

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

**MIZUE FUKIAGE, AKIKO KOBAYASHI, YOSHIKI FUKIAGE, KOBAYASHI
KYOHODO CO., LTD. AND TORU FUKIAGE**

Applicants

- and -

**CLEARVIEW GARDEN ESTATES INC., TALBOT CROSSING INC., NIAGARA
ESTATES OF CHIPPAWA II INC., LONDON VALLEY INC., LONDON VALLEY II
INC., LONDON VALLEY III INC., LONDON VALLEY IV INC., LONDON VALLEY V
INC., FORT ERIE HILLS INC., 2533430 ONTARIO INC., CGE CAPITAL
MANAGEMENT INC., TGP-TALBOT CROSSING INC., NEC II CAPITAL
MANAGEMENT INC., LV CAPITAL MANAGEMENT INC., LV II CAPITAL
MANAGEMENT INC., LV III CAPITAL MANAGEMENT INC., LV IV CAPITAL
MANAGEMENT INC., LV V CAPITAL MANAGEMENT INC. AND FORT ERIE
HILLS CAPITAL MANAGEMENT INC.**

Respondents

FACTUM OF THE RECEIVER

May 23, 2025

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PART I - OVERVIEW

1. KSV Restructuring Inc. (“**KSV**”) was appointed as receiver and manager (the “**Receiver**”) of, *inter alios*, the assets, undertakings and properties of various companies, pursuant to an application made by a group of investors. These investors had invested in certain land banking projects in the Niagara and London region, and had brought a receivership application as a result of, amongst other things, the alleged improper transfer of certain real estate properties. KSV was appointed as Receiver pursuant to the *Courts of Justice Act* pursuant to an order granted on March 6, 2025 (the “**Appointment Order**”).¹ Since its appointment, the Receiver has taken steps to advance certain pending sale transactions, investigate the allegations raised in the receivership application and to further protect the investors’ interests.

2. At the time of the receivership application, five properties were identified to be still owned by the Respondents.² The Receiver has since become aware of one additional property. The Receiver is seeking approval to sell five of these properties at this time for the benefit of investors.

3. Prior to the Receiver’s appointment, certain of the real estate properties owned by the respondents London Valley Inc. (“**LV**”), London Valley II Inc. (“**LV II**”), London Valley V Inc. (“**LV V**”), Niagara Estates of Chippawa II Inc. (“**NEC II**”), and Talbot Crossing Inc. (“**Talbot**”) had been listed for sale. Offers had been made by arm’s length prospective purchasers to purchase these properties, and based on the Receiver’s review, the value of these prospective transactions were fair and reasonable. As a result, the Receiver seeks court approval to enter into sale agreements with various third-party purchasers and to vest each of these properties as follows:

- (a) An approval and vesting order in respect of the sale of property located at 4001 and 0 Weaver Road (the “**Weaver Property**”) pursuant to an agreement of purchase and sale dated May 16, 2025 between the Receiver and Rainer Hummel in trust for a company to be incorporated, and assigned pursuant to an assignment and assumption agreement to 1001243320 Ontario Inc. dated May 23, 2025;³

¹ Second Report of KSV Restructuring Inc. as Receiver and Manager, dated May 20, 2025, Motion Record of the Receiver dated May 20, 2025 (“[Second Report](#)”), Appendix A, [Appointment Order](#).

² [Second Report](#), Appendix A, [Appointment Order](#), [Schedule “A”](#).

³ [Second Report](#), Appendix M, [Redacted Agreement of Purchase and Sale between Rainer Hummel in trust for a company to be incorporated and the Receiver](#). An unredacted copy can be found at Confidential Appendix “7” to the Second Report.

- (b) An approval and vesting order in respect of the sale of property located at 5318 Colonel Talbot (the “**5318 CT Property**”) pursuant to an agreement of purchase and sale dated May 19, 2025 between the Receiver and Copperstone Farms Inc.;⁴
- (c) An approval and vesting orders in respect of the sale of the property located at 5980 Colonel Talbot Road (the “**5980 Colonel Property**”) pursuant to an agreement of purchase and sale dated May 16, 2025 between the Receiver and Farhi Farming Corporation (“**Farhi**”);⁵
- (d) An approval and vesting order in respect of the sale of the property located at 6172 Colonel Talbot Road (the “**6172 Colonel Talbot Property**”) pursuant to an agreement of purchase and sale dated May 16, 2025 between the Receiver and Farhi;⁶ and
- (e) An approval and vesting order in respect of the sale of the property known as the Wonderland Road Property (the “**Wonderland Property**”) pursuant to an agreement of purchase and sale dated May 16, 2025 between the Receiver, as vendor, and Farhi and Farhi Holdings Corporation as purchasers.⁷

