this was the first time that 255 was informed that the hearing of the Debtor's appeal had been scheduled for April 2, 2023. I understand from Mr. Sherkin that he was not provided with the Debtor's Appeal materials until Monday, March 11, 2024. Attached hereto as **Exhibit "J"** is an email from Ms. Stephanie Song dated Friday, March 8, 2024 attaching the Receiver's Appeal materials.


SWORN by Anthony Marcucci of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

035BE5EE77D849F...

Commissioner for Taking Affidavits
(or as may be)

KEVIN D. SHERKIN (LSO#: 27099B)

DocuSigned by:

113EBAC319124DC...

ANTHONY MARCUCCI

RCP-E 4D (February 1, 2021)

This is Exhibit "A" referred to in the Affidavit of Anthony Marcucci sworn by Anthony Marcucci of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

035BE5EE77D849F...

Commissioner for Taking Affidavits (or as may be)

KEVIN SHERKIN (LSO NO.: 27099B)



Form 500

for use in the Province of Ontario

Agreement of Purchase and Sale Commercial

This Agreement of Purchase and Sale dated this 7 day of September, 2023

BUYER: 2537904 ONTARIO INC., agree to purchase from
(Full legal names of all Buyers)

SELLER: 1000093910 ONTARIO INC. the following
(Full legal names of all Sellers)

REAL PROPERTY

Address 20 Regina Rd. - City of Vaughan

fronting on the North side of Regina Rd

in the City of Vaughan

and having a frontage of more or less by a depth of \$31,000.00 more or less

and legally described as PCL 3-1 SEC 6502720; R/L 3 PL 6502720 ; S/T LT576260, LT576262 VAUGHAN \$31,500,000.00

RA (Legal description of land including agreements not described elsewhere) \$30,000.000 "property"

RA Thirty-One Million Five Hundred Thousand \$32,250,000

PURCHASE PRICE: Thirty Two Million two hundred \$20,000,000.00
fifty thousand dollars Dollars

DEPOSIT: Buyer submits as otherwise described in this Agreement
(Monetary/Upon Acceptance/as otherwise described in this Agreement)

Dollars (CDN\$)

by negotiable cheque payable to REN/TEX REALTY INC., BROKERAGE "Deposit Holder"
to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes
of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance
of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place
the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE A BUYER attached hereto form(s) part of this Agreement.

1. **IRREVOCABILITY:** This offer shall be irrevocable by SELLER until 11:59 am on 15th day of September, 2023

the 15th day of September, 2023 after which time, if not accepted, this
offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. **COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the 21 day of December, 2023

Upon completion, vacant possession of the property shall be given to the Buyer
unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

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3. **NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices. Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein, and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.
(for delivery of Documents to Seller)

FAX No.
(for delivery of Documents to Buyer)

Email Address: jracco@rentxrealty.com
(for delivery of Documents to Seller)

Email Address: vkolenc89658@rogers.com
(for delivery of Documents to Buyer)

4. **CHATTLS INCLUDED:**

RA all office and warehouse light
fixtures and HVAC equipment
Existing compressors

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. **FIXTURES EXCLUDED:**

RA all equipment related to the operating business
including but limited to air compressors and related
equipment, lines, machinery, and electrical, and or
HVAC specific to operations of the business.

Take what you want and leave what you want

6. **RENTAL ITEMS (including Lease, Lease to Own):** The following equipment is rented and not included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

7. **HST:** If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price. The Seller will not collect HST. If the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act ("ETA"), together with a copy of the Buyer's ETA in illustration, a warranty that the Buyer shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Seller in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If the sale of the property is not subject to HST, Seller agrees to certify on or before closing, that the transaction is not subject to HST. Any HST on chattels, if applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



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8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 1 day of December, 2023 (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there are no outstanding work orders or deficiency notices affecting the property, that its present use (Industrial) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.
9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.
10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telecommunication services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telecommunication lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection to made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.
11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendment, thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer retaining any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Ontario. Unless otherwise agreed to by the lawyers, such exchange of Requisite Deliveries shall occur by the delivery of the Requisite Deliveries of each party to the office of the lawyer for the other party or such other location agreeable to both lawyers.
12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.
13. **INSPECTIONS:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller.
14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

R.A.



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- 15. PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
- 16. DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O.1990.
- 17. RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada;
(b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.
- 18. ADJUSTMENTS:** Any rents, mortgage interest, renty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
- 19. TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
- 20. PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
- 21. TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Lynx high value payment system as set out and prescribed by the Canadian Payments Act (R.S.C., 1985, c. C-21), as amended from time to time.
- 22. FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O.1990 unless the spouse of the Seller has executed the consent hereinafter provided.
- 23. UFF:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing urea formaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains urea formaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
- 24. LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
- 25. CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
- 26. AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
- 27. ELECTRONIC SIGNATURES:** The parties hereto consent and agree to the use of electronic signatures pursuant to the Electronic Commerce Act, 2000, S.O. 2000, c17 as amended from time to time with respect to this Agreement and any other documents respecting this transaction.
- 28. TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S)



INITIALS OF SELLER(S)



Sept 7/23

Date:

Date:

IN WITNESS whereof I have hereunto set my hand and seal

09/09/2023

(Date)

Date:

.....
[Date]

11:40
(a.m./p.m.)

Signature of Seller or Buyer

(Salesperson/Broker/Broker of Record Name)

(Fax, NY)

[illegible]

Authorized to bind the Co-operating Brokerage

Form 800 Revised 2023 Page 3 of 6



Schedule A

Agreement of Purchase and Sale - Commercial

Form 500

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER: 2557904 ONTARIO INC. and

SELLER: 1000093910 ONTARIO INC.

for the purchase and sale of 20 Regina Rd. - City of Vaughan Vaughan

ON L4M 0P6 dated the 7 day 21 September, 2023

Buyer agrees to pay the balance as follows:

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This form must be initialed by all parties to the Agreement of Purchase and Sale

INITIALS OF BUYER(S)

INITIALS OF SELLER(S)

RA



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**SCHEDULE "A" TO THE
AGREEMENT OF PURCHASE AND SALE
(FOR USE IN THE PROVINCE OF ONTARIO)**

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER: 2557904 ONTARIO INC., and

SELLER: 1000093910 ONTARIO INC.,

for the purchase and sale of: 20 REGINA RD. - CITY OF VAUGHAN

1. PURCHASE TERMS:

a) **Price and Payment:**

Thirty-One Million Five
Hundred Thousand

\$31,000,000.00

THIRTY ONE MILLION FIVE HUNDRED
THOUSAND DOLLARS

The purchase price for the Real Property shall be the sum of TWENTY EIGHT MILLION
(CDN\$ 28,000,000.00) DOLLARS in lawful money of Canada, payable as follows:

\$32,250,000 ~~\$30,000,000~~ ~~\$31,500,000.00~~
the sum of ONE MILLION TWO HUNDRED THOUSAND (CDN\$ 1,200,000.00) DOLLARS
by cheque forthwith upon acceptance to Ren/tex Realty Inc., pending completion or other termination
of this transaction and to be credited on account of the purchase price on closing;

(iii) the balance of the purchase price on closing, subject to usual adjustments.

b) **Disbursement of the Deposit:**

In the event the Agreement of Purchase and Sale is not completed by reason of the default of the Buyer, the Seller shall be entitled to retain the Deposit in full. The Seller and the Buyer acknowledge the deposit will not be cashed or certified by the Agent until acceptance of this Offer. If the deposit cheque is not paid when due or is not honoured by the Buyer's bank, this agreement may, at the Seller's option, be terminated by written notice to the Buyer and any deposit funds paid to the Seller shall be forfeited to the Seller.

The buyer will submit a further deposit of \$500,000.00
(Five hundred Thousand Dollars) 310 days after acceptance
to The Listing Broker and to be used towards
the purchase price.

(NOTE: This form must be initialed by all parties to the Agreement of Purchase and Sale.)

X
(Buyer)

Ravi Aurora
(Seller)

(Seller)

SCHEDULE "A" CONTINUED**PAGE 2****2. ADJUSTMENTS**

All adjustments with respect to municipal taxes, local improvement charges and utilities and all other items normally adjusted between a Seller and a Buyer on the sale of similar commercial property shall be made with respect to the Property as of the Closing Date. The Buyer shall receive all income and pay all expenses relating to the Property from and including the Closing Date. The Seller shall deliver to the Buyer not less than five (5) days prior to the Closing Date the Statement of Adjustments.

3. SELLER PROVIDED

The Buyer acknowledges receipt of the following:

- (1) Copy of Final Property Tax Bill 2021;
- (2) Area Certificate dated 2023-08-14, including As-Built Overall and Office Plan (Project No. 202030069), and corresponding .dwg file (the "Plans");
- (3) Phase I ESA issued on Nov. 19, 2021;
- (4) Narrative Appraisal Report dated August 21, 2023.

The Buyer specifically acknowledges and agrees that the Seller does not represent, warrant, or guarantee the accuracy, completeness or reliability of any report or study provided to the Buyer. The Buyer agrees that the Seller shall not be liable for any losses as a result of reliance on information or report provided to the Buyer.

4. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE SELLER:

The Seller hereby represents, warrants, and covenants to the Buyer, as the case may be, the following representations, warranties and covenants:

- a) the Seller is the registered legal owner of the Property;
- b) the Seller is not now and shall not be on the Closing Date a non-resident of Canada within the meaning of the Income Tax Act;

..... 3

(NOTE: This form must be initialed by all parties to the Agreement of Purchase and Sale.)

X _____ Ravi Aurora
(Buyer) (Seller)

(Buyer) (Seller)

RA

SCHEDULE "A" CONTINUED**PAGE 3**

- c) any orders or deficiency notices outstanding against the property shall be satisfied by the Seller at its sole expense before the date of closing;
- d) that no contracts exist for the servicing, maintenance or management of the Property which may be binding upon the Buyer after closing other than those disclosed by the Seller;
- e) It is duly authorized to enter into the Agreement with power and capacity to complete the transaction provided herein in accordance with the terms thereof;

5. AGENCY DISCLOSURE

THE PARTIES to this transaction hereby acknowledge that the Co-operating Broker acts for the Buyer under a Buyer's Agency Agreement and that the Co-operating Broker will be compensated through the Listing Broker.

6. WAIVER TO AGENT

The parties to this Agreement acknowledge that the Agents have recommended that they obtain advice from their legal Counsel prior to signing this document. The parties further acknowledge that the information provided by the Agents is not legal, accounting, environmental or tax advice, and the parties are cautioned not to rely on any such information without seeking specific legal, accounting, environmental or tax advice with respect to their unique circumstances.

7. FACSIMILE/ELECTRONIC COMMUNICATION OF AGREEMENT

THE SELLER AND BUYER acknowledge and agree that this Offer, any subsequent counteroffer amendments, notices and acknowledgements that are transmitted between the parties by facsimile or similar electronic transmission shall be treated as signed originals and shall be deemed communicated at the time and date of sending.

8. ~~CONDITION-BUYER~~

RA THIS OFFER shall be conditional for TWO (2) business days from receipt of an up-to-date Phase I Environmental report and on the Property from the Seller to the Buyer in his sole discretion, otherwise this offer shall become null and void and the deposit shall be returned to the Buyer in full without interest or deduction. This condition is included for the sole benefit of the Buyer and may be waived at his option in writing to the Seller within the time period stated herein.

8. SALE/LEASEBACK

RA It is agreed and understood that upon completion of this transaction, the Buyer will allow the Seller to lease the premises back, for a term of FOUR (4) MONTHS from the completion date at a semi-gross rental rate of \$20.00 per sq. ft. per annum including Net Rent and T.M.S. Said Lease shall have a no Option to Renew and shall contain standard lease terms as in a transaction of this nature and size. The Seller/Tenant shall be responsible for all Liability Insurance and utilities. *Plus T.M.S. and Utilities on entire building Seller/Tenant will pay his own contents insurance & Liability*

Only 40% of the entire space to be determined by the Buyer & Seller and agreed upon Both parties

(NOTE: This form must be initialed by all parties to the Agreement of Purchase and Sale.)

RA

(Buyer)

Ravi Aurara

(Seller)

(Buyer)

(Seller)

RA

SCHEDULE "A" CONTINUED**PAGE 4****8. SEVERABILITY**

If any provision contained herein shall be found to be unenforceable, such provision shall be severed from the Agreement, and the remainder of this Agreement shall continue to be in full force and effect.

9. SUCCESSORS AND ASSIGNS

This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

10. APPLICABLE LAW

This Agreement shall be interpreted in accordance with the laws of the province of Ontario and the laws of Canada applicable thereto.

11. FURTHER ASSURANCES

Except as provided herein, each of the parties shall, at the cost and expense of the other party, execute and deliver all such further documents and do such further acts and things that the other party may reasonably request from time to time to give full effect to this agreement.

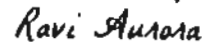
12. NO REGISTRATION BY BUYER

The Buyer agrees that it will at no time prior to the Closing Date register or permit to be registered on title to the Property this Agreement or a notice or assignment or transfer thereof or a caution or any other document pertaining to this Agreement or the Property. Any such registration shall be a default by the Buyer, entitling the Seller to all remedies available to it, including, the right to terminate this Agreement and claim the Deposit. In the event of such termination, this Agreement shall be deemed not to have created any interest in the Property and any improvements thereon, and the Buyer shall forthwith remove any such registration. If such registration is not removed within 3 days of the Seller notifying the Buyer in writing to do so, the Buyer, by the execution of this Agreement, hereby expressly appoints the Seller as its lawful attorney to execute any transfers, releases or applications to have the said registration removed, released or deleted from the title to the Property.

(NOTE: This form must be initialed by all parties to the Agreement of Purchase and Sale.)


(Buyer)

(Buyer)


Ravi Aurora

(Seller)

(Seller)

 RA

OREA Ontario Real Estate Association
Form 105
for use in the Province of Ontario

Schedule B
Agreement of Purchase and Sale

Toronto
Real Estate
Board

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER, 2557904 ONTARIO INC.

SELLER, 1000093910 ONTARIO INC.

for the property known as **20 REGINA RD.** **City of Vaughan**

dated the **7TH** day of **September**, **2023**

The Parties to this Agreement hereby agree that Ren/Tex Realty Inc will not accept cash deposits. The Buyer agrees that the deposit, as stated herein, shall be submitted by Certified Cheque or Bank Draft, payable to Ren/Tex Realty Inc (the "Deposit Holder"), according to the time period contained in this Agreement, and will be held in a non-interest bearing Real Estate Trust Account.

The Buyer and Seller agrees and acknowledges that all the measurements and information provided by Rentex Realty Inc., Brokerage on the MLS Listing, Feature Sheets, Internet/Website And any other marketing materials for the subject property, have been supplied for reference purposes only, and such Rentex Realty Inc., Brokerage does not warrant their accuracy. The Buyer is advised to verify any measurements or information upon which he or she is relying.

The Parties to this Agreement acknowledge that the representatives of Listing and Co-operating Brokerages in this transaction have recommended that they obtain advice from their legal advisor, banker, accountant and inspector prior to signing this document. The Parties further acknowledged that no information provided by either Brokerages' representatives is to be construed as being expert legal, financial, tax, building condition or environmental advice.

Buyer's Acknowledgment: It is agreed and understood that notwithstanding anything contained herein to the contrary, the above-mentioned Property, the improvements within, and property condition are to be accepted in "as is" condition. The Seller or the Agent(s) named herein cannot be held liable for any of the above and that no representation or warranty exists in respect to all aspects of the Property. The Buyer agrees that this is a firm offer, without conditions and shall accept the entire Property in "as is" condition and is relying solely upon its own due diligence. The parties agree that this Buyer's Acknowledgment shall survive and not merge on completion of this transaction.

FOR ALL PURPOSES of this Agreement, the terms "banking day" or "business day" shall mean any day, other than Saturday, Sunday, or statutory holiday in the Province of Ontario.


THE BUYER SHALL have the Right to Assign this Agreement of Purchase and Sale and all its rights and obligations hereunder to a person(s), corporation(s), partnership of person(s) and/or corporation(s) or firm(s). Notwithstanding such assignment the purchasers named herein shall not be relieved of their obligations under the agreement and shall remain responsible hereunder in the event that the assignee defaults in its obligations under the Agreement of Purchase & Sale.

It is agreed and understood, in the case of any conflict between the provisions of the Agreement of Purchase and Sale, Schedule "A", or Schedule "B", then the terms of Schedule "B" shall prevail.


This form must be initialed by all parties to the Agreement of Purchase and Sale

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

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This is Exhibit "B" referred to in the Affidavit of Anthony Marcucci sworn by Anthony Marcucci of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

035BE5EE77D849F...

Commissioner for Taking Affidavits (or as may be)

KEVIN SHERKIN (LSO NO.: 27099B)

From: Louis Raffaghello
Sent: Wednesday, November 1, 2023 6:58 PM
To: Sean Zweig <ZweigS@bennettjones.com>
Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

I have an appointment out of the office at 9:30. I am available anytime after 11 am, except between 1 and 1:30 pm.

Regards,

Louis E. Raffaghello, LL.B., LL.M.



260 Edgeley Boulevard, Unit 12

Vaughan, ON L4K 3Y4

T | (647) 792-1272, x 208 F | 1 (866) 220-3747

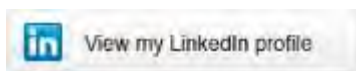
E | louisr@concordelaw.ca

Assistant: Sylvia Kirin, x 210

sylvia@concordelaw.ca

www.Concordelaw.ca

- 2 -



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From: Sean Zweig <ZweigS@bennettjones.com>
Sent: Wednesday, November 1, 2023 6:54 PM
To: Louis Raffaghello <louisr@concordelaw.ca>; Noah Goldstein <ngoldstein@ksvadvisory.com>
Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Hi Louis,

Can we please have a call tomorrow to discuss? 9:30am?

Sean Zweig

*Partner**, Bennett Jones LLP

*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4

T. [416 777 6254](tel:4167776254) | F. [416 863 1716](tel:4168631716)

[BennettJones.com](https://www.BennettJones.com)



Bennett Jones

From: Louis Raffaghello <louisr@concordelaw.ca>

Date: Tuesday, Oct 31, 2023 at 4:29 PM

75736498.1

- 3 -

To: Sean Zweig <ZweigS@bennettjones.com>, Noah Goldstein <ngoldstein@ksvadvisory.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Hello Sean,

Further to our video call, I confirm that we act for 2557904 Ontario Inc.

For reasons that were discussed, I confirm that our client will not be executing the amending agreement and therefore the transaction will not proceed and is effectively null and void. Please instruct Ren/Tex Realty Inc., to refund the deposit funds of \$1M to our client as soon as possible.

Our client still remains interested in the property. Based on current market conditions, and subject to entering into a formal offer, it is prepared to pay \$385 per square foot for a total of \$24,255,000 (assuming the building is 63,000 square feet in size). The offer will be all cash, closing as soon as possible. Our client will pay a deposit of \$1.5M.

If these general terms are acceptable, please contact me asap to proceed with a formal binding offer.

Regards,

Louis E. Raffaghello, LL.B., LL.M.



260 Edgeley Boulevard, Unit 12

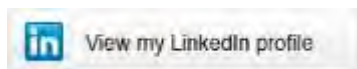
Vaughan, ON L4K 3Y4

T | (647) 792-1272, x 208 F | 1 (866) 220-3747

E | louisr@concordelaw.ca

Assistant: Sylvia Kirin, x 210

- 4 -

sylviak@concordelaw.cawww.Concordelaw.ca

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COVID-19 NOTICE: CONCORDE LAW continues to operate at full capacity with Covid-19 safeguards in place. We offer meetings and all other services by teleconference and videoconference and some in-person meetings by appointment only.

From: Sean Zweig <ZweigS@bennettjones.com>

Sent: Monday, October 30, 2023 1:34 PM

To: Noah Goldstein <ngoldstein@ksvadvisory.com>; Louis Raffaghello <louisr@concordelaw.ca>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Louis,

I am not available at 2:15pm. How is 4pm?

Sean Zweig

*Partner**, Bennett Jones LLP

*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4

T. [416 777 6254](tel:4167776254) | F. [416 863 1716](tel:4168631716)

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- 5 -

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From: Noah Goldstein <ngoldstein@ksvadvisory.com>

Sent: Monday, October 30, 2023 1:31 PM

To: Louis Raffaghello <louisr@concordelaw.ca>

Cc: Sean Zweig <ZweigS@bennettjones.com>

Subject: Re: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Pls connect with sean who is my lawyer today.

Noah Goldstein

416.844.4842

On Oct 30, 2023, at 1:30 PM, Louis Raffaghello <louisr@concordelaw.ca> wrote:

Hello Noah,

I will call you at 2:15 if that works for you.

Regards,

Louis E. Raffaghello, LL.B., LL.M.



CONCORDE LAW
PROFESSIONAL CORPORATION

- 6 -

260 Edgeley Boulevard, Unit 12

Vaughan, ON L4K 3Y4

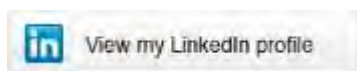
T | (647) 792-1272, x 208 F | 1 (866) 220-3747

E | louisr@concordelaw.ca

Assistant: Sylvia Kirin, x 210

sylviak@concordelaw.ca

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From: Noah Goldstein <ngoldstein@ksvadvisory.com>

Sent: Monday, October 30, 2023 10:00 AM

To: Anthony Marcucci <anthony@crediblegroup.com>

Cc: Jagjeet Kaur <jagjeet@crediblegroup.com>; Vesna Kolenc <vkolenc8965@rogers.com>; Louis Raffaghello <louisr@concordelaw.ca>; zweigs@bennettjones.com

Subject: Re: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Louis, when can you chat today.

Noah Goldstein

416.844.4842

- 7 -

On Oct 30, 2023, at 9:58 AM, Anthony Marcucci <anthony@crediblegroup.com> wrote:

Good morning Noah,

Mancini Law has been terminated from this transation.

Louis Raffaghello is new council on this matter.

He will reach out to you today and or please communicate directly with him.

Thank you.

Please see his coordinates below:

Louis E. Raffaghello, LL.B., LL.M.

