

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN

BRIDGING FINANCE INC., as agent for
2665405 ONTARIO INC.

Applicant

-and-

1033803 ONTARIO INC. and 1087507 ONTARIO LIMITED

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 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
(Returnable May 30, 2019)
(Approval of Basaltic Transaction)

Date: May 24, 2019

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in its capacity as Court-appointed Receiver

PART I - OVERVIEW

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on November 19, 2018 (the “**Receivership Order**”), KSV Kofman Inc. (“**KSV**”) was appointed receiver and manager (KSV, in such capacity, the “**Receiver**”) of: (i) all of the assets, undertakings and properties of 1033803 Ontario Inc. (operating as Forma-Con Construction and Forma Finishing) (“**Forma-Con**”), including without limitation, the real property municipally known as 3420 Queen Street East, Brampton, Ontario (formerly 3420 Highway 7 East, Brampton, Ontario) (the “**Brampton Property**”) and the real property municipally known as 407 Basaltic Road, Concord, Ontario (the “**Basaltic Property**”), and 1087507 Ontario Limited (together with Forma-Con, the “**Debtors**”), including without limitation, the real property municipally known as 4431 Stouffville Road, Stouffville, Ontario (the “**Stouffville Property**”); (ii) certain assets of Bondfield Construction Company Limited (“**BCCL**”) and Bondfield Construction Equipment Ltd. (“**BCEL**”); and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario (the “**Vaughan Property**”, together with the Basaltic Property and the Stouffville Property, collectively, the “**Unsold Properties**”, and such assets described (i) – (iii), collectively, the “**Property**”).

2. This Factum is filed by the Receiver in connection with its motion returnable May 30, 2019, for an order (the “**Basaltic Order**”) dealing with the Basaltic Property and seeking, among other things:

- (a) the approval of the sale of the Basaltic Property pursuant to the agreement of purchase and sale made as of April 23, 2019, between the Receiver and Tedescorp Holdings Inc. (“**Tedescorp**”), pursuant to which Tedescorp has agreed to purchase the Basaltic Property (such agreement, the “**APA**”, and such transaction, the “**Transaction**”);
- (b) the approval of the Receiver’s execution of the APA and authorizing and directing the Receiver to execute all other ancillary documents and agreements required to complete the transaction set out in the APA and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Basaltic Transaction and for the conveyance of the Basaltic Property to the Purchaser;
- (c) the vesting of Forma-Con’s right, title and interest in and to the Basaltic Property free and clear of all encumbrances (other than permitted encumbrances, if any) provided

that such vesting shall be effective only upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached to the draft order confirming, among other things, that all terms and conditions under the APA have been satisfied or waived;

(d) sealing the offer summary and unredacted version of the APA, which are appended as Confidential Appendices “1” and “2”, respectively, to the Fifth Report (as defined below), until further Order of this Court

(e) authorizing the Receiver to distribute \$100,000 of the Purchase Price (as such term is defined in the APA) to Bondfield Construction Company Limited (“**BCCL**”);

(f) authorizing the Receiver to make an interim distribution in the amount of \$10,000,000 to Bridging Financing Inc., as agent for 2665405 Ontario Inc. (collectively, the “**Secured Creditor**”), from proceeds of the Transaction (the “**Interim Distribution**”);

(g) approving the fees and disbursements of the Receiver for the period from February 1, 2019, to April 30, 2019 and those of its legal counsel, Torys LLP (“**Torys**”), for the period from January 1, 2019, to April 30, 2019; and

(h) the approval of the fifth report of the Receiver dated May 24, 2019 (the “**Fifth Report**”) and the actions and activities of the Receiver described therein.

3. Approval of the APA and the transaction contemplated thereby is an important piece of these receivership proceedings. For this reason, and the other reasons set forth in greater detail in the Fifth Report, the Receiver recommends that this Court grant the requested orders.

PART II - THE FACTS

Fifth Report

4. The Fifth Report sets forth a detailed description of the facts and considerations relevant to the relief sought pursuant to the Basaltic Order. The Receiver’s actions and activities, as described in the Fifth Report, are lawful and proper, consistent with its powers and duties under the Receivership Order and in accordance with the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”).