4. In addition to the relief above, the Receiver also seeks an ancillary order (“**Ancillary Order**”) for the following relief:

- (a) approval of the First Report of the Receiver dated April 9, 2025 (“**First Report**”)⁸ and the Second Report of the Receiver dated May 20, 2025 (the “**Second Report**”), and the actions of the Receiver and its counsel as described therein;

⁴ [Second Report](#), Appendix D, [Redacted Agreement of Purchase and Sale between Copperstone Farms Inc. and the Receiver](#). An unredacted copy can be found at Confidential Appendix “3” to the Second Report.

⁵ [Second Report](#), Appendix G, [Redacted Agreement of Purchase and Sale between Farhi Farming Corporation and the Receiver](#). An unredacted copy can be found at Confidential Appendix “4” to the Second Report.

⁶ [Second Report](#), Appendix H, [Redacted Agreement of Purchase and Sale between Farhi Farming Corporation and the Receiver](#). An unredacted copy can be found at Confidential Appendix “5” to the Second Report.

⁷ [Second Report](#), Appendix I, [Redacted Agreement of Purchase and Sale between Farhi Farming Corporation and Farhi Holdings Corporation and the Receiver](#). An unredacted copy can be found at Confidential Appendix “6” to the Second Report.

⁸ First Report of KSV Restructuring Inc. as Receiver of London Valley IV Inc. et al, dated April 9, 2025, Motion Record of the Receiver dated May 20, 2025 (“[First Report](#)”).

- (b) a sealing order in respect of the Confidential Appendices to the Second Report (the “**Confidential Appendices**”); and
- (c) approval of the fees and disbursements of the Receiver and its counsel.

PART II - SUMMARY OF FACTS

A. Background

4. Mizue Fukiage, Akiko Kobayashi, Yoshiki Fukiage, Kobayashi Kyohodo Co., Ltd. and Toru Fukiage (collectively, the “**Kobayashi Group**”) and other members of their family had made investments in certain land banking projects.⁹

5. Various companies were formed to hold title to various pieces of real estate in Ontario as nominees and bare trustees. The investments made by Kobayashi Group and other investors (known as “**Co-Owners**”) were used to finance the acquisition of such real estate.¹⁰

6. The Kobayashi Group became concerned over, amongst other things, the alleged improper transfer and sale of the real estate subject to these land banking projects (without the approval of the requisite percentage of Co-Owners) and the alleged improper distribution of sale proceeds (without the knowledge or approval of the Co-Owners). Accordingly, the Kobayashi Group initiated these receivership proceedings.¹¹

B. Marketing of Properties Prior to Receivership

7. Prior to the Receiver’s appointment, each of the Weaver Property, the 5318 CT Property, the 5980 Colonel Property, the 6172 Colonel Talbot Property, and the Wonderland Property were marketed for sale by Remax West Realty Inc., Brokerage (“**Remax**”), and agreements of purchase and sale had been entered into.¹²

8. Remax provided the Receiver with copies of all offers received, a summary of the potential transactions and a summary of the interest generated over the course of Remax’s marketing process for each of these properties. Upon the Receiver’s request, Remax provided information regarding

⁹ [Second Report](#) at [paras 2.0.1-2.0.2](#).

¹⁰ [Second Report](#) at [para 2.0.3](#).

¹¹ [Second Report](#) at [para 2.0.4](#).

¹² [Second Report](#) at [paras 3.1.2](#) and [3.1.9](#).

the pre-receivership marketing process, offers submitted, negotiations with potential buyers and its views regarding the reasonableness of the purchase prices.¹³

9. The Receiver also corresponded with Jones Lang LaSalle Real Estate Services, Inc. (“JLL”), a prominent national real estate brokerage, to understand whether the purchase prices were reasonable based on recent comparable transactions, the status of the current real estate market in each of London, Ontario and Niagara Falls, Ontario, the current use and development potential of the properties and any other relevant considerations, including whether there were any reasons to extend the marketing process and risk closing the agreements that were entered into prior to the receivership proceedings.¹⁴ Based on its experience and discussions, JLL advised the Receiver that it was of the view the value of the prospective transactions were fair and reasonable.¹⁵