<image010.png>

260 Edgeley Boulevard, Unit 12

Vaughan, ON L4K 3Y4

T | (647) 792-1272, x 208 F | 1 (866) 220-3747

E | louisr@concordelaw.ca

www.Concordelaw.ca

- 8 -

Regards,

<image001.png>

From: Vesna Kolenc <vkolenc8965@rogers.com>

Sent: Sunday, October 29, 2023 11:41 PM

To: Jagjeet Kaur <jagjeet@crediblegroup.com>; Anthony Marcucci
<anthony@crediblegroup.com>

Subject: Fw: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Caution: This is an external email and has a suspicious subject or content. Please take care when clicking links or opening attachments. When in doubt, contact your IT Department

Thank you,

Vesna Kolenc

Sales Representative

RE/MAX Premier Inc.

[Sent from Yahoo Mail for iPhone](#)

Begin forwarded message:

On Sunday, October 29, 2023, 11:11 PM, Vesna Kolenc <vkolenc8965@rogers.com> wrote:

Good evening Noah

I just read all this

75736498.1

- 9 -

I was away and lost track of all this as it seems the lawyers got involved

This deal seems simple and in place as far as I'm concerned but I am not knowledgeable in what happens when it goes into receivership in the

Midst of an existing deal, being in place with Rentex and Remax as listing and selling brokers

Going back to our first conversation when you informed Anthony and me that the property went into receivership and it seemed that you were ok with the firm deal in place as you stated that there was enough money to pay everyone

From that point on I'm not sure what took place and where we actually stand at this moment

I did see that the aps was sent to you showing you that it was a firm deal closing December 21, 2023

A 1 million dollar deposit was submitted immediately to Rentex realty by way of a bank draft and a further deposit of \$500000 was due within the next couple of weeks

At that point it seems that there were some breaks put on this further deposit by Anthony's lawyers or I'm not sure by who else suggesting something else other than that the further deposit goes to the listing broker Rentex realty where this deal originated

Also you were given the paperwork regarding the sale of 830, 840 Edgley Blvd showing a firm sale closing December 18, 2023

So when you say that this is urgent I agree with you but I am not sure what is required at this moment as numerous emails are circulating between your lawyers and Anthony's lawyers

Please let me know what you need from me and how we can help this whole situation as you are addressing this email to me

- 10 -

Thank you,

Vesna Kolenc

Sales Representative

RE/MAX Premier Inc.

[Sent from Yahoo Mail for iPhone](#)

On Friday, October 27, 2023, 4:17 PM, Noah Goldstein <ngoldstein@ksvadvisory.com> wrote:

Vesna,

This is now getting urgent. We cant sit in this position.

Noah

From: Sean Zweig <ZweigS@bennettjones.com>

Sent: Friday, October 27, 2023 4:01 PM

To: Noah Goldstein <ngoldstein@ksvadvisory.com>; Jonathan Sistilli <jonathan@mancinilaw.ca>; Michael Mancini <michael@mancinilaw.ca>

Cc: Ben Luder <bluder@ksvadvisory.com>; Christopher Ferencz <FerenczC@bennettjones.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Can we please hear back from you? If we cannot get this settled, we will need to go back to market.

Sean Zweig

*Partner**, Bennett Jones LLP

*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4

T. 416 777 6254 | F. 416 863 1716

75736498.1

- 11 -

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[<image002.png>](#)

From: Noah Goldstein <ngoldstein@ksvadvisory.com>

Date: Thursday, Oct 26, 2023 at 9:25 AM

To: Sean Zweig <ZweigS@bennettjones.com>, Jonathan Sistilli <jonathan@mancinilaw.ca>, Michael Mancini <michael@mancinilaw.ca>

Cc: Ben Luder <bluder@ksvadvisory.com>, Christopher Ferencz <FerenczC@bennettjones.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Can we get back a turn of this today? It's a very short document

From: Sean Zweig <ZweigS@bennettjones.com>

Sent: Monday, October 23, 2023 11:57 AM

To: Jonathan Sistilli <jonathan@mancinilaw.ca>; Michael Mancini <michael@mancinilaw.ca>

Cc: Noah Goldstein <ngoldstein@ksvadvisory.com>; Ben Luder <bluder@ksvadvisory.com>; Christopher Ferencz <FerenczC@bennettjones.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Michael and Jonathan,

Further to the below, attached please find a draft amending agreement to reflect the fact that the APS will now need to be complete by the Receiver. Can you please review and let us know if any comments?

Thanks

Sean Zweig

75736498.1

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*Partner**, Bennett Jones LLP

*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4

T. 416 777 6254 | F. 416 863 1716

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[<image002.png>](#)

From: Sean Zweig

Sent: Wednesday, October 18, 2023 10:35 AM

To: 'Jonathan Sistilli' <jonathan@mancinilaw.ca>

Cc: Noah Goldstein (ngoldstein@ksvadvisory.com) <ngoldstein@ksvadvisory.com>; Ben Luder
<bluder@ksvadvisory.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Hi Jonathan,

Apologies, but I'm in examinations today and tomorrow.

Thanks for the update. Let me chat with the Receiver (copied) re the deposit. Can you please remind me when it is due? We are currently preparing an amendment to address the receivership.

Sean Zweig

*Partner**, Bennett Jones LLP

*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4

T. 416 777 6254 | F. 416 863 1716

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75736498.1

- 13 -

From: Jonathan Sistilli <jonathan@mancinilaw.ca>
Sent: Wednesday, October 18, 2023 10:31 AM
To: Sean Zweig <ZweigS@bennettjones.com>
Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Hi Sean,

Sorry I was unable to speak with you yesterday, I had a family matter to attend to.

I just wanted to provide you with an update:

1. Our client is currently working with BDC to obtain a bank loan and it will take some time for BDC to provide an approval. In any event based on the payouts that we have provided our client has sufficient equity to complete the purchase transaction. I believe the shortly fall is between \$5-6 million from the sale of the Edgeley properties.
2. There is a further deposit that is payable under the agreement, which is to be paid to the seller's real estate agent. It is my client's intention to provide the deposit, however, I would like to hold the funds in our trust account until we confirm that the purchase transaction will proceed. It is my understanding based on the Court Order your client obtained, that we will need to speak with the Receiver on this point.

Can you please call me when you have a moment to discuss this.

Regards,

Jonathan C. Sistilli , J.D., Hons. B.A.

Barrister & Solicitor

- 14 -

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From: Sean Zweig <ZweigS@bennettjones.com>

Sent: Tuesday, October 17, 2023 3:39 PM

To: Jonathan Sistilli <jonathan@mancinilaw.ca>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

I'm available now if that works.

Sean Zweig

*Partner**, Bennett Jones LLP

*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4

T. 416 777 6254 | F. 416 863 1716

BennettJones.com

<[image002.png](#)>

From: Jonathan Sistilli <jonathan@mancinilaw.ca>

Sent: Tuesday, October 17, 2023 3:18 PM

To: Sean Zweig <ZweigS@bennettjones.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

- 15 -

Hi Sean,

Do you have a moment for a brief chat...wanted to discuss and provide you with an update.

Let me know what time works best for you.

Regards,

Jonathan C. Sistilli , J.D., Hons. B.A.

Barrister & Solicitor

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From: Sean Zweig <ZweigS@bennettjones.com>

Sent: Monday, October 16, 2023 5:12 PM

To: Jonathan Sistilli <jonathan@mancinilaw.ca>; Alyssa Da Silva <alyssa@mancinilaw.ca>; Noah Goldstein <ngoldstein@ksvadvisory.com>

Cc: Aiden Nelms <NelmsA@bennettjones.com>; Ben Luder <bluder@ksvadvisory.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

- 16 -

Thanks Jonathan for this and for the vmail. Apologies I haven't had a chance to call you back but I've been on back-to-backs for a while.

When do you expect to get us evidence of the purchaser's access to funds to make up the rest of the purchase price?

Sean Zweig

*Partner**, Bennett Jones LLP

*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4

T. 416 777 6254 | F. 416 863 1716

BennettJones.com

[<image002.png>](#)

From: Jonathan Sistilli <jonathan@mancinilaw.ca>

Sent: Monday, October 16, 2023 4:51 PM

To: Sean Zweig <ZweigS@bennettjones.com>; Alyssa Da Silva <alyssa@mancinilaw.ca>; Noah Goldstein <ngoldstein@ksvadvisory.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Hi Sean,

I was able to get a copy of the BNS mortgage, see attached.

In terms of the 2nd mortgage, it is an interest only charge, so the principal balance is \$1,800,000.00.

The remaining information will follow.

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- 17 -

Regards,

Jonathan C. Sistilli , J.D., Hons. B.A.

Barrister & Solicitor

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From: Sean Zweig <ZweigS@bennettjones.com>

Sent: Monday, October 16, 2023 11:06 AM

To: Alyssa Da Silva <alyssa@mancinilaw.ca>; Noah Goldstein <ngoldstein@ksvadvisory.com>

Cc: Jonathan Sistilli <jonathan@mancinilaw.ca>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Jonathan – your client said we would get the information today. Can you please confirm?

Sean Zweig

*Partner**, Bennett Jones LLP

*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4

T. 416 777 6254 | F. 416 863 1716

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- 18 -

[<image002.png>](#)

From: Alyssa Da Silva <alyssa@mancinilaw.ca>
Sent: Monday, October 16, 2023 10:48 AM
To: Noah Goldstein <ngoldstein@ksvadvisory.com>
Cc: Sean Zweig <ZweigS@bennettjones.com>; Jonathan Sistilli <jonathan@mancinilaw.ca>
Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Hi Noah,

Jonathan has carriage of this file, and is cc'd on the email chains regarding same. He is aware of the file, please feel free to reach out to him if you have any questions or comments.

Thanks,

Alyssa Da Silva, Law Clerk

Mancini Law Professional Corporation

3850 Steeles Ave. W. Unit 6,

Vaughan ON L4L 4Y6

T:905.265.8911 | F:905.265.0933

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From: Noah Goldstein <ngoldstein@ksvadvisory.com>
Sent: Monday, October 16, 2023 7:40 AM
To: Alyssa Da Silva <alyssa@mancinilaw.ca>

75736498.1

- 19 -

Cc: zweigs@bennettjones.com

Subject: Fwd: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

How do we progress a matter in Michael's absence?

Noah Goldstein

416.844.4842

Begin forwarded message:

From: Noah Goldstein <ngoldstein@ksvadvisory.com>

Date: October 16, 2023 at 7:38:30 AM EDT

To: zweigs@bennettjones.com

Cc: Aiden Nelms <NelmsA@bennettjones.com>, Michael Mancini <michael@mancinilaw.ca>, Anthony Marcucci <anthony@crediblegroup.com>, Alyssa Da Silva <alyssa@mancinilaw.ca>, Vesna Kolenc <vkolenc8965@rogers.com>, Ben Luder <bluder@ksvadvisory.com>, Jonathan Sistilli <jonathan@mancinilaw.ca>

Subject: Re: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

We absolutely need this information today. Please get back to us

Noah Goldstein

416.844.4842

On Oct 14, 2023, at 9:03 AM, Sean Zweig <ZweigS@bennettjones.com> wrote:

Michael,

Just following-up on this chain. Can we please get confirmation of how much is owing on the mortgages, and your client's ability to fund whatever additional amount is needed to close our transaction?

Sean Zweig
*Partner**, Bennett Jones LLP
*Denotes Professional Corporation

75736498.1

- 20 -

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
T. 416 777 6254 | F. 416 863 1716

BennettJones.com

[<image002.png>](#)

From: Aiden Nelms <NelmsA@bennettjones.com>

Date: Tuesday, Oct 10, 2023 at 1:39 PM

To: Michael Mancini <michael@mancinilaw.ca>, Sean Zweig <ZweigS@bennettjones.com>, Noah Goldstein <ngoldstein@ksvadvisory.com>

Cc: Anthony Marcucci <anthony@crediblegroup.com>, Alyssa Da Silva <alyssa@mancinilaw.ca>, Vesna Kolenc <vkolenc8965@rogers.com>, Ben Luder <bluder@ksvadvisory.com>, Jonathan Sistilli <jonathan@mancinilaw.ca>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Thank you Michael.

Please pass the additional information along when you can as that is material to the Receiver's assessment.

Best,

Aiden Nelms

Associate, Bennett Jones LLP
3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
T. 416 777 4642 | F. 416 863 1716 | M. 416 671 3090

BennettJones.com

75736498.1

- 21 -

[<image002.png>](#)

From: Michael Mancini <michael@mancinilaw.ca>
Sent: Tuesday, October 10, 2023 1:36 PM
To: Aiden Nelms <NelmsA@bennettjones.com>; Sean Zweig <ZweigS@bennettjones.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>
Cc: Anthony Marcucci <anthony@crediblegroup.com>; Alyssa Da Silva <alyssa@mancinilaw.ca>; Vesna Kolenc <vkolenc8965@rogers.com>; Ben Luder <bluder@ksvadvisory.com>; Jonathan Sistilli <jonathan@mancinilaw.ca>
Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Sorry about that. The amendment is attached.

At the moment we do not have payout statements for the Charges. We have asked our client for statements.

We can get you additional information as it arrives.

Michael M. Mancini

[<image009.png>](#)

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From: Aiden Nelms <NelmsA@bennettjones.com>
Sent: Tuesday, October 10, 2023 11:52 AM
To: Michael Mancini <michael@mancinilaw.ca>; Sean Zweig <ZweigS@bennettjones.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>
Cc: Anthony Marcucci <anthony@crediblegroup.com>; Alyssa Da Silva <alyssa@mancinilaw.ca>; Vesna

- 22 -

Kolenc <vkolenc8965@rogers.com>; Ben Luder <bluder@ksvadvisory.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Michael,

I think you inadvertently did not include the amendment referenced at point 2 in your below email – can you please send along when you have a moment? Additionally, can you please confirm how much is outstanding under both the BNS and Silverberg, Howard Merlin Inc. mortgages on the Edgeley properties?

Thank you in advance.

Best,

Aiden Nelms

Associate, Bennett Jones LLP
3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
T. 416 777 4642 | F. 416 863 1716 | M. 416 671 3090

BennettJones.com

<[image001.png](#)>

From: Michael Mancini <michael@mancinilaw.ca>

Sent: Friday, October 6, 2023 11:19 AM

To: Sean Zweig <ZweigS@bennettjones.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>

Cc: Anthony Marcucci <anthony@crediblegroup.com>; Alyssa Da Silva <alyssa@mancinilaw.ca>; Vesna Kolenc <vkolenc8965@rogers.com>; Aiden Nelms <NelmsA@bennettjones.com>; Ben Luder <bluder@ksvadvisory.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

- 23 -

Hi Sean,

Pursuant to my client's instructions. I have enclosed the following:

1. Agreement of Purchase and Sale for 830-840 Edgeley Blvd;
2. Amendment to the Agreement removing the Buyer's Due Diligence condition and setting a Completion Date of December 18, 2023;
3. Parcel Registers for the subject properties; and
4. A certificate of Status for our client.

As it currently stands, I do not have mortgage payout statements for the BNS mortgage given to my client.

My client has advised that purchase proceeds for the acquisition of 20 Regina Road will be coming from the sale of the Edgeley properties.

Regards,

Michael M. Mancini

<image002.png>

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From: Sean Zweig <ZweigS@bennettjones.com>

Sent: Wednesday, October 4, 2023 1:13 PM

To: Noah Goldstein <ngoldstein@ksvadvisory.com>; Michael Mancini <michael@mancinilaw.ca>

Cc: Anthony Marcucci <anthony@crediblegroup.com>; Alyssa Da Silva <alyssa@mancinilaw.ca>; Vesna Kolenc <vkolenc8965@rogers.com>; Aiden Nelms <NelmsA@bennettjones.com>; Ben Luder

- 24 -

<bluder@ksvadvisory.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Mike,

Further to our discussion yesterday, the Receiver needs comfort that your client has the financial wherewithal to close the transaction. Can you please provide a financing commitment letter, financial statements, or whatever else is available to give the Receiver that comfort?

Thanks

Sean Zweig

*Partner**, Bennett Jones LLP

*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4

T. 416 777 6254 | F. 416 863 1716

BennettJones.com

<[image001.png](#)>

From: Sean Zweig

Sent: Tuesday, October 3, 2023 12:18 PM

To: 'Noah Goldstein' <ngoldstein@ksvadvisory.com>; Michael Mancini <michael@mancinilaw.ca>

Cc: Anthony Marcucci <anthony@crediblegroup.com>; Alyssa Da Silva <alyssa@mancinilaw.ca>; Vesna Kolenc <vkolenc8965@rogers.com>

Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Mike,

Good to connect with you. Please see attached, as promised.

75736498.1

- 25 -

Let me know if you have any questions.

Sean Zweig

*Partner**, Bennett Jones LLP

*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4

T. 416 777 6254 | F. 416 863 1716

BennettJones.com

[<image001.png>](#)

From: Noah Goldstein <ngoldstein@ksvadvisory.com>

Sent: Tuesday, October 3, 2023 12:08 PM

To: Michael Mancini <michael@mancinilaw.ca>

Cc: Anthony Marcucci <anthony@crediblegroup.com>; Alyssa Da Silva <alyssa@mancinilaw.ca>; Vesna Kolenc <vkolenc8965@rogers.com>; Sean Zweig <ZweigS@bennettjones.com>

Subject: Re: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

At a lunch. Copying my lawyer, Sean Zweig

Noah Goldstein

416.844.4842

On Oct 3, 2023, at 12:07 PM, Michael Mancini <michael@mancinilaw.ca> wrote:

Hi Noah,

Further to my previous voicemail, I confirm that we are acting for the Buyer in the above-noted transaction.

75736498.1

- 26 -

I understand that you spoke to Mr. Marcucci and his realtor Ms. Kolenc yesterday and advised that the Seller has been placed in Receivership.

Would you be kind enough to forward me the Receivership Notice or any other filed pleadings in this regard?

I haven been unable to locate any information on the KSV website.

Regards,

Michael M. Mancini

<image002.png>

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- 27 -

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The contents of this message may contain confidential and/or privileged subject matter. If this message has been received in error, please contact the sender and delete all copies. If you do

- 28 -

not wish to receive future commercial electronic messages from Bennett Jones, you can unsubscribe at the following link: <http://www.bennettjones.com/unsubscribe>

This is Exhibit "C" referred to in the Affidavit of Anthony Marcucci sworn by Anthony Marcucci of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

035BE5EE77D849F...

Commissioner for Taking Affidavits (or as may be)

KEVIN SHERKIN (LSO NO.: 27099B)

From: Sean Zweig <ZweigS@bennettjones.com>
Sent: Monday, October 23, 2023 11:57 AM
To: Jonathan Sistilli <jonathan@mancinilaw.ca>; Michael Mancini <michael@mancinilaw.ca>
Cc: Noah Goldstein (ngoldstein@ksvadvisory.com) <ngoldstein@ksvadvisory.com>; Ben Luder <bluder@ksvadvisory.com>; Christopher Ferencz <FerenczC@bennettjones.com>
Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Michael and Jonathan,

Further to the below, attached please find a draft amending agreement to reflect the fact that the APS will now need to be complete by the Receiver. Can you please review and let us know if any comments?

Thanks

Sean Zweig

Partner*, Bennett Jones LLP
*Denotes Professional Corporation

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
T. [416 777 6254](tel:4167776254) | F. [416 863 1716](tel:4168631716)

[BennettJones.com](https://www.BennettJones.com)



Bennett Jones

From: Sean Zweig
Sent: Wednesday, October 18, 2023 10:35 AM
To: 'Jonathan Sistilli' <jonathan@mancinilaw.ca>
Cc: Noah Goldstein (ngoldstein@ksvadvisory.com) <ngoldstein@ksvadvisory.com>; Ben Luder <bluder@ksvadvisory.com>
Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

75736383.1

AMENDMENT TO AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT is made as of the ____ day of October, 2023 (the "**Effective Date**")

BETWEEN:

KSV RESTRUCTURING INC., solely in its capacity as court-appointed receiver and manager over **1000093910 ONTARIO INC.** (the "**Debtor**"), and all of the assets, undertakings and properties of the Debtor, including the property municipally known as 20 Regina Road, Vaughan, Ontario, and not in its personal or corporate capacity

(the "**Seller**")

- and -

2557904 ONTARIO INC.

(the "**Buyer**")

RECITALS:

- A. The Debtor and the Buyer entered into a purchase agreement dated September 7, 2023, (as the same has been and may be further amended, restated, modified, supplemented, or assigned from time to time, collectively, the "**Purchase Agreement**") whereby the Debtor agreed to sell, and the Buyer agreed to purchase, the property municipally known as 20 Regina Road, Vaughan, Ontario (the "**Property**").
- B. Pursuant to the Order of the Ontario Superior Court of Justice (the "**Court**") dated September 13, 2023 (the "**Receivership Order**"), KSV Restructuring Inc. (the "**Receiver**") was appointed as receiver and manager of the Debtor, and all of the assets, undertakings and properties of the Debtor, including the Property.
- C. The Seller and the Buyer wish to amend the Purchase Agreement as provided for in this Agreement to, *inter alia*, seek an Approval and Vesting Order (as hereinafter defined) from the Court vesting title in the Property to the Buyer.

FOR VALUE RECEIVED, the parties agree as follows:

1. **Definitions**

Capitalized terms used in this Agreement but not defined in this Agreement shall have the respective meanings given to them in the Purchase Agreement.

2. **Amendment of Purchase Agreement**

- 2 -

The Purchase Agreement is hereby amended as follows:

- (a) by deleting the date set out in section 2 ("Completion Date") of the Purchase Agreement and replacing it with "see Schedule C".
- (b) by deleting the words "transfer/deed" from section 11 of the Purchase Agreement and replacing them with the words "application for vesting order".
- (c) by deleting the existing last paragraph contained in Section 1 of Schedule A of the Purchase Agreement and replacing it with the following:

"c) The Buyer shall submit an additional deposit in the amount of Five Hundred Thousand Dollars (\$500,000.00) on the Effective Date to the Receiver, in trust, to be credited towards the purchase price due on closing, which deposit, together with the first deposit, shall constitute the Deposit for the purpose of this Agreement.

d) On the Effective Date, the Buyer shall direct Ren/Tex Realty Inc. to wire the first deposit in the amount of \$1,000,000 to the Receiver, in trust, and Receiver shall hereinafter be the "Deposit Holder" for the purposes of this Agreement.

e) The Parties hereby confirm that the Deposit, as stated herein, shall be transferred or submitted, as the case may be, by wire transfer to the Receiver, in trust, in accordance with the terms of this Agreement and that the Deposit shall be held in a non-interest bearing trust account.";

- (d) by deleting the first paragraph of Schedule B in its entirety;
- (e) by deleting the last paragraph of Schedule B in its entirety;
- (f) by adding the following as a new Schedule C:

(i) **Additional Defined Terms**

For the purpose of this Agreement:

"Approval and Vesting Order" means an approval and vesting order in form and substance acceptable to the Seller and Buyer, each acting reasonably, issued by the Court approving the transactions contemplated by this Agreement, and authorizing and directing the Receiver to complete the transaction and conveying to the Buyer all of the Debtor's right, title and interest to the Property and other assets of the Debtor more specifically set

- 3 -

out in this Agreement, if any, free and clear of all encumbrances except for those which are permitted encumbrances hereunder.

