

CITATION: Equitable Bank v. Ashcroft Homes – Capital Hall Inc., 2025 ONSC 6047
COURT FILE NO.: CV-25-00098805
DATE: 20251027

SUPERIOR COURT OF JUSTICE – ONTARIO

(OTTAWA COMMERCIAL LIST)

RE: EQUITABLE BANK, Applicant

AND:

ASHCROFT HOMES – CAPITAL HALL INC., Respondent

BEFORE: Mew J.

COUNSEL: *Calvin Horsten*, for the Applicant

Alexander Bissonnette, Thomas Conway, Natalia Rodriguez and Kevin Caron for
the Respondent

Chad Kopach, for KSV Restructuring Inc. in its capacity as Court-Appointed
Receiver

Stephen Kroeger, for Grant Thornton Limited

Andrew Evangelista, for Northbridge Financial Corporation

Deborah Berlach, Advisory Counsel to the Receiver

HEARD: 24 October 2025 (by videoconference)

ENDORSEMENT

(Motion for Orders approving Settlement of Ashcroft Homes - Capital Hall Inc.
Litigation and Discharge of Receiver)

- [1] The Court-Appointed Receiver of Ashcroft Homes – Capital Hall Inc. (“Capital Hall”) – seeks, *inter alia*, an order approving a settlement entered into by KSV Restructuring Inc. in its capacity as Court-Appointed Receiver (the “Receiver”) concerning an action brought by Capital Hall against Northbridge Financial Corporation (“Northbridge”).

Background

- [2] The proposed settlement involves a residential condominium building with 353 units located at 105 Champagne Avenue South, Ottawa (the “Building”) which was designed,

developed and constructed by Capital Hall. Construction of the Building, which was completed in May 2021, was interrupted by a fire that occurred in 2018.

- [3] As of the date of the Receivership Order on 24 February 2025, Capital Hall continued to own and manage 110 of the 353 residential condominium units at the Building.
- [4] Capital Hall brought a claim against Northbridge seeking damages of approximately \$60 million for reconstruction costs, delayed start-up, and interest on funds that Capital Hall was required to borrow to complete the Building.
- [5] An eight-week trial of Capital Hall's action against Northbridge (which was continued by the Receiver following its appointment) was scheduled to commence in Ottawa on 6 October 2025. Capital Hall is represented by Conway Baxter Wilson LLP in that litigation. Northbridge is represented by Evangelista Barristers and Solicitors.
- [6] A round of negotiations which commenced on 29 August 2025 culminated in a settlement proposal on 17 September 2025. After the Receiver obtained an opinion from Deborah Berlach of Stieber Berlach LLP on the reasonableness of the proposed settlement, a confidential settlement agreement was reached.
- [7] The Receiver now seeks the court's approval of the settlement and discharge of the Receiver.

The Settlement

- [8] The financial terms of the proposed settlement are contained in a confidential volume filed as part of the motion record. This volume contains the Full and Final Release executed by the Receiver on 1 October 2025 as part of the settlement arrangement, and a letter from Ms. Berlach dated 15 October 2025, confirming her opinion that the proposed settlement is reasonable.
- [9] It is an express term of the settlement agreement that it not be disclosed (with certain exceptions), other than to the court. Northbridge is not prepared to proceed with the settlement if the terms of the settlement agreement, and in particular the release and Ms. Berlach's opinion letter, are not subject to a sealing order made pursuant to s. 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.
- [10] Setting to one side the question of whether a sealing order is appropriate, and having reviewed the Second Report of KSV Restructuring Inc. as Receiver dated 16 October 2025 and Ms. Berlach's opinion, I am satisfied that the proposed settlement is reasonable in all of the circumstances. In doing so I adopt the summary recommendations provided by the Receiver in support of its request for court approval:
 - a. there are inherent risks in any litigation. There is no certainty that judgment would ultimately have been awarded to Capital Hall for any or all of the amount of its claim against Northbridge;

- b. the trial was scheduled to commence on 6 October 2025, subject to the availability of judicial resources. Given the complexities and quantum of the claim, a decision would not likely have been rendered for several months, with a reasonable expectation of at least one appeal;
- c. absent a settlement, the professional costs associated with litigating the claim and continuing to administer the receivership likely for several years would have been in the millions of dollars;
- d. the settlement provides a certain outcome and the amount of the settlement is to be paid immediately following court approval;
- e. the Receiver and Stieber Berlach believe that the commercial terms of the settlement are reasonable; and
- f. Equitable Bank, the principal and first secured creditor of Capital Hall, supports the settlement, as does Ashcroft Homes Group.