10. Based on the extent of the marketing conducted by Remax and the recommendations of Remax and JLL, respectively, regarding the offers, the nature of the subject real properties and the other reasons set out below, the Receiver was prepared to complete these sales, subject to Court approval.¹⁶

11. With respect to the Weaver Property, there had initially been separate agreements of purchase and sale – one agreement with respect to 4001 Weaver with a third party individual (the “**Potential 4001 Purchaser**”) and one agreement with respect to 0 Weaver with Mr. Hummel. The Receiver subsequently learned that the 4001 Weaver Property and 0 Weaver Property, which the Receiver had initially understood were separate parcels, had merged under the Ontario Planning Act, and could therefore not be conveyed independent of each other absent filing an application to sever the lands which would have involved substantial time and cost. Accordingly, the Receiver approached both the Potential 4001 Purchaser and Mr. Hummel to inquire about their interest in making an offer for both properties. Of the two offers, Mr. Hummel’s purchase price for the Proposed Hummel Properties was the superior offer.¹⁷

¹³ [Second Report](#) at [paras 3.1.4-3.1.6](#) and [Second Report](#), Confidential Appendix “1”, Information from Remax regarding the Marketing Process and Offers.

¹⁴ [Second Report](#) at [paras 3.1.7 -3.1.8](#).

¹⁵ [Second Report](#) at [paras 3.1.8 and 3.1.12](#).

¹⁶ [Second Report](#) at [para 3.1.10](#) and [Second Report](#), Confidential Appendix “2”, JLL Desktop Review.

¹⁷ [Second Report](#) at [paras 3.1.5-3.1.11](#).

12. The Receiver then inquired with JLL as to whether Mr. Hummel's proposed purchase price for the Proposed Hummel Properties was reasonable. JLL confirmed that the purchase price was in line with what it considered a justifiable price range.¹⁸

13. As the offers were all submitted prior to the receivership proceedings, the Receiver negotiated revised agreements of purchase and sale with each of the selected purchasers to include standard terms and conditions typically included in transactions completed in receivership proceedings.¹⁹ Should court approval be granted and the transactions close, the Receiver will also terminate the previously entered into agreements of purchase and sale.²⁰

14. As further described in the Second Report, the Receiver or Remax are in receipt of each of the deposits. The Receiver intends to pay a commission of 5% between Remax and the co-operating broker.²¹

C. The Hamilton Proceedings

15. Prior to the commencement of these proceedings, Trans Global Partners Limited, Randy Hoffner and Pauline Hoffner brought an application under s. 248 of the Business Corporations Act as against First Global Financial Corp. ("**First Global**"), Elena Salvatore, Vincent Salvatore and Tiberis Capital Corp., (the "**Hamilton Proceedings**").²²

16. Mr. Hoffner is the director and officer of a number of the Respondents. Based on materials filed by the Kobayashi Group, the Receiver understands that through certain share purchase agreements, First Global was to become an indirect owner of the Respondents. Further, First Global, along with 2630306 Ontario Inc. o/a Paybank Financial ("**Paybank**"), were to, amongst other things, assume certain existing investor/ownership agreements.²³

17. The applicants in the Hamilton Proceedings raised allegations, amongst other things, surrounding the circumstances of these agreements. Further, they sought that any proceeds from

¹⁸ [Second Report](#) at [para 3.1.12](#).

¹⁹ [Second Report](#) at [para 3.1.13](#).

²⁰ [Second Report](#) at [para 3.2.7](#).

²¹ [Second Report](#) at [paras 3.3-3.6](#).

²² Court File No. CV-24-00087580-0000. The style of cause was subsequently amended to add Danny Iandoli as a respondent. See [Second Report](#) at [para 3.2](#).