"**Completion Date**" means the date that is five (5) Business Days following the date on which the Receiver obtains the Approval and Vesting Order from the Court, or such other date as the Receiver and the Buyer may agree.

(ii) **Conditions in Favour of the Receiver**

The obligation of the Receiver to complete the transaction contemplated by this Agreement is subject and conditional to the satisfaction of the following conditions on or before the Completion Date:

(b) all the covenants of the Buyer contained in this Agreement to be performed on or before the Closing Date shall have been duly performed by the Buyer; and

(c) there shall be no order issued by a governmental authority against either of the parties, or involving the Property, enjoining, preventing or restraining the completion of the transaction contemplated by this Agreement.

(iii) **Failure to Fulfill Conditions in Favour of Receiver**

If any of the conditions contained in Schedule C, section (ii) hereof is not fulfilled on or prior to the Closing Date and such non-fulfilment is not directly or indirectly as a result of any act or omission of the Receiver, then the Receiver may, in its sole discretion, and without limited any rights or remedies available to it at law or in equity:

(A) terminate this Agreement by notice to the Buyer, in which event the Receiver shall be released from its obligations under this Agreement to complete the transaction contemplated herein; or

(B) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

(iv) **Mutual Condition**

This Agreement shall be subject to the mutual condition precedent (the "Court Approval Condition") that the Receiver shall have obtained the Approval and Vesting Order, and there shall not be any notice of appeal with respect to the Approval and Vesting Order, or any notice of any application, motion or proceedings seeking to set aside or vary the Approval and Vesting Order or to enjoin, restrict or prohibit the transaction contemplated by this Agreement, that in each case has not been finally dismissed by a court of competent jurisdiction or abandoned by the moving

- 4 -

party. This is a true condition precedent and may not be waived by any party. If the Receiver's motion for the Approval and Vesting Order is denied by the Court, then, absent any express written agreement between the parties otherwise, this Agreement shall automatically terminate and upon such termination then the Deposit shall be returned to the Buyer.

(v) **Mutual Covenant**

The Receiver hereby covenants and agrees that, from the Effective Date until the termination of the Agreement or the completion of the transaction contemplated herein, it shall take all such actions as are necessary to have the transaction contemplated by this Agreement approved and to and to obtain the Approval and Vesting Order. The Buyer covenants and agrees to assist in this regard and to provide any information, approvals, consents, authorizations, or information, reasonably necessary.

(vi) **Additional Closing Deliverables**

The Receiver hereby covenants to execute, where applicable, and deliver the following to the Buyer on or prior to the Completion Date, which for greater certainty are in addition to the closing deliverables otherwise contemplated by this Agreement:

- (A) a copy of the issued and entered Approval and Vesting Order and the receiver's certificate which will be attached as an Exhibit to the Approval and Vesting Order, the "**Receiver's Certificate**"; and
- (B) a certificate from the Receiver, dated as of the Completion Date, certifying that the Receiver has not been served with any notice of appeal with respect to the Approval and Vesting Order, or any notice of any application, motion or proceedings seeking to set aside or vary the Approval and Vesting Order or to enjoin, restrict or prohibit the transaction contemplated by this Agreement, that in each case has not been finally dismissed by a court of competent jurisdiction or abandoned by the moving party.

The Buyer hereby covenants to execute and deliver, in addition to the closing deliverables otherwise contemplated by this Agreement, such further documentation relating to the completion of the transaction as may be required by the Receiver, acting reasonably, or by applicable law or any governmental authority.

(vii) **Receiver's Certificate**

On the Completion Date and upon receipt by the Buyer of written confirmation of the Receiver's satisfaction or waiver of all conditions contained in sections (ii) and (iv) of Schedule C hereof, the Receiver shall

- 5 -

forthwith deliver to the Buyer the Receiver's Certificate, and shall thereafter forthwith file same with the Court.

(viii) **Termination of the Agreement**

This Agreement may be terminated:

- (A) upon the mutual written agreement of the parties;
- (B) pursuant to section (iii)(A) of Schedule C hereof by the Receiver; or
- (C) pursuant to section (iv) of Schedule C hereof.

(ix) **Remedies for Breach of Agreement**

If this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Receiver, the Buyer shall be entitled to the return of the Deposit without deduction, which shall be returned to the Buyer forthwith, and this shall be the Buyer's sole right and remedy pursuant to this Agreement or at law as a result of the Receiver's breach. If this Agreement is terminated as a result of a breach of a representation, warranty, covenant or obligation of the Buyer, the Deposit shall be forfeited to the Receiver as liquidated damages and not as a penalty, which Deposit the parties agree is a genuine estimate of the liquidated damages that the Receiver would suffer in such circumstances, and this shall be the Receiver's sole right and remedy pursuant to this Agreement or at law as a result of the Buyer's breach.

(x) **Termination If No Breach of Agreement**

If this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of a party, then the parties hereto shall be released from all obligations and liabilities hereunder, the Deposit shall be forthwith returned to the Purchaser without deduction, and neither party shall have any right to specific performance, to recover damages or expenses or any other remedy (legal or equitable) or relief other than as expressly provided herein.

3. **Further Confirmation**

The parties confirm that all other terms of the Purchase Agreement remain the same and that time shall remain of the essence. This Agreement and the Purchase Agreement shall hereafter be read together and shall collectively constitute one agreement.

4. **Governing Law**

This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

- 6 -

5. **Successors and Assigns**

This Agreement shall enure to the benefit of and shall be binding upon the Parties, shall be binding upon their respective successors and permitted assigns and shall enure to the benefit of and be enforceable only by such successors and permitted assigns that have succeeded or which have received such assignment in the manner permitted by this Agreement.

6. **Counterparts**

This Agreement may be executed in any number of counterparts, and each of such counterparts shall constitute an original of this Agreement and all such counterparts together shall constitute one and the same agreement. This Agreement or counterparts hereof may be delivered by fax or email, and the Parties adopt any signatures provided or received by DocuSign, fax or email as original signatures of the applicable party or Parties.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

KSV RESTRUCTURING INC., solely in its capacity as receiver and manager of 1000093910 Ontario Inc., and all of the assets, undertakings and properties of 1000093910 Ontario Inc., and not in its personal or corporate capacity

Per: _____

Name: Noah Goldstein

Title: Managing Director

2557904 ONTARIO INC.

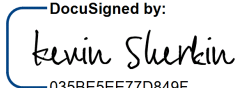
Per: _____

Name:

Title: Authorized Signing Officer

This is Exhibit "D" referred to in the Affidavit of Anthony Marcucci sworn by Anthony Marcucci of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

A blue ink signature of Kevin Sherkin, written in a cursive style.

035BE5EE77D849E

Commissioner for Taking Affidavits (or as may be)

KEVIN SHERKIN (LSO NO.: 27099B)

From: Louis Raffaghello
Sent: Tuesday, October 31, 2023 4:29 PM
To: Sean Zweig <ZweigS@bennettjones.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>
Subject: RE: 2557904 Ontario Inc. p/f 1000093910 Ontario Inc - 20 Regina Road Vaughan

Hello Sean,

Further to our video call, I confirm that we act for 2557904 Ontario Inc.

For reasons that were discussed, I confirm that our client will not be executing the amending agreement and therefore the transaction will not proceed and is effectively null and void. Please instruct Ren/Tex Realty Inc., to refund the deposit funds of \$1M to our client as soon as possible.

Our client still remains interested in the property. Based on current market conditions, and subject to entering into a formal offer, it is prepared to pay \$385 per square foot for a total of \$24,255,000 (assuming the building is 63,000 square feet in size). The offer will be all cash, closing as soon as possible. Our client will pay a deposit of \$1.5M.

If these general terms are acceptable, please contact me asap to proceed with a formal binding offer.

Regards,

Louis E. Raffaghello, LL.B., LL.M.



260 Edgeley Boulevard, Unit 12

Vaughan, ON L4K 3Y4

T | (647) 792-1272, x 208 F | 1 (866) 220-3747

[75736284.1](#)

This is Exhibit "E" referred to in the Affidavit of Anthony Marcucci sworn by Anthony Marcucci of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Kevin Sherkin

035BE5EE77D849F...

Commissioner for Taking Affidavits (or as may be)

KEVIN SHERKIN (LSO NO.: 27099B)

AGREEMENT OF PURCHASE AND SALE**BETWEEN****KSV RESTRUCTURING INC.,**

solely in its capacity as court-appointed receiver and manager over **1000093910 ONTARIO INC.** (the "**Debtor**"), and all of the assets, undertakings and properties of the Debtor, including the property municipally known as 20 Regina Road, Vaughan, Ontario, and not in its personal or corporate capacity

- and –

2557904 ONTARIO INC.

Dated: November 13, 2023

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AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this 13th day of November, 2023.

BETWEEN:

KSV RESTRUCTURING INC., solely in its capacity as court-appointed receiver and manager over 1000093910 ONTARIO INC. (the "**Debtor**"), and all of the assets, undertakings and properties of the Debtor, including the property municipally known as 20 Regina Road, Vaughan, Ontario, and not in its personal or corporate capacity

(in such capacity, the "**Receiver**")

- and -

2557904 ONTARIO INC.

(the "**Purchaser**")

RECITALS

- A. **WHEREAS** pursuant to the Order of the Ontario Superior Court of Justice (the "**Court**") dated September 13, 2023 (the "**Appointment Order**"), KSV Restructuring Inc. was appointed as receiver and manager of the Debtor, and all of the assets, undertakings and properties of the Debtor, including the Real Property (as defined hereafter);
- B. **AND WHEREAS** pursuant to the Appointment Order, the Receiver was authorized to, among other things, market the Purchased Assets (as defined hereafter) and apply for an order of the Court approving the sale of the Purchased Assets and vesting in and to a purchaser all the Debtor's right, title and interest in and to the Purchased Assets;
- C. **AND WHEREAS** the Receiver will seek to obtain the Bidding Procedures Order (as defined herein) pursuant to which the Court will authorize the sale process with respect to the Purchased Assets in accordance with the Bidding Procedures (as defined herein);
- D. **AND WHEREAS** the Purchaser has agreed (a) to act as a "stalking horse bidder", and (b) to purchase the Purchased Assets in the absence of a superior bid pursuant to the Bidding Procedures for the Purchased Assets in accordance with the transaction of purchase and sale contemplated in this Agreement.

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are each hereby acknowledged by the Parties (as defined hereafter), the Parties agree as follows:

ARTICLE 1

DEFINED TERMS

1.1 Definitions

In this Agreement:

“Acceptance Date” means the date that this Agreement is executed by and delivered to all Parties hereunder;

“Accounts Payable” means all amounts relating to the Business owing to any Person which are incurred in connection with the purchase of goods or services in the ordinary course of business;

“Agreement” means this agreement of purchase and sale, including all schedules and all amendments or restatements, as permitted, and references to **“article”**, **“section”** or **“schedule”** mean the specified article, section of, or schedule to this Agreement and the expressions **“hereof”**, **“herein”**, **“hereto”**, **“hereunder”**, **“hereby”** and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement;

“Applicable Law” means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

“Appointment Order” has the meaning set out in the recitals hereof;

“Approval and Vesting Order” means the approval and vesting order issued by the Court approving this Agreement and the transactions contemplated by this Agreement, and authorizing and directing the Receiver to complete the Transaction and conveying to the Purchaser all of the Debtor’s right, title and interest, if any, in and to the Purchased Assets free and clear of all Encumbrances other than the Permitted Encumbrances, and which order shall be in a form substantively similar to the draft order attached as Schedule B hereto;

“Bidding Procedures” means the bidding procedures substantially in the form attached hereto as Schedule A;

“Bidding Procedures Order” has the meaning set out in Section 14.1(b);

“Books and Records” means the files, documents, instruments, surveys, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise) pertaining to the Purchased Assets that have been or will be delivered by the Receiver to the Purchaser at or before Closing; provided, however, that **“Books and Records”** shall not include any bank or accounting records;

“Business” means the business carried on by the Debtor with respect to the Real Property;

“Business Day” means a day on which banks are open for business in the City of Toronto but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;

“Chattels” means all chattels, furniture and equipment in, on, around or upon the Real Property and which are used in operating or maintaining the Real Property (including, without limitation, all elevating devices and equipment, furniture, telephones and other equipment in the onsite property management office(s), any computer software, marketing materials and management records used in the leasing and operation of the Real Property, to the extent owned by the Debtor, electric light fixtures, furniture, equipment, plumbing fixtures, furnace burner equipment, oil tanks, heating and ventilating and air conditioning equipment, air handling equipment, existing compressors, boiler machinery and equipment, sprinklers, drainage and other mechanical and electrical systems and any other chattels or tangible personal property), excluding: (i) any of the foregoing owned by any of the current tenants under any Leases; or (ii) in the case of services to the Real Property or subterranean fiber optic cables, any of the foregoing owned by third parties;

“Claims” means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including solicitor and client costs and disbursements, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing, related to the Debtor or the Real Property, and **“Claim”** means any one of them;

“Closing” means the successful completion of the Transaction;

“Closing Date” means the first Business Day which is Five (5) Business Days after receipt of the Approval and Vesting Order, or such other date as agreed in writing by the Parties;

“Closing Time” means 4:00 p.m. (Toronto time) on the Closing Date or such other time as agreed in writing by the Parties;

“Contracts” means all of the contracts, licences, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements and engagements to which the Debtor is a party and which relate to the Business;

“Court” has the meaning set out in the recitals hereof;

“Debtor” has the meaning set out in the recitals hereof;

“Deposit” has the meaning given in Section 4.2 herein;

“Encumbrances” means all liens, charges, security interests (whether contractual, statutory or otherwise), pledges, Leases, offers to lease, title retention agreements, mortgages, restrictions on use, development or similar agreements, easements, rights-of-way, title defects, options or adverse claims or encumbrances of any kind or character whatsoever;

“ETA” means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;

“Excluded Assets” means the Debtor’s right, title and interest in and to any asset of the Debtor other than the Purchased Assets, which Excluded Assets include the Debtor’s right, title and interest in and to the following:

- (a) any Leases;
- (b) original tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of the Debtor that do not relate exclusively or primarily to any of the Purchased Assets; and
- (c) the benefit of any refundable Taxes payable or paid by the Debtor in respect of the Purchased Assets and applicable to the period prior to the Closing Date net of any amounts withheld by any taxing authority, and any claim or right of the Debtor to any refund, rebate, or credit of Taxes for the period prior to the Closing Date.

“Excluded Liabilities” has the meaning given in Section 3.3 herein;

“Governmental Authority” means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, republic, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and **“Governmental Authority”** means any one of them;

“HST” means harmonized sales tax imposed under Part IX of the ETA;

“ITA” means the *Income Tax Act*, R.S.C. 1985, c.1, as amended;

“Lands” means, that certain parcels or tract of land known as 20 Regina Road, Vaughan, Ontario, and as legally described in Schedule D hereto, and includes all rights and benefits appurtenant thereto;

“Leases” means, in respect of the Real Property, all offers to lease (unless a lease with respect thereto has been entered into which supersedes any such offer to lease), agreements to lease (unless a lease with respect thereto has been entered into which supersedes any such agreement to lease), leases, renewals of leases, and other rights or licenses granted to possess or occupy space within the Real Property to which it relates now or hereafter together with all security, guarantees and indemnities of the tenants' and licensees' obligations thereunder, in each case as amended, renewed or otherwise varied, and including any parking and storage space leases, if any; and **“Lease”** means any one of the Leases;

“Notice” has the meaning given in Section 17.3 herein;

“Parties” means the Receiver and the Purchaser;

“Permits” means all the authorizations, registrations, permits, certificates of approval, approvals, consents, commitments, rights or privileges issued, granted or required by any Governmental Authority in respect of the Real Property;

“Permitted Encumbrances” means all those Encumbrances described in Schedule C hereto;

“Person” means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;

“Plans” means all plans, designs and specification in connection with the Real Property which are in the possession or control of the Receiver (it being acknowledged that the Receiver is under no obligation to incur additional expense to obtain such plans, designs and specifications);

“Purchase Price” has the meaning set out in Section 4.1 herein;

“Purchased Assets” means all of the Debtor’s right, title and interest in and to the following:

- (a) the full benefit of all prepaid expenses and all deposits with any Person, public utility or Governmental Authority relating to the Real Property;
- (b) the Real Property;
- (c) the Chattels;
- (d) the Plans; and
- (e) the Permits and Contracts, but only to the extent transferable to the Purchaser or the Purchaser’s permitted assignees.

provided, however, that the Purchased Assets shall not include the Excluded Assets or the Excluded Liabilities;

“Purchaser” means 2557904 Ontario Inc.;

“Qualified Bidder” has the meaning set out in the Bidding Procedures;

“Real Property” means the Lands, together with all buildings, improvements and structures thereon) and the fixtures affixed thereto, as well as all plans, designs and specifications in connection therewith;

“Receiver’s Certificate” means the certificate referred to in the Approval and Vesting Order;

“Receiver’s Solicitors” means Bennett Jones LLP;

“Rights” has the meaning given in Section 3.1(c) herein, but only has such meaning in such Section;

“**Stalking Horse Bid**” has the meaning set out in Section 14.1(b);

“**Taxes**” means all taxes, HST, land transfer taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, excise, real property and personal property taxes, and any related interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

“**Transaction**” means the transaction of purchase and sale of the Purchased Assets as contemplated by this Agreement; and

“**Vendor**” means the Debtor, by KSV Restructuring Inc., in its capacity as Receiver.

ARTICLE 2

SCHEDULES

2.1 Schedules

The following schedules are incorporated in and form part of this Agreement:

<u>Schedule</u>	<u>Description</u>
Schedule A	Bidding Procedures
Schedule B	Approval and Vesting Order
Schedule C	Permitted Encumbrances
Schedule D	Legal Description of Lands

ARTICLE 3

AGREEMENT TO PURCHASE

3.1 Purchase and Sale of Purchased Assets

- (a) Subject to the terms and conditions herein, the Receiver hereby agrees to sell, assign, convey and transfer to the Purchaser, and the Purchaser hereby agrees to purchase, all right, title and interest of the Debtor in and to the Purchased Assets free and clear of all Encumbrances, other than the Permitted Encumbrances.
- (b) Subject to the Closing, the Receiver hereby remises, releases and forever discharges to, and in favour of, the Purchaser, all of its rights, claims and demands whatsoever in the Purchased Assets.
- (c) This Agreement or any document delivered in connection with this Agreement shall not constitute an assignment of any rights, benefits or remedies (in this Section 3.1(c), collectively, the “**Rights**”) under any Permits that form part of the Purchased

Assets and which are not assignable by the Receiver to the Purchaser without the required consent of the other party or parties thereto (collectively, the “**Third Party**”). To the extent any such consent is required and not obtained by the Receiver prior to the Closing Date, then, to the extent permitted by Applicable Law:

- (i) the Receiver will, at the request, direction and cost of the Purchaser, acting reasonably, assist the Purchaser, in a timely manner and using commercially reasonable efforts, in applying for and obtaining all consents or approvals required under the Permits in a form satisfactory to the Receiver and the Purchaser, acting reasonably;
- (ii) the Receiver will only deal with or make use of such Rights in accordance with the directions of the Purchaser;
- (iii) at the Purchaser's cost, the Receiver will use its commercially reasonable efforts to take such actions and do such things as may be reasonably and lawfully designed to provide the benefits of the Permits to the Purchaser, including holding those Permits in trust for the benefit of the Purchaser or acting as agent for the Purchaser pending such assignment; and
- (iv) in the event that the Receiver receives funds with respect to those Permits, the Receiver will promptly pay over to the Purchaser all such funds collected by the Receiver, net of any outstanding costs directly related to the assignment in respect of such Permits.

The provisions of this Section 3.1 shall not merge but shall survive the completion of the Transaction. Notwithstanding the forgoing, nothing herein shall prohibit the Receiver, in its sole, absolute and unfettered discretion, from seeking to be discharged as Receiver of the Debtor at any time after Closing. The parties hereto hereby acknowledge and agree that the covenants of the Receiver contained in this Section 3.1 shall terminate concurrently with the discharge of the Receiver as Receiver of the Debtor.

3.2 Excluded Assets

Notwithstanding anything else in this Agreement, the Purchased Assets shall not include the Excluded Assets.

3.3 Excluded Liabilities

The Purchaser is not assuming, and shall not be deemed to have assumed any liabilities, obligations or commitments of the Debtor or of any other Person, whether known or unknown, fixed or contingent or otherwise, including any debts, obligations, sureties, positive or negative covenants or other liabilities directly or indirectly arising out of or resulting from the conduct or operation of the Business or the Debtor's ownership or interest therein, whether pursuant to this Agreement or as a result of the Transaction (collectively, the “**Excluded Liabilities**”). For greater certainty, the Excluded Liabilities shall include, but not be limited to, the following:

- (a) except as otherwise agreed in this Agreement, all Taxes payable by the Debtor arising with respect to any period prior to the Closing Date and all Taxes payable relating to any matters or assets other than the Purchased Assets arising with respect to the period from and after the Closing Date;
- (b) any liability, obligation or commitment associated with: (i) the Accounts Payable incurred prior to Closing; or (ii) any employees of the Debtor;
- (c) any liability, obligation or commitment resulting from an Encumbrance that is not a Permitted Encumbrance;
- (d) any liability, obligation or commitment associated with any of the Excluded Assets; and
- (e) any liability, obligation or commitment in respect to Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Date.

ARTICLE 4

PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE

4.1 Purchase Price

The purchase price for the Purchased Assets shall be the aggregate of Twenty-Four Million, Two Hundred and Fifty-Five Thousand (\$24,255,000) dollars (the “**Purchase Price**”), plus all applicable Taxes payable in respect of the Transaction.

