

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CMLS FINANCIAL LTD.

Applicant

-and-

ASHCROFT URBAN DEVELOPMENTS 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**

**FACTUM OF THE RECEIVER
(Sale Process Approval)**

March 19, 2025

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in its capacity as Court-appointed
Receiver

TO: SERVICE LIST

PART I – OVERVIEW

1. On February 24, 2025, following a December 5, 2024 application for protection under the *Companies' Creditors Arrangement Act* (the “**CCAA Proceedings**”) by Ashcroft Urban Developments Inc. (“**AUDI**”) and other related companies (the “**Ashcroft Group**”), and a January 3, 2025 Order appointing KSV Restructuring Inc. (“**KSV**”) as interim receiver (the “**Interim Receiver**”) over Audi and other Ashcroft Group companies, the Ontario Superior Court of Justice issued an Order (the “**Receivership Order**”) appointing KSV as the receiver and manager (the “**Receiver**”), without security, all of the property, assets and undertakings (the “**Property**”) of the Respondent, AUDI, on application by CMLS Financial Ltd. (“**CMLS**”), AUDI’s first mortgagee.
2. AUDI’s principal asset is the real property located at 101 Queen Street and 110 Sparks Street, Ottawa, Ontario (the “**Real Property**”), which consists of a luxury hotel and condominiums branded as “ReStays”.
3. On this motion, the Receiver seeks an Order, among other things:
 - (a) approving a proposed Sales Process (defined below) for the Real Property; and,
 - (b) sealing the confidential appendix attached to the Receiver’s First Report dated March 13, 2025 (“**First Report**”), being a summary of a Realtor Proposals (as defined below), pending completion of a sale of the Real Property, or until further Order of this Court (whichever is earlier).
4. The Sales Process is a fair, open, and transparent process that was developed with the assistance of two leading real estate brokerages, and has the support of CMLS. The Sales Process

is designed and intended to canvass the market broadly on an efficient basis to obtain the highest and best price for the Real Property.

5. The Realtor Proposals contain sensitive business information that if made public would prejudice the sales process and recoveries to AUDI's stakeholders.

PART II – FACTS

Procedural Background to the Receivership

6. On December 5, 2024, the Court issued an Initial Order in the CCAA Proceedings to AUDI and the Ashcroft Group.¹

7. The continuation of the CCAA Proceedings was opposed at the comeback motion heard on December 12, 2024. Pursuant to the Honourable Justice Mew's decision dated December 20, 2024, the Court dismissed the motion to extend the CCAA Proceedings and allowed a motion made by CMLS to appoint KSV as interim receiver of AUDI. KSV was also appointed as Interim Receiver over other Ashcroft Group companies by way of motions brought by certain other lenders.²

8. By way of the order of Justice Mew dated January 3, 2025, KSV was appointed interim receiver of the assets, undertakings, and properties of AUDI, and other Ashcroft Group companies (the "**Interim Receivership Order**").³

¹ Motion Record of the Receiver dated March 14, 2025 ("**Receiver's Record**"), First Report, para 1.1.

² Receiver's Record, First Report, para 1.2 and Appendix "A", Reasons for decision of Justice Mew dated December 20, 2025.

³ Receiver's Record, First Report, para 1.3 and Appendix "B", Interim Receivership Order.

9. Following the granting of the Interim Receivership Order, CMLS commenced the within application seeking, among other things, to convert the Interim Receivership Order to a full Receivership Order. On February 24, 2025, the Honourable Justice Mew granted the Receivership Order.⁴

10. AUDI is currently indebted to CMLS in the approximate amount of \$52,000,000, with interest and costs continuing to accrue. CMLS is the principal secured creditor of AUDI, holding a first ranking mortgage and general assignment of rents registered on title to the Real Property.⁵

The Proposed Marketing and Sales Process

i. Broker Selection Process

11. On or about January 15, 2025, the Interim Receiver (at the time) invited three national real estate brokerages (the “**Realtors**”) to submit proposals to list the Real Property for sale (the “**RFP Process**”). Each of the Realtors submitted a proposal (collectively, the “**Realtor Proposals**”), and in a series of meetings held February 13, 14 and 18, 2025, representatives from the Receiver and CMLS met with the Realtors to review the Realtor Proposals and understand their respective approaches to market the Real Property for sale.⁶

12. After evaluating the proposals in conjunction with CMLS, the Receiver selected TD Cornerstone Commercial Realty Inc. and Cushman & Wakefield Ottawa (collectively, the “**Brokers**”) to assist the Receiver to carry out a sale process for the Real Property. The Receiver

⁴ Receiver’s Record, First Report, para 1.5 and Appendix “C”, Receivership Order.