²³ [Second Report](#) at [para 3.2.2](#).

the pending sale of certain properties be paid into SimpsonWigle Law LLP (“**SimpsonWigle**”), counsel for the applicants in the Hamilton Proceedings, in Trust or into court.²⁴

18. On October 31, 2024, the Court in the Hamilton Proceedings issued an order that provided, amongst other things, approval of:

- (a) an agreement of purchase and sale dated July 30, 2024 between Talbot Crossing Inc. and Clawson Group Inc., as assigned to Farhi Farming Corporation in respect of the 5980 Colonel Talbot Road property;
- (b) an agreement of purchase and sale dated July 30, 2024 between London Valley II Inc. and Clawson Group Inc., as assigned to Farhi Farming Corporation in respect of the 6172 Colonel Talbot Road property; and
- (c) an agreement of purchase and sale dated July 30, 2024 between London Valley II Inc. and Clawson Group Inc., as assigned to Farhi Holdings Corporation and Farhi Farming Corporation in respect of the Wonderland Road Property.²⁵

19. In the same order, the Court also ordered that the proceeds of sale from these properties be paid to SimpsonWigle in Trust.²⁶

20. The Receiver understands that the transactions contemplated by these sale agreements did not close. As described above, the Receiver has since entered into new agreements with the Farhi group to reflect that the properties will be sold within this receivership. SimpsonWigle has communicated to the Receiver that any sale proceeds would not be directed to its firm.²⁷

D. Steps Taken to Protect Investors Interests

21. Pursuant to the Appointment Order, the Receiver was granted tracing powers in respect of income and other monies related to real estate property that is no longer owned by the Respondents.

²⁴ [Second Report](#) at [para 3.2.3.](#)

²⁵ [Second Report](#) at [para 3.2.4](#) and [Appendix “C”, Order from Hamilton Proceedings.](#)

²⁶ [Second Report](#) at [para 3.2.5](#) and [Appendix “C”, Order from Hamilton Proceedings.](#)

²⁷ [Second Report](#) at [paras 3.2.6-3.2.7.](#)

The Receiver continues to take substantial steps in this regard and will provide a more fulsome update to the Court in due course on its ongoing tracing activities and findings.²⁸

22. As further set out in the First Report, London Valley IV Inc. (“**LV IV**”) previously owned a property known as 6211 Colonel Talbot Road (the “**LV IV Property**”).²⁹ The Kobayashi Group claims to have invested the aggregate amount of \$3.7 million to acquire an approximately 72% undivided beneficial interest in the LV IV Property. The LV IV Property was sold prior to the Receiver’s appointment in February 2025. The Kobayashi Group asserts, as part of their receivership application, that this sale was completed without their knowledge or consent. Further, the Kobayashi Group claim that they have not received any proceeds in connection with this property.³⁰

23. Through its investigations, the Receiver believes that the LV IV Property may have been used as collateral mortgage in respect of personal property owned by Mr. Hoffner, including in respect of 601 Maplehurst Ave, Oakville, Ontario (the “**Maplehurst Property**”). Through the review of various banking information, the Receiver further believes that proceeds from the sale of the LV IV Property were used to pay off this collateral mortgage charge. The Receiver made various inquiries in respect thereof, including to Mr. Hoffner. The Receiver did not receive any evidence of any consideration or a valid business purpose for the LV IV Property to have been offered as collateral to secure the mortgage loan as against the Maplehurst Property.³¹

24. As a precautionary measure, the Receiver registered a caution and the Appointment Order on the Maplehurst Property. As this property was listed for sale, the Receiver further obtained on an *ex parte* basis a Certificate of Pending Litigation on the Maplehurst Property.³²

25. The Receiver has agreed to discharge the Certificate of Pending Litigation in connection with the proposed sale, provided that it receives alternative security in the sum of \$731,331.20

²⁸ [Second Report](#) at [para 5.0](#).

²⁹ [First Report](#) at [para 3.0](#).

³⁰ [First Report](#) at [para 3.2](#).

³¹ [First Report](#) at [paras 3.3-3.4](#)

³² [First Report](#) at [paras 3.3-3.4](#) and [Second Report](#) at [para 4.5](#).

from Mr. Hoffner. The Receiver views this alternative security, once provided, will protect its interests as it continues its investigation.³³

E. Other Activities

26. As further set out in the Second Report, the Receiver has taken steps to identify and trace funds related to property that was formerly owned by certain of the Respondents. These steps include the Receiver obtaining information regarding properties that are now subject to other receivership proceedings. As set out in its Second Report, the Receiver continues to review its potential entitlement to the proceeds realized from these other receivership proceedings.³⁴

