

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

B E T W E E N :

ONTARIO SECURITIES COMMISSION

Applicant

- and -

GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP and 2506039 ONTARIO LIMITED

Respondents

APPLICATION UNDER SECTIONS 126 AND 129 OF THE *SECURITIES ACT*, R.S.O. 1990, c. S.5, AS AMENDED

FACTUM OF THE RECEIVER – RETURNABLE APRIL 7, 2022

April 4, 2022

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PART I – INTRODUCTION

1. This factum is filed by KSV Restructuring Inc. (“**KSV**”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) of the 23 parties listed on Schedule “B” of the Receivership Order (as defined below) (the “**Receivership Respondents**”), in support of the Receiver’s motion for two Orders.
2. The first Order (the “**Approval and Vesting Order**”) contains, in substance, the following requested relief:
 - (i) the approval of the Third Report of the Receiver dated March 29, 2022 (the “**Third Report**”) and the activities set out therein;
 - (ii) the approval of the agreement of purchase and sale dated February 16, 2022 (the “**St. Catharines APS**”) between the Receiver and Midroc Holdings Group Inc. (the “**St. Catharines Purchaser**”) for the purchase and sale of the real property municipally known as 75 Oliver Lane (also known as 527 Glendale Avenue) (the “**St. Catharines Property**”), the authorization for the Receiver to complete the transaction contemplated thereby (the “**St. Catharines Transaction**”) and the vesting in the St. Catharines Purchaser of all right, title and interest in the St. Catharines Property subject to certain encumbrances;
 - (iii) the authorization for the Receiver to make distributions in respect of the first two mortgages registered on title to the St. Catharines Property;
and
 - (iv) the sealing of the confidential appendices to the Third Report.

3. The second Order (the “**Claims Procedure Order**”) contains, in substance, the following requested relief:
- (i) the approval of, and authorization for the Receiver to conduct, a claims procedure to call for, assess and determine claims against the Receivership Respondents (the “**Claims Procedure**”); and
 - (ii) the authorization, direction and empowerment for the Receiver to administer the Claims Procedure in accordance with the terms of the proposed Clams Procedure Order.

PART II – THE FACTS

A. Background

4. Pursuant to an application by the Ontario Securities Commission (the “**OSC**”) under ss. 126 and 129 of the *Securities Act*, RSO 1990, c. S.5, as amended (the “**Securities Act**”), the Court made an Order on December 10, 2021 (the “**Receivership Order**”) appointing KSV as the Receiver of the 17 pieces of real property listed on Schedule “A” of the Receivership Order (the “**Real Property**”) and all the other assets, undertakings and properties of each of the Receivership Respondents, including all the assets held in trust or required to be held in trust by or for any of the Receivership Respondents, or by their lawyers, agents and/or any other person, and all proceeds thereof (together with the Real Property, the “**Property**”).¹

¹ Receivership Order, at recitals and para. 3.

5. The Receivership Respondents are developers of nine residential real estate projects in Ontario (the “**Projects**”).² The Receivership Respondents’ principal is Oscar Furtado (“**Mr. Furtado**”). Between 2016 and 2020, Mr. Furtado and the Receivership Respondents raised almost \$80 million from Ontario investors for the Projects. All the Projects are in the early development stages, and the vast majority of investors’ funds remain outstanding.³
6. Having regard to all the circumstances described in the OSC’s application, the Court determined that it was in the best interests of the Projects’ investors to appoint the Receiver.⁴
7. Mr. Furtado and the Receivership Respondents took steps to appeal the Receivership Order. They also brought a motion to stay the Receivership Order pending the appeal.⁵
8. On December 29, 2021, the Court of Appeal for Ontario dismissed the motion to stay the Receivership Order. The appeal itself is scheduled to be heard on April 13, 2022.⁶

B. The Sale Process

9. The Receivership Order grants the Receiver the authority to, *inter alia*, market the Property, sell the Property (with Court approval) and apply for a vesting Order.⁷

²Third Report, section 2.0.

³ Endorsement of The Honourable Mr. Justice Pattillo dated December 10, 2021 [**Receivership Endorsement**], at para. 8.

⁴ Receivership Endorsement, at para. 22.

⁵ Third Report, section 1.0.

⁶ Third Report, section 1.0.