Facts

5. Forma-Con was founded in 1993. It operates a concrete forming business that provides forming services for construction projects. The shares of Forma-Con are owned by members of the Aquino family. Forma-Con is an affiliate of BCCL. BCCL is a major full-service construction company operating in Ontario. Except for those assets of BCCL subject to the Receivership Order, BCCL's business continues to operate and is not subject to these receivership proceedings.

Fifth Report, Receiver's Motion Record, Tab 2, Section 2.1, Paras. 1-3.

6. On November 18, 2019, KSV was appointed as the Receiver. On February 25, 2019, this Court issued an order with respect to the Unsold Properties (the "**Real Estate Sale Process Order**"). Such order permitted the Receiver to engage in a sale process for the Unsold Properties (the "**Sale Process**"). The Sale Process was a necessary milestone in realizing value from these assets for the benefit of creditors.

Fifth Report, Receiver's Motion Record, Tab 2, Section 1.0, Para. 1.

7. The terms of the Sale Process cover the marketing, facilitation of due diligence, solicitation of offers and selection of successful bids, in respect of the Unsold Properties, as described in the Fifth Report. The Real Estate Sale Process also considers the interests of holders of rights of first refusal and provides a framework for dealing with those rights.

Fifth Report, Receiver's Motion Record, Tab 2, Section 3.0, Paras. 1-3.

8. The Receiver completed a process to select a listing agent for the Unsold Properties, as described in greater detail in the Fifth Report. This process culminated in the selection of CBRE Canada Inc., which selection has the Agent's consent.

Fifth Report, Receiver's Motion Record, Tab 2, Section 3.0, Para. 1.

9. A summary of the Sale Process is as follows:

- 19 parties executed a confidentiality agreement, were provided a copy of the Confidential Information Memorandum and given access to the data room;
- 16 parties toured the property; and
- 7 parties submitted offers.

10. The Receiver invited the three parties with the best offers to participate in a second round of bidding. Second round bids were due on April 25, 2019. All three bidders submitted second round offers. The Sale Process culminated in the successful bid.

Fifth Report, Receiver's Motion Record, Tab 2, Section 3.1, Paras. 1-3.

11. As set out in the Fifth Report, the Purchased Assets include certain solar panels affixed to the Basaltic Property and related contracts (collectively, the "**Solar Panel Assets**") and fixtures which are owned by BCCL and not subject to the Receivership Order, and the Receiver has negotiated a Bill of Sale with BCCL, with the consent of Ernst & Young Inc., in its capacity as Monitor of BCCL, to acquire the Solar Panel Assets and fixtures for \$100,000. The Receiver is seeking Court approval to distribute \$100,000 of the sale proceeds to BCCL.

Fifth Report, Receiver's Motion Record, Tab 2, Section 3.1, Para. 3.

12. The Real Estate Sale Process is fair, open and transparent and is intended to canvass the market broadly, with the assistance of an experienced listing agent, in order to obtain the highest and best offers. The listing agent used in connection with the Sale Process is of the view that the Transaction is the best available transaction in the circumstances and the Agent is supportive of it. Absent the Transaction, a protracted marketing period will likely be necessary. The ongoing professional fees and other costs will erode the recoveries with no certainty that a superior transaction could be completed.

Fifth Report, Receiver's Motion Record, Tab 2, Section 4.2, Para. 1.

13. The Receiver is seeking Court approval to make a distribution of \$10 million to the Secured Creditor from the proceeds generated from the Transaction to repay its mortgage on the

Basaltic Property. The Secured Creditor's security has been reviewed by Torys. Subject to the standard assumption and qualifications contained in the security opinion, Torys is of the opinion that the Secured Creditor has a valid and perfected security interest in the assets subject to the receivership.

Fifth Report, Receiver's Motion Record, Tab 2, Section 5.2, Para. 4.

14. The fees and disbursements of the Receiver for the period from February 1, 2019, and those of Torys for the period from January 1, 2019, to April 30, 2019, are summarized in the Fifth Report. Detailed invoices are appended to the Fifth Report. The fees of the Receiver and Torys were incurred in connection with the administration of the receivership. The Receiver is of the view that the hourly rates charged by Torys are consistent with the rates charged by downtown Toronto law firms practicing in the area of insolvency and restructuring in the Toronto market, and that the fees charged are reasonable in the circumstances.