F. Distribution

27. The Receiver continues to take steps to identify parties that may have an interest in these properties as Co-Owners. As these efforts are ongoing, the Receiver is not recommending that the Court approve any distributions at this time. Accordingly, should the proposed transactions be approved and close, the Receiver only intends to pay costs secured by the Receiver's charge (as set out in the Appointment Order). The balance of the net proceeds will be held by the Receiver pending further Court order. Any fees paid from the proceeds of the Proposed Transactions will be allocated amongst the Property. Approval of the Receiver's fee allocation will be sought at a later date.³⁵

PART III - ISSUES

28. The issues on this motion are:

- (a) Whether each of the Approval and Vesting Orders should be granted;
- (b) Whether the First Report and the Second Report, and the activities described therein, should be approved;
- (c) Whether the fees of the Receiver and its counsel should be approved; and

³³ [Second Report](#) at [para 4.5.](#)

³⁴ [Second Report](#) at [paras 5.0-7.0.](#)

³⁵ [Second Report](#) at [para 6.0.](#)

- (d) Whether a sealing order should be granted.

PART IV - LAW AND ARGUMENT

A. The Sale Transactions Should Be Approved

(i) *The Legal Framework*

29. In *Soundair*, the Court of Appeal stated that the following factors must be considered when considering the approval of a proposed sale: (i) whether the Receiver has made a sufficient effort to get the best price and has not acted improvidently; (ii) the efficacy and integrity of the process by which offers are obtained; (iii) whether there has been unfairness in the working out of the process; and, (iv) the interests of all parties.³⁶

30. Courts will generally defer to a court-appointed receiver's business expertise in reviewing a sale and will not second-guess their recommendation absent exceptional circumstances.³⁷ Where a receiver has acted reasonably, prudently and not arbitrarily, the court will not conduct a detailed review of each aspect of the procedure by which a receiver's decision was made with respect to a sales process.³⁸

31. The *Soundair* principles can still be satisfied where the marketing process was conducted by a party other than the receiver. This is the case of the approval of "quick flip" sales. As explained by The Honourable Mr. Justice Osborne in *Tung Kee*:

Courts have approved immediate sales of property (colloquially referred to as "quick flip sales") in circumstances where a marketing process was conducted by a party other than a receiver, if the process was nonetheless fair and reasonable and where the court was of the view that no purpose would be served by a further marketing process [references omitted]. In such circumstances, the *Soundair* Principles still apply, but courts will scrutinize with special care the adequacy and the fairness of the sales and marketing process.³⁹

³⁶ *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA) [*Soundair*].

³⁷ *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, 2021 ONCA 375 at para. 15 citing *Regal Constellation Hotel Ltd., Re.*, 2004 CanLII 206 (ONCA) at para. 23. See also *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857 at paras. 43-45.

³⁸ *Bank of Montreal v. Dedicated National Pharmacies Inc. et al.*, 2011 ONSC 4634 at para 43.

³⁹ *Romspen Investment Corporation v. Tung Kee Investment Canada Ltd. et al.*, 2023 ONSC 5911 [*Tung Kee*] at paras 48-49.

32. In the Receiver's view, the marketing process conducted by Remax was fair and reasonable, such that the *Soundair* principles have been satisfied.

(ii) The *Soundair* Principles have been satisfied

33. Each of the foregoing factors are satisfied in respect of the proposed Sale Transactions:

- (a) **Fairness, Transparency, and Integrity:** Remax's marketing process was commercially reasonable as it marketed each of the properties since July or August 2024.⁴⁰ The Receiver understands from Remax that the 5318 CT Property was listed on Multiple Listing Services, and that all the properties were advertised extensively through on-site signage, through Remax's vast broker network, and various groups, and including realtors, mortgage brokers and buyers.⁴¹ In the Receiver's view, Remax's marketing process was commercially reasonable given that it canvassed the market thoroughly and engaged in negotiations with each of the Proposed Purchasers to obtain the highest and best offer. The marketing methodology employed by Remax is consistent with customary ways in which real estate is marketed and sold inside and outside of formal insolvency proceedings.⁴²
- (b) **Commercial Efficacy:** In the Receiver's view, extending the marketing process for these properties will add incremental cost and, critically, put the current proposed transactions at risk.⁴³ The Receiver is also satisfied that Remax's commission fee of 5% plus HST (which includes an amount payable to co-operating brokers) is consistent with market rates.⁴⁴
- (c) **Best Possible Price:** The Receiver had obtained a desktop review from JLL of all the properties, with the exception of the Weaver Property (which was not known to the Receiver at that time). This review provided JLL's estimated low and high value for these properties.⁴⁵ Based on feedback from Remax and JLL, the marketing periods were sufficient and the respective purchase prices are reasonable.⁴⁶