Sealing Order

- [11] Section 137(2) of the *Courts of Justice Act* provides that the court may order that any document filed in a civil proceeding be treated as confidential, sealed, and not part of the public record.
- [12] In *Sherman Estate v. Donovan*, 2021 SCC 25, [2021] 2 S.C.R. 75, at para. 38, the Supreme Court reaffirmed and reformulated the test applicable to a determination of whether a sealing order should be granted, as set out in its 2002 decision in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 S.C.R. 522:

The test for discretionary limits on presumptive court openness has been expressed as a two-step inquiry involving the necessity and proportionality of the proposed order (*Sierra Club*, at para. 53). Upon examination, however, this test rests upon three core prerequisites that a person seeking such a limit must show. Recasting the test around these three prerequisites, without altering its essence, helps to clarify the burden on an applicant seeking an exception to the open court principle. In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:

- (1) court openness poses a serious risk to an important public interest;
- (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
- (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.

Only where all three of these prerequisites have been met can a discretionary limit on openness — for example, a sealing order, a publication ban, an order excluding the public from a hearing, or a redaction order — properly be ordered. This test applies to all discretionary limits on court openness, subject only to valid legislative enactments (*Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41, [2005] 2 S.C.R. 188, at paras. 7 and 22).

- [13] The sealing order in this case is being sought at the insistence of Northbridge. The Receiver, the parties, and the other interests represented at the hearing of this motion, either consent to the order sought, or do not oppose it.
- [14] Before turning to an analysis of the *Sherman* factors, I would observe that had the insurance coverage litigation between Capital Hall and Northbridge gone to trial, the proceedings at trial and the outcome would have been matters of public record.
- [15] Confidentiality provisions in releases are not unusual: *Carroll v. Natsis*, 2020 ONSC 3263 (CanLII). However, in the absence of other reasons, the fact that an agreement includes a term requiring that the terms of a settlement shall be kept confidential is not in and of itself a sufficient basis for a sealing order: *Carroll*, at para. 98. As Kimmel J. aptly stated in *Royal Bank of Canada v. Distinct Infrastructure Group Inc.*, 2022 ONSC 5878, at paras. 26-28, each case must be justified on its own merits: "...there is no guarantee that the court will rubber stamp sealing orders just because of a confidentiality or sealing order clause".
- [16] That said, as a practical matter, and as observed by Lederer J. in *Magnotta Winery Corporation v The Alcohol and Gaming Commission (Ontario)*, 2015 ONSC 2612, at para. 3:

One of the inducements to settlement is the acknowledgement, often agreed to by the parties, that the terms of the settlement will remain confidential.
- [17] Turning to the application to of the *Sherman* factors to the Receiver's request, the first consideration is the public interest.
- [18] The Receiver submits that maximisation of recovery in insolvency has been found to constitute an important public interest for the purpose of obtaining a sealing order, as has the promotion of settlements. In this receivership proceeding, the sealing of the confidential information is necessary to ensure that recoveries are maximised.
- [19] The Receiver continues, suggesting that the granting of a sealing order in respect of commercially sensitive information is "standard practice" in insolvency proceedings.
- [20] In my view, that submission overstates the position. Not all settlements are commercially sensitive. In fact, nothing in the present record suggests that the proposed settlement with Northbridge is commercially sensitive. Even where there is a claim that information is commercially sensitive, a critical evaluation of that claim is warranted. As Cavanagh J.

stated in *Amgen Inc. v. Apotex Inc.*, unreported, Court File No. CV-21-00665009-00CL (Toronto), 10 August 2021, at para. 17:

