

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF 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**

**AND IN THE MATTER OF THE APPOINTMENT OF A RECEIVER OVER
THE PROPERTY, ASSETS AND UNDERTAKING OF 2067166
ONTARIO INC., 2265132 ONTARIO INC., ASHCROFT HOMES – LA
PROMENADE INC., 2195186 ONTARIO INC., 1384274 ONTARIO INC.
AND 1019883 ONTARIO INC.**

**FACTUM OF KSV RESTRUCTURING INC.,
IN ITS CAPACITY AS RECEIVER AND MANAGER**

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TO: THE SERVICE LIST

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IN ITS CAPACITY AS RECEIVER AND MANAGER**

PART I - INTRODUCTION

1. KSV Restructuring Inc. ("**KSV**"), in its capacity as receiver and manager (in such capacity, the "**Receiver**") of the lands listed on Schedule "A" to the Receivership Order (defined below) and the property, assets and undertaking (collectively, the "**Property**") of each of 2195186 Ontario Inc., Ashcroft Homes – La Promenade Inc. ("**Promenade Senior**"), 2265132 Ontario Inc. ("**Ravines Senior**"), 1384274 Ontario Inc. ("**138 Ontario**"), 2067166 Ontario Inc. ("**Park Place Senior**"), 1019883 Ontario Inc. (the "**Head Office Company**" and collectively, the "**Companies**"), brings this motion seeking an Order, among other things:

- (a) approving the proposed sale process (the "**Ravines Sale Process**") for the properties owned by Ravines Senior and 138 Ontario located at 636 Prado Private, Ottawa, Ontario;
- (b) approving the proposed sale process (the "**Promenade Sale Process**") for the properties owned by Promenade Senior located at 100, 130 and 150 Rossignol Drive, Ottawa, Ontario (together, the "**Promenade Properties**");

- (c) approving the First Report to Court dated March 13, 2025 (the “**First Report**”), the Second Report of the Receiver dated May 20, 2025¹ (the “**Second Report**” and together with the First Report, the “**Reports**”), and the Receiver’s activities detailed therein; and
- (d) amending the Order of this Court dated February 24, 2025 (the “**Receivership Order**”) to rectify the legal description of certain properties listed in Schedule “A” attached thereto.

PART II - SUMMARY OF FACTS

2. The facts with respect to this motion are set out in more detail in the Second Report. Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Second Report.

Background

3. On February 24, 2025, the Court granted the Receivership Order appointing KSV as Receiver, without security, of all of the Property of the Companies pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3,² as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43,³ as amended (the “**CJA**”). Prior to the granting of the Receivership Order, the Companies had commenced proceedings pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1990, c. C-36, which proceedings were terminated after the appointment of KSV as interim receiver pursuant to an Order of the Court dated December 20, 2024.⁴

¹ Second Report of the Receiver, KSV Restructuring Inc. (the “**Receiver**”), dated May 20, 2025 (the “**Second Report**”), Motion Record of the Receiver (“**MR**”), Tab 2.

² *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s. [243\(1\)](#) [**BIA**].

³ *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. [101](#) [**CJA**].

⁴ Second Report at paras 1.0.1-1.0.5, MR, Tab 2, pp 12-13.

4. The Companies are incorporated in Ontario and carry on business as part of the Ashcroft Homes Group, a residential and commercial real estate developer owned, directly or indirectly, by Mr. David Choo (“**Choo**”). The Companies manage several properties from the Head Office Company’s owned office building in Nepean, Ontario. Other than the Head Office Company’s property, the Companies’ real property consists of, among other things, three seniors facilities: Park Place Senior, Ravines Senior and Promenade Senior; and a student residence, Envie I. 138 Ontario owns the parking lot that is used by Ravines Senior and Ravines Retirement.⁵

5. There is one or more mortgages registered on title to the real property owned by each of the Companies.⁶

The Ravines Sales Process

6. The Receiver, with the assistance of its proposed listing agent, Newmark Real Estate Canada Limited (“**Newmark**”), has developed the Ravines Sale Process, which is divided into five stages, each with specific timelines and milestones. Newmark is the listing agent for the sale process commenced by BDO Canada Limited, the receiver of the adjacent property, Ravines Retirement, which was approved by the Court on April 17, 2025 (the “**BDO Sale Process Order**”). The milestones and timelines are consistent with those approved by the Court pursuant to the BDO Sale Process Order, including the bid deadline.⁷

7. The timelines and milestones for the Ravines Sales Process are described at paragraph 3.2.1 of the Second Report. Additional aspects of the Ravines Sales Process are set out at section 3.2.2 of the Second Report, and will include:⁸

⁵ Second Report at paras 2.0.1-2.0.2, MR, Tab 2, p 15.