Fifth Report, Receiver's Motion Record, Tab 2, Section 6.0, Paras. 1-3.

PART III - THE ISSUES

15. The issues before this Court, and addressed below, are:
- (a) Should this Court should approve the Transaction and grant a vesting order?
 - (b) Should this Court approve the Interim Distribution?
 - (c) Should this Court seal the order summary and the unredacted APA on the terms requested?
 - (d) Should this Court approve the fees and disbursements of the Receiver and Torys that were incurred in connection with the administration of the receivership?
 - (e) Should this Court approve the Receiver's Fifth Report and the actions and activities of the Receiver described therein?

PART IV - LAW AND ARGUMENT***This Court should approve the Transaction and APA and grant a vesting order***

16. Receivers have the powers set out in the orders appointing them. Receivers are consistently granted the power to sell property of a debtor, which is, indeed, the case under the Receivership Order.

Receivership Order, Receiver's Brief of Authorities, Tab 1, Subsection 3(l).

17. Under Section 100 of the *Courts of Justice Act* (Ontario), this Court has the power to vest in any person an interest in real or personal property that the Court has authority to order be conveyed.

Courts of Justice Act, R.S.O. 1990, c. C-43, s. 100, Schedule "B".

18. It is settled law that where a Court is asked to approve a transaction in a receivership context, the Court is to consider the following principles (collectively, the "***Soundair Principles***"):

- (a) whether the party made a sufficient effort to obtain the best price and to not act improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which the party obtained offers; and
- (d) whether the working out of the process was unfair.

Royal Bank of Canada v. Soundair Corp., (1991), 4 O.R. (3d) 1 (C.A.), Receiver's Brief of Authorities, Tab 2, Pg. 6.

Skyepharma PLC v. Hyal Pharmaceutical Corp., (1999), 12 C.B.R. (4th) 87 (Ont. S.C.J., appeal quashed, (2000), 47 O.R. (3d) 234 (C.A.)), Receiver's Brief of Authorities, Tab 3, Para. 3.

19. Absent clear evidence that a proposed sale is improvident or that there was an abuse of process, a Court is to grant deference to the recommendation of a receiver to sell a debtor's

assets. Only in such exceptional circumstances will a Court intervene and proceed contrary to the recommendation of its officer, the Receiver.

Royal Bank of Canada v. Soundair Corp., (1991), 4 O.R. (3d) 1 (C.A.), Receiver's Brief of Authorities, Tab 2, Paras. 14 and 21.

Skyepharma PLC v. Hyal Pharmaceutical Corp., (1999), 12 C.B.R. (4th) 87 (Ont. S.C.J., appeal quashed, (2000), 47 O.R. (3d) 234 (C.A.)), Receiver's Brief of Authorities, Tab 3, Paras. 3 and 4.

Integrated Building Corp. v. Bank of Nova Scotia (1989), 75 C.B.R. (N.S.) 158 (Alta. C.A.), Receiver's Brief of Authorities, Tab 4, Paras. 1-3.

Battery Plus Inc. (Re.), [2002] O.J. No. 731, Receiver's Brief of Authorities, Tab 5, Paras. 2-3 and 22-23.

20. Moreover, if a sale process leading up to a proposed asset sale is determined to be fair and reasonable, "a court will not lightly interfere with the exercise of...commercial and business judgment in the context of an asset sale."

Re AbitibiBowater Inc., 2010 QCCS 1742, Receiver's Brief of Authorities, Tab 6, para. 71.

21. In the case of *Re Grant Forest Products Inc.*, Justice Campbell held that, "once a process has been put in place by Court Order for the sale of assets of a failing business, that process should be honoured, excepting extraordinary circumstances."

Re Grant Forest Products Inc., 2010 ONSC 1846 [Comm. List], Receiver's Brief of Authorities, Tab 7, Para. 29.