4.2 Deposit

Within two (2) Business Days after the Acceptance Date, the Purchaser shall pay to the Receiver, in trust, a deposit by wire or certified cheque of Two Million, Four Hundred Thousand dollars (\$2,400,000.00) dollars (the “**Deposit**”), which Deposit shall be held by the Receiver in accordance with the provisions of this Agreement pending completion or other termination of this Agreement and shall be applied against and towards the Purchase Price due on completion of the Transaction on the Closing Date. The Parties acknowledge that Ren/Tex Realty Inc. is currently holding One Million dollars (\$1,000,000.00), in trust for the Purchaser, and in partial satisfaction of the Deposit due to the Receiver, the Parties agree to direct Ren/Tex Realty Inc. to pay such amount to the Receiver by wire transfer on or before the date on which the Deposit is due.

4.3 Satisfaction of Purchase Price

The Purchaser shall indefeasibly pay and satisfy the Purchase Price as follows:

- (a) the Deposit shall be applied against the Purchase Price; and
- (b) the balance of the Purchase Price, subject to adjustments contained in this Agreement, shall be paid by wire or bank draft on Closing by the Purchaser to the Receiver or as the Receiver may otherwise direct in writing.

4.4 Allocation of Purchase Price

The Parties, acting reasonably and in good faith, covenant to use commercially reasonable efforts to agree to allocate the Purchase Price among the Purchased Assets in a mutually agreeable manner on or prior to the Closing Time, provided that failure of the Parties to agree upon an allocation shall not result in the termination of this Agreement but rather shall result in the nullity of the application of this Section 4.4 of the Agreement such that each of the Parties shall be free to make its own reasonable allocation.

4.5 Adjustment of Purchase Price

- (a) The Purchase Price shall be adjusted as of the Closing Time for any realty taxes and local improvement rates and charges (including interest thereon), utilities, rental income, and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets as contemplated by this Agreement. The Receiver shall prepare a statement of adjustments and deliver same with all supporting documentation to the Purchaser for its approval no later than three (3) Business Days prior to the Closing Date. If the amount of any adjustments required to be made pursuant to this Agreement cannot be reasonably determined as of the Closing Date, an estimate shall be agreed upon by the Parties as of the Closing Date based upon the best information available to the Parties at such time, each Party acting reasonably, and such estimate shall serve as a final determination. Other than as provided for in this Section 4.5, there shall be no adjustments to the Purchase Price.

ARTICLE 5 **TAXES**

5.1 Taxes

In addition to the Purchase Price, the Purchaser shall be responsible for all federal and provincial sales taxes, land transfer tax, goods and services, HST and other similar taxes and duties and all registration fees payable upon or in connection with the conveyance or transfer of the Purchased Assets to the Purchaser. If the sale of the Purchased Assets is subject to HST, then such tax shall be in addition to the Purchase Price. The Receiver will not collect HST if the Purchaser provides to the Receiver a warranty that it is registered under the ETA, together with a copy of the required ETA registration at least three (3) Business Days prior to Closing, a warranty that the Purchaser shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Receiver in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the Transaction.

ARTICLE 6

ACCESS

6.1 Authorizations

Upon request, the Receiver shall provide the Purchaser with authorizations executed by the Receiver and addressed to the appropriate municipal building department, zoning department and fire department and to any other Governmental Authority, authorizing the release of any and all information on file in respect of the Purchased Assets, but such authorization shall not authorize any inspections by any Governmental Authority.

ARTICLE 7

CLOSING ARRANGEMENTS

7.1 Closing

Closing shall take place at the Closing Time.

7.2 Tender

Any tender of documents or money under this Agreement may be made upon the Parties or their respective lawyers, and money shall be tendered by wire transfer of immediately available funds to the account specified by the receiving Party. The Receiver and the Purchaser acknowledge and agree that insofar as the tender of any documents to be electronically registered is concerned, the tender of same will be deemed to be effective and proper when the solicitor for the party tendering has completed all steps required by Teraview in order to complete the Transaction that can be performed or undertaken by the tendering party's solicitor without the cooperation or participation of the other party's solicitor, and specifically when the tendering party's solicitor has electronically "signed" the transfer/deed and any other Closing document, if any, to be electronically registered for completeness and granted access to the other party's solicitor to same, but without the necessity of the tendering party's solicitor actually releasing such document(s) to the other party's solicitor for registration.

7.3 Receiver's Closing Deliverables

The Receiver covenants to execute, where applicable, and deliver the following to the Purchaser at Closing or on such other date as expressly provided herein:

- (a) a copy of the issued Approval and Vesting Order and the Receiver's Certificate;
- (b) a statement of adjustments prepared in accordance with Section 4.5 hereof, to be delivered not less than three (3) Business Days prior to Closing;
- (c) to the extent applicable, an assignment and assumption agreement with respect to all Permits and Contracts and to the extent not assignable, an agreement that the Receiver will hold same in trust for the Purchaser in accordance with the provisions of Section 3.1(c);

- (d) a bill of sale with respect to the Chattels;
- (e) a certificate signed by the Receiver confirming that the Receiver is not a non-resident of Canada within the meaning of section 116 of the ITA and that, to the best of the Receiver's knowledge, the Debtor is not a non-resident of Canada within the meaning of the said section 116;
- (f) a certificate from the Receiver, dated as of the Closing Date, certifying:
 - (i) that, except as disclosed in the certificate, the Receiver has not been served with any notice of appeal with respect to the Approval and Vesting Order, or any notice of any application, motion or proceedings seeking to set aside or vary the Approval and Vesting Order or to enjoin, restrict or prohibit the Transaction; and
 - (ii) that all representations, warranties and covenants of the Receiver contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time;
- (g) an acknowledgement, dated as of the Closing Date, that each of the conditions in Section 8.1 hereof have been fulfilled, performed or waived as of the Closing Time; and
- (h) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Purchaser, acting reasonably, or by Applicable Law or any Governmental Authority.

7.4 Purchaser's Closing Deliverables

The Purchaser covenants to execute, where applicable, and deliver the following to the Receiver at Closing or on such other date as expressly provided herein:

- (a) the indefeasible payment and satisfaction in full of the Purchase Price according to Section 4.3 hereof;
- (b) an assignment and assumption agreement with respect to all Permits and Contracts pertaining to the Real Property (to the extent assignable) and to the extent not assignable, an agreement that the Receiver will hold same in trust for the Purchaser in accordance with the provisions of Section 3.1(c);
- (c) a certificate from the Purchaser, dated as of the Closing Date, certifying that all representations, warranties and covenants of the Purchaser contained in Article 10 are true as of the Closing Time, with the same effect as though made on and as of the Closing Time;
- (d) if necessary, payment or evidence of payment of HST applicable to the Purchased Assets or, if applicable, appropriate tax exemption certificates with respect to HST in accordance with Article 5 hereof; and

- (e) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Receiver, acting reasonably, or by Applicable Law or any Governmental Authority.

7.5 Receiver's Certificate

Upon receipt of written confirmation from the Purchaser that all of the conditions contained in Section 8.3 have been satisfied or waived by the Purchaser, and upon satisfaction or waiver by the Receiver of all of the conditions contained in Section 8.1, the Receiver shall forthwith deliver to the Purchaser the Receiver's Certificate, and shall file same with the Court.

ARTICLE 8

CONDITIONS PRECEDENT TO CLOSING

8.1 Conditions in Favour of the Receiver

The obligation of the Receiver to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date:

- (a) all the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (b) all the covenants of the Purchaser contained in Article 10 to be performed on or before the Closing Date shall have been duly performed by the Purchaser;
- (c) there shall be no order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets enjoining, preventing or restraining the completion of the Transaction; and
- (d) this Agreement shall be the Successful Bid with respect to all or any of the Purchased Assets; and
- (e) the Court shall have issued the Bidding Procedures Order and Approval and Vesting Order, which Approval and Vesting Order shall provide for the termination of the Leases, and the operation and effect of such orders shall not have been stayed, amended, modified, reversed or dismissed at the Time of Closing.

8.2 Conditions in Favour of Receiver Not Fulfilled

If any of the conditions contained in Section 8.1 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Receiver, then the Receiver may, at its sole discretion (other than as stipulated below) and without limiting any rights or remedies available to it at law or in equity:

- (a) terminate this Agreement by notice to the Purchaser, in which event the Receiver shall be released from its obligations under this Agreement to complete the Transaction; or

- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

8.3 Conditions in Favour of the Purchaser

The obligation of the Purchaser to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date, which conditions are inserted for the sole benefit of the Purchaser and may be waived in whole or in part at the Purchaser's sole option:

- (a) all the representations and warranties of the Receiver contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (b) all the covenants of the Receiver under this Agreement to be performed on or before the Closing Date shall have been duly performed by the Receiver;
- (c) there shall be no order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets enjoining, preventing or restraining the completion of the Transaction;
- (d) from the Acceptance Date to Closing, there shall have been no new work orders, deficiency notices, notices of violation or non-compliance or similar orders, and no new Encumbrances registered on title to the Lands or matters affecting the title to the Lands arising or registered after the Acceptance Date, in each case which are not otherwise vested-out pursuant to the Approval and Vesting Order; and
- (e) this Agreement shall be the Successful Bid with respect to all or any portion of the Purchased Assets; and
- (f) the Court shall have issued the Bidding Procedures Order and Approval and Vesting Order, and the operation and effect of such orders shall not have been stayed, amended, modified, reversed or dismissed at the Time of Closing.

8.4 Conditions in Favour of Purchaser Not Fulfilled

If any of the conditions contained in Section 8.3 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Purchaser, then the Purchaser may, in its sole discretion and without limiting its rights or remedies available at law or in equity:

- (a) terminate this Agreement by notice to the Receiver, in which event the Purchaser and the Receiver shall be released from their obligations under this Agreement to complete the Transaction and the Deposit and all interest accrued thereon shall be immediately returned to the Purchaser without deduction; or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

ARTICLE 9
REPRESENTATIONS & WARRANTIES OF THE RECEIVER

The Receiver represents and warrants to the Purchaser as follows, with the knowledge and expectation that the Purchaser is placing complete reliance thereon and, but for such representations and warranties, the Purchaser would not have entered into this Agreement:

- (a) the Receiver has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary action on the part of the Receiver, subject to the Approval and Vesting Order. This Agreement is a valid and binding obligation of the Receiver enforceable in accordance with its terms;
- (b) the Receiver has been duly appointed as the Receiver of the Debtor by the Appointment Order and such Appointment Order is in full force and effect and has not been stayed, and, subject to obtaining the Approval and Vesting Order, the Receiver has the full right, power and authority to enter into this Agreement, perform its obligations hereunder and convey all right, title and interest of the Debtor in and to the Purchased Assets;
- (c) the Receiver is not a non-resident of Canada for the purposes of the ITA; and
- (d) subject to any charges created by the Appointment Order, the Receiver has done no act itself to encumber or dispose of the Purchased Assets and is not aware of any action or process pending or threatened against the Debtor that may affect its ability to convey any of the Purchased Assets as contemplated herein.

ARTICLE 10
REPRESENTATIONS & WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Receiver as follows, with the knowledge and expectation that the Receiver is placing complete reliance thereon and, but for such representations and warranties, the Receiver would not have entered into this Agreement:

- (a) the Purchaser is and will be at closing a corporation duly formed and validly subsisting under the laws of the Province of Ontario;
- (b) the Purchaser has all necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. Neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constating documents, any agreement to which the Purchaser is bound, any judgment or order of a court of competent jurisdiction or any Governmental Authority, or any Applicable Law. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all

necessary corporate action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms;

- (c) the Purchaser is or will be a registrant under Part IX of the ETA on the Closing Date; and
- (d) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property.

ARTICLE 11

COVENANTS

11.1 Mutual Covenants

Each of the Receiver and the Purchaser hereby covenants and agrees that, from the date hereof until Closing, each shall take all such actions as are necessary to have the Transaction approved in the Approval and Vesting Order on substantially the same terms and conditions as are contained in this Agreement, and to take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with each of the conditions set forth in Article 8 hereof.

11.2 Receiver Covenants

The Receiver hereby covenants and agrees that, from the date hereof until Closing, it shall use commercially reasonable efforts to provide to the Purchaser all necessary information in respect of the Debtor and the Purchased Assets reasonably required to complete the applicable tax elections in accordance with Article 5 hereof and to execute all necessary forms related thereto.

ARTICLE 12

POSSESSION AND ACCESS PRIOR TO CLOSING

12.1 Possession of Purchased Assets

The Receiver shall remain in possession of the Purchased Assets until the Closing Time, at which time the Purchaser shall take possession of the Purchased Assets where situated. In no event shall the Purchased Assets be sold, assigned, conveyed or transferred to the Purchaser until all the conditions set out in this Agreement and the Approval and Vesting Order have been satisfied or waived and the Purchaser has satisfied or the Receiver has waived all the delivery requirements outlined in Section 8.1 hereof.

12.2 Risk

- (a) The Purchased Assets shall be and remain at the risk of the Receiver until Closing and at the risk of the Purchaser from and after Closing.
- (b) The Receiver covenants that, on Closing, vacant possession of the Real Property shall be given to the Purchaser, subject only to the Permitted Encumbrances.
- (c) If, prior to the Closing Date, all or a material part of any of the Real Property is expropriated or a notice of expropriation or intent to expropriate all or a material part of any of the Real Property is issued by any Governmental Authority, the Receiver shall immediately advise the Purchaser thereof by Notice in writing. The Purchaser shall, by Notice in writing given within three (3) Business Days after the Purchaser receives Notice in writing from the Receiver of such expropriation, elect to either (i) complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price, and all compensation for expropriation of any of the Real Property shall be payable to the Purchaser and all right, title and interest of the Debtor to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis, or (ii) terminate this Agreement and not complete the Transaction, in which case all rights and obligations of the Receiver and the Purchaser (except for those obligations which are expressly stated to survive the termination of this Agreement) shall terminate, and the Deposit shall be returned to the Purchaser forthwith.
- (d) If, prior to Closing, the Purchased Assets are substantially damaged or destroyed by fire, casualty or otherwise, then, at its option, the Purchaser may decline to complete the Transaction. Such option shall be exercised within fifteen (15) calendar days after notification to the Purchaser by the Receiver of the occurrence of such damage or destruction (or prior to the Closing Date if such occurrence takes place within fifteen (15) calendar days of the Closing Date), in which event this Agreement shall be terminated automatically. If the Purchaser does not exercise such option, it shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. Where any damage or destruction is not substantial, the Purchaser shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. For the purposes of this Section 12.2(b), substantial damage or destruction shall be deemed to have occurred if the loss or damage to the Purchased Assets exceeds fifteen percent (15%) of the total Purchase Price (inclusive of the Deposit).

ARTICLE 13 **AS IS, WHERE IS**

13.1 Condition of the Purchased Assets

The Purchaser acknowledges that the Receiver is selling and the Purchaser is purchasing the Purchased Assets on an “*as is, where is*” and “*without recourse*” basis as the Purchased Assets

shall exist on the Closing Date, including, without limitation, whatever defects, conditions, impediments, hazardous materials or deficiencies exist on the Closing Date, whether patent or latent. The Purchaser further acknowledges and agrees that it has entered into this Agreement on the basis that neither the Receiver nor the Debtor has guaranteed or will guarantee title to or marketability, use or quality of the Purchased Assets, that the Purchaser will conduct such inspections of the condition and title to the Purchased Assets as it deems appropriate and will satisfy itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrance, description, fitness for purpose, environmental compliance, merchantability, condition or quality, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Receiver to sell, assign, convey or transfer same, save and except as expressly provided in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S.1, do not apply hereto and/or have been waived by the Purchaser. The description of the Purchased Assets contained in this Agreement is for the purpose of identification only and no representation, warranty or condition has or will be given by the Receiver concerning the accuracy of such description.

ARTICLE 14

Bidding Procedures

14.1 Bidding Procedures

- (a) The Receiver and the Purchaser acknowledge that this Agreement and the transactions contemplated hereby are subject to Court approval.
- (b) The Receiver and the Purchaser acknowledge and agree that the Receiver shall apply to the Court as soon as practicable for an order (the “**Bidding Procedures Order**”), *inter alia*, recognizing this Agreement, and in particular the Purchase Price, as a baseline or “stalking horse bid” (the “**Stalking Horse Bid**”) and approving the Bidding Procedures, the payment of the break fee and expense reimbursement in the circumstances set out in Section 14.2, and the parties will use commercially reasonable efforts to have the Bidding Procedures Order issued. The Purchaser acknowledges and agrees that the Bidding Procedures are in contemplation of determining whether a superior bid can be obtained for the Purchased Assets.

14.2 Break Fee and Expense Reimbursement

In consideration for the Purchaser's expenditure of time and money and agreement to act as the initial bidder through the Stalking Horse Bid, and the preparation of this Agreement, and in performing due diligence pursuant to this Agreement, and subject to Court approval, the Purchaser shall be entitled to (a) a break fee in the amount of \$200,000 (inclusive of HST) of the amount of the Purchase Price in the event that the Purchaser is not the Successful Bidder, and (b) an expense reimbursement amount for legal expenses and disbursements actually incurred, such amount not to exceed \$50,000 (inclusive of HST), in each case payable by the Receiver to the Purchaser only in the event that a Successful Bid for any of the Purchased Assets other than the Stalking Horse Bid is accepted by the Receiver, approved by the Court and completed. The payment of the

foregoing amounts shall be approved in the Bidding Procedures Order and shall be payable to the Purchaser out of the sale proceeds derived from and upon completion of the Successful Bid for all of the Purchased Assets. Each of the Parties acknowledges and agrees that the foregoing amounts represent a fair and reasonable estimate of the costs and damages that will be incurred by the Purchaser as a result of the Purchaser not being the Successful Bidder, and is not intended to be punitive in nature nor to discourage competitive bidding for the Purchased Assets. The Purchaser agrees to indemnify and hold harmless the Receiver from and against any Tax, interest and penalties assessed, reassessed or imposed upon the Receiver as a result of or in connection with the failure to withhold or remit any amount required to be withheld and remitted under Part XIII of the ITA in respect the break fee or expense reimbursement payable pursuant to this Section 14.2.

ARTICLE 15

POST-CLOSING MATTERS

15.1 Books and Records

The Purchaser shall keep and maintain the Books and Records for a period of two (2) years from the Closing Date, or for any longer period as may be required by Applicable Law or Governmental Authority or as requested by the Receiver, the Debtor or the Debtor's trustee in bankruptcy (the "**Retention Period**"). Upon reasonable advance notice, during such two (2) year period after the Closing Date, the Purchaser will grant the Receiver and the Debtor and, in the event the Debtor is adjudged bankrupt, any trustee of the estate of the Debtor and their respective representatives, reasonable access during normal business hours to use and copy the Books and Records at the sole cost of the Receiver, Debtor or bankruptcy trustee of the estate of the Debtor, as the case may be, and at no cost to the Purchaser. After the Retention Period, the Purchaser shall give the Receiver, the Debtor or bankruptcy trustee of the estate of the Debtor, as the case may be, thirty (30) days' prior written notice of its intent to destroy the Books and Records. The Parties agree that the covenants of the Purchaser in this Section 15.1 shall survive the closing of the Transaction.

ARTICLE 16

TERMINATION

16.1 Termination of this Agreement

This Agreement may be validly terminated:

- (a) upon the mutual written agreement of the Parties;
- (b) pursuant to Section 8.2 hereof by the Receiver;
- (c) pursuant to Section 8.4 hereof by the Purchaser; or
- (d) pursuant to Section 12.2 hereof.

16.2 Remedies for Breach of Agreement

Notwithstanding any other term or condition of this Agreement, if this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Receiver, the Purchaser shall be entitled to the return of the Deposit without deduction, which shall be returned to the Purchaser forthwith, and this shall be the Purchaser's sole right and remedy pursuant to this Agreement or at law as a result of the Receiver's breach. If this Agreement is terminated as a result of a breach of a representation, warranty, covenant or obligation of the Purchaser, the Deposit shall be forfeited to the Receiver as liquidated damages and not as a penalty, which Deposit the Parties agree is a genuine estimate of the liquidated damages that the Receiver would suffer in such circumstances, and this shall be the Receiver's sole right and remedy pursuant to this Agreement or at law as a result of the Purchaser's breach.

16.3 Termination If No Breach of Agreement

If this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of a Party, then the parties hereto shall be released from all obligations and liabilities hereunder, other than their obligations under Article 6, and:

- (a) all obligations of each of the Receiver and the Purchaser hereunder shall end completely, except those that survive the termination of this Agreement;
- (b) the Purchaser shall be entitled to the return of the Deposit without deduction, which shall be returned to the Purchaser forthwith; and
- (c) neither Party shall have any right to specific performance, to recover damages or expenses or to any other remedy (legal or equitable) or relief other than as expressly provided herein.

ARTICLE 17 **GENERAL CONTRACT PROVISIONS**

17.1 Further Assurances

From time to time after Closing, each of the Parties shall execute and deliver such further documents and instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Agreement and which are not inconsistent with the terms hereof, including, at the Purchaser's request and expense, the Receiver shall execute and deliver such additional conveyances, transfers and other assurances as may, in the opinion of the Parties or their counsel, acting reasonably, be reasonably required to effectually carry out the intent of this Agreement and transfer the Purchased Assets to the Purchaser.

17.2 Survival Following Completion

Notwithstanding any other provision of this Agreement, Article 9, Article 10, Section 16.2 and Section 16.3 shall survive the termination of this Agreement and the completion of the Transaction, provided, however, that upon the discharge of the Receiver, the Parties' respective obligations by

reason of this Agreement shall end completely and they shall have no further or continuing obligations by reason thereof.

17.3 Notice

All notices, requests, demands, waivers, consents, agreements, approvals, communications or other writings required or permitted to be given hereunder or for the purposes hereof (each, a “**Notice**”) shall be in writing and be sufficiently given if personally delivered, sent by prepaid registered mail or transmitted by email, addressed to the Party to whom it is given, as follows:

(a) to the Receiver:

KSV Restructuring Inc.
220 Bay Street, 13th Floor, PO Box 20
Toronto, ON M5J 2W4

Attention: Noah Goldstein & Ben Luder
Tel: (416) 932-6207 & (437) 889-9995
Email: ngoldstein@ksvadvisory.com & bluder@ksvadvisory.com

and a copy to the Receiver’s counsel to:

Bennett Jones LLP
3400 One First Canadian Place
Toronto, ON M5X 1A5

Attention: Sean Zweig & Aiden Nelms
Tel: (416) 777-6254 & (416) 777-4642
Email: zweigs@bennettjones.com & nelmsa@bennettjones.com

(b) to the Purchaser:

Credible Group
830 Edgeley Blvd.
Concord, ON
L4K 4X1

Attention: Anthony Marcucci
Tel: (416) 745-9100
Email: anthony@crediblegroup.com

and a copy to the Purchaser's counsel to:

Concorde Law
260 Edgeley Boulevard, Unit 12
Vaughan, ON L4K 3Y4

Attention: Louis Raffaghello
Tel: (647) 792-1272, x 208
Email: louisr@concordelaw.ca

or such other address of which Notice has been given. Any Notice mailed as aforesaid will be deemed to have been given and received on the third (3rd) Business Day following the date of its mailing. Any Notice personally delivered will be deemed to have been given and received on the day it is personally delivered, provided that if such day is not a Business Day, the Notice will be deemed to have been given and received on the Business Day next following such day. Any Notice transmitted by email will be deemed given and received on the first (1st) Business Day after its transmission.