⁵ Receiver’s Record, First Report, paras 2.2(3)-(4).

⁶ Receiver’s Record, First Report, paras 3.1(1)-(3).

and the Brokers executed an exclusive listing and advisory agreement on March 13, 2025 (the “**Listing Agreement**”).⁷

13. The decision was based on, amongst other things:⁸

- (a) the Brokers’ knowledge of the Ottawa hospitality market;
- (b) the Brokers’ proposed marketing process; and,
- (c) the experience of the Brokers’ respective teams;

ii. The Sales Process Timelines

14. The Receiver, with the assistance of Brokers, developed the sales process for the Real Property (the “**Sales Process**”). The Sales Process runs for just over three months and is divided into three phases, each with its own milestones. The timelines and milestones for the Sales Process are summarized below and are more fully described at paragraph 3.2 of the First Report.⁹

15. The first phase has already begun, and runs from March 3 to April 7, 2025. This phase includes, among other things: (i) executing the listing agreement with the Brokers; (ii) due diligence on the Real Property; (ii) preparing strategic marketing materials, populating data rooms for potential purchasers, and preparing a confidentiality agreement and confidential information memorandum; and, (iii) identifying and prioritizing target buyer prospects in the market.¹⁰

⁷ Receiver’s Record, First Report, paras 3.1(4)-(5).

⁸ Receiver’s Record, First Report, para 3.1(4).

⁹ Receiver’s Record, First Report, para 3.2(1)

¹⁰ *Ibid.*

16. The second phase is scheduled to run from April 8 to May 20, 2025, and includes, among other things: (i) a mass market marketing campaign involving distributing marketing materials to prospects, publication of the acquisition opportunity on websites and trade specific forums, and direct communication with leading prospects and potential purchasers; (ii) facilitating purchaser due diligence, such as providing access to the data room to qualified interested prospects and giving tours of the Real Property; (iii) preparing a vendor's form of purchase and sale agreement (PSA); and, (iv) inviting prospective purchasers to submit PSAs.¹¹

17. The third and final phase is scheduled to run from May 21 to June 13, 2025, and includes among other things: (i) a phased bidding process that can adapt to the volume and quality of interested purchasers of the Real Property to increase the probability of obtaining the highest and best price for the Real Property; (ii) selecting the successful bidder; and, (iii) preparing motion materials for Court approval for sale approval.¹²

18. It is expected that a transaction will thereafter close as soon as possible after an offer has been accepted and following Court approval.¹³

iii. Other Key Features of the Sales Process

19. Additional aspects of the Sales Process are set out at section 3.2(2) of the First Report, and will include:¹⁴

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Receiver's Record, First Report, at para 3.2(2)(a) to (f).

- (a) the Real Property is being sold on an “as-is” basis with other standard conditions for a receivership sale;
- (b) if the Receiver believes it is appropriate to better facilitate the sale of the Real Property it may bring a motion to amend the Sales Process;
- (c) the Receiver may, in its discretion, adjust any timeline in the Sales Process up to four weeks provided CMLS does not object;
- (d) any material modification or termination of the Sales Process requires Court approval;
- (e) the Receiver, acting reasonably, has the power to reject any and all offers;
- (f) if the highest and best offer received does not generate proceeds sufficient to repay CMLS in full and CMLS does not consent to the proposed transaction, the Receiver will terminate the Sale Process and CMLS will then have the option to credit bid its debt to purchase the Property; and,
- (g) any sales transaction for the Real Property will be subject to Court approval.

PART III – ISSUES

20. The issues to be decided on the Receiver’s motion are whether the Court should (a) approve the Sale Process for the Real Property, as proposed by the Receiver, and (b) seal the Receiver’s summary of the Realtor Proposals.