10. Following its appointment, the Receiver scheduled a motion to be heard on February 9, 2022 for the purpose of obtaining an Order (the “**Sale Process Order**”) to approve a sale process for the Real Property and all the right, title and interest of the Receivership Respondents in the Real Property (the “**Sale Process**”).⁸
11. On February 8, 2022, counsel for the Receivership Respondents brought a motion seeking to direct the Receiver to accept an earlier iteration of the St. Catharines APS and a second agreement of purchase and sale in respect of the Aurora Property (as defined in the Third Report) (the “**Aurora APS**” and, together with the St. Catharines APS, the “**Offers**”). The Receiver reviewed the Offers to consider whether they warranted being accepted and, if so, the terms on which it would consider doing so. The Receiver also discussed its intentions regarding the Offers with the Receivership Respondents’ legal counsel.⁹
12. On February 9, 2022, the Court granted the Sale Process Order as requested by the Receiver. The Receiver also advised the Court that the Receiver was prepared to consider the Offers on certain terms, which were reflected in a consent endorsement issued by the Court (the “**February 9th Endorsement**”).¹⁰
13. Pursuant to the February 9th Endorsement, if the Receiver determines that either of the Offers should be rejected, the applicable Real Property is to be included in the Sale Process. As set out below, the Receiver accepted the St. Catharines APS following

⁷ Receivership Order, at paras. 4(j), 4(k) and 4(l).

⁸ Third Report, section 3.0.

⁹ Third Report, section 3.0.

¹⁰ Third Report, section 3.0.

negotiations with the St. Catharines Purchaser. The Receiver rejected the Aurora Offer because, *inter alia*, the offeror advised it would not be able to waive its due diligence condition by the deadline set in the February 9th Endorsement.¹¹

C. The St. Catharines APS

14. A summary of the St. Catharines APS is as follows:

- (a) Purchaser: Midroc Holdings Group Inc., which is arms' length to the Receivership Respondents.
- (b) Purchased Assets: All of the right, title and interest of the Receiver, Go-To Glendale Avenue LP and Go-To Glendale Avenue Inc. (together with Go-To Glendale Avenue LP, "**Go-To Glendale**") in and to the St. Catharines Property.
- (c) Purchase Price: The Receiver recommends that the purchase price be sealed pending closing. The purchase price is to be adjusted on closing for adjustments standard for a real estate transaction, including property taxes.
- (d) Deposit: The Purchaser paid 50% of the required deposit on acceptance of the St. Catharines APS and the balance of the required deposit on receipt by the Receiver of the Acknowledgements (as defined below).
- (e) Closing Date: The later of 30 calendar days after issuance of the Approval and Vesting Order and April 29, 2022.
- (f) Material Conditions: As follows:

¹¹ Third Report, sections 3.0-3.4.

- (i) each purchaser of a pre-construction condominium unit in the Project presently located at the St. Catharines Property (a “**Condo Purchaser**”) shall provide a written acknowledgement that limits their claims against Go-To Glendale to a return of their deposits paid for the purchase of their condominium (the “**Purchaser Acknowledgments**”);
 - (ii) each investor in Go-To Glendale (the “**Glendale Investors**”) shall provide a written acknowledgement confirming their support of the St. Catharines Transaction (the “**Investor Acknowledgements**” and, together with Purchaser Acknowledgments, the “**Acknowledgements**”); and
 - (iii) issuance of the Approval and Vesting Order.
- (g) Termination: The Receiver can terminate the St. Catharines APS if:
- (i) the St. Catharines Transaction is not approved by the Court or the Court does not issue the Approval and Vesting Order;
 - (ii) any of the St. Catharines Property is removed from the control of the Receiver;
 - (iii) legal proceedings are threatened against the Receiver restraining the sale of the St. Catharines Property;
 - (iv) the St. Catharines Property is redeemed in whole or in part prior to closing; or

(v) the Acknowledgements are not received by February 25, 2022.¹²

15. As set out in the Third Report, the Receiver recommends that the Court approve the St. Catharines Transaction for the following reasons:

- (a) the Receiver is of the view that the purchase price is fair and reasonable based on:
 - (i) estimates of value that were provided to the Receiver by four realtors that participated in its broker solicitation process; and
 - (ii) the value in an appraisal dated February 1, 2022 prepared for the Receiver by Altus Group (“**Altus**”), a real estate advisory services firm. A schedule comparing the purchase price pursuant to the St. Catharines APS to the four estimates of value provided by the realtors and in the Altus appraisal is provided in Confidential Appendix “2” to the Third Report;
- (b) all Glendale Investors and Condo Purchasers have signed Acknowledgements;
- (c) the St. Catharines Transaction has a short closing period, as it is to close no later than 30 calendar days following issuance of the Approval and Vesting Order;
- (d) the transaction is not subject to any conditions, except the approval of the Court; and

¹² Third Report, section 3.1.