If a Notice is mailed and regular mail service is interrupted by strike or other irregularity on or before the fourth (4th) Business Day after the mailing thereof, such Notice will be deemed to have not been received unless otherwise personally delivered or transmitted by email.

17.4 Waiver

No Party will be deemed or taken to have waived any provision of this Agreement unless such waiver is in writing and such waiver will be limited to the circumstance set forth in such written waiver.

17.5 Consent

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit or the requirement for such consent is not required pursuant to the terms of the Approval and Vesting Order, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

17.6 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties irrevocably attorn to the jurisdiction of the courts of the Province of Ontario. The Parties consent to the exclusive jurisdiction and venue of the Court for the resolution of any disputes among them, regardless of whether or not such disputes arose under this Agreement.

17.7 Entire Agreement

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings between the Parties. There are not and will not be any verbal statements, representations, warranties, undertakings or agreements between the Parties. This Agreement may not be amended or modified in any respect except by written instrument signed by the Parties. The recitals herein are true and accurate, both in substance and in fact.

17.8 Time of the Essence

Time will be of the essence, provided that if the Parties establish a new time for the performance of an obligation, time will again be of the essence of the new time established.

17.9 Time Periods

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

17.10 Assignment

This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, legal and personal administrators, successors and permitted assigns. The Purchaser may not assign this Agreement without the Receiver's prior written approval, which approval shall be in the Receiver's sole, absolute and unfettered discretion. Notwithstanding the foregoing, up until the granting of the Approval and Vesting Order, the Purchaser shall have the right to direct that title to the Lands be taken in the name of another person, entity, joint venture, partnership or corporation (presently in existence or to be incorporated) that is an affiliate of the Purchaser, provided that the Purchaser shall not be released from any and all obligations and liabilities hereunder until after the Closing of the transaction. The foregoing right may only be exercised once by the Purchaser. Any other requested direction of title shall require the Receiver's prior written approval, which approval shall be in the Receiver's sole, absolute and unfettered discretion.

17.11 Expenses

Except as otherwise set out in this Agreement, all costs and expenses (including, without limitation, the fees and disbursements of legal counsel) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.

17.12 Severability

If any portion of this Agreement is prohibited in whole or in part in any jurisdiction, such portion shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining portions of this Agreement and shall, as to such jurisdiction, be deemed to be severed from this Agreement to the extent of such prohibition.

17.13 No Strict Construction

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

17.14 Cumulative Remedies

Unless otherwise expressly stated in this Agreement, no remedy conferred upon or reserved to one or both of the Parties is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

17.15 Currency

All references to dollar amounts contained in this Agreement shall be deemed to refer to lawful currency of Canada.

17.16 Receiver's Capacity

It is acknowledged by the Purchaser that the Receiver is entering into this Agreement solely in its capacity as Court-appointed Receiver and that the Receiver shall have absolutely no personal or corporate liability under or as a result of this Agreement in any respect.

17.17 Planning Act

This Agreement is to be effective only if the provisions of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, are complied with.

17.18 No Third Party Beneficiaries

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns. No other person or entity shall be regarded as a third party beneficiary of this Agreement.

17.19 Number and Gender

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

17.20 Counterparts

This Agreement may be executed in counterparts and by facsimile or PDF, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF the Receiver has duly executed this Agreement as of the date first above written.

KSV RESTRUCTURING INC., solely in its capacity as receiver and manager of 1000093910 Ontario Inc., and all of the assets, undertakings and properties of 1000093910 Ontario Inc., and not in its personal or corporate capacity

Per: 

Name: Noah Goldstein

Title: Managing Director

ACCEPTED by the Purchaser this 13th day of November, 2023

2557904 ONTARIO INC.

Per: _____

Name: Anthony Marcucci

Title: Authorized Signing Officer

IN WITNESS WHEREOF the Receiver has duly executed this Agreement as of the date first above written.

KSV RESTRUCTURING INC., solely in its capacity as receiver and manager of 1000093910 Ontario Inc., and all of the assets, undertakings and properties of 1000093910 Ontario Inc., and not in its personal or corporate capacity

Per: _____

Name: Noah Goldstein

Title: Managing Director

ACCEPTED by the Purchaser this 13th day of November, 2023

2557904 ONTARIO INC.

Per: _____

Name: Anthony Marcucci

Title: Authorized Signing Officer

**SCHEDULE A
BIDDING PROCEDURES**

Attached.

BIDDING PROCEDURES

Introduction

On September 13, 2023, the Superior Court of Justice (the “**Court**”) made an order (the “**Receivership Order**”) appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (KSV, in such capacity, the “**Receiver**”) of 1000093910 Ontario Inc. (the “**Debtor**”), and all of the assets, undertakings and properties of the Debtor, including the land known as 20 Regina Road, Vaughan, Ontario, together with all buildings, improvements and structures thereon and the fixtures affixed thereto, as well as all plans, designs and specifications in connection therewith (the “**Property**”).

The Receiver intends to bring a motion before the Court for an order (the “**Bidding Procedures Order**”), and such motion the (“**Bidding Procedures Approval Motion**”), among other things, approving: (i) the agreement of purchase and sale (the “**Stalking Horse Bid**”) made as of November •, 2023, between the Receiver and 2557904 Ontario Inc. (the “**Stalking Horse Bidder**”) pursuant to which the Stalking Horse Bidder has agreed to purchase the Property; (ii) the payment of a Break Fee and Expense Reimbursement (each as defined below) by the Receiver to the Stalking Horse Bidder in accordance with the provisions of the Stalking Horse Bid; and (iii) the procedures as described in this document (the “**Bidding Procedures**”).

This document contains the Bidding Procedures to be followed by the Receiver in connection with the sale (the “**Sale**”) of the Property. The Receiver will conduct the Bidding Procedures in accordance with the Bidding Procedures Order. All amounts specified herein are in Canadian dollars.

Assets to Be Sold

The Receiver is offering for sale all the Debtor’s right, title and interest in and to the Property.

The Bidding Procedures

The Bidding Procedures Order approves the retention of • (the “**Broker**”) to act as real estate broker and listing agent for the Property, and the entry into a retention agreement with the Broker by the Receiver, among other things.

Interested parties may be provided by the Receiver with such access to due diligence materials and information relating to the Property as the Receiver deems appropriate in its reasonable business judgment. In the Receiver’s sole discretion, this may include the provision of access to an electronic data room of due diligence information. The Receiver shall require interested parties to execute a form of non-disclosure agreement in form and substance satisfactory to the Receiver prior to the provision of any such access.

The Receiver shall have the right to adopt such other rules for the Bidding Procedures (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of the Bidding Procedures and/or achieving a Sale. The Receiver may seek Court approval of an amendment to the Bid Procedures that it considers material. The extension of any deadline by up to two weeks shall not be considered material.

Bid Deadline

An interested party that desires to make a bid shall deliver written copies of its bid (including the Required Bid Terms and Materials) to the Broker, with a copy to the Receiver, by 5:00 p.m. (Toronto time) on the date that is one month after the Court approves the Bidding Procedures or the following business day (the “**Bid Deadline**”).

Bid Requirements

All bids (other than the Stalking Horse Bid) must include, unless such requirement is waived by the Receiver in its sole discretion, the following:

- (i) A base cash purchase price equal to or greater than \$24,555,000, which is the amount of the Stalking Horse Bid plus \$300,000, being a break fee of \$200,000 (the “**Break Fee**”), an expense reimbursement of up to \$50,000 (the “**Expense Reimbursement**”) and \$50,000;
- (ii) A provision stating that the bidder’s offer is irrevocably open for acceptance until the first business day after the Property has been sold pursuant to the closing of the Sale that is approved by the Court pursuant to the Sale Approval Order (as defined below);
- (iii) Disclosure of the identity of each entity (including its ultimate shareholders and/or sponsors) that will be bidding for the Property or otherwise participating in such bid and the complete terms of any such participation;
- (iv) Written evidence of a firm, irrevocable commitment for financing or other evidence of an ability to consummate the proposed transaction comprising such bid, that will allow the Receiver to make a determination as to the bidder’s financial and other capabilities to consummate the proposed transaction;
- (v) Written evidence, in form and substance reasonably satisfactory to the Receiver, of authorization and approval from the bidder’s board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the bid;
- (vi) An acknowledgment and representations of the bidder that: (A) it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its bid; (B) it has relied solely upon its own independent review, investigation and/or inspection of the Property (including, without limitation, any documents in connection therewith) in making its bid; and (C) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Property or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) executed by the Receiver and approved by the Court;

- (vii) An executed copy of a proposed purchase agreement and a redline of the bidder's proposed purchase agreement reflecting any variations from the Stalking Horse Bid; and
- (viii) A cash deposit in the amount of 10% of the purchase price in the form of a wire transfer, certified cheque or such other form acceptable to the Receiver (the "**Bid Deposit**"), which shall be held by the Receiver in an escrow account (the "**Escrow Account**"). Funds shall be disbursed from the Escrow Account only as follows: (i) if the Qualified Bidder is the Successful Bidder, its Bid Deposit will be applied without interest to the purchase price payable by it under its bid on the closing thereof or as otherwise provided for in the purchase agreement; and (ii) if the Qualified Bidder is not the Successful Bidder, then its Bid Deposit shall be returned without interest to it forthwith following the expiration of its offer;

provided, however, that a bid shall not be subject to further due diligence, financing, bid protections, expense reimbursement, third party approvals or any other conditions or conditions precedent except those that are customary in a transaction of this nature (collectively, the "**Required Bid Terms and Materials**").

A bid received from a bidder that includes all of the Required Bid Terms and Materials and is received by the Bid Deadline is a "**Qualified Bid**", and such bidder is a "**Qualified Bidder**". Notwithstanding the bid requirements detailed above, the Stalking Horse Bid shall be deemed a Qualified Bid and the Stalking Horse Bidder shall be deemed a Qualified Bidder.

The Receiver may waive strict compliance with the Bid Deadline or any one or more of the Required Bid Terms and Materials and deem such non-compliant bid to be a Qualified Bid, provided that doing so shall not constitute a waiver by the Receiver of the Bid Deadline or the Required Bid Terms and Materials or an obligation on the part of the Receiver to designate any other bid as a Qualified Bid. At any time during the Bidding Procedures, the Receiver may, in its reasonable business judgment, eliminate an interested party, a bidder or a Qualified Bidder (other than the Stalking Horse Bidder) from the Bidding Procedures, in which case such party will no longer be an interested party, bidder or a Qualified Bidder for the purposes of the Bidding Procedures.

Credit Bids

No person shall be permitted to credit bid the indebtedness owed to them by the corporation in connection with the making of a Qualified Bid or in the conduct of the Auction.

"As Is, Where Is, With All Faults"

The sale of the Property shall be on an "as is, where is" and "with all faults" basis and without representations, warranties, or guarantees, express, implied or statutory, written or oral, of any kind, nature, or description by the Receiver or its agents, counsel, representatives, partners or employees, or any of the other parties participating in the procedures outlined in these Bidding Procedures, except as may otherwise be provided in a definitive purchase agreement with the Receiver. Any party (including, without limitation, a Qualified Bidder) shall be deemed to

acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Property, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or as set forth in a definitive purchase agreement with the Receiver.

Free of Any and All Liens

Except as otherwise provided in the Stalking Horse Bid or another Successful Bidder's purchase agreement, all of the Debtor's right, title and interest in and to the Property shall be sold free and clear of all liens and encumbrances pursuant to the Sale Approval Order except for Permitted Encumbrances (as defined in the Stalking Horse Bid).

Selection of Successful Bidder

If one or more Qualified Bids is received by the Bid Deadline or so designated by the Receiver, all such Qualified Bidders shall proceed to an auction with the Stalking Horse Bidder (an "**Auction**"), which shall proceed according to the Auction Procedures set out in Schedule "A" hereto (the "**Auction Procedures**") to identify the Successful Bidder. In such event, the Receiver shall determine, in its reasonable business judgment, which Qualified Bid is the highest and/or best bid (the "**Lead Bid**"). In determining the Lead Bid, the Receiver may consider, without limitation: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities and the related implied impact on recoveries for creditors; (iii) the Receiver's assessment of the certainty of the Qualified Bidder to close the proposed transaction; (iv) the likelihood, extent and impact of any potential delays in closing; and (v) the net economic effect of any changes from the Stalking Horse Bid; and (vi) such other considerations as the Receiver deems relevant in its reasonable business judgment.

If no Qualified Bid is submitted by the Bid Deadline or all Qualified Bids that have been submitted have been withdrawn prior to the Bid Deadline, then the Stalking Horse Bid shall be the Successful Bid, and the Stalking Horse Bidder shall be the Successful Bidder.

The "**Successful Bid**" will be either (i) the Stalking Horse Bid if no Qualified Bid is received by the Bid Deadline or so designated by the Receiver; (ii) in the event of an Auction, the highest and best bid as determined by the Receiver at the Auction; or (iii) a bid that is so designated by the Receiver in the event that the closing of the Sale that is approved by the Court pursuant to the Sale Approval Order (as defined below) does not occur by the required date pursuant to the Successful Bid (or such date that may otherwise be mutually agreed upon between the Receiver and the Successful Bidder). The party that submitted the Successful Bid is referred to herein as the "**Successful Bidder**".

Break Fee and Expense Reimbursement

To provide an incentive and to compensate the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary in entering into the Stalking Horse

Bid with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Receiver has agreed to pay the Stalking Horse Bidder, under the conditions outlined herein and in the Stalking Horse Bid, the Break Fee in the amount of \$200,000 and an Expense Reimbursement on account of its reasonable and documented fees and expenses up to a maximum of \$50,000. The Receiver will take into account the Break Fee and Expense Reimbursement in each round of bidding with respect to the Stalking Horse Bidder. The Break Fee and Expense Reimbursement were material inducements for, and a condition of, the Stalking Horse Bidder's entry into the Stalking Horse Bid. The Break Fee and Expense Reimbursement, if payable in accordance with the Stalking Horse Bid, shall be paid in accordance with the Stalking Horse Bid and the Bidding Procedures Order.

Sale Approval Motion

Subject to the availability of the Court, within ten (10) business days following the conclusion of the Auction, the Receiver shall bring a motion (the "**Sale Approval Motion**") for an order of the Court authorizing and approving the Sale of the Property to the Successful Bidder (such order, as approved, the "**Sale Approval Order**"). At the hearing of the Sale Approval Motion, the Receiver shall, among other things, seek approval from the Court to consummate the Successful Bid. Notwithstanding the foregoing, as part of the Bidding Procedures Order, the Receiver may seek approval to proceed with the Stalking Horse Bid without the need for the Sale Approval Motion in the event the Stalking Horse Bid is the Successful Bid.

Acceptance of Qualified Bids

The sale of the Property to any Successful Bidder by the Receiver is expressly conditional upon the approval of the Successful Bid by the Court. The Receiver's presentation of the Successful Bid to the Court for approval does not obligate the Receiver to close the transaction contemplated by such Successful Bid unless and until the Court approves the Successful Bid. All of the Qualified Bids other than the Successful Bid, shall be deemed rejected by the Receiver on and as of the date of the closing of the Sale that is approved by the Court.

In the event that the closing of the Sale that is approved by the Court does not occur by the required date pursuant to the Successful Bid (or such date that may otherwise be mutually agreed upon between the Receiver and the Successful Bidder), the Receiver shall be authorized, but not required, to: (a) exercise such rights and remedies as are available to the Receiver under the Successful Bid including, if applicable, deeming that the Successful Bidder has breached its obligations pursuant to the Successful Bid and that the Successful Bidder has forfeited its Deposit to the Receiver; (b) accept any Qualified Bid or other bid of a Qualified Bidder, including, without limitation, a bid made at the Auction, in which case such bid and bidder shall be a Successful Bid and Successful Bidder, respectively, for the purposes of these Bidding Procedures, and close the transaction under such bid; and/or (c) take such other steps as it deems advisable. The Receiver reserves its right to seek all available damages and remedies, including specific performance, from any defaulting Successful Bidder.

Miscellaneous

The Receiver will oversee, in all respects, the conduct of the Bidding Procedures and, without limitation, the Receiver will participate in the Bidding Procedures in the manner set out in these Bidding Procedures and the Bidding Procedures Order. All discussions or inquiries regarding the Bidding Procedures should be directed to the Receiver.

The Sale Process and these Bidding Procedures are solely for the benefit of the Receiver and nothing contained in the Bidding Procedures Order or these Bidding Procedures shall create any rights in any other person (including, without limitation, any bidder or Qualified Bidder, and any rights as third party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the Bidding Procedures Order. Other than as specifically set forth in the Broker's retention agreement, the Stalking Horse Bid or in a definitive agreement between the Receiver and another Successful Bidder, the Bidding Procedures do not, and will not be interpreted to create any contractual or other legal relationship among the Receiver, the Broker, any interested party, any bidder, and Qualified Bidder, the Successful Bidder, or any other party.

The Receiver may consult with any other parties with a material interest in the receivership proceedings regarding the status and material information and developments relating to the Bidding Procedures to the extent considered appropriate by the Receiver; provided that such parties may be required to enter into confidentiality arrangements satisfactory to the Receiver.

Subject to the terms of the Receivership Order, participants in the Bidding Procedures are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any bids, participation in the Auction, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

Except as provided in the Bidding Procedures Order and Bidding Procedures, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Bidding Procedures Order and the Bidding Procedures.

Schedule "A"

Auction Procedures

1. If the Receiver determines to conduct an Auction pursuant to the Bidding Procedures, the Receiver will notify the Qualified Bidders who made a Qualified Bid that the Auction will be held either virtually or at the offices of Bennett Jones LLP at 10:00 a.m. (Toronto time) on date that is determined by the Receiver, provided that that is not later than five business days after the Bid Deadline, or such other place and time as the Receiver may advise. Capitalized terms used but not defined have the meaning given to them in the Bidding Procedures.
2. The Auction shall be conducted in accordance with the following procedures:
 - (a) Participation At The Auction. Only a Qualified Bidder is eligible to participate in the Auction. The Receiver shall provide all Qualified Bidders with the amount of the Leading Bid, a copy thereof and a blackline to the Stalking Horse Bid by 5:00pm (Toronto Time) two business days before the scheduled date of the Auction. Each Qualified Bidder must inform the Receiver whether it intends to participate in the Auction no later than 12:00 p.m. (Toronto time) on the business day prior to the Auction. Only the authorized representatives of each of the Qualified Bidders, the Receiver, the Receiver, Peakhill Capital Inc., Zaherali Visram and their respective counsel and other advisors shall be permitted to attend the Auction.
 - (b) Bidding at the Auction. Bidding at the Auction shall be conducted in rounds. The Leading Bid shall constitute the "Opening Bid" for the first round and the highest Overbid (as defined below) at the end of each round shall constitute the "Opening Bid" for the following round. In each round, a Qualified Bidder may submit no more than one Overbid. Any Qualified Bidder who bids in a round (including the Qualified Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction.
 - (c) Receiver Shall Conduct The Auction. The Receiver and its advisors shall direct and preside over the Auction. At the start of each round of the Auction, the Receiver shall provide the terms of the Opening Bid to all participating Qualified Bidders at the Auction. The determination of which Qualified Bid constitutes the Opening Bid for each round shall take into account any and all factors that the Receiver reasonably deems relevant to the value of the Qualified Bid, including, among other things, the following: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities and the related implied impact on recoveries for creditors; (iii) the Receiver's assessment of the certainty of the Qualified Bidder to close the proposed transaction; (iv) the likelihood, extent and impact of any potential delays in closing; (v) the net economic effect of any changes from the Opening Bid of the previous round; and (vi) such other considerations as the Receiver deems relevant in its reasonable business judgment (collectively, the "**Bid Assessment Criteria**"). All Bids made after the Opening Bid shall be Overbids, and shall be made and received on an open basis, and all material terms of the

highest and best Overbid shall be fully disclosed to all other Qualified Bidders that are participating in the Auction. The Receiver shall maintain a record of the Opening Bid and all Overbids made and announced at the Auction.

- (d) Terms of Overbids. An “**Overbid**” is any Bid made at the Auction subsequent to the Receiver’s announcement of the Opening Bid. To submit an Overbid, in any round of the Auction, a Qualified Bidder must comply with the following conditions:
- (i) *Minimum Overbid Increment:* Any Overbid shall be made in such increments as the Receiver may determine in order to facilitate the Auction (the “**Minimum Overbid Increment**”). The amount of any Overbid shall not be less than the amount of the Opening Bid, plus the Minimum Overbid Increment(s) at that time, plus any additional Minimum Overbid Increments.
 - (ii) *The Bid Requirements same as for Qualified Bids:* Except as modified herein, an Overbid must comply with the Bid Requirements, provided, however, that the Bid Deadline shall not apply.
 - (iii) *Announcing Overbids:* At the end of each round of bidding, the Receiver shall announce the identity of the Qualified Bidder and the material terms of the then highest and/or best Overbid and the basis for calculating the total consideration offered in such Overbid based on, among other things, the Bid Assessment Criteria.
 - (iv) *Consideration of Overbids:* The Receiver reserves the right to make one or more adjournments in the Auction to, among other things: (A) allow individual Qualified Bidders to consider how they wish to proceed; (B) consider and determine the current highest and/or best Overbid at any given time during the Auction; and (C) give Qualified Bidders the opportunity to provide the Receiver with such additional evidence as it may require that the Qualified Bidder has obtained all required internal corporate approvals, has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount. The Receiver may have clarifying discussions with a Qualified Bidder, and the Receiver may allow a Qualified Bidder to make technical clarifying changes to its Overbid following such discussions.
 - (v) *Failure to Bid:* If at the end of any round of bidding a Qualified Bidder (other than the Qualified Bidder that submitted the then highest and/or best Overbid or Opening Bid, as applicable) fails to submit an Overbid, then such Qualified Bidder shall not be entitled to continue to participate in the Auction.