In *Sierra Club*, the Supreme Court of Canada, at paras. 59-60, recognized that the preservation of confidential information constitutes a sufficiently important commercial interest to pass the first branch of the test as long as certain criteria relating to the information are met. The applicant must demonstrate that the information in question has been treated at all relevant times as confidential and that on a balance of probabilities its proprietary, commercial, and scientific interests could reasonably be harmed by the disclosure of the information. The information must be of a “confidential nature” in that it has been “accumulated with a reasonable expectation of it being kept confidential” as opposed to “facts which a litigant would like to keep confidential by having the courtroom doors closed” [emphasis added].

- [21] There are certain processes in the insolvency context, for example when there is a sale process, for which courts have recognised, as a matter of standard practice, that all aspects of the bidding or sales process should be kept confidential: *Yukon (Government of) v. Yukon Zinc Corporation*, 2022 YKSC 2 (CanLII), at para. 39.
- [22] Similarly, where parties settle following a mediation under terms of confidentiality, a court will typically exercise its discretion to preserve that confidentiality because it furthers the expressed intentions of the parties as well as the public policy of encouraging extra-judicial settlements: *Union Carbide Canada Inc. v. Bombardier Inc.*, 2014 SCC 35 (CanLII), [2014] 1 SCR 800, at para. 49.
- [23] In the present case, the most compelling argument under the first *Sherman* factor is that if the sealing order is denied, there will be no settlement with Northbridge – a settlement which an independent specialist counsel has opined is reasonable. Instead, Northbridge and Capital Hall would return to court, having now missed the current Ottawa long trial window. A lengthy and expensive trial would eventually ensue, with no guarantee that the outcome would be as or more favourable to Capital Hall’s creditors than the proposed settlement, quite possibly followed by an appeal, with all of the attendant risk, expense and delay. In the meantime, the receivership would continue. Interest and costs would continue to accrue.
- [24] In my view, in the circumstances of this case, the public interest in the consummation of the settlement agreement between Capital Hall and Northbridge outweighs the important principle of court openness.
- [25] The second *Sherman* factor requires the court to consider whether a sealing order is necessary because there are no reasonable alternative measures that would prevent the loss of the settlement with Northbridge and, hence, the maximisation of asset value for the benefit of stakeholders: *In the Matter of the Companies’ Creditors Arrangement Act and*

In the Matter of a Plan of Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc., 2023 ONSC 753 (CanLII), at paras. 60-62.

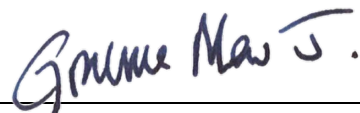
- [26] In the present case there are no reasonable alternatives to a sealing order which would prevent the risks to the stakeholders.
- [27] Thirdly, in considering whether as a matter of proportionality, the benefits of the proposed sealing order outweigh its negative impact on the operation of the open court principle, it is noteworthy that no stakeholder has opposed the Receiver's request. Such public interest as there might be in disclosure of the amount of the Northbridge settlement (as opposed to the fact of the settlement, which is in the public record) is more than outweighed by the benefits of the confidentiality provision and the resultant request for a sealing order to secure the implementation of that settlement.
- [28] It is worth adding, as noted in the Receiver's submissions, that the sealing order which it seeks is not absolute. It remains subject to further order of the court.

Other Matters

- [29] The following matters raised by counsel were noted:
- a. \$82,927.77 is to be held back by the Receiver pending further order of the court in relation to *Condominium Act* lien issues;
 - b. Capital Hall, as debtor, asked the court to set an outside date for the discharge of the Receiver. The Receiver declined to agree to such a term. In the absence of a record that would support the court inserting an outside date for the discharge of the Receiver, the court declines to do so.

Decision

- [30] I am satisfied that the court should exercise its discretion to make the requested sealing order.
- [31] There being no other issues arising from the Receiver's motion which require resolution, an order shall go in the form of the draft order submitted by Mr. Kopach.



 Mew J.

Date: 27 October 2025