(e) based on Go-To Glendale's books and records, the purchase price of the St. Catharines Transaction is sufficient to repay the first two mortgages registered on title to the St. Catharines Property. Subject to completion of the Claims Procedure, as discussed below, the purchase price also appears to be sufficient to: a) pay in full all other creditor claims against Go-To Glendale; and b) return in full the capital invested by the Glendale Investors in Go-To Glendale Avenue LP, which is the entity through which Glendale Investors invested.¹³

16. The Receiver advised Glendale Investors in an investor update dated February 22, 2022 that if claims against Go-To Glendale exceed those reflected on Go-To Glendale's books and records, it is possible that creditors may not be repaid in full or that the Glendale Investors may not have a full recovery of their invested capital.¹⁴

D. Proposed Distributions upon Closing of the St. Catharines Transaction

17. Upon closing of the St. Catharines Transaction, the Receiver recommends that it be authorized to make distributions from the sale proceeds arising from the St. Catharines Transaction to Meridian Credit Union Limited ("**Meridian**") and Reciprocal Opportunities Incorporated ("**ROI**"), in full satisfaction of their secured claims against Go-To Glendale. Based on Go-To Glendale's books and records as of December 31, 2021, the balances owing to Meridian and ROI, respectively, were approximately \$1.15 million and \$2.14 million, plus interest and costs which continue to accrue.¹⁵

¹³ Third Report, section 3.2.

¹⁴ Third Report, section 3.2.

¹⁵ Third Report, section 3.3.

18. The Receiver's counsel has provided opinions dated March 23, 2022, which, subject to the standard assumptions and qualifications contained therein, conclude that the security granted by Go-To Glendale, as registered on title to the St. Catharines Property by way of mortgages and under the *Personal Property Security Act* (Ontario) create valid and perfected security interests in the St Catharines Property.¹⁶
19. Other than a construction lien in the amount of \$303,210 that was registered after the date of the Receivership Order, the Receiver is not aware of any other secured creditors or any other claim that ranks or may rank in priority to the claims of Meridian or ROI, other than:
- (a) property taxes which will be satisfied on closing of the St. Catharines Transaction;
 - (b) a fee of \$50,000 (plus HST) payable to CBRE Limited (as referenced in the February 9th Endorsement), which will also be satisfied on closing of the St. Catharines Transaction; and
 - (c) the Receiver's Charge (as defined in paragraph 21 of the Receivership Order).
- In this regard, the Receiver will retain an appropriate reserve for its fees and expenses, and those of its counsel.¹⁷

E. Claims Procedure

20. Unless otherwise defined in this section, capitalized terms have the meaning ascribed to them in the proposed Claims Procedure Order. Below is a high-level summary of

¹⁶ Third Report, section 3.3.

the proposed Claims Procedure, but interested parties should read the proposed Claims Procedure Order in its entirety.

21. The proposed Claims Procedure is intended to solicit and determine all Claims against the Receivership Respondents, being both Creditor Claims and Investor Claims.¹⁸ Investor Claims constitute those derived from an investment by way of a subscription agreement with any of the Receivership Respondents, whereas Creditor Claims are Claims other than Investor Claims.¹⁹
22. The proposed Claims Procedure requires:
 - (a) a Notice to Claimants to be published in *The Globe and Mail* (National Edition) by the Receiver by no later than April 28, 2022;
 - (b) the Receiver to post the Claims Procedure Order and Schedules (which include the Notice to Claimants, the Instruction Letter, the Acknowledgement of Investor Claim and Proof of Claim) on its website within five days of the issuance of the Claims Procedure Order; and
 - (c) the Receiver to send a Claims Package to each Known Claimant by no later than April 28, 2022, by ordinary or electronic mail to the Claimant's last known address provided by the Receivership Respondents, or the address provided to the Receiver by the Claimant.²⁰

¹⁷ Third Report, section 3.3.

¹⁸ Third Report, section 6.0.