- (e) Additional Procedures. The Receiver may adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction, including rules pertaining to the structure of the Auction, the order of bidding provided they are not inconsistent with any of the provisions of the Bidding Procedures (including these Auction Procedures) and provided further that no such rules may change the requirement that all material terms of the then highest and/or best Overbid at the end of each round of bidding will be fully disclosed to all other Qualified Bidders.
- (f) Closing the Auction. The Auction shall be closed after the Receiver has: (i) reviewed the final Overbid of each Qualified Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale; and (ii) identified the Successful Bid and advised the Qualified Bidders participating in the Auction of such determination.
- (g) Finalizing Documentation. Promptly following a bid of a Qualified Bidder being declared the Successful Bid, the Qualified Bidder shall execute and deliver such revised and updated definitive transaction agreements as may be required to reflect and evidence the Successful Bid.

This is Exhibit "F" referred to in the Affidavit of Anthony Marcucci sworn by Anthony Marcucci of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

035BE5EE77D849F...

Commissioner for Taking Affidavits (or as may be)

KEVIN SHERKIN (LSO NO.: 27099B)

COURT OF APPEAL FOR ONTARIO

CITATION: Peakhill Capital Inc. v. 1000093910 Ontario Inc., 2024 ONCA 59

DATE: 20240124

DOCKET: M54775 (COA-23-CV-1357)

Simmons J.A. (Motion Judge)

BETWEEN

Peakhill Capital Inc.

Applicant
(Respondent on Appeal)

and

1000093910 Ontario Inc.

Respondent
(Appellant on Appeal/Moving Party)

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, as amended and
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C. 43, as
amended

Gary M. Caplan and Aram Simovonian, for the moving party

Richard Swan and Aiden Nelms, for the Receiver, KSV Restructuring Inc., for the
responding party

Heard: January 19, 2024

ENDORSEMENT

[1] This is a motion by 1000093910 Ontario Inc. (the “Debtor”) for an extension
of time to serve this motion, if necessary, and for directions concerning whether
leave to appeal and a stay is required with respect to the reasons and an order

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made in a receivership proceeding in light of ss. 193 and 195 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “BIA”). If leave is required, the Debtor seeks leave to appeal the order, and the reasons for the order, under s. 193(e) of the BIA, and a stay of the order pending appeal.

[2] The order at issue is an order dated December 20, 2023 (the “Order”), which approved Bidding Procedures and a “Stalking Horse APS” proposed by the court appointed receiver for the sale of the Debtor’s primary asset, an industrial building occupied by tenants located in the City of Vaughan (the “Property”).

[3] In her reasons for making the Order, the motion judge declined to hear a cross-motion the Debtor served late in the day on December 19, 2023 seeking to amend the receivership order by: i) approving an agreement of purchase and sale for the sale of the Property entered into by the Debtor prior to the receivership order (the “original APS”); and ii) directing the court appointed receiver to permit the Debtor to complete the original APS.

[4] The Debtor served and filed a notice of appeal of the reasons for the Order and the Order on December 29, 2023, relying on s. 193(c) of the BIA as the basis for an appeal as of right, and on s. 195 of the BIA as the basis for an automatic stay pending appeal. Subsequently, after the receiver took the position that leave to appeal the Order is required, the Debtor brought this motion out of an abundance of caution.

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[5] For the reasons that follow, I conclude that the Debtor has an automatic right of appeal to this court, and I direct that the appeal should be expedited.

Background

[6] On September 13, 2023, KSV Restructuring Inc. (the “Receiver”) was appointed on consent as Receiver over the Debtor and all of its assets under s. 243(1) of the BIA and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. The receivership order was obtained by Peakhill Capital Inc., which holds a first mortgage on the Property in the principal amount of \$19,000,000. Peakhill’s first mortgage matured on May 1, 2023. In accordance with the terms of the consent, the receivership order became effective on October 2, 2023 after the Debtor failed to pay certain sums specified in the consent.

[7] Among other things, the receivership order specifies that the Receiver may cease to perform any contracts of the Debtor and also states that no Person shall repudiate or terminate a contract held by the Debtor without written consent of the Receiver or leave of the Court:

3. THIS COURT ORDERS that the Receiver ... is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

...

c) to manage, operate, and carry on the business of the Debtor, including the powers to ... cease to perform any contracts of the Debtor;

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...

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favour of or held by the Debtor without written consent of the Receiver or leave of this Court. [Emphasis added.]

[8] On September 7, 2023, prior to the receivership order being made but with notice of the receivership proceeding, the Debtor entered into an unconditional agreement of purchase and sale (the “original APS”) to sell the Property to 2557904 Ontario Inc. (“255”) for \$31,000,000. Upon execution of the original APS, 255 paid a deposit of \$1,000,000 to the Debtor’s real estate agent. The closing date under the original APS was December 21, 2023.

[9] According to the Debtor, a sale of the Property under the original APS would yield sufficient funds to pay all of the Debtor’s creditors, including Peakhill, a second mortgage on the Property in the principal amount of \$8,000,000, and outstanding property taxes owing to the City of Vaughan in the approximate amount of \$162,786.

[10] After the receivership order was made, the Receiver had discussions with 255 concerning amending the original APS to include terms the Receiver considered necessary to implement a receivership sale, including substituting the Receiver as the vendor and allowing for a vesting order of the Property to complete the transaction.

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[11] After being informed that 255 was not willing to amend the original APS, on November 13, 2023, the Receiver entered into a stalking horse agreement (the “Stalking Horse APS”) with 255 to establish a minimum sale price of \$24,255,000 as part of a proposed auction sale process for the Property. Under the terms of the Stalking Horse APS, 255 agreed to purchase the Property in the absence of a superior bid. The Stalking Horse APS included a break fee of \$200,000 in the event 255 was not the successful bidder as well as provision for an expense reimbursement of up to \$50,000 to 255 if that occurred.

[12] Around the same time, the Debtor’s counsel informed the Receiver’s counsel that the Debtor wished the Receiver to enforce the original APS. However, the Receiver’s counsel informed the Debtor’s counsel that the Receiver could not close the original APS without 255’s consent and that the Debtor’s proposal that the Receiver should seek to enforce the original APS was not tenable. Nonetheless, the Receiver’s counsel suggested that the Debtor could bring a motion to seek to close the original APS if it thought that appropriate.

[13] At some point, the Receiver’s counsel reserved time for a motion on December 20, 2023, to seek approval of Bidding Procedures to allow the Receiver to sell the Property and the Stalking Horse APS.

[14] On December 6, 2023, the Debtor’s counsel informed the Receiver’s counsel that it would require time on December 20, 2023, to either seek the

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discharge of the Receiver or vary the receivership order to allow the Debtor to complete the original APS.

[15] On December 13, 2023, the Receiver issued its First Report in the receivership recommending Bidding Procedures, which included a marketing plan, a 30-day listing period with a specified realtor, and the Stalking Horse APS. It also served a motion returnable December 20, 2023, requesting: i) approval of the Bidding Procedures and the Stalking Horse APS, ii) an order terminating the original APS, and iii) an order directing the Debtor's real estate agent to return the deposit paid in relation to the original APS to 255.

[16] In its First Report, the Receiver said the following about its discussions with the Debtor:

The Receiver and its legal counsel have engaged extensively with counsel to the [Debtor] regarding the Original APS. Counsel to the [Debtor] has advised that prior to the return of this motion, the [Debtor] intends to either: (a) repay Peakhill and bring a motion to terminate the receivership proceedings; or (b) bring a motion to amend the receivership order to allow the [Debtor] to close the Original APS. In connection with the foregoing, the Receiver has been advised by counsel to the [Debtor] that the [Debtor] is negotiating a commitment letter to repay Peakhill. As of the date of this Report, the Receiver has not seen a copy (including any drafts) of any such commitment letter, despite multiple requests therefor.

As the Receiver has not seen any commitment letter and the [Debtor] has not filed its materials as of the date of this Report, the receiver intends to file a supplemental report with its views on any motion brought by the [Debtor]. The supplemental report may or may not

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include revised recommendations for the Court.
[Emphasis added.]

[17] On December 19, 2023, just before 4 p.m., the Debtor served a cross-motion returnable on December 20, 2023, requesting amendments to the receivership order to approve the original APS and directing the receiver to permit it to complete the original APS.

[18] On December 20, 2023, the motion judge abridged the time for service of the Receiver's motion and approved the Bidding Procedures and Stalking Horse APS proposed by the Receiver. Although her reasons do not address the issue specifically, she apparently declined the Receiver's request to terminate the original APS and direct the return of the deposit by deleting terms from the proposed draft order submitted by the Receiver because of an objection by the Debtor's real estate agent.

[19] The Order includes a term specifying that nothing in it approves the sale of the Property to 255 under the Stalking Horse APS and that approval of such a sale would be considered on a subsequent motion following completion of the sale process under the Bidding Procedures if 255 was the successful bidder.

[20] In her December 20, 2023 reasons, the motion judge declined to hear the Debtor's cross-motion for several reasons. It was late served and thus provided essentially no notice; it could not be "piggybacked" onto an existing motions list;

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and it could have been brought earlier as the facts on which it was based had been known for some time.

[21] The motion judge also concluded that, in any event, the Debtor's cross-motion had little chance of success. She noted that the cross-motion concerned the original APS, which was entered into six days before the receivership order. The closing date was the next day, December 21, 2023, and the Receiver had advised it could not close the transaction based on its terms. Further, the Receiver's agreement with 255, namely the Stalking Horse APS, was now in play and the Receiver's request for relief related to that transaction. Finally, 255, the purchaser under the original APS, had advised that it would refuse to close the original APS, which it considered to be null and void.

[22] On December 29, 2023, the Debtor served and filed a notice of appeal from the reasons for the Order and the Order in which it asked that the Order be set aside and in its place an order be made allowing it or the Receiver to enforce the terms of the original APS, including the right to specific performance. In the alternative, the Debtor sought an order remitting the matter back to the Superior Court.

[23] In its notice of appeal, the Debtor asserted, among other things, that the motion judge erred by failing to consider its cross-motion; by preferring the interests of 255 over the interests of the Debtor; and by failing to apply or consider

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the principles outlined in *Royal Bank of Canada v. Sound Air Corp* (1991), 4 O.R. (3d) 1 (C.A.).

[24] On January 2, 2024, the Receiver took the position that service of the notice of appeal was improper because the Order is procedural and not substantive. Although the Debtor disagrees with the Receiver's position, as I have said, it subsequently served this motion on January 3, 2024 out of an abundance of caution.

Discussion

[25] The Debtor's primary position on this motion is that it is entitled to an automatic right of appeal under s. 193(1)(c) of the BIA. In the alternative, it requests leave to appeal under s. 193(1)(e) and a stay pending appeal under s. 195.

[26] Section 193 of the BIA provides, in relevant part, as follows:

193 Unless otherwise expressly provided, an appeal lies to the Court of Appeal from any order or decision of a judge of the court in the following cases:

...

(c) if the property involved in the appeal exceeds the value of \$10,000;

...

(e) in any other case by leave of a judge of the Court of Appeal.

[27] The Debtor acknowledges that decisions from this court have interpreted s. 193(c) narrowly and restricted the automatic right of appeal so that it does not

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apply to decisions or orders that: are procedural in nature; do not bring the value of the debtor's property into play; or do not result in a loss of more than \$10,000: e.g. *Cardillo v. Medcap Real Estate Holdings Inc.*, 2023 ONCA 852.

[28] The Debtor also acknowledges that, on its face, the Order appears to be procedural in that it simply approves a sale process.

[29] In that respect, because the Order simply approves a sale process, it is similar to the order at issue in *Re Harmon International Industries Inc.*, 2020 SKCA 95, a decision on which the Receiver relies.

[30] In *Re Harmon*, the order at issue authorized a sale process that included a requirement to list one property for \$3,800,000. The Saskatchewan Court of Appeal found that all the order in question did was “establish a process for the sale of the property”, with future transactions still requiring court approval. As a result, the Court found that any claim of loss was without foundation and that the order did not “directly have an impact on the proprietary or monetary interests of Harmon or crystallize any loss at this time.” The order therefore “concern[ed] a matter of procedure only” and was “merely an order as to the manner of sale”. As “no value was in jeopardy”, leave to appeal was required under s. 193(e) of the BIA.

[31] However, the Debtor submits that in assessing whether an automatic right of appeal exists under s. 193(c), the court must “make a critical examination of the effect of the order sought to be appealed.” In doing so, the court must undertake a

fact-specific, evidence-based inquiry to “discern the operative effect of the order ... does the order result in a loss or gain, or put in jeopardy value of property, in excess of \$10,000”: *Comfort Capital Inc. v. Yeretsian*, 2023 ONCA 282 at paras. 20 and 21, citing *Hillmount Capital Inc. v. Pizale*, 2021 ONCA 364, 462 D.L.R. (4th) 228 at paras. 35, 42 and 45.

[32] The Debtor asserts that in refusing to hear its cross-motion and also making the Order approving the Bidding Procedures and Stalking Horse APS but failing to terminate the original APS, the motion judge both left the original APS in place and also deprived it of the right to complete, or obtain an order for specific performance of, the original APS that had a fixed value of \$31,000,000. The Debtor contends that by adopting the Bidding Procedures and Stalking Horse APS, which sets a floor price of \$24,455,000 based on an offer from 255 (the purchaser under the original APS), the Order puts in play, and jeopardizes, the value of the Property for an amount in excess of \$10,000. The Order is thus not merely procedural, it also affects substantive rights.

[33] The Receiver responds that the Order had no substantive effect on the original APS. Because of the receivership Order, the Debtor had no ability to complete the APS. As was the case in *Re Harmon*, the Order did nothing more than establish the sale process for the Property. It did not crystalize any loss and was merely procedural in its effect.

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[34] I agree that, on their face, the motion judge's decision not to entertain the Debtor's cross-motion (the "refusal decision") and the Order both appear to be procedural in nature. Nonetheless, I conclude that, in the particular circumstances of this case, at least the refusal decision, although procedural in nature, also had the effect of putting in play, and jeopardizing, the value of property by an amount exceeding \$10,000.

[35] Although the Receiver is correct in stating that because of the receivership order, the Debtor lacked the ability to complete the APS, the Receiver effectively acknowledged in its dealings with the Debtor and the Debtor's counsel leading up to the December 20, 2023 motion date that the original APS had not been terminated. Further, the Receiver had at least acknowledged, if not suggested, that the Debtor could bring a motion to seek to close the original APS, if the Debtor thought that appropriate, and had reserved its rights concerning the position it would take on such a motion.

[36] On its face, the original APS was an unconditional agreement of purchase and sale with a purchase price of \$31,000,000. No basis has been advanced to support 255's claim on December 20, 2023 that the original APS was null and void. The Receiver had not terminated the original APS. Nor did the motion judge accede to the Receiver's request that she do so. The Order does not address the original APS. As I see it, by declining to hear the Debtor's cross-motion, the refusal

Page: 13

decision deprived the Debtor of any ability to complete or enforce the original APS, a prospect the Receiver appears to have acknowledged could occur.

[37] Instead, the Order sanctioned a sale process which approved the Stalking Horse APS of \$24,455,000 from the purchaser under the original APS and required payments of up to \$250,000 to that purchaser if a superior bid was obtained. In my view, the refusal decision clearly put in play, and jeopardized, the value of property by an amount exceeding \$10,000. Although no loss was crystallized by the refusal decision or the Order, given the circumstances of a receivership sale and the terms of the Stalking Horse APS, which established a floor price of \$24,455,000 and required payment of up to \$250,00 to 255 if a superior bid was obtained, the likelihood of loss in excess of \$10,000, as compared to completion or enforcement of the unconditional original APS at a sale price of \$31,000,00 appears inevitable.

[38] The refusal decision deprived the Debtor of any right it may have had to enforce the unconditional original APS at a price of \$31,000,000 and instead required that the Property be sold, subject to the uncertainties of the market, based on a floor price of almost \$7,000,000 less and a guarantee to the stalking horse purchaser of a payment of up to \$250,000 in the event of a superior bid. The Debtor asserts that, because the original APS has not been terminated, either it or the Receiver can still enforce it. Whether that is so remains to be seen. In the circumstances, I conclude that the property involved on the appeal exceeds 10,000 as required under s. 193(c) of the BIA.

Page: 14

[39] In reaching this conclusion, I recognize that the Debtor purports, in part, to appeal the motion judge's reasons. As an appeal must be from a judgment or order and not the reasons, the Debtor will be required to obtain a formal order incorporating the motion judge's decision not to consider the Debtor's cross-motion.

Disposition

[40] In the result, I conclude that the Debtor is not required to seek leave to appeal under s. 193(e) of the BIA and that its notice of appeal was validly served. As the appeal and automatic stay will hinder the progress of an ongoing receivership proceeding under the BIA, I direct that the appeal be expedited. If necessary, the Debtor may perfect the appeal without a formal order concerning the motion judge's decision not to consider the Debtor's cross-motion, but the Debtor is directed to obtain a formal order relating to that decision as soon as possible and the Receiver is directed to take any steps necessary to assist in that regard. If so advised, the parties may make brief written submissions not to exceed three pages concerning any further directions that may be required to expedite the perfection and hearing of the appeal.

[41] The Debtor may file a costs outline and make written submissions not to exceed three pages within 10 days from the release of this decision. The Receiver

Page: 15

may respond with written submissions not to exceed three pages within 10 days thereafter.

“Janet Simmons J.A.”

This is Exhibit "G" referred to in the Affidavit of Anthony Marcucci sworn by Anthony Marcucci of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Kevin Sherkin

035BE5EE77D849F...

Commissioner for Taking Affidavits (or as may be)

KEVIN SHERKIN (LSO NO.: 27099B)

From: Sherkin, Kevin <ksherkin@millerthomson.com>
Sent: Wednesday, January 24, 2024 5:39 PM
To: gary caplan <gcaplan.scalzilaw@outlook.com>
Cc: Sean Zweig <ZweigS@bennettjones.com>; Sacks, Jeremy <jsacks@millerthomson.com>; Martins, Michelle <mmartins@millerthomson.com>; Carli, Michael <mcarli@millerthomson.com>
Subject: 2024_ONCA_059.pdf

I see you can appeal.. We are going to intervene as our rights will be affected. Please advise if you will consent. My partner Jeremy Sacks will be appearing with me on the Appeal

KEVIN SHERKIN

Providing services on behalf of a Professional Corporation
Partner

MILLER THOMSON LLP

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Toronto, Ontario | M5H 3S1
T +1 416.597.6028
ksherkin@millerthomson.com



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This is Exhibit "H" referred to in the Affidavit of Anthony Marcucci sworn by Anthony Marcucci of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

035BE5EE77D849F...

Commissioner for Taking Affidavits (or as may be)

KEVIN SHERKIN (LSO NO.: 27099B)

From: Sacks, Jeremy <jsacks@millerthomson.com>
Sent: Tuesday, January 30, 2024 1:34 PM
To: gary caplan <gcaplan.scalzilaw@outlook.com>
Cc: Sean Zweig <ZweigS@bennettjones.com>; Martins, Michelle <mmartins@millerthomson.com>; Carli, Michael <mcarli@millerthomson.com>; Sherkin, Kevin <ksherkin@millerthomson.com>
Subject: RE: 2024_ONCA_059.pdf [MTDMS-Legal.FID12467635]

Hi Gary,

I am following up regarding Kevin's request to consent to our client intervening on the appeal. We will be relying upon Rule 13.01(1) (a) and (b). We would appreciate if moving forward all materials will be sent to mine and Kevin's attention. Please confirm. Thanks,

JEREMY SACKS

Providing services on behalf of a Professional Corporation
Partner

MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario | M5H 3S1
T +1 416.597.6037
jsacks@millerthomson.com



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From: Sherkin, Kevin <ksherkin@millerthomson.com>
Sent: Wednesday, January 24, 2024 5:39 PM
To: gary caplan <gcaplan.scalzilaw@outlook.com>
Cc: Sean Zweig <ZweigS@bennettjones.com>; Sacks, Jeremy <jsacks@millerthomson.com>; Martins, Michelle <mmartins@millerthomson.com>; Carli, Michael <mcarli@millerthomson.com>
Subject: 2024_ONCA_059.pdf

- 2 -

I see you can appeal.. We are going to intervene as our rights will be affected. Please advise if you will consent. My partner Jeremy Sacks will be appearing with me on the Appeal

KEVIN SHERKIN

Providing services on behalf of a Professional Corporation
Partner

MILLER THOMSON LLP

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Toronto, Ontario | M5H 3S1
T +1 416.597.6028
ksherkin@millert Thomson.com



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This is Exhibit "I" referred to in the Affidavit of Anthony Marcucci sworn by Anthony Marcucci of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

035BE5EE77D849F...

Commissioner for Taking Affidavits (or as may be)

KEVIN SHERKIN (LSO NO.: 27099B)

From: Gary Caplan <gary@sclawpartners.ca>
Sent: Wednesday, January 31, 2024 5:53 AM
To: Sacks, Jeremy <jsacks@millerthomson.com>; gary caplan <gcaplan.scalzilaw@outlook.com>
Cc: Sean Zweig <ZweigS@bennettjones.com>; Martins, Michelle <mmartins@millerthomson.com>; Carli, Michael <mcarli@millerthomson.com>; Sherkin, Kevin <ksherkin@millerthomson.com>; Aram Simovonian <aram@sclawpartners.ca>; Carmine Scalzi <carmine@sclawpartners.com>
Subject: [**EXT**] Re: 2024_ONCA_059.pdf [MTDMS-Legal.FID12467635] without prejudice

Jeremy:

The governing section is 13.03(2). As a condition of intervention and before I seek instructions and subject to the position of the Receiver,

- a) The intervenor should not file any materials other than a factum;
- b) The intervenor should accept the record as is;
- c) No costs of the intervention if allowed by the panel.
- d) The proposed intervention cannot delay the expedited appeal.