⁴⁰ [Second Report](#) at [para 3.1.5.](#)

⁴¹ [Second Report](#) at [para 3.1.5.](#)

⁴² [Second Report](#) at [para 3.6.1\(a\).](#)

⁴³ [Second Report](#) at [para 3.6.1\(b\).](#)

⁴⁴ [Second Report](#) at [para 3.6.1\(d\).](#)

⁴⁵ [Second Report](#) at [para 3.1.9-3.1.10.](#)

⁴⁶ [Second Report](#) at [para 3.6.1\(c\).](#)

34. In the Receiver's view, further marketing efforts are not required given that the process conducted by Remax has met the *Soundair* principles. The Receiver thus recommends that the Court approve the proposed sale transactions.

B. The AVOs should be granted

(i) The Legal Framework

35. The Receiver seeks an approval and vesting order to grant the Purchased Assets free and clear of any claims and encumbrances, other than respective Permitted Encumbrances, as set out in each of the sale agreements. The sale agreements provide for the sale of the real property and chattels, if any, on the property.⁴⁷

36. The Court has the power to grant approval and vesting orders pursuant to section 100 of the *Courts of Justice Act*. This section states that:

A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.”⁴⁸

37. Vesting orders are a routine part of insolvency practice.⁴⁹ As set out by the Ontario Court of Appeal in *Third Eye Capital Corporation v. Resources Dianor Inc./Dianor Resources Inc.* [*Third Eye*], the court will adopt a rigorous cascade analysis. It will consider the nature and strength of the interest that is proposed to be extinguished, which can be determinative. The court can also consider if the parties have consented to the vesting of the interest at the time of sale before the

⁴⁷ [Second Report](#), Appendix M, [Redacted Agreement of Purchase and Sale between Rainer Hummel in trust for a company to be incorporated and the Receiver](#). An unredacted copy can be found at Confidential Appendix “7” to the Second Report; [Second Report](#), Appendix D, [Redacted Agreement of Purchase and Sale between Copperstone Farms Inc. and the Receiver](#). An unredacted copy can be found at Confidential Appendix “3” to the Second Report; [Second Report](#), Appendix G, [Redacted Agreement of Purchase and Sale between Farhi Farming Corporation and the Receiver](#). An unredacted copy can be found at Confidential Appendix “4” to the Second Report; [Second Report](#), Appendix H, [Redacted Agreement of Purchase and Sale between Farhi Farming Corporation and the Receiver](#). An unredacted copy can be found at Confidential Appendix “5” to the Second Report; and [Second Report](#), Appendix I, [Redacted Agreement of Purchase and Sale between Farhi Farming Corporation and Farhi Holdings Corporation and the Receiver](#). An unredacted copy can be found at Confidential Appendix “6” to the Second Report.

⁴⁸ *Courts of Justice Act*, RSO 100, c. C.42, s. 100.

⁴⁹ *Third Eye*, [2019 ONCA 508](#) at para 106.

court, or through prior agreement.⁵⁰ If these factors proved inconclusive, the court can engage in a consideration of equities to determine if a vesting order is appropriate.⁵¹

(ii) Encumbrances

38. Specifically, the proposed vesting orders seek to extinguish the following interests registered on title to each of these properties:

- (a) **Weaver Property:** A charge in the amount of \$110,000,000 granted by NEC II Inc. in favour of 1001045239 Ontario Inc. and the Appointment Order;⁵²
- (b) **5318 Colonel Talbot Property:** the Appointment Order;⁵³
- (c) **5980 Colonel Talbot Property:** A charge in the amount of \$110,000,000 granted by Talbot in favour of 1001045239 Ontario Inc. and the Appointment Order;⁵⁴
- (d) **6172 Colonel Talbot Property:** the Appointment Order;⁵⁵ and
- (e) **Wonderland Property:** A charge in the amount of \$110,000,000 granted by LV V in favour of 1001045239 Ontario Inc. and the Appointment Order.⁵⁶

39. As is customary with vesting orders of this nature, the proposed form of vesting order specifically extinguishes *Personal Property Security Act* (Ontario) registrations. The Receiver is only aware of one registration made by 2229815 Ontario Ltd. as against NEC II.