¹⁹ Claims Procedure Order, at para. 2(f).

²⁰ Third Report, section 6.1.

23. The proposed Claims Procedure requires any Creditor of the Receivership Respondents who wishes to file a Creditor Claim to deliver a completed Proof of Claim to the Receiver on or before the **Claims Bar Date**, being 5:00 p.m. (Eastern Time) on **June 2, 2022**.²¹
24. In contrast, the Receiver will determine all Investor Claims as at the date of the Receivership Order based on the Receivership Respondents' books and records. The specifics of each such Investor Claim will be sent by the Receiver to the applicable Investor by way of the Acknowledgement of Investor Claim form. Any Investor that does not dispute its Investor Claim as presented in the Acknowledgment of Investor Claim form is not required to take any further action and the Investor Claim will be deemed to be the Investor's Proven Claim.²²
25. The proposed Claims Procedure provides that any Investor wishing to dispute the content of the Acknowledgment of Investor Claim must file a Request for Amendment with the Receiver on or before the Claims Bar Date. Any Investor who does not receive an Acknowledgement of Investor Claim and believes it has an Investor Claim is required to file a completed Proof of Claim with the Receiver on or before the Claims Bar Date. Any Claimant who does not file a Proof of Claim or a Request for Amendment with the Receiver in accordance with this Claims Procedure Order by the Claims Bar Date shall:

²¹ Third Report, section 6.2.

²² Third Report, section 6.2.

- (a) be forever barred from asserting or enforcing any such Claim, except to the extent that such Claim is based exclusively on the contents of the Acknowledgment of Investor Claim;
 - (b) not be entitled to receive any distributions from any of the Receivership Respondents' estates in respect of such Claim, except to the extent that such Claim is based exclusively on the contents of the Acknowledgment of Investor Claim; and
 - (c) not be entitled to any further notice in, and shall not be entitled to participate in, the proceeding commenced by the Receivership Order, except to the extent that such notice or participation is based exclusively on the contents of the Acknowledgment of Investor Claim or an Excluded Claim. Excluded Claims are defined as any claim secured by the Receiver's Charge or the Receiver's Borrowings Charge (as both are defined in the Receivership Order).²³
26. The proposed Claims Procedure provides that the Receiver shall review all Proofs of Claim and Requests for Amendment filed in accordance with this Claims Procedure Order, and at any time may, amongst other things:
- (a) attempt to resolve and settle any issue arising in a Proof of Claim, in a Request for Amendment or in respect of a Claim more generally;
 - (b) accept the Claim; and/or

²³ Third Report, sections 6.2 and 6.3.

(c) revise or disallow the amount of any Claim and so notify the Claimant in writing by way of a Notice of Revision or Disallowance.²⁴

27. The proposed Claims Procedure provides that any Person who intends to dispute a Notice of Revision or Disallowance must deliver a Notice of Dispute to the Receiver in writing, by 5:00 p.m. (Eastern Time) on the day that is no later than 14 days after delivery of the Notice of Revision or Disallowance, failing which the value and status of such Claim shall be deemed to be set out in the Notice of Revision or Disallowance.²⁵

28. If a Notice of Dispute is received by the above deadline, the proposed Claims Procedure provides that the Receiver and the Claimant may attempt to resolve the disputed Claim on a consensual basis, failing which the Receiver may bring a motion to have the disputed Claim adjudicated by the Court.²⁶

PART III – ISSUES AND THE LAW

29. The substantive issues to be adjudicated by the Court on the Receiver’s motion are:

(a) the granting of the Approval and Vesting Order in respect of the St. Catharines Transaction;

(b) the sealing of the Confidential Appendices to the Third Report (the “**Confidential Appendices**”); and

²⁴ Third Report, section 6.4.

²⁵ Third Report, section 6.4.

²⁶ Third Report, section 6.4.

- (c) the granting of the Claims Procedure Order.