From: "Sacks, Jeremy" <jsacks@millerthomson.com>
Date: Tuesday, January 30, 2024 at 1:33 PM
To: gary caplan <gcaplan.scalzilaw@outlook.com>
Cc: Sean Zweig <ZweigS@bennettjones.com>, "Martins, Michelle" <mmartins@millerthomson.com>, "Carli, Michael" <mcarli@millerthomson.com>, Kevin Sherkin <ksherkin@millerthomson.com>
Subject: RE: 2024_ONCA_059.pdf [MTDMS-Legal.FID12467635]
Resent-From: <gcaplan.scalzilaw@outlook.com>

Hi Gary,

I am following up regarding Kevin's request to consent to our client intervening on the appeal. We will be relying upon Rule 13.01(1) (a) and (b). We would appreciate if moving forward all materials will be sent to mine and Kevin's attention. Please confirm. Thanks,

JEREMY SACKS

Providing services on behalf of a Professional Corporation
Partner

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- 2 -

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From: Sherkin, Kevin <ksherkin@millerthomson.com>

Sent: Wednesday, January 24, 2024 5:39 PM

To: gary caplan <gcaplan.scalzilaw@outlook.com>

Cc: Sean Zweig <ZweigS@bennettjones.com>; Sacks, Jeremy <jsacks@millerthomson.com>;
Martins, Michelle <mmartins@millerthomson.com>; Carli, Michael <mcarli@millerthomson.com>

Subject: 2024_ONCA_059.pdf

I see you can appeal.. We are going to intervene as our rights will be affected. Please advise if you will consent. My partner Jeremy Sacks will be appearing with me on the Appeal

KEVIN SHERKIN

Providing services on behalf of a Professional Corporation
Partner

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This is Exhibit "J" referred to in the Affidavit of Anthony Marcucci sworn by Anthony Marcucci of the City of Vaughan, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Kevin Sherkin

035BE5EE77D849E...

Commissioner for Taking Affidavits (or as may be)

KEVIN SHERKIN (LSO NO.: 27099B)

From: Stephanie Song <SongS@bennettjones.com>

Sent: Friday, March 8, 2024 3:57 PM

To: Court of Appeal for Ontario (coa.e-file@ontario.ca) <coa.e-file@ontario.ca>

Cc: Sean Zweig <ZweigS@bennettjones.com>; ngoldstein@ksvadvisory.com; bluder@ksvadvisory.com; dmichaud@robapp.com; jjamil@robapp.com; bp@friedmans.ca; diane.winters@justice.gc.ca; leslie.crawford@ontario.ca; insolvency.unit@ontario.ca; pat.confalone@cra-arc.gc.ca; rhe@thcllp.com; george@chaitons.com; hmanis@manislaw.ca; dmagisano@lerner.ca; Louis Raffaghello <louisr@concordelaw.ca>; AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca; Vesna Kolenc <vkolenc8965@rogers.com>; Sherkin, Kevin <ksherkin@millerthomson.com>; Aram Simovonian <aram@sclawpartners.ca>; Gary Caplan <gary@sclawpartners.ca>; Preet Gill <GillP@bennettjones.com>; Richard Swan <SwanR@bennettjones.com>

Subject: [**EXT**] Appeal Book and Compendium of the Respondent on Appeal and Factum of the Receiver M54775

Dear Registrar,

We act for KSV Restructuring Inc. in its capacity as court-appoint receiver and manager (the “Receiver”) in the above-mentioned matter. Please find attached the following documents which are being submitted for Court filing for the motion returnable April 2, 2024:

1. Appeal Book and Compendium of the Respondent on Appeal, dated March 8, 2024
2. Factum of the Receiver, dated March 8, 2024
3. Affidavit of Service of Aiden Nelms sworn March 8, 2024

Please confirm receipt. Thank you.

Stephanie Song

Assistant to Mike Shakra and Jamie Ernst, Bennett Jones SLP
3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4
T. 416 777 7817 | F. 416 863 1716
BennettJones.com



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PEAKHILL CAPITAL INC.
Applicant
(Respondent in Appeal)

and

1000093910 ONTARIO INC. et al.
Respondents
(Appellant)

Court File No. COA-23-CV-1357

COURT OF APPEAL FOR ONTARIO Proceeding Commenced at TORONTO
AFFIDAVIT OF ANTHONY MARCUCCI SWORN MARCH 14, 2024
MILLER THOMSON LLP Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto ON M5H 3S1 Kevin D. Sherkin (LSO#: 27099B) ksherkin@millerthomson.com Tel: 416-597-6028 Jeremy Sacks (LSO#: 62361R) jsacks@millerthomson.com Tel: 416.597.6037 Lawyers for the Respondent 2557904 Ontario Inc. Served by Email: Dominique Michaud: dmichaud@robapp.com Gary M. Caplan: gary@sclawpartners.ca Sean Zweig: zweigs@bennettjones.com

Tab 3

Court File No. CV-23-00004031-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

PEAKHILL CAPITAL INC.

Applicant

and

1000093910 ONTARIO INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C. 43, AS AMENDED**

**AFFIDAVIT OF KAYLA SWEET
(SWORN MAY 10, 2024)**

I, KAYLA SWEET, of the Town of Erin, in the County of Wellington, MAKE OATH AND
SAY:

1. I am a law clerk with the law firm of Miller Thomson LLP, lawyers for the Intervener, 2557904 Ontario Inc. ("**255**"), and, as such, have knowledge of the matters contained in this Affidavit.
2. I am advised by counsel that on January 19, 2024, the Respondent, 1000093910 Ontario Inc. ("**Debtor**") was granted leave to Appeal by the Ontario Court of Appeal. A true copy of the Ontario Court of Appeal Endorsement granting leave to appeal dated January 24, 2024 is attached hereto as **Exhibit "A"**.
3. On March 15, 2024, 255 filed a motion to intervene in the appeal, which contained an Affidavit from Anthony Marcucci sworn on even date, and which was re-produced as **Tab 2** to the within motion record.

-2-

4. On March 28, 2024, 255 was granted leave to intervene by the Ontario Court of Appeal. A true copy of the Order of the Court of Appeal is attached hereto as **Exhibit "B"**.

5. The Appeal was heard on April 2, 2024 and the Debtor's appeal was denied. A true copy of the Court of Appeal Reasons for Decisions dismissing the motion for leave to appeal dated April 9, 2024 is attached hereto as **Exhibit "C"**.

6. On April 18, 2024, counsel for 255, Kevin Sherkin, wrote to counsel for Ren/Tex Realty Inc. ("**Ren/Tex**"), Domenic Magisano of Lerner LLP, seeking a return of 255's original deposit. Mr. Sherkin advised that the Original APS was not operative and that the deposit had to be returned. A true copy of the email from Mr. Sherkin dated April 18, 2024 is attached hereto as **Exhibit "D"**.

7. On April 27, 2024, Mr. Sherkin again wrote to counsel for Ren/Tex. Mr. Sherkin advised that 255 would be seeking interest on the deposit from the day that it was first requested to be returned to 255 and that interest would continue to accrue until the deposit was returned. A true copy of the email from Mr. Sherkin dated April 27, 2024 is attached hereto as **Exhibit "E"**.

8. On April 30, 2024, counsel for Ren/Tex, Jason Squire of Lerner LLP, responded that commission was due to Ren/Tex and that Ren/Tex had obligations with respect to a Commission Trust Agreement between the Debtor and Ren/Tex. Mr. Squire further advised that they would require a Court order before they would be prepared to distribute the deposit to 255. A true copy of Mr. Squire's email dated April 30, 2024 is attached hereto as **Exhibit "F"**.

9. I am advised by counsel that Ren/Tex continues to hold the Deposit and have advised that they will distribute (or hold) these funds in accordance with a court order.

-3-

10. I swear this affidavit in support of 255's motion for release of the deposit monies held by Ren/Tex.

SWORN by Kayla Sweet of the Town of Erin, in the County of Wellington, before me at the Town of New Hamburg, in the Province of Ontario, on May 10, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Heather Walker
820FD18C181C48A...

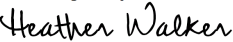
HEATHER ANNE WALKER, a
Commissioner, etc., Province of Ontario, for
Miller Thomson LLP, Barristers and Solicitors.
Expires April 17, 2027.

DocuSigned by:
Kayla Sweet
54E431AED32D415...

KAYLA SWEET

RCP-E 4D (February 1, 2021)

This is **Exhibit “A”** referred to in the Affidavit of Kayla Sweet sworn by Kayla Sweet of the Town of Erin, in the County of Wellington, before me at the Town of New Hamburg, in the Province of Ontario, on May 10, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

820FD18C181C48A...

Commissioner for Taking Affidavits (or as may be)

HEATHER ANNE WALKER a Commissioner, etc., Province of Ontario, for Miller Thomson LLP, Barristers and Solicitors. Expires April 17, 2027.

COURT OF APPEAL FOR ONTARIO

CITATION: Peakhill Capital Inc. v. 1000093910 Ontario Inc., 2024 ONCA 59

DATE: 20240124

DOCKET: M54775 (COA-23-CV-1357)

Simmons J.A. (Motion Judge)

BETWEEN

Peakhill Capital Inc.

Applicant
(Respondent on Appeal)

and

1000093910 Ontario Inc.

Respondent
(Appellant on Appeal/Moving Party)

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, as amended and
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C. 43, as
amended

Gary M. Caplan and Aram Simovonian, for the moving party

Richard Swan and Aiden Nelms, for the Receiver, KSV Restructuring Inc., for the
responding party

Heard: January 19, 2024

ENDORSEMENT

[1] This is a motion by 1000093910 Ontario Inc. (the “Debtor”) for an extension of time to serve this motion, if necessary, and for directions concerning whether leave to appeal and a stay is required with respect to the reasons and an order

Page: 2

made in a receivership proceeding in light of ss. 193 and 195 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “BIA”). If leave is required, the Debtor seeks leave to appeal the order, and the reasons for the order, under s. 193(e) of the BIA, and a stay of the order pending appeal.

[2] The order at issue is an order dated December 20, 2023 (the “Order”), which approved Bidding Procedures and a “Stalking Horse APS” proposed by the court appointed receiver for the sale of the Debtor’s primary asset, an industrial building occupied by tenants located in the City of Vaughan (the “Property”).

[3] In her reasons for making the Order, the motion judge declined to hear a cross-motion the Debtor served late in the day on December 19, 2023 seeking to amend the receivership order by: i) approving an agreement of purchase and sale for the sale of the Property entered into by the Debtor prior to the receivership order (the “original APS”); and ii) directing the court appointed receiver to permit the Debtor to complete the original APS.

[4] The Debtor served and filed a notice of appeal of the reasons for the Order and the Order on December 29, 2023, relying on s. 193(c) of the BIA as the basis for an appeal as of right, and on s. 195 of the BIA as the basis for an automatic stay pending appeal. Subsequently, after the receiver took the position that leave to appeal the Order is required, the Debtor brought this motion out of an abundance of caution.

Page: 3

[5] For the reasons that follow, I conclude that the Debtor has an automatic right of appeal to this court, and I direct that the appeal should be expedited.

Background

[6] On September 13, 2023, KSV Restructuring Inc. (the “Receiver”) was appointed on consent as Receiver over the Debtor and all of its assets under s. 243(1) of the BIA and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. The receivership order was obtained by Peakhill Capital Inc., which holds a first mortgage on the Property in the principal amount of \$19,000,000. Peakhill’s first mortgage matured on May 1, 2023. In accordance with the terms of the consent, the receivership order became effective on October 2, 2023 after the Debtor failed to pay certain sums specified in the consent.

[7] Among other things, the receivership order specifies that the Receiver may cease to perform any contracts of the Debtor and also states that no Person shall repudiate or terminate a contract held by the Debtor without written consent of the Receiver or leave of the Court:

3. THIS COURT ORDERS that the Receiver ... is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

...

c) to manage, operate, and carry on the business of the Debtor, including the powers to ... cease to perform any contracts of the Debtor;

Page: 4

...

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favour of or held by the Debtor without written consent of the Receiver or leave of this Court. [Emphasis added.]

[8] On September 7, 2023, prior to the receivership order being made but with notice of the receivership proceeding, the Debtor entered into an unconditional agreement of purchase and sale (the “original APS”) to sell the Property to 2557904 Ontario Inc. (“255”) for \$31,000,000. Upon execution of the original APS, 255 paid a deposit of \$1,000,000 to the Debtor’s real estate agent. The closing date under the original APS was December 21, 2023.

[9] According to the Debtor, a sale of the Property under the original APS would yield sufficient funds to pay all of the Debtor’s creditors, including Peakhill, a second mortgage on the Property in the principal amount of \$8,000,000, and outstanding property taxes owing to the City of Vaughan in the approximate amount of \$162,786.

[10] After the receivership order was made, the Receiver had discussions with 255 concerning amending the original APS to include terms the Receiver considered necessary to implement a receivership sale, including substituting the Receiver as the vendor and allowing for a vesting order of the Property to complete the transaction.

Page: 5

[11] After being informed that 255 was not willing to amend the original APS, on November 13, 2023, the Receiver entered into a stalking horse agreement (the “Stalking Horse APS”) with 255 to establish a minimum sale price of \$24,255,000 as part of a proposed auction sale process for the Property. Under the terms of the Stalking Horse APS, 255 agreed to purchase the Property in the absence of a superior bid. The Stalking Horse APS included a break fee of \$200,000 in the event 255 was not the successful bidder as well as provision for an expense reimbursement of up to \$50,000 to 255 if that occurred.

[12] Around the same time, the Debtor’s counsel informed the Receiver’s counsel that the Debtor wished the Receiver to enforce the original APS. However, the Receiver’s counsel informed the Debtor’s counsel that the Receiver could not close the original APS without 255’s consent and that the Debtor’s proposal that the Receiver should seek to enforce the original APS was not tenable. Nonetheless, the Receiver’s counsel suggested that the Debtor could bring a motion to seek to close the original APS if it thought that appropriate.

[13] At some point, the Receiver’s counsel reserved time for a motion on December 20, 2023, to seek approval of Bidding Procedures to allow the Receiver to sell the Property and the Stalking Horse APS.

[14] On December 6, 2023, the Debtor’s counsel informed the Receiver’s counsel that it would require time on December 20, 2023, to either seek the

Page: 6

discharge of the Receiver or vary the receivership order to allow the Debtor to complete the original APS.

[15] On December 13, 2023, the Receiver issued its First Report in the receivership recommending Bidding Procedures, which included a marketing plan, a 30-day listing period with a specified realtor, and the Stalking Horse APS. It also served a motion returnable December 20, 2023, requesting: i) approval of the Bidding Procedures and the Stalking Horse APS, ii) an order terminating the original APS, and iii) an order directing the Debtor's real estate agent to return the deposit paid in relation to the original APS to 255.

[16] In its First Report, the Receiver said the following about its discussions with the Debtor:

The Receiver and its legal counsel have engaged extensively with counsel to the [Debtor] regarding the Original APS. Counsel to the [Debtor] has advised that prior to the return of this motion, the [Debtor] intends to either: (a) repay Peakhill and bring a motion to terminate the receivership proceedings; or (b) bring a motion to amend the receivership order to allow the [Debtor] to close the Original APS. In connection with the foregoing, the Receiver has been advised by counsel to the [Debtor] that the [Debtor] is negotiating a commitment letter to repay Peakhill. As of the date of this Report, the Receiver has not seen a copy (including any drafts) of any such commitment letter, despite multiple requests therefor.

As the Receiver has not seen any commitment letter and the [Debtor] has not filed its materials as of the date of this Report, the receiver intends to file a supplemental report with its views on any motion brought by the [Debtor]. The supplemental report may or may not

Page: 7

include revised recommendations for the Court.
[Emphasis added.]

[17] On December 19, 2023, just before 4 p.m., the Debtor served a cross-motion returnable on December 20, 2023, requesting amendments to the receivership order to approve the original APS and directing the receiver to permit it to complete the original APS.

[18] On December 20, 2023, the motion judge abridged the time for service of the Receiver's motion and approved the Bidding Procedures and Stalking Horse APS proposed by the Receiver. Although her reasons do not address the issue specifically, she apparently declined the Receiver's request to terminate the original APS and direct the return of the deposit by deleting terms from the proposed draft order submitted by the Receiver because of an objection by the Debtor's real estate agent.

[19] The Order includes a term specifying that nothing in it approves the sale of the Property to 255 under the Stalking Horse APS and that approval of such a sale would be considered on a subsequent motion following completion of the sale process under the Bidding Procedures if 255 was the successful bidder.

[20] In her December 20, 2023 reasons, the motion judge declined to hear the Debtor's cross-motion for several reasons. It was late served and thus provided essentially no notice; it could not be "piggybacked" onto an existing motions list;

Page: 8

and it could have been brought earlier as the facts on which it was based had been known for some time.

[21] The motion judge also concluded that, in any event, the Debtor's cross-motion had little chance of success. She noted that the cross-motion concerned the original APS, which was entered into six days before the receivership order. The closing date was the next day, December 21, 2023, and the Receiver had advised it could not close the transaction based on its terms. Further, the Receiver's agreement with 255, namely the Stalking Horse APS, was now in play and the Receiver's request for relief related to that transaction. Finally, 255, the purchaser under the original APS, had advised that it would refuse to close the original APS, which it considered to be null and void.

[22] On December 29, 2023, the Debtor served and filed a notice of appeal from the reasons for the Order and the Order in which it asked that the Order be set aside and in its place an order be made allowing it or the Receiver to enforce the terms of the original APS, including the right to specific performance. In the alternative, the Debtor sought an order remitting the matter back to the Superior Court.

[23] In its notice of appeal, the Debtor asserted, among other things, that the motion judge erred by failing to consider its cross-motion; by preferring the interests of 255 over the interests of the Debtor; and by failing to apply or consider

Page: 9

the principles outlined in *Royal Bank of Canada v. Sound Air Corp* (1991), 4 O.R. (3d) 1 (C.A.).

[24] On January 2, 2024, the Receiver took the position that service of the notice of appeal was improper because the Order is procedural and not substantive. Although the Debtor disagrees with the Receiver's position, as I have said, it subsequently served this motion on January 3, 2024 out of an abundance of caution.

Discussion

[25] The Debtor's primary position on this motion is that it is entitled to an automatic right of appeal under s. 193(1)(c) of the BIA. In the alternative, it requests leave to appeal under s. 193(1)(e) and a stay pending appeal under s. 195.

[26] Section 193 of the BIA provides, in relevant part, as follows:

193 Unless otherwise expressly provided, an appeal lies to the Court of Appeal from any order or decision of a judge of the court in the following cases:

...

(c) if the property involved in the appeal exceeds the value of \$10,000;

...

(e) in any other case by leave of a judge of the Court of Appeal.

[27] The Debtor acknowledges that decisions from this court have interpreted s. 193(c) narrowly and restricted the automatic right of appeal so that it does not

Page: 10

apply to decisions or orders that: are procedural in nature; do not bring the value of the debtor's property into play; or do not result in a loss of more than \$10,000: e.g. *Cardillo v. Medcap Real Estate Holdings Inc.*, 2023 ONCA 852.

[28] The Debtor also acknowledges that, on its face, the Order appears to be procedural in that it simply approves a sale process.

[29] In that respect, because the Order simply approves a sale process, it is similar to the order at issue in *Re Harmon International Industries Inc.*, 2020 SKCA 95, a decision on which the Receiver relies.

[30] In *Re Harmon*, the order at issue authorized a sale process that included a requirement to list one property for \$3,800,000. The Saskatchewan Court of Appeal found that all the order in question did was “establish a process for the sale of the property”, with future transactions still requiring court approval. As a result, the Court found that any claim of loss was without foundation and that the order did not “directly have an impact on the proprietary or monetary interests of Harmon or crystallize any loss at this time.” The order therefore “concern[ed] a matter of procedure only” and was “merely an order as to the manner of sale”. As “no value was in jeopardy”, leave to appeal was required under s. 193(e) of the BIA.

[31] However, the Debtor submits that in assessing whether an automatic right of appeal exists under s. 193(c), the court must “make a critical examination of the effect of the order sought to be appealed.” In doing so, the court must undertake a

fact-specific, evidence-based inquiry to “discern the operative effect of the order ... does the order result in a loss or gain, or put in jeopardy value of property, in excess of \$10,000”: *Comfort Capital Inc. v. Yeretsian*, 2023 ONCA 282 at paras. 20 and 21, citing *Hillmount Capital Inc. v. Pizale*, 2021 ONCA 364, 462 D.L.R. (4th) 228 at paras. 35, 42 and 45.

[32] The Debtor asserts that in refusing to hear its cross-motion and also making the Order approving the Bidding Procedures and Stalking Horse APS but failing to terminate the original APS, the motion judge both left the original APS in place and also deprived it of the right to complete, or obtain an order for specific performance of, the original APS that had a fixed value of \$31,000,000. The Debtor contends that by adopting the Bidding Procedures and Stalking Horse APS, which sets a floor price of \$24,455,000 based on an offer from 255 (the purchaser under the original APS), the Order puts in play, and jeopardizes, the value of the Property for an amount in excess of \$10,000. The Order is thus not merely procedural, it also affects substantive rights.

[33] The Receiver responds that the Order had no substantive effect on the original APS. Because of the receivership Order, the Debtor had no ability to complete the APS. As was the case in *Re Harmon*, the Order did nothing more than establish the sale process for the Property. It did not crystalize any loss and was merely procedural in its effect.

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[34] I agree that, on their face, the motion judge's decision not to entertain the Debtor's cross-motion (the "refusal decision") and the Order both appear to be procedural in nature. Nonetheless, I conclude that, in the particular circumstances of this case, at least the refusal decision, although procedural in nature, also had the effect of putting in play, and jeopardizing, the value of property by an amount exceeding \$10,000.

[35] Although the Receiver is correct in stating that because of the receivership order, the Debtor lacked the ability to complete the APS, the Receiver effectively acknowledged in its dealings with the Debtor and the Debtor's counsel leading up to the December 20, 2023 motion date that the original APS had not been terminated. Further, the Receiver had at least acknowledged, if not suggested, that the Debtor could bring a motion to seek to close the original APS, if the Debtor thought that appropriate, and had reserved its rights concerning the position it would take on such a motion.

[36] On its face, the original APS was an unconditional agreement of purchase and sale with a purchase price of \$31,000,000. No basis has been advanced to support 255's claim on December 20, 2023 that the original APS was null and void. The Receiver had not terminated the original APS. Nor did the motion judge accede to the Receiver's request that she do so. The Order does not address the original APS. As I see it, by declining to hear the Debtor's cross-motion, the refusal

Page: 13

decision deprived the Debtor of any ability to complete or enforce the original APS, a prospect the Receiver appears to have acknowledged could occur.