PART IV – LAW AND ARGUMENT

A. The Sale Procedure Should be Approved

21. Court-appointed receivers have the powers set out in the Orders appointing them. The Receivership Order, amongst other things, authorizes and grants the Receiver the powers to deal with the Real Property, specifically:¹⁵

- (a) take possession of and exercise control over the Property (including the Real Property) and any and all proceeds, receipts and disbursements arising out of or from the Property (para 4(a));
- (b) engage brokers (among others) to assist with the exercise of the Receiver's powers and duties, including those conferred by the Receivership Order (para 4(e));
- (c) market any or all of the Property for sale, including advertising and soliciting offers in respect of the Property or any part or parts thereof, and soliciting and entering into engagement proposals by brokers, and negotiating such terms and conditions of sale or engagement as the Receiver in its discretion may deem appropriate (para 4(m)); and,
- (d) apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property (para 4(o)).

¹⁵ Receiver's Record, First Report, Appendix "C", Receivership Order, at para 4.

22. Pursuant to section 243(1)(c) of the *Bankruptcy and Insolvency Act*, this Court has jurisdiction to approve the proposed Sale Process.¹⁶

23. Although the decision to approve a particular form of sale process is distinct from the approval of a proposed sale, the reasonableness and adequacy of any sale process that is proposed by a receiver must be assessed in light of the factors that a Court will take into account when considering the sale approval. These are the *Soundair* factors, namely:

- (a) whether the receiver has made a sufficient effort to get the best price, and has not acted improvidently;
- (b) whether the interests of all parties have been considered;
- (c) the efficacy and integrity of the process by which offers are obtained; and,
- (d) whether there has been unfairness in the working out of the process.¹⁷

24. Accordingly, when reviewing a sales and marketing process proposed by a receiver, a court should assess:

- (a) the fairness, transparency and integrity of the proposed process;
- (b) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and,
- (c) whether the sale process will optimize the chances, in the particular circumstances,

¹⁶ *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, [section 243\(1\)\(c\)](#).

¹⁷ *KEB Hana Bank v Mizrahi Commercial (The One) LP et al* (“*KEB v. Mizrahi*”), 2024 ONSC 3739 (Ont. S.C.J. – CL) at [para 60](#), citing *Royal Bank of Canada v Soundair Corp.*, 1991 CanLII 2727 (Ont. C.A.).

of securing the best possible price for the assets up for sale.¹⁸

25. A proposed sale process need not be perfect, only reasonable. The Court ought to give significant weight to the recommendation of its receiver, who is a court-appointed officer with significant expertise in insolvency proceedings.¹⁹

26. The Receiver's proposed Sale Process satisfies the above-noted factors to approve a sales process:²⁰

- (a) The Sale Process is fair, open and transparent, and provides the Receiver with the timelines, procedures and flexibility that it believes are necessary to maximize value;
- (b) the Brokers, who have significant expertise and knowledge to market the Real Property, were retained through an RFP Process and in consultation with CMLS;
- (c) the Sale Process will canvass the market broadly on an efficient basis to obtain the highest and best price, including a flexible bidding process that involves multiple rounds and that can also be adapted to an auction depending on the volume and quality of bids received;
- (d) KSV has conducted real property sale processes in other insolvency proceedings using similar timelines and marketing; and,

¹⁸ *KEB v. Mizrahi* at para 59, and *CCM Master Qualified Fund v. Bluetip Power Technologies*, 2012 ONSC 1750 (Ont. S.C.J. – CL) at para 6.

¹⁹ *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, 2021 ONCA 375 at paras 15 and 19.

²⁰ Receiver's Record, First Report, para 3.3(1)(a) to (f).

- (e) the Sale Process was developed with feedback from CMLS, who consents to it.

27. For the foregoing reasons, it is commercially reasonable and appropriate to approve the Sale Process.

B. Sealing Order

28. Pursuant to s. 137(2) of the *Courts of Justice Act*, R.S.O. c. C.43, the Receiver requests that the unredacted summary of Realtor Proposals attached as a confidential exhibit to the First Report, be temporarily treated as confidential and sealed, and not form part of the public record, pending completion of a sale of the Real Property, or until further Order of this Court (whichever is earlier).