22. The application of the *Soundair* Principles to the present case demonstrates why this Court should approve the Transaction and APA and grant a vesting order:

- (a) ***Sufficient effort was made to obtain the best price.*** The goal of the Sale Process was to obtain the best price possible. With the implementation of the Sale Process, the market was canvassed extensively and parties that may have had an interest were given a reasonable opportunity to review the opportunity, conduct due diligence, and make an

offer. The Receiver's view is that the price achieved is fair and reasonable. Under the current circumstances, any further marketing efforts are unlikely to result in a superior transaction.

Fifth Report, Receiver's Motion Record, Tab 2, Section 4.2, Para.

1.

(b) ***Interests of all parties have been served.*** The Transaction provides for the best possible outcome for all parties with an economic interest in these proceedings, as it will result in a substantial reduction in the indebtedness owed to the Agent and corresponding interest and fees payable in connection therewith.

Fifth Report, Receiver's Motion Record, Tab 2, Section 4.0, Para.

1.

(c) ***The process was run with integrity.*** The Basaltic Property was extensively marketed. All interested parties were given the opportunity to participate in the Sale Process and were provided with access to data rooms upon executing the appropriate confidentiality arrangements. The APA was negotiated in good faith and is the best and highest price under the circumstances. The appropriateness of this is evidenced in the Fifth Report. No one objected to the Sale Process at the time that it was previously approved by this Court, and the Receiver has implemented and adhered to the Sale Process.

Fifth Report, Receiver's Motion Record, Tab 2, Section 3.0, Paras.

1-3.

(d) ***There was no unfairness.*** The Sale Process was approved pursuant to an Order of this Court dated February 25, 2019. The Receiver had direct involvement in negotiating the terms and conditions of the APA, and believes they are fair and reasonable under the current circumstances. The Receiver carried out the Sale Process approved by the Court.

Fifth Report, Receiver's Motion Record, Tab 2, Section 3.0, Paras.

1-3.

23. Based on the foregoing, the proposed Transaction satisfies the *Soundair* Principles.

24. Moreover, Court-appointed receivers have the powers set out in the orders appointing them. It is usual for receivers to be granted the power to market the property of a debtor, which is the case under the Receivership Order granted in this case that authorizes the Receiver to “market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.”

Receivership Order, Receiver’s Brief of Authorities, Tab 1, Subsection 3(k).

25. The sale of the assets for the benefit of creditors is a principal objective of receivership proceedings, and this is often accomplished by way of a sales process approved by Court order. The Sale Process was approved by this Court as a process that is fair and transparent, commercially effective, and one that would optimize the chances of achieving the best prices. The Sale Process was adhered to and culminated in the APA.

Houlden, Lloyd W. et al, *The 2018-2019 Annotated Bankruptcy and Insolvency Act* (Toronto: Carswell, 2018), L20, citing *CCM Master Qualified Fund Ltd. v. blutip Power Technologies Ltd.* (2012), 2012 CarswellOnt 3158, 90 C.B.R. (5th) 74, 2012 ONSC 1750 (Ont. S.C.J. [Commercial List]), Receiver’s Brief of Authorities, Tab 8.

This Court should approve the Interim Distribution

26. Orders granting interim distributions are routinely granted by courts in insolvency proceedings and receiverships.

Re Windsor Machine & Stamping Ltd., 2009 CanLII 39772 (ON SC), Receiver’s Brief of Authorities, Tab 9, paras. 8, 13.

Re Abitibowater Inc., 2009 QCCS 6461 (CanLII) (QC SC), Receiver’s Brief of Authorities, Tab 10, at paras. 70-75.

27. In *Re Abitibowater Inc.*, Justice Gascon considered a number of factors in deciding whether to approve an interim distribution under the CCAA that are equally applicable to a

receivership proceeding, including whether the payee's security is valid and enforceable, whether the distribution would result in significant interest savings to the estate and whether the distribution will leave the estate with sufficient liquidity.

Re AbitibiBowater Inc., 2009 QCCS 6461 (CanLII) (QC SC),
Receiver's Brief of Authorities, Tab 10, at para. 75.

28. The application of these factors to the present case demonstrates why this Court should approve the Interim Distribution.