A. THE APPROVAL AND VESTING ORDER

30. In determining whether to approve a proposed sale of assets by a Court-appointed receiver, Ontario courts have consistently and uniformly applied the principles set out by the Court of Appeal for Ontario in *Royal Bank v. Soundair*.²⁷

31. *Soundair* establishes that, in reviewing a proposed sale of assets by a Court-appointed receiver, the Court must consider the following:

- (a) first, *whether the receiver has made a sufficient effort to get the best price and has not acted improvidently*. Pursuant to the February 9th Endorsement, the Receiver was authorized to review the St. Catharines Offer and to enter into the St Catharines APS if all the terms in the February 9th Endorsement in connection with the St Catharines Offer were satisfied. These terms were all completed in full prior to the Receiver's acceptance of the St. Catharines APS. The Receiver also compared and negotiated the St. Catharines Offer against:
 - (i) the estimates of value that were provided to the Receiver by four realtors that participated in its broker solicitation process; and (ii) the Altus appraisal. The Receiver also further tested the sufficiency of the purchase price via the completed Acknowledgments from each of the Glendale Investors;
- (b) second, *whether the interests of all parties have been considered*. Through the Acknowledgements, the Receiver is able to confirm that the St. Catharines

²⁷ (1991), 4 O.R. (3d) 1 (C.A.) (CanLII: <http://canlii.ca/t/1p78p>) [*Soundair*].

APS is acceptable to all the Glendale Investors and Condo Purchasers. Based on Go-To Glendale's books and records, the purchase price of the St. Catharines Transaction is sufficient to repay the first two mortgages registered on title to the St. Catharines Property in favour of Meridian and ROI. Subject to completion of the Claims Procedure, the purchase price also appears to be sufficient to: a) pay in full all other creditor claims against Go-To Glendale; and b) return in full the capital invested by the Glendale Investors in Go-To Glendale Avenue LP. With respect to any potential claims against the third registered charge on title in favour of Trisura Guarantee Insurance Company ("**Trisura**"), which the Receiver understands to be Tarion's insurer in respect of certain matters involving the Condo Purchasers' condominium units, the Purchaser Acknowledgments limit the Condo Purchasers' claims against Go-To Glendale, the Receiver and their respective successors and assigns to a return of their deposits paid for the purchase of their condominium units. The Receiver understands that these deposits are being held in trust, and arrangements are being made with Trisura to ensure their return to the Condo Purchasers;

- (c) third, *the efficacy and integrity of the process by which offers are obtained.*

The proposed St. Catharines Transaction is the result of the February 9th Endorsement, which was obtained on consent, as further confirmed by the Acknowledgments; and

- (d) fourth, *whether there has been unfairness in the working out of the process.*

The Receiver believes that there was no unfairness in the process. The

Receiver's rationale for its acceptance of the St. Catharines APS in light of all the foregoing reflects sound business judgment and respect for the February 9th Endorsement, which is consistent with the "*building block*" approach in insolvency and restructuring proceedings.²⁸

32. The Receiver respectfully submits that the *Soundair* principles have been satisfied and that the St. Catharines Transaction is commercially reasonable under the circumstances. This Court's approval of the St. Catharines APS, the associated vesting in favour of the St. Catharines Purchaser and the distributions to Meridian and ROI are in the best economic interests of stakeholders. The Receiver's counsel has provided the Receiver with an opinion confirming the validity and enforceability of Meridian's and ROI's security, subject to standard assumptions and qualifications. As such, the Receiver's request for the Approval and Vesting Order falls within "*the general principle that the court will be loathe to interfere with the business judgment of a Receiver and refuse to approve a transaction recommended by the Receiver acting properly in the fulfillment of its obligations as an officer of the court.*"²⁹

B. THE SEALING REQUEST

33. The Confidential Appendices contain commercially-sensitive information, which the Receiver seeks to have sealed and be treated as confidential.

²⁸ *Soundair*, at para. 16; *Target Canada Co. (Re)*, 2016 ONSC 316 [Comm. List] (CanLII: <https://canlii.ca/t/gn05p>) at para. 81; Ari Y Sorek and Charlotte Dion, Good Faith in Insolvency and Restructuring: At The Intersection of Civilian and Common Law Paradigms, at a Fork in the Road or in a Merging Lane?, 2020 18th Annual Review of Insolvency Law 34, 2020 (CanLII: <https://canlii.ca/t/t1wm>), section 2(iv) "Duty of consistency."