29. The test for a sealing order was established by the Supreme Court in *Sierra Club*, and subsequently recast in *Sherman Estate*. The test requires the court to consider whether:²¹

- (a) Court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identifiable interest because reasonable alternative measures will not prevent this risk; and,
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

30. Each of these considerations support the proposed sealing order:

- (a) **Public Interest:** The maximization of recovery in insolvency has been found to constitute an important public interest for the purpose of obtaining a sealing

²¹ *Sherman Estate v. Donovan*, [2021 SCC 25](#), at [para. 38](#).

order. The granting of a sealing order in respect of commercially sensitive information is therefore “standard practice” in insolvency proceedings,²² and courts have approved sealing orders where they are required to protect commercially sensitive information, including in respect of the purchase price.²³ The summary of Realtor Proposals contains opinions of value for the Real Property, which if disclosed to potential purchasers could adversely impact the bidding process by creating a “ceiling” bid and thereby negatively affecting realizations for the Real Property. Sealing of this information is necessary to ensure that recoveries in these receivership proceedings are maximized.²⁴

- (b) **Lack of a Reasonable Alternative:** Courts in insolvency proceedings have found that there is no reasonable alternative to a sealing order in circumstances where declining to grant the proposed order would materially impair the maximization of asset value for the benefit of stakeholders.²⁵ In the present case, there are no reasonable alternatives to a sealing order which would prevent the risks to the stakeholders outlined above.
- (c) **Proportionality:** The benefits of the proposed sealing order greatly exceed any disadvantages. No party will be prejudiced by the temporary sealing of the commercially sensitive information, and no public interest will be served if it

²² *Yukon (Government of) v. Yukon Zinc Corporation*, [2022 YKSC 2](#) (YT. S.C.), at [para. 39](#).

²³ *Danier Leather Inc., Re*, [2016 ONSC 1044](#) (Ont. S.C.J. – Commercial List), at [para. 84](#); *Elleway Acquisitions Limited v. 4358376 Canada Inc. (“Elleway Acquisitions”)*, [2013 ONSC 7009](#) (Ont. S.C.J. - Commercial List), at [para 48](#).

²⁴ Receiver’s Record, First Report, at para 3.4(1).

²⁵ *Original Traders Energy Ltd. (Re)*, (“*Original Traders*”), [2023 ONSC 753](#) (Ont. S.C.J. - Commercial List), at [paras. 60-62](#).

is made public prior to closing, prejudicing stakeholder recoveries in the process.²⁶

PART V – ORDER REQUESTED

31. For the reasons set out above, the Receiver requests that this Court approve the Sale Procedure for the sale of the Real Property, and grant a sealing order in respect of the summary of Realtor Proposals.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of March, 2025.



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²⁶ See *Elleway Acquisitions*, at [para. 48](#), in which the court held that the beneficial effects of maximizing recoveries in insolvency greatly outweigh any deleterious effects which could result for sealing an APA pending a transaction closing.

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *CCM Master Qualified Fund v. blutip Power Technologies*, [2012 ONSC 1750](#).
2. *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#).
3. *Elleway Acquisitions Limited v. 4358376 Canada Inc.*, [2013 ONSC 7009](#) (Ont. S.C.J. - Commercial List)
4. *KEB Hana Bank v Mizrahi Commercial (The One) LP et al*, [2024 ONSC 3739](#) (Ont. S.C.J. – CL)
5. *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, [2021 ONCA 375](#)
6. *Original Traders Energy Ltd. (Re)*, [2023 ONSC 753](#) (Ont. S.C.J. -Commercial List)
7. *Royal Bank of Canada v Soundair Corp.*, [1991 CanLII 2727](#) (Ont. C.A.)
8. *Sherman Estate v. Donovan*, [2021 SCC 25](#)
9. *Yukon (Government of) v. Yukon Zinc Corporation*, [2022 YKSC 2](#) (YT. S.C.)

Schedule “B”: Text of Statutes, Regulations & By-Laws

BANKRUPTCY AND INSOLVENCY ACT

R.S.C., 1985, c. B-3, as amended

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

COURTS OF JUSTICE ACT

R.S.O. 1990, c. C.43, as amended

Sealing documents

137 (2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Court File No. CV-25-00098804-0000

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