(a) ***The Agent's security is valid.*** The Agent's security has been reviewed by Torys. Subject to the standard assumptions and qualifications contained in the security opinion, Torys is of the opinion that the security granted by the Debtors, BCCL and BCEL and Ralph Aquino, a guarantor, in favour of the Secured Creditor creates a valid and perfected security interest in the assets subject to the receivership.

Fifth Report, Receiver's Motion Record, Tab 2, Section 5.2, Para.
1.

(b) ***The Interim Distribution will result in significant interest savings.*** A distribution to the Agent at this time will pay down a portion of the indebtedness owed to the Secured Creditor and limit the accrual of additional fees and interest in respect thereof, for the benefit of creditors generally. This will result in significant interest savings.

Fifth Report, Receiver's Motion Record, Tab 2, Section 5.2, Paras.
1-5.

(c) ***The Interim Distribution is being made in partial satisfaction of a "prescribed security interest".*** Section 227(4.2) of the *Income Tax Act* provides that a "prescribed security interest" is exempt from the deemed trust priority in favour of the CRA. A "prescribed security interest" includes a mortgage registered on real property prior to the time that a deemed trust arises, subject to the adjustments set out in the relevant Regulations.

(d) *There will be sufficient liquidity after the Interim Distribution is made.* As detailed in the Fifth Report, the Receiver intends to retain \$1.5 million to fund ongoing receivership costs, including professional fees, and any potential liabilities.

Fifth Report, Receiver's Motion Record, Tab 2, Section 5.2, Para. 5.

This Court should seal the offer summary and the unredacted APA on the terms requested

29. The Receiver requests that the Confidential Appendices be sealed until further order of this Court. Pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, this Court has the discretion to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.

30. The Supreme Court of Canada in *Sierra Club of Canada v. Canada (Minister of Finance)*, held that a sealing order may be granted when:

(a) An order is needed to prevent serious risk to an important interest because reasonable alternative measures will not prevent the risk; and

(b) The salutary effects of the order outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.

Sierra Club of Canada v. Canada (Minister of Finance), [2002] 2 S.C.R. 522, Receiver's Brief of Authorities, Tab 11, Para. 53.

31. Sealing the offer summary and the unredacted version of the APA until further Order of this Court is necessary to preserve the integrity of any subsequent attempts to market and sell the Purchased Assets (in the event that the Transaction does not close) and to avoid any prejudice that might be caused by publicly disclosing the confidential and commercially-sensitive information contained therein. There is no other reasonable alternative to prevent this information from becoming publicly available. The sealing request has been tailored to this transaction and the Receiver is not aware of any party that will be prejudiced if the information is sealed, in light of the terms of the APA that are being publicly disclosed. The salutary effects of

maintaining the confidential nature of the Confidential Appendices greatly outweighs the deleterious effects.

Fifth Report, Receiver's Motion Record, Tab 2, Section 4.1, Para. 1.

This Court should approve the fees and disbursements

32. Pursuant to the Receivership Order, the fees and disbursements of the Receiver and its legal counsel are authorized to be paid on a periodic basis subject to any final approval as ordered by the Court.

33. The Receiver is seeking approval of the Court for the fees and disbursements of: (a) the Receiver for the period from February 1, 2019, to April 30, 2019; and (b) its legal counsel, Torys, for the period from January 1, 2019, to April 30, 2019.

34. The accounts meet the technical requirements established by prior case law:

- (a) the accounts disclose the name of each person who rendered services, the rate charged and the total charges for each of the categories of services rendered;
- (b) the accounts are in a form that can be easily understood by those affected by the receivership or by the judicial officer required to assess the accounts; and
- (c) both the Receiver's and Torys' accounts are verified by an affidavit.

Confectionately Yours Inc., Re, 2002 CarswellOnt 3002 (C.A.),
Receiver's Brief of Authorities, Tab 12, at paras. 37-38.

35. A Receiver is entitled to be paid its fees and disbursements, along with those of its counsel, where the amount charged is fair and reasonable in the circumstances. Courts will consider the following factors in making this determination:

- (a) the nature, extent and value of the assets handled;
- (b) the complications and difficulties encountered;

- (c) the degree of assistance provided by the company, its officers or its employees and the time spent;
- (d) the receiver's knowledge, expertise and skill;
- (e) the diligence and thoroughness displayed;
- (f) the responsibilities assumed;
- (g) the results of the receiver's efforts; and
- (h) the cost of comparable services when performed in a prudent and economical manner.