40. Both 1001045239 Ontario Inc. and 2229815 Ontario Ltd. have been served with these materials.

⁵⁰ *Third Eye*, [2019 ONCA 508](#) at paras 103-106.

⁵¹ *Third Eye*, [2019 ONCA 508](#) at para 110.

⁵² [Second Report](#), [Appendix “N”, Mortgage Charge](#), [Second Report](#), [Appendix “O”, Title Searches](#), and [Second Report](#) at para 3.5.4(f).

⁵³ [Second Report](#), [Appendix “E”, Title Search](#) and [Second Report](#) at para 3.3.2(f).

⁵⁴ [Second Report](#), [Appendix “J”, Mortgage Charge](#), [Second Report](#), [Appendix “L”, Title Searches](#), and [Second Report](#) at para 3.4.2(f).

⁵⁵ [Second Report](#), [Appendix “L”, Title Searches](#) and [Second Report](#) at para 3.4.2(f).

⁵⁶ [Second Report](#), [Appendix “K”, Mortgage Charge](#), [Second Report](#), [Appendix “L”, Title Searches](#) and [Second Report](#) at para 3.4.2(f).

41. For the reasons set out above, the Receiver believes it is appropriate for the Court to issue the proposed form of approval and vesting orders.

C. The Ancillary Order should be Granted

(i) The First Report, the Second Report and the Activities Therein Should be Approved

42. The Receiver also seeks an Ancillary Order approving the First Report and the Second Report along with the actions, conduct and activities of the Receiver and its counsel described therein.

43. The Court has inherent jurisdiction to review and approve the activities of a court appointed receiver where the receiver has met the objective test that it has acted reasonably, prudently and not arbitrarily.⁵⁷ The principles espoused by Justice Morawetz in *Re Target Canada Co*, a case involving proceedings under the *Companies Creditors' Arrangement Act*, are applicable here. He noted that requests to approve a court-appointed officer's reports are not unusual, and that there are good policy and practical reasons for such approval to provide a level of protection.⁵⁸ In particular, Justice Morawetz also noted that Court approval:

- (a) allows the Monitor to move forward with the next steps in the CCAA proceedings;
- (b) brings the Monitor's activities before the Court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified,
- (d) enables the Court to satisfy itself that the Monitor's activities have been conducted in a prudent and diligent manner;
- (e) provides protection for the Monitor not otherwise provided by the CCAA; and
- (f) protects the creditors from the delay and distribution that would be caused by:
 - (i) re-litigation of steps taken to date, and

⁵⁷ *Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.*, 2014 BCSC 1855 at para 54.

⁵⁸ *Target Canada Co. (Re)*, 2015 ONSC 7574 at para 2 and para 22.

(ii) potential indemnity claims by the Monitor.⁵⁹

44. Subsequent case law has confirmed that these considerations apply equally to the reports and activities of a receiver,⁶⁰ and such approval is commonly granted as part of orders in receivership proceedings.⁶¹

45. The activities of the Receiver and its counsel have been reported to the Court and stakeholders in the First Report and the Second Report.⁶² These activities were all necessary and undertaken in good faith in accordance with the Appointment Order, further to the best interests of the stakeholders generally.

(ii) Approval of the Fees of the Receiver and its Counsel

46. The Receiver also submits that the fees of the Receiver and its counsel described in the Second Report should be approved.

47. The Court of Appeal in *Bank of Nova Scotia v. Diemer* set out a non-exhaustive list of factors that provide useful guidance in considering fees of a receiver and its counsel. These include:

- (a) the nature, extent and value of the assets;
- (b) the complications and difficulties encountered;
- (c) the degree of assistance provided by the debtor;
- (d) the time spent;
- (e) the receiver's knowledge, experience and skill;
- (f) the diligence and thoroughness displayed;
- (g) the responsibilities assumed;
- (h) the results of the receiver's efforts; and

⁵⁹ *Target Canada Co. (Re)*, 2015 ONSC 7574 at para 23.

⁶⁰ *Hanfeng Evergreen Inc., (Re)*, 2017 ONSC 7161 at para 15.

⁶¹ See e.g., *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, 2023 ONSC 3400 at para 65.

⁶² [First Report](#) and [Second Report](#) at [para 7](#).

- (i) the cost of comparable services when performed in a prudent and economical manner.⁶³

48. Should the proposed sale transactions be approved, the Receiver will have realized on all known real estate properties still owned by the Respondents and subject to these proceedings, with the exception of one property. The nature of the interests, including with respect to property no longer owned by the Respondents, are complex. The Receiver has taken substantial efforts to obtain information regarding the Respondents, including with respect to other receivership proceedings and the Hamilton Proceedings.