⁶ Second Report at para 2.0.2, MR, Tab 2, p 15.

⁷ Second Report at paras 3.1.1-3.2.3 and 3.2.1, MR, Tab 2, pp 15-16.

⁸ Second Report at para 3.2.2, MR, Tab 2, p 17.

- (a) the listing for Ravines Senior will be unpriced;
- (b) Ravines Senior will be marketed and sold on an “as-is” basis with other standard conditions for a receivership transaction;
- (c) the Receiver may amend any timeline in the Ravines Sale Process without Court approval, provided the timeline extension does not exceed 30 days;
- (d) the Receiver may bring a motion to amend the Ravines Sale Process, including any timeline greater than 30 days, if it considers it appropriate to better facilitate the sale of Ravines Senior;
- (e) any material modification or termination of the Ravines Sales Process requires Court approval;
- (f) the Receiver, acting reasonably, has the power to reject any offer;
- (g) nothing in the Ravines Sale Process affects ACM’s right to submit a credit bid for Ravines Senior at the conclusion of the Ravines Sale Process; and
- (h) any sales transaction generated under the Ravines Sale Process will be subject to Court approval.

The Promenade Sales Process

8. The Receiver selected CBRE Limited (“**CBRE**”) as its proposed listing agent to list the Promenade Properties after soliciting proposals from three reputable realtors. The Receiver, with the assistance of CBRE, developed the Promenade Sale Process for the Promenade Properties.

The Promenade Sale Process is divided into three phases, each with its own milestones and timelines.⁹

9. The timelines and milestones for the Promenade Sales Process are described at paragraph 4.2.1 of the Second Report. Additional aspects of the Promenade Sales Process are set out at section 4.2.3 of the Second Report, and will include:¹⁰

- (a) the listings for the Promenade Properties will be unpriced;
- (b) CBRE will use customary procedures to market and sell real estate for the vacant parcel of land at 100 Rossignol Drive, including listing it on Multiple Listing Service (MLS) and placing “for sale” signage on the property;
- (c) the Promenade Properties will be marketed and sold on an “as-is” basis with other standard conditions for a receivership transaction;
- (d) the Receiver may amend any timeline in the Promenade Sale Process without Court approval, provided the timeline extension does not exceed 30 days;
- (e) the Receiver may bring a motion to amend the Promenade Sale Process, including any timeline greater than 30 days, if it considers it appropriate to better facilitate the sale of the Promenade Properties;
- (f) any material modification or termination of the Promenade Sales Process requires Court approval;
- (g) the Receiver, acting reasonably, has the power to reject any offer;

⁹ Second Report at paras 4.1.1-4.1.4, and 4.2.1, MR, Tab 2, pp 18-19.

¹⁰ Second Report at para 4.2.3, MR, Tab 2, p 21.

- (h) nothing in the Promenade Sale Process affects IMC's right to submit a credit bid for the Promenade Properties at the conclusion of the Promenade Sale Process; and
- (i) any transaction(s) generated under the Promenade Sale Process will be subject to Court approval.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

10. The issues for the Court to consider are as follows:

- (a) should the Ravines Sale Process and the Promenade Sale Process (together, the **"Sale Processes"**) be approved?
- (b) should the ancillary relief requested, including amending the Receivership Order to rectify the legal description of certain properties and approving the Reports and the Receiver's activities described therein, be approved?

The Sale Processes Should be Approved

11. Court-appointed receivers have the powers set out in the Orders appointing them. The Receivership Order, among other things, authorizes and grants the Receiver the powers to manage the Property as follows, among other things:

- (a) take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;¹¹
- (b) engage agents and such other persons to assist with the exercise of the Receiver's powers and duties, including those conferred by the Receivership Order;¹²

¹¹ Second Report, Appendix "A", at para 6(a), MR, Tab 2, p 28.

¹² Second Report, Appendix "A", at para 6(d), MR, Tab 2, p 29.