Confectionately Yours Inc., Re, 2002 CarswellOnt 3002 (C.A.), Receiver's Brief of Authorities, Tab 12, at para. 42.

Belyea v. Federal Business Development Bank, 1983 CarswellNB 27 (C.A.), Tab 13, at para. 9.

36. Any assessment of whether the Receiver's account is fair and reasonable must focus on the circumstances as they existed at the time the fees and disbursements were incurred, and not with the benefit of hindsight.

BT-PR Realty Holdings Inc. v. Coopers & Lybrand, 1997 CarswellOnt 1246 (Sup. Ct. (Commercial List)), Tab 14, at para. 22.

37. These have not been simple receivership proceedings. As highlighted in the Fifth Report and the prior court reports, among other things, the Receiver has been:

- (a) engaging in various sale processes, including the negotiation and closing of various complicated asset sales;
- (b) protecting the interests of the estate by taking steps to recover outstanding accounts receivable on construction projects and registering liens where appropriate;

- (c) communicating with contractors, owners, unions, suppliers, customers and other stakeholders in connection with the various construction projects and the receivership proceedings;
- (d) communicating with the Agent, union representatives and other creditors in respect of their various claims against the assets that are subject to the receivership;
- (e) preparing motion materials and court reports; and
- (f) generally administering the estate.

38. This list of activities is not exhaustive, but is meant to be indicative of the complexity of the Receiver's mandate. The Receiver has acted in good faith and in the interest of the creditors. Over the course of these receivership proceedings, the Receiver has exercised the reasonable care, supervision and control that an ordinary person would have given to the Debtors if they were his or her own companies.

BT-PR Realty Holdings Inc. v. Coopers & Lybrand, 1997 CarswellOnt 1246 (Sup. Ct. (Commercial List)), Tab 14, at para. 22.

39. The fees and disbursements of both the Receiver and Torys reflect the firms' standard billing rates and were validly incurred in accordance with the provisions of the Receivership Order. In light of the circumstances of these receivership proceedings, as set out further in the Third Report and the prior court reports, this Court should approve the payment of the fees and disbursements incurred by the Receiver and Torys.

Fifth Report, Receiver's Motion Record, Tab 2, Section 6.0, Paras. 1-3.

This Court should approve the Fifth Report and the actions and activities of the Receiver described therein

40. Justice Morawetz, in *Target Canada Co. (Re)*, found that a request to approve a monitor's report "is not unusual. A practice has developed in proceedings under the [CCAA] whereby the Monitor will routinely bring a motion for such approval. In most cases, there is no opposition to such requests, and the relief is routinely granted."

Re Target Canada Co. (Re), 2015 ONSC 7574 (Ont. S.C.J. [Comm. List]), Receiver's Brief of Authorities, Tab 15, Para. 2.

41. The practice of approving court reports extends to all officers of the Court, including receivers. The approval of a receiver's report takes on an added importance because there is rarely an affidavit from a representative of the debtor company to provide additional evidence or the Court. In this case, the contents of the Fifth Report inform the relief sought in this motion.

42. In *Target*, Justice Morawetz recognized that there are "good policy and practical reasons for the court to approve of Monitor's activities and providing a level of protection for Monitors during the CCAA process."

Re Target Canada Co. (Re), 2015 ONSC 7574 (Ont. S.C.J. [Comm. List]), Receiver's Brief of Authorities, Tab 15, Para. 22.

43. In the context of the CCAA, Justice Morawetz cited specific purposes served by Court approval of reports and activities, finding 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 prudent and diligent manners;
- (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
 - (ii) potential indemnity claims by the Monitor.

Re Target Canada Co. (Re), 2015 ONSC 7574 (Ont. S.C.J. [Comm. List]), Receiver's Brief of Authorities, Tab 15, Para. 23.