34. A Court may order that any document filed in a civil proceeding be treated as confidential, sealed and that it not form part of the public record.³⁰
35. The test for determining whether a sealing request ought to be granted in a commercial context was set out by the Supreme Court of Canada in *Sierra Club of Canada v. Canada (Minister of Finance)*, namely:
- (a) when such a request is necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
 - (b) when the salutary effects of the confidentiality request, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which, in this context, includes the public interest in open and accessible court proceedings.³¹
36. In *Sherman Estate v Donovan*, the Supreme Court held that a person asking a court to exercise discretion in limiting the ‘open court’ presumption must establish that: (i) openness poses a risk to an important interest of the public; (ii) the request sought is necessary to prevent the risk to the identified interest as reasonable alternative

²⁹ *Soundair*, at para. 16; *Morganite Canada Corp. v. Wolfhollow Properties Inc.* (2003), 47 CBR (4th) 89 (ONSC) (CanLII: <http://canlii.ca/t/4qkp>) at para. 7; *B&M Handelman Investments Limited v. Drotos*, 2018 ONCA 581 (CanLII: <http://canlii.ca/t/hsp9r>) at para. 43.

³⁰ *Courts of Justice Act* (Ontario), s. 137(2).

³¹ [2002] 2 S.C.R. 522 (CanLII: <http://canlii.ca/t/51s4>) at para. 53.

measures will not prevent said risk; and (iii) the benefits of the request outweigh the negatives as a matter of proportionality.³²

37. The Confidential Appendices contain:
- (a) the purchase price of the St. Catharines APS;
 - (b) estimates of value of the St. Catharines Property; and
 - (c) the floor price relating to a settlement agreement involving real property that is adjacent to the Vaughan Property (as defined and discussed in the Third Report), which Vaughan Property comprises part of the Real Property and is part of the Sale Process.
38. If such commercially-sensitive information is disclosed, it would likely have a detrimental impact on the sale efforts for the St. Catharines Property (if the St. Catharines Transaction does not close) and on the sale efforts for the Vaughan Property. Accordingly, in the Receiver's view, it is necessary and appropriate for the Confidential Appendices to be sealed.³³
39. The requested sealing Order is the least restrictive means available, in that only the pricing information itself has been redacted from the public record (i.e., both the St. Catharines APS and the Vaughan Property-adjacent settlement agreement have been included in the public record, with only the pricing information redacted).

³² 2021 SCC 25 (CanLII: <https://canlii.ca/t/jgc4w>) at para 38.

³³ Third Report, section 5.0.

C. THE CLAIMS PROCEDURE ORDER

40. The proposed Claims Procedure Order is modelled upon, and substantively analogous to, other claims procedures that have been approved by the Court in other insolvency proceedings, including regulator-initiated insolvency proceedings.³⁴
41. The Receiver requests that the Court issue the Claims Procedure Order for the following reasons:
- (a) the proposed notices, dispute resolution provisions and timelines set out in the Claims Procedure Order are consistent with those commonly approved by Canadian courts in insolvency proceedings and are sufficient to allow claimants to file Claims in this proceeding;
 - (b) the Claims Procedure is being conducted by the Receiver to determine all claims against the Receivership Respondents, and is necessary to facilitate timely distributions to the Claimants;
 - (c) the Claims Bar Date, being approximately 56 days from the date of the proposed Claims Procedure Order (April 7, 2022), is sufficient for Claimants to file a Proof of Claim and/or Request for Amendment with the Receiver; and
 - (d) the basis on which the Claims Procedure proposes to address Investor Claims will allow the Receiver to calculate Investor Claims in a consistent manner

³⁴ See, for example, the Claims Procedure Order of The Honourable Madam Justice Conway dated September 5, 2017 in Court File No. CV-16-11567-00CL: *The Superintendent of Financial Services v. Textbook Student Suites (525 Princess Street) Trustee Corporation* https://docs.granthornton.ca/document-folder/viewer/docu18LWsxWho7J/352570303112382044?_ga=2.79144084.1020399216.1648671370-329039883.1608235402.

based on the Receivership Respondents' books and records, and minimize the number of disputes, thereby streamlining the Claims Procedure and minimizing the professional costs of the Claims Procedure.³⁵

PART V – RELIEF SOUGHT

42. The Receiver respectfully requests the granting of orders substantially in the form contained in its motion record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED as of the date first written above.

Aird & Berlis LLP

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³⁵ Third Report, section 6.6.