- (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 negotiating such terms and conditions of sale or engagement as the Receiver in its discretion, and with the consent of the applicable mortgagees, may deem appropriate;¹³ 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.¹⁴

12. Pursuant to subsection 243(1)(c) of the BIA, this Court has jurisdiction to approve the proposed Sale Processes.¹⁵

13. Although the decision to approve a particular form of sale process is distinct from the approval of a proposed sale, courts have held that the reasonableness and adequacy of any sale process proposed by a court-appointed receiver must be assessed with reference to the factors that a court will consider when approving a proposed sale, as follows:¹⁶

- (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.

¹³ Second Report, Appendix "A", at para 6(k), MR, Tab 2, pp 29-30.

¹⁴ Second Report, Appendix "A", at para 6(m), MR, Tab 2, p 30.

¹⁵ BIA, s. [243\(1\)\(c\)](#).

¹⁶ [Royal Bank of Canada v Soundair Corp.](#), 1991 CanLII 2727; [CCM Master Qualified Fund v blutip Power Technologies](#), 2012 ONSC 1750 at para [6](#) [**CCM Master**]; [Choice Properties Limited Partnership v Penady \(Barrie\) Ltd.](#), 2020 ONSC 3517 at para [16](#).

14. Accordingly, when reviewing a sales and marketing process proposed by a receiver, a court should assess:¹⁷

- (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 circumstance, of securing the best possible price for the assets up for sale.

15. The proposed sale process need not be perfect, only reasonable. A court should give significant weight to the recommendation of its receiver, who is a court-appointed officer with significant expertise in insolvency proceedings.¹⁸

16. Approval of the Ravines Sale Process should be granted at this time including for the following reasons:¹⁹

- (a) the Ravines Sale Process is a fair, open and transparent process, developed with input from Newmark, and is intended to canvass the market broadly on an efficient basis to obtain the highest and best price;
- (b) the Ravines Sale Process provides the Receiver with the timelines, procedures and flexibility that both the Receiver and Newmark believe are necessary to maximize value;

¹⁷ See *CCM Master* at para 6.

¹⁸ *Marchant Realty Partners Inc. v 2407553 Ontario Inc.*, 2021 ONCA 375 at paras 10, 15 and 19; *Re Sanjel Corporation*, 2016 ABQB 257 at para 80.

¹⁹ Second Report at para 3.3.1, MR, Tab 2, p 18.

- (c) it is substantially consistent with the process for Ravines Retirement, which was approved by this Court pursuant to the BDO Sale Process Order;
- (d) Newmark has the industry expertise and experience to market Ravines Senior and has been engaged by BDO to conduct the Court-approved sale process for Ravines Retirement;
- (e) the Ravines Sale Process is without prejudice to the ongoing refinancing efforts of Choo; and
- (f) the Receiver has consulted with ACM and IMC regarding the proposed Ravines Sale Process and understands that both secured lenders are supportive of it.

17. Approval of the Promenade Sale Process should be granted at this time including for the following reasons:²⁰

- (a) the Promenade Sale Process is a fair, open and transparent process, developed with input from CBRE, and is intended to canvass the market broadly on an efficient basis to obtain the highest and best price;
- (b) the Promenade Sale Process provides the Receiver with the timelines, procedures and flexibility that both the Receiver and CBRE believe are necessary to maximize value in the circumstances;
- (c) the Receiver has retained CBRE, a national realtor with a group focused on the seniors' sector;

²⁰ Second Report at para 4.3.1, MR, Tab 2, pp 21-22.

- (d) CBRE's commissions are consistent with the proposal submitted by the other listing brokerage that participated in the process;
- (e) the Promenade Sale Process is without prejudice to Choo's ongoing refinancing efforts for the Companies; and
- (f) IMC has consented to the Promenade Sale Process.

18. The Sale Processes should be approved at this time notwithstanding the ongoing refinancing efforts of the Companies. The Court, in connection with the BDO Sale Process Order, considered the request of the Companies to delay the issuance of the BDO Sale Process Order pending the motion for the refinancing, which request was denied by the Court.²¹ As of the date of this factum, the Receiver understands that the prospective lender is still conducting due diligence and that the financing remains subject to a number of conditions precedent, including internal approval by Farallon.²²

The Ancillary Relief Should be Granted

i. The Receivership Order Should be Amended:

19. The Receiver is seeking the rectification of the legal description of certain properties listed in Schedule "A" to the Receivership Order. The proposed rectifications are required to clarify the

²¹ [Endorsement of Justice Smith dated April 17, 2025](#), *Central 1 Credit Union v 2139770 Ontario Inc.* (Court File No. CV-24-00097134-0000).