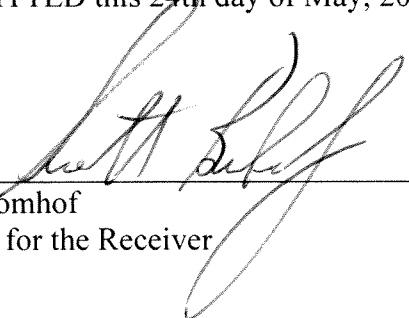
These purposes apply equally to receiverships. In this case, the Fifth Report, which was prepared in a manner consistent with the Receiver's powers and duties under the Receivership

Order and in accordance with the provisions of the BIA, should be approved. The Receiver's actions and activities, as described in the Fifth Report, are lawful and proper, consistent with its powers and duties under the Receivership Order and in accordance with the provisions of the BIA. They should also be approved.

PART V - ORDER REQUESTED

44. For the reasons set forth herein and in the Fifth Report, the Receiver respectfully requests the granting of the Order in the form contained in the Receiver's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of May, 2019.



Scott Bomhof
Lawyer for the Receiver



TABA

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. Receivership Order issued November 18, 2019.
2. *Royal Bank of Canada v. Soundair Corp.*, (1991), 4 O.R. (3d) 1 (C.A.)
3. *Skyepharm PLC v. Hyal Pharmaceutical Corp.*, (1999), 12 C.B.R. (4th) 87 (Ont. S.C.J., appeal quashed, (2000), 47 O.R. (3d) 234 (C.A.))
4. *Integrated Building Corp. v. Bank of Nova Scotia* (1989), 75 C.B.R. (N.S.) 158 (Alta. C.A.)
5. *Battery Plus Inc. (Re.)*, [2002] O.J. No. 731
6. *Re AbitibiBowater Inc.*, 2010 QCCS 1742
7. *Re Grant Forest Products Inc.*, 2010 ONSC 1846 [Comm. List]
8. Houlden, Lloyd W. et al, *The 2018-2019 Annotated Bankruptcy and Insolvency Act* (Toronto: Carswell, 2018), L20, citing *CCM Master Qualified Fund Ltd. v. blutip Power Technologies Ltd.* (2012), 2012 CarswellOnt 3158, 90 C.B.R. (5th) 74, 2012 ONSC 1750 (Ont. S.C.J. [Commercial List])
9. *Re Windsor Machine & Stamping Ltd.*, 2009 CanLII 39772 (ON SC)
10. *Re Abitibowater Inc.*, 2009 QCCS 6461 (CanLII) (QC SC)
11. *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522
12. *Confectionately Yours Inc., Re*, 2002 CarswellOnt 3002 (C.A.)
13. *Belyea v. Federal Business Development Bank*, 1983 CarswellNB 27 (C.A.)
14. *BT-PR Realty Holdings Inc. v. Coopers & Lybrand*, 1997 CarswellOnt 1246 (Sup. Ct. (Commercial List))
15. *Re Target Canada Co. (Re)*, 2015 ONSC 7574 (Ont. S.C.J. [Comm. List])



TABB

SCHEDULE “B” RELEVANT STATUTES

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

Section 100

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.

Section 137

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.

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.)

Withholding taxes

227 (1) No action lies against any person for deducting or withholding any sum of money in compliance or intended compliance with this Act.

Marginal note: Return filed with person withholding

(2) Where a person (in this subsection referred to as the “payer”) is required by regulations made under subsection 153(1) to deduct or withhold from a payment to another person an amount on account of that other person’s tax for the year, that other person shall, from time to time as prescribed, file a return with the payer in prescribed form.

Failure to file return

(3) Every person who fails to file a return as required by subsection (2) is liable to have the deduction or withholding under section 153 on account of the person's tax made as though the person were a person who is neither married nor in a common-law partnership and is without dependants.

Trust for moneys deducted

(4) Every person who deducts or withholds an amount under this Act is deemed, notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

Extension of trust

(4.1) Notwithstanding any other provision of this Act, the Bankruptcy and Insolvency Act (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection 227(4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person and property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for a security interest (as defined in subsection 224(1.3)) would be property of the person, equal in value to the amount so deemed to be held in trust is deemed

(a) to be held, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, in trust for Her Majesty whether or not the property is subject to such a security interest, and

(b) to form no part of the estate or property of the person from the time the amount was so deducted or withheld, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property and in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

Marginal note: Meaning of security interest

(4.2) For the purposes of subsections 227(4) and 227(4.1), a security interest does not include a prescribed security interest.