49. The Receiver respectfully submits that its fees, and its counsel's fees, are fair, reasonable and justified in the circumstances.⁶⁴ They accurately reflect the work done in the course of these proceedings. The activities of the Receiver were carried out in accordance with the Appointment Order, and the Receiver has acted reasonably and in good faith throughout the receivership.

(iii) The Sealing Order Should Be Granted

50. The Receiver also seeks a sealing order with respect to the Confidential Appendices.

51. The applicable legal test for granting a sealing order is that the party seeking such relief must establish that:

- (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 identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.⁶⁵

52. This Court has granted sealing orders in respect of commercial information that could negatively impact any sales process in the event that the proposed transaction does not close and the property must undergo another marketing process.⁶⁶ This Court has also observed that

⁶³ *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at para 33.

⁶⁴ [Second Report](#) at para 8.0.

⁶⁵ *Sherman Estate v. Donovan*, 2021 SCC 25 at para 38.

⁶⁶ *Tung Kee* at paras 104-107.

disclosure of items such as realization estimates may have a negative impact on future realizations and be detrimental to efforts to maximize value for shareholders.⁶⁷ This Court has further held that, in such circumstances, there is no reasonable alternative to a sealing order; stakeholders will not be materially prejudiced; and any deleterious effects are outweighed by the benefits of granting such relief.⁶⁸

53. Disclosure of the contents of the Confidential Appendices could have a detrimental impact on any future sales process, should one be required if any of the Sale Transactions is not approved or otherwise does not close. The Confidential Appendices contain, amongst other things, i) details regarding Remax's marketing efforts and interest received for each of the properties; ii) the Desktop Review; and iii) unredacted copies of the agreements of sale for the proposed transactions including, without limitation, the purchase prices and deposit information.⁶⁹ Disclosure of this information could impact any future realizations in a future sales process, should one be required.

54. There is no reasonable alternative to any sealing order here, and stakeholders would not be materially prejudiced by this sealing order. The benefits of maximizing value for stakeholders outweigh any deleterious effects of the relief sought. The proposed sealing is appropriately limited to the earlier of closing of the proposed transactions or further order of the Court.

PART V - RELIEF SOUGHT

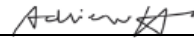
55. For the reasons set out above, the Receiver requests that this Court grant each of the proposed approval and vesting orders and Ancillary Order.

⁶⁷ *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857 at paras 50-53.

⁶⁸ *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857 at paras 50-53.

⁶⁹ [Second Report](#) at [para 3.7.1.](#)

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of May 2025.



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SCHEDULE “A”: LIST OF AUTHORITIES


1. *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA)
2. *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, 2021 ONCA 375
3. *Regal Constellation Hotel Ltd., Re.*, 2004 CanLII 206 (ONCA)
4. *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857
5. *Bank of Montreal v. Dedicated National Pharmacies Inc. et al.*, 2011 ONSC 4634
6. *Third Eye Capital Corporation v. Resources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508
7. *Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.*, 2014 BCSC 1855
8. *Target Canada Co. (Re)*, 2015 ONSC 7574
9. *Hanfeng Evergreen Inc., (Re)*, 2017 ONSC 7161
10. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851
11. *Sherman Estate v. Donovan*, 2021 SCC 25
12. *Romspen Investment Corporation v. Tung Kee Investment Canada Ltd. et al.*, 2023 ONSC 5911
13. *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, [2023 ONSC 3400](#)

Certificate of Authenticity

I, Adrienne Ho, am satisfied as to the authenticity of every authority cited in the factum, in accordance with Rule 4.06.1(2.1) of the *Rules of Civil Procedure*, R.R.O, 1990, Reg. 194.

23 – May – 2025

DATE



Adrienne Ho

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

Courts of Justice Act, RSO 1990, c. C.43

Vesting orders

100 A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed. R.S.O. 1990, c. C.43, s. 100

Documents public

137 (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

(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 lists public

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

Copies

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see. R.S.O. 1990, c. C.43, s. 137.

MIZUE FUKIAGE et al.

- and -

CLEARVIEW GARDEN ESTATES INC. et al.

Applicants

Respondents

Court File No. CV-25-00736577-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

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