²² Affidavit of David Oswald Choo sworn May 21, 2025, Motion Record of 2067166 Ontario Inc. et al., Tab 2, para 24; see also Second Report at para 5.0.4, MR, Tab 2, p 22.

legal description of the applicable properties and will, among other things, assist with registration and discharge of instruments on title on a go-forward basis.

20. The Court has the jurisdiction to grant an order amending a Receivership Order. Under both Rule 1.05 of the Ontario *Rules of Civil Procedure*²³ and Section 101(2) of the CJA,²⁴ the Court is given a broad discretion to grant such orders and to impose such terms as are just. No prejudice will result from the proposed amendments.

ii. The Reports and the Activities of the Receiver Should be Approved:

21. The Receiver seeks the approval of each of the Reports, along with the activities of the Receiver referred to therein. In *Re Target Canada Co.* (“**Re Target**”), this Court noted that requests to approve a court-appointed officer’s reports and its activities are not unusual. The Court highlighted that there are good policy and practical reasons for doing so, including as follows:²⁵

- (a) allowing the court-appointed officer to bring its activities before the Court;
- (b) allowing an opportunity for stakeholders’ concerns to be addressed;
- (c) enabling the Court to satisfy itself that the court-appointed officer’s activities have been conducted in prudent and diligent manners; and
- (d) protecting the creditors from the delay and distribution that would be caused by re-litigation of steps taken to date and potential indemnity claims by the court-appointed officer.

²³ [Rules of Civil Procedure](#), RRO 1990, Reg 194, s. [1.05](#).

²⁴ CJA, s. [101\(2\)](#).

²⁵ [Re Target Canada Co.](#), 2015 ONSC 7574 at para [22](#).

22. Although *Re Target* was a case involving proceedings under the *Companies' Creditors Arrangement Act*, this Court has recognized that the same principles and policy considerations apply to receivership proceedings,²⁶ and such approvals are commonly granted in receivership proceedings.²⁷

23. In this case, the activities detailed in the Reports were necessary and carried out in good faith by the Receiver, in accordance with its mandate set forth in the Receivership Order. Furthermore, the Receiver has acted reasonably and in the best interests of the Companies' stakeholders while carrying out these activities. Accordingly, the Receiver believes it is appropriate for this Court to approve the Reports and the activities of the Receiver mentioned therein.

PART IV - ORDER REQUESTED

24. For the reasons set out above, the Receiver requests that this Court should grant the proposed Order.

²⁶ [Re Hanfeng Evergreen Inc.](#), 2017 ONSC 7161 at para 15.

²⁷ See the [Order of Justice Mew dated March 21, 2024](#), *CMLS Financial Ltd. v Ashcroft Urban Developments Inc.* (Court File No. CV-25-00098804-0000) at para 2.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of May, 2025.



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SCHEDULE "A"

LIST OF AUTHORITIES

- 1 [Royal Bank of Canada v. Soundair Corp.](#), 1991 CanLII 2727
- 2 [CCM Master Qualified Fund v. blutip Power Technologies](#), 2012 ONSC 1750
- 3 [Choice Properties Limited Partnership v Penady \(Barrie\) Ltd.](#), 2020 ONSC 3517
- 4 [Marchant Realty Partners Inc. v 2407553 Ontario Inc.](#), 2021 ONCA 375
- 5 [Re Sanjel Corporation](#), 2016 ABQB 257
- 6 [Re Target Canada Co.](#), 2015 ONSC 7574
- 7 [Re Hanfeng Evergreen Inc.](#), 2017 ONSC 7161

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

1 Rules of Civil Procedure, R.R.O. 1990, Reg. 194

Orders on Terms

1.05 When making an order under these rules the court may impose such terms and give such directions as are just.

2 Courts of Justice Act, R.S.O. 1990, c. C-43

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

3 Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

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.

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Court File No. CV-24-00098058-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
OTTAWA

**FACTUM
(SALES PROCESS APPROVAL – RAVINES SENIOR AND
PROMENADE SENIOR)**

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