Application to Crown

(4.3) For greater certainty, subsections (4) to (4.2) apply to Her Majesty in right of Canada or a province where Her Majesty in right of Canada or a province is a secured creditor (within the meaning assigned by subsection 224(1.3)) or holds a security interest (within the meaning assigned by that subsection).

Payments by trustees, etc.

(5) Where a specified person in relation to a particular person (in this subsection referred to as the “payer”) has any direct or indirect influence over the disbursements, property, business or estate of the payer and the specified person, alone or together with another person, authorizes or otherwise causes a payment referred to in subsection 135(3), 135.1(7) or 153(1), or on or in respect of which tax is payable under Part XII.5 or XIII, to be made by or on behalf of the payer, the specified person

(a) is, for the purposes of subsections 135(3) and 153(1), section 215 and this section, deemed to be a person who made the payment;

(a.1) is, for the purposes of subsections 135.1(7) and 211.8(2), deemed to be a person who redeemed, acquired or cancelled a share and made the payment as a consequence of the redemption, acquisition or cancellation;

(b) is jointly and severally, or solidarily, liable with the payer to pay to the Receiver General

(i) all amounts payable by the payer because of any of subsections 135(3), 135.1(7), 153(1) and 211.8(2) and section 215 in respect of the payment, and

(ii) all amounts payable under this Act by the payer because of any failure to comply with any of those provisions in respect of the payment; and

(c) is entitled to deduct or withhold from any amount paid or credited by the specified person to the payer or otherwise recover from the payer any amount paid under this subsection by the specified person in respect of the payment.

Excise Tax Act Regulations, SOR/2011-55

Interpretation

1 In these Regulations, Act means the Excise Tax Act.

Prescribed Security Interest

2 (1) For the purpose of subsection 222(4) of the Act, a prescribed security interest, in relation to an amount deemed under subsection 222(1) of the Act to be held in trust by a person, is that part of a mortgage or hypothec securing the performance of an obligation of the person that encumbers land or a building, but only if the mortgage or hypothec is

registered pursuant to the appropriate land registration system before the time the amount is deemed under subsection 222(1) of the Act to be held in trust by the person.

(2) For the purpose of subsection (1), if, at a particular time, an amount deemed to be held in trust by the person referred to in that subsection is not remitted to the Receiver General or withdrawn in the manner and at the time provided under Part IX of the Act, the amount of the prescribed security interest referred to in that subsection may not exceed the amount determined by the following formula until such time as all amounts deemed under subsection 222(1) of the Act to be held in trust by the person are withdrawn in accordance with subsection 222(2) of the Act or are remitted to the Receiver General:

$A - B$

where

A

is the amount of the obligation secured by the mortgage or hypothec that is outstanding at the particular time; and

B

is the total of

(a) all amounts, each of which is the value determined at the particular time, having regard to all the circumstances including the existence of any deemed trust for the benefit of Her Majesty pursuant to subsection 222(1) of the Act, of all the rights of the secured creditor securing the obligation, whether granted by the person or not, including guarantees or rights of set-off or of compensation but not including the mortgage or hypothec referred to in subsection (1), and

(b) all amounts applied after the particular time on account of the obligation.

(3) A prescribed security interest under subsection (1) includes the amount of any insurance or expropriation proceeds relating to land or a building that is the subject of a registered mortgage interest or registered hypothecary right, adjusted in accordance with subsection (2), but does not include a lien, a priority or any other security interest created by statute, an assignment or hypothec of rents or leases, or a mortgage interest or hypothecary right in any equipment or fixtures that a mortgagee, hypothecary creditor or any other person has the right absolutely or conditionally to remove or dispose of separately from the land or building.

**BRIDGING FINANCE INC.,
as agent for 2665405 ONTARIO INC.**

Applicant

**1033803 ONTARIO INC. and
1087507 ONTARIO LIMITED**

Respondents

Court File No. CV-18-608978-00CL

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

Proceedings commenced in Toronto

**FACTUM OF THE RECEIVER
(Returnable May 30, 2019)
(Approval of Basaltic Transaction)**

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