[37] Instead, the Order sanctioned a sale process which approved the Stalking Horse APS of \$24,455,000 from the purchaser under the original APS and required payments of up to \$250,000 to that purchaser if a superior bid was obtained. In my view, the refusal decision clearly put in play, and jeopardized, the value of property by an amount exceeding \$10,000. Although no loss was crystallized by the refusal decision or the Order, given the circumstances of a receivership sale and the terms of the Stalking Horse APS, which established a floor price of \$24,455,000 and required payment of up to \$250,00 to 255 if a superior bid was obtained, the likelihood of loss in excess of \$10,000, as compared to completion or enforcement of the unconditional original APS at a sale price of \$31,000,00 appears inevitable.

[38] The refusal decision deprived the Debtor of any right it may have had to enforce the unconditional original APS at a price of \$31,000,000 and instead required that the Property be sold, subject to the uncertainties of the market, based on a floor price of almost \$7,000,000 less and a guarantee to the stalking horse purchaser of a payment of up to \$250,000 in the event of a superior bid. The Debtor asserts that, because the original APS has not been terminated, either it or the Receiver can still enforce it. Whether that is so remains to be seen. In the circumstances, I conclude that the property involved on the appeal exceeds \$10,000 as required under s. 193(c) of the BIA.

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[39] In reaching this conclusion, I recognize that the Debtor purports, in part, to appeal the motion judge's reasons. As an appeal must be from a judgment or order and not the reasons, the Debtor will be required to obtain a formal order incorporating the motion judge's decision not to consider the Debtor's cross-motion.

Disposition

[40] In the result, I conclude that the Debtor is not required to seek leave to appeal under s. 193(e) of the BIA and that its notice of appeal was validly served. As the appeal and automatic stay will hinder the progress of an ongoing receivership proceeding under the BIA, I direct that the appeal be expedited. If necessary, the Debtor may perfect the appeal without a formal order concerning the motion judge's decision not to consider the Debtor's cross-motion, but the Debtor is directed to obtain a formal order relating to that decision as soon as possible and the Receiver is directed to take any steps necessary to assist in that regard. If so advised, the parties may make brief written submissions not to exceed three pages concerning any further directions that may be required to expedite the perfection and hearing of the appeal.

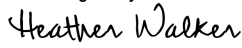
[41] The Debtor may file a costs outline and make written submissions not to exceed three pages within 10 days from the release of this decision. The Receiver

Page: 15

may respond with written submissions not to exceed three pages within 10 days thereafter.

“Janet Simmons J.A.”

This is **Exhibit “B”** referred to in the Affidavit of Kayla Sweet sworn by Kayla Sweet of the Town of Erin, in the County of Wellington, before me at the Town of New Hamburg, in the Province of Ontario, on May 10, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

820FD18C181C48A...

Commissioner for Taking Affidavits (or as may be)

HEATHER ANNE WALKER a Commissioner, etc., Province of Ontario, for Miller Thomson LLP, Barristers and Solicitors. Expires April 17, 2027.

Court of Appeal File No. COA-23-CV-1357/M54775

Court File No. CV-23-00004031-0000

COURT OF APPEAL FOR ONTARIO

THE HONOURABLE

) THURSDAY, THE 28TH

JUSTICE HARVISON YOUNG

)

) DAY OF MARCH , 2024

BETWEEN:

PEAKHILL CAPITAL INC.

Applicant

(Respondent in Appeal)

- and -

1000093910 ONTARIO INC.

Respondent

(Appellant)

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED**

ORDER

THIS MOTION, made by the Proposed Intervener, 2557904 ONTARIO INC. ("**255**"), for an Order for leave to intervene in the within appeal was heard this day at 130 Queen St. W., Toronto, Ontario by remote video conference;

ON READING the Motion Record, Factum and Appeal Book and Compendium of 255 and the Responding Factum of the Appellant, 1000093910 Ontario Inc. (the "**Debtor**"), on being advised of the consent of KSV Restructuring Inc. (the "**Receiver**") to the intervention, and on hearing the submissions of counsel for 255, the Debtor and the Receiver;

1. **THIS COURT ORDERS** that 255 be granted leave to intervene as an added party at the Appeal Hearing scheduled for April 2, 2024;
2. **THIS COURT ORDERS** that the Affidavit of Anthony Marcucci sworn March 15, 2024 (the "**Marcucci Affidavit**"), filed in support of the intervention motion, shall not form part of the Appeal record;

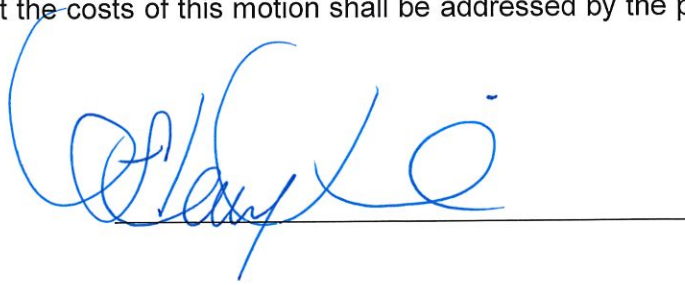
- 2 -

3. **THIS COURT ORDERS** that 255's oral submissions at the Appeal shall be limited to 15 minutes and shall only address the status of the original agreement of purchase and sale dated September 15, 2023 and the stalking horse agreement dated November 13, 2023;
4. **THIS COURT ORDERS** that the costs of this motion shall be addressed by the panel of this Court hearing the appeal.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAR 23 2024

PER / PAR:



PEAKHILL CAPITAL INC.
Applicant
(Respondent in Appeal)

and

1000093910 ONTARIO INC. et al.
Respondents
(Appellant)

Court of Appeal File No. COA-23-CV-1357/M54775
Court File No. CV-23-00004031-0000

COURT OF APPEAL FOR ONTARIO

Proceeding Commenced at TORONTO

ORDER

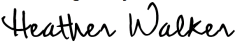
MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto ON M5H 3S1

Kevin D. Sherkin (LSO#: 27099B)
ksherkin@millerthomson.com
Tel: 416-597-6028

Mitchell Lightowler (LSO#: 76305T)
Tel: 416-595-7938
mlightowler@millerthomson.com

Lawyers for the Proposed Intervener,
2557904 Ontario Inc.

This is **Exhibit “C”** referred to in the Affidavit of Kayla Sweet sworn by Kayla Sweet of the Town of Erin, in the County of Wellington, before me at the Town of New Hamburg, in the Province of Ontario, on May 10, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

820FD18C181C48A...

Commissioner for Taking Affidavits (or as may be)

HEATHER ANNE WALKER a Commissioner, etc., Province of Ontario, for Miller Thomson LLP, Barristers and Solicitors. Expires April 17, 2027.

COURT OF APPEAL FOR ONTARIO

CITATION: Peakhill Capital Inc. v. 1000093910 Ontario Inc., 2024 ONCA 261

DATE: 20240409

DOCKET: COA-23-CV-1357

Harvison Young, Coroza and Gomery JJ.A.

BETWEEN

Peakhill Capital Inc.

Applicant (Respondent)

and

1000093910 Ontario Inc.

Respondent (Appellant)

and

2257004 Ontario Inc.

Third Party (Respondent)

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c.B-3, as amended, AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, as
amended

Gary M. Caplan and Aram Simovonian, for the appellant

Richard Swan, Sean Zweig and Aiden Nelms, for the respondent, KSV
Restructuring Inc.Kevin Sherkin and Mitchell Lightowler, for the third party/respondent, 2257004
Ontario Inc.

Heard: April 2, 2024

On appeal from the order of Justice Mary E. Vallee of the Superior Court of Justice,
dated December 20, 2023.

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REASONS FOR DECISION

[1] 1000093910 Ontario Inc., a company in receivership, appeals from the motion judge's decision declining to hear a cross-motion it sought to present on December 20, 2023. Through the cross-motion, the appellant sought orders to vary the receivership order and to enforce an agreement of purchase and sale (the "September APS") of its primary asset, a piece of real estate in Vaughan, Ontario, with the third party 2557004 Ontario Inc. ("255 Ontario"). The appellant further contends that the motion judge erred in granting, in the same decision, the receiver's proposal for a public auction of the property, subject to a "stalking horse" agreement with 255 Ontario whereby it agreed to pay a minimum price under a second APS.

[2] After hearing the parties' arguments, the court advised that the appeal was dismissed, with reasons to follow. These are those reasons.

[3] The motion judge's decision not to hear the cross-motion was an exercise of her discretion. It should not be overturned unless she erred in law, misapprehended the evidence in a material way, or was clearly wrong: *Royal Bank of Canada v. Keller & Sons Farming Ltd.*, 2016 MCBA 46, at para. 12. Decisions by judges supervising insolvency and restructuring proceedings are, in particular, entitled to considerable defence: *Re Harmon International Industries Inc.*, 2020 SKCA 95, at para. 40. This court will intervene only if the motion judge committed a demonstrable error: *Marchant Realty Partners Inc. v.*

Page: 3

2407553 Ontario Inc., 2021 ONCA 375, at para. 18, citing *Ravelston Corporation Limited (Re)*, 2007 ONCA 135, at para. 3.

[4] The appellant has not established that the motion judge erred in refusing to hear the cross-motion. Both the receivership order and the *Rules of Civil Procedure* required the appellant to give seven days notice of its cross-motion. Prior to the hearing date, the receiver repeatedly told the appellant's lawyers that it could not consider any motion that it might bring until materials had been served. The appellant served its notice of cross-motion and supporting materials minutes before 4:00 p.m. on the eve of the hearing date set for the receiver's motion. As the motion judge observed, the receiver did not have any opportunity to respond to the cross-motion nor had the court had time to read the materials. In addition, the hearing list that day was already full.

[5] The motion judge moreover found that the cross-motion had little chance of success:

[The cross-motion] concerns a different real estate transaction entered into six days before the receivership order. The closing date is tomorrow. The receiver states that it could not close this transaction because of certain terms that it contains. Another agreement of purchase and sale entered into by the receiver and 2557004 Ontario Inc. dated November 13, 2023, referred to as the "stalking horse agreement", is now in play. The receiver's motion concerns this transaction. The purchaser states that it would refuse to close the earlier transaction, which it considers null and void.

Page: 4

[6] The appellant has not identified any error in the motion judge's findings, which are amply supported on the record. Indeed, 255 Ontario sought and obtained leave to intervene in this appeal to confirm that it had refused to consent to changes to the September APS required following the receivership order and that, in its view, "the deal is dead".

[7] The appellant contends that the motion judge should have adjourned the hearing of the cross-motion to give the receiver and any other stakeholders time to respond. The appellant did not, however, initially seek an adjournment at the December 20 hearing. Its counsel instead insisted that the cross-motion had to be heard that day, as the September APS would expire the next day if the purchase did not close. The hearing, which was set for less than one hour, consumed over two and a half hours of the motion judge's time. When the motion judge verbally advised the appellant's counsel that she would not be adjudicating the cross-motion, he then asked for the first time for an adjournment, which was refused.

[8] In the circumstances, we do not accept the appellant's submission that it was unjustly deprived of a right to be heard.

[9] The appellant has likewise not shown that the motion judge erred in principle or exercised her discretion improperly in granting the receiver's motion to engage in the sales process it proposed. The appellant argues that the motion judge's

Page: 5

granting of the receiver's motion is inconsistent with the principles in *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ONCA), alleging that there are steps that the receiver could and should have taken prior to the hearing date that might have permitted enforcement of the original APS.

[10] The receiver's report proposed a sale process involving public marketing and an auction process undergirded by a stalking horse agreement. Its factum in support of its motion identified the criteria for assessing the proposed sales process, including the *Soundair* principles. The receiver directed the motion judge to evidence that the proposed process was fair and transparent; that it promoted integrity and commercial efficacy; and that it would optimize the chances of securing the best price for the assets. It pointed out that, in *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750, at para. 7, a stalking horse agreement may be considered an element of a reasonable sales process.

[11] In the circumstances, we do not find that the motion judge made any error in principle. We assume that the motion judge was aware of the law and the evidence, even if she did not refer to them in her endorsement. We see no reason why we should not defer to her decision: *Canrock Ventures LLC v. Ambercore Software Inc.*, 2011 ONCA 414, 78 C.B.R. (5th) 97, at para. 4.

Page: 6

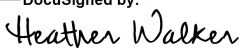
[12] The appeal is therefore dismissed. The appellant is ordered to pay costs to the receiver of \$25,000 inclusive on the appeal and the motion for directions and stay before Simmons J., as agreed by the parties. No costs are awarded on 255 Ontario's motion to intervene.

A. Harrison Young J.A.

S. COROZA J.A.

My Young J.A.

This is **Exhibit “D”** referred to in the Affidavit of Kayla Sweet sworn by Kayla Sweet of the Town of Erin, in the County of Wellington, before me at the Town of New Hamburg, in the Province of Ontario, on May 10, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

820FD18C181C48A...

Commissioner for Taking Affidavits (or as may be)

HEATHER ANNE WALKER a Commissioner, etc., Province of Ontario, for Miller Thomson LLP, Barristers and Solicitors. Expires April 17, 2027.

Sweet, Kayla

From: Sherkin, Kevin
Sent: Wednesday, May 8, 2024 2:12 PM
To: Sweet, Kayla
Subject: Fwd: Peakhill
Attachments: COA-23-CV-1357.reen.pdf

Sent from my iPhone

KEVIN SHERKIN

Providing services on behalf of a Professional Corporation
Partner

MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario | M5H 3S1
T +1 416.597.6028
ksherkin@millerthomson.com



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Begin forwarded message:

From: "Sherkin, Kevin" <ksherkin@millerthomson.com>
Date: April 18, 2024 at 2:07:48 PM EDT
To: dmagisano@lerner.ca
Cc: "Carli, Michael" <mcarli@millerthomson.com>, zweigs@bennetjones.com
Subject: Peakhill

Don

Peakhill's appeal was dismissed. Please ensure your client immediately returns our client deposit from the first deal which is dead given the attached endorsement from the court. I have copied the receivers counsel

This is **Exhibit “E”** referred to in the Affidavit of Kayla Sweet sworn by Kayla Sweet of the Town of Erin, in the County of Wellington, before me at the Town of New Hamburg, in the Province of Ontario, on May 10, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

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Commissioner for Taking Affidavits (or as may be)

HEATHER ANNE WALKER a Commissioner, etc., Province of Ontario, for Miller Thomson LLP, Barristers and Solicitors. Expires April 17, 2027.

Sweet, Kayla

From: Sherkin, Kevin
Sent: Saturday, April 27, 2024 12:28 PM
To: dmagisano@lerner.ca
Cc: Carli, Michael; zweigs@bennetjones.com
Subject: Re: Peakhill

Dom

I heard nothing .. we will be filing a complaint with RECO on Monday .. in addition we will be seeking interest from the day we requested your client return the funds .. based upon the cja that's about 5k a month
Sent from my iPhone

On Apr 18, 2024, at 2:07 PM, Sherkin, Kevin <ksherkin@millerthomson.com> wrote:

Don

Peakhill's appeal was dismissed. Please ensure your client immediately returns our client deposit from the first deal which is dead given the attached endorsement from the court. I have copied the receivers counsel

<COA-23-CV-1357.reen.pdf>

KEVIN SHERKIN

Providing services on behalf of a Professional Corporation
Partner


MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario | M5H 3S1
T +1 416.597.6028
ksherkin@millerthomson.com



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This is **Exhibit “F”** referred to in the Affidavit of Kayla Sweet sworn by Kayla Sweet of the Town of Erin, in the County of Wellington, before me at the Town of New Hamburg, in the Province of Ontario, on May 10, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

820FD18C181C48A...

Commissioner for Taking Affidavits (or as may be)

HEATHER ANNE WALKER, a Commissioner, etc., Province of Ontario, for Miller Thomson LLP, Barristers and Solicitors. Expires April 17, 2027.

Sweet, Kayla

From: Jason Squire <jsquire@lerner.ca>
Sent: Tuesday, April 30, 2024 4:15 PM
To: Sherkin, Kevin; Domenico Magisano
Cc: Carli, Michael; zweigs@bennetjones.com
Subject: RE: *EXT*-Re: Peakhill

Kevin:

Yes, I am just confirming the extent of Lerner's client group, but I will be dealing with matters relating to the Original APS Deposit, the Commission Trust Agreement, and at least Ren/Tex's commission. You can continue to copy Dom.

As set out in Mr. Racco's affidavit of December 19, 2023, it is our position that the commission is due to Ren/Tex, and note that Ren/Tex in turn has obligations pursuant to the Commission Trust Agreement. As we have made clear, a court order is necessary to deal with the distribution of the funds your client has demanded. Our client made the arrangements for the opportunity your client came to take the benefit of, and Ren/Tex is entitled to be paid for its efforts (as is the cooperating broker).

I am happy to coordinate the return of a motion to have the Commercial List deal with this matter.

Regards,

Jason Squire
office 416-601-2369

LEARNERS
JASON SQUIRE
Partner

✉ jsquire@lerner.ca
☎ 416.601.2369 | 📠 416.867.2404
📍 225 King St. West, Suite 1600, Toronto, Ontario, M5V 3M2
🌐 www.lerner.ca



From: Sherkin, Kevin <ksherkin@millerthomson.com>
Sent: April 30, 2024 1:38 PM
To: Domenico Magisano <dmagisano@lerner.ca>
Cc: Carli, Michael <mcarli@millerthomson.com>; zweigs@bennetjones.com; Jason Squire <jsquire@lerner.ca>
Subject: RE: *EXT*-Re: Peakhill

Jason

Do you intend to respond my client wants his money

KEVIN SHERKIN

Providing services on behalf of a Professional Corporation
Partner

MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, Ontario | M5H 3S1
T +1 416.597.6028
ksherkin@millerthomson.com



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From: Domenico Magisano <dmagisano@lerner.ca>

Sent: Saturday, April 27, 2024 12:30 PM

To: Sherkin, Kevin <ksherkin@millerthomson.com>

Cc: Carli, Michael <mcarli@millerthomson.com>; zweigs@bennetjones.com; Jason Squire <jsquire@lerner.ca>

Subject: [**EXT**] RE: *EXT*-Re: Peakhill

Kevin,

My partner Jason Squire (copied) will be responding to your e-mail.

Dom

LERNERS
DOMENICO MAGISANO
Partner

✉ dmagisano@lerner.ca

☎ 416.601.4121 | 📠 416.601.4123

📍 225 King St. West, Suite 1600, Toronto, Ontario, M5V 3M2

🌐 www.lerner.ca



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From: Sherkin, Kevin <ksherkin@millerthomson.com>

Sent: April 27, 2024 12:28 PM

To: Domenico Magisano <dmagisano@lerner.ca>

Cc: Carli, Michael <mcarli@millerthomson.com>; zweigs@bennetjones.com

Subject: *EXT*-Re: Peakhill

Dom

I heard nothing .. we will be filing a complaint with RECO on Monday .. in addition we will be seeking interest from the day we requested your client return the funds .. based upon the cja that's about 5k a month
Sent from my iPhone

On Apr 18, 2024, at 2:07 PM, Sherkin, Kevin <ksherkin@millerthomson.com> wrote:

Don

Peakhill's appeal was dismissed. Please ensure your client immediately returns our client deposit from the first deal which is dead given the attached endorsement from the court. I have copied the receivers counsel

<COA-23-CV-1357.reen.pdf>

KEVIN SHERKIN

Providing services on behalf of a Professional Corporation

Partner

MILLER THOMSON LLP

Scotia Plaza

40 King Street West, Suite 5800

P.O. Box 1011

Toronto, Ontario | M5H 3S1

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ksherkin@millerthomson.com



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<div><div>ONTARIO</div><div>SUPERIOR COURT OF JUSTICE</div><div>Proceeding Commenced at NEWMARKET</div></div>	
<div><div>AFFIDAVIT OF KAYLA SWEET</div><div>(SWORN MAY 10, 2024)</div></div>	
<div><div>MILLER THOMSON LLP</div><div>Scotia Plaza</div><div>40 King Street West, Suite 5800</div><div>P.O. Box 1011</div><div>Toronto ON M5H 3S1</div><div>Kevin D. Sherkin (LSO#: 27099B)</div><div>ksherkin@millerthomson.com</div><div>Tel: 416-597-6028</div><div>Mitchell Lightowler (LSO#: 76305T)</div><div>mightowler@millerthomson.com</div><div>Tel: 416-595-7938</div><div>Lawyers for 2557904 Ontario Inc.</div><div>Served by Email:</div><div>Dominique Michaud: dmichaud@robapp.com</div><div>Howard F. Manis: hmanis@manislaw.ca</div><div>Jason Squire: jsquire@lerner.ca</div><div>Sean Zweig: zweigs@bennettjones.com</div></div>	<div>RCP-F 4C (September 1, 2020)</div>

Tab 4

Court File No. CV-23-00004031-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE), THE
)	
JUSTICE)	DAY OF, 2024

B E T W E E N:

(Court Seal)

PEAKHILL CAPITAL INC.

Applicant

and

1000093910 ONTARIO INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C. 43, AS AMENDED**

ORDER

THIS MOTION, made by the 2557904 Ontario Inc. for an Order that deposit monies in the sum of \$1,000,000.00 currently held in trust by Ren/Tex Realty Inc. be released to 2557904 Ontario Inc., was heard this day, at 50 Eagle Street West, Newmarket, ON.

ON READING the Motion Record of the 2557904 Ontario Inc. and on hearing the submissions of the lawyers for 2557904 Ontario Inc., in attendance:

1. **THIS COURT ORDERS** that the deposit monies in the amount of \$1,000,000.00 currently held in trust by Ren/Tex Realty Inc. be returned to 2557904 Ontario Inc. plus interest of \$29,767.12 and shall be released to the 2667904 Ontario Inc., within seven (7) days.

2. **THIS COURT ORDERS** that Ren/Tex Realty Inc. shall pay the costs of the motion to the 2557904 Ontario Inc. in the amount of \$...... all-inclusive.

THIS ORDER BEARS INTEREST at the rate of percent per year commencing on the date hereof.

(Signature of judge, officer or registrar)

RCP-E 59A (January 2, 2024)

PEAKHILL CAPITAL INC. et al.
Applicants

Court File No. CV-23-00004031-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at NEWMARKET

ORDER

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Lawyers for the 2557904 Ontario Inc.

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RCP-F 4C (September 1, 2020)

PEAKHILL CAPITAL INC. et al.
Applicants

-and-

1000093910 ONTARIO INC.
Respondent

Court File No. CV-23-00004031-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at NEWMARKET

**MOTION RECORD
OF 2557905 ONTARIO INC. (returnable June
12, 2024 at 9:30 a.m.)**

MILLER THOMSON LLP

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Served by Email: Service List

RCP-F 4C (September 1, 2020)