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Royal Bank of Canada v. Soundair Corp.*, (1991) 4 O.R. (3d) 1 (C.A.).
2. *Target Canada Co. (Re)*, 2016 ONSC 316.
3. Ari Y Sorek and Charlotte Dion, Good Faith in Insolvency and Restructuring: At The Intersection of Civilian and Common Law Paradigms, at a Fork in the Road or in a Merging Lane?, 2020 18th Annual Review of Insolvency Law 34, 2020, section 2(iv) “Duty of consistency.”
4. *Morganite Canada Corp. v. Wolfhollow Properties Inc.*, (2003) 47 CBR (4th) 89 (ONSC).
5. *B&M Handelman Investments Limited v. Drotos*, 2018 ONCA 581.
6. *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522.
7. *Sherman Estate v. Donovan*, 2021 SCC 25.
8. *The Superintendent of Financial Services v. Textbook Student Suites (525 Princess Street) Trustee Corporation* (CV-16-11567-00CL), Claims Procedure Order dated September 5, 2017.

**SCHEDULE “B”
RELEVANT STATUTES**

Securities Act, R.S.O. 1990, c. S.5

Freeze direction

126 (1) If the Commission considers it expedient for the due administration of Ontario securities law or the regulation of the capital markets in Ontario or expedient to assist in the due administration of the securities laws or the regulation of the capital markets in another jurisdiction, the Commission may,

- (a) direct a person or company having on deposit or under its control or for safekeeping any funds, securities or property of any person or company to retain those funds, securities or property;
- (b) direct a person or company to refrain from withdrawing any funds, securities or property from another person or company who has them on deposit, under control or for safekeeping; or
- (c) direct a person or company to maintain funds, securities or property, and to refrain from disposing of, transferring, dissipating or otherwise dealing with or diminishing the value of those funds, securities or property.

Duration

(1.1) A direction under subsection (1) applies until the Commission in writing revokes the direction or consents to release funds, securities or property from the direction, or until the Superior Court of Justice orders otherwise.

Application

(2) A direction under subsection (1) that names a bank or other financial institution shall apply only to the branches of the bank or other financial institution identified in the direction.

Exclusions

(3) A direction under subsection (1) shall not apply to funds, securities or property in a recognized clearing agency or to securities in process of transfer by a transfer agent unless the direction so states.

Certificate of pending litigation

(4) The Commission may order that a direction under subsection (1) be certified to a land registrar or mining recorder and that it be registered or recorded against the lands or claims identified in the direction, and on registration or recording of the certificate it shall have the same effect as a certificate of pending litigation.

Review by court

(5) As soon as practicable, but not later than 10 days after a direction is issued under subsection (1), the Commission shall serve and file a notice of application in the Superior Court of Justice to continue the direction or for such other order as the court considers appropriate.

Grounds for continuance or other order

(5.1) An order may be made under subsection (5) if the court is satisfied that the order would

be reasonable and expedient in the circumstances, having due regard to the public interest and,

- (a) the due administration of Ontario securities law or the securities laws of another jurisdiction; or
- (b) the regulation of capital markets in Ontario or another jurisdiction.

Notice

(6) A direction under subsection (1) may be made without notice but, in that event, copies of the direction shall be sent forthwith by such means as the Commission may determine to all persons and companies named in the direction.

Clarification or revocation

(7) A person or company directly affected by a direction may apply to the Commission for clarification or to have the direction varied or revoked.

Appointment of receiver, etc.

129 (1) The Commission may apply to the Superior Court of Justice for an order appointing a receiver, receiver and manager, trustee or liquidator of all or any part of the property of any person or company.

Grounds

- (2) No order shall be made under subsection (1) unless the court is satisfied that,
 - (a) the appointment of a receiver, receiver and manager, trustee or liquidator of all or any part of the property of the person or company is in the best interests of the creditors of the person or company or of persons or companies any of whose property is in the possession or under the control of the person or company or the security holders of or subscribers to the person or company; or
 - (b) it is appropriate for the due administration of Ontario securities law.

Application without notice

(3) The court may make an order under subsection (1) on an application without notice, but the period of appointment shall not exceed fifteen days.

Motion to continue order

(4) If an order is made without notice under subsection (3), the Commission may make a motion to the court within fifteen days after the date of the order to continue the order or for the issuance of such other order as the court considers appropriate.

Powers of receiver, etc.

(5) A receiver, receiver and manager, trustee or liquidator of the property of a person or company appointed under this section shall be the receiver, receiver and manager, trustee or liquidator of all or any part of the property belonging to the person or company or held by the person or company on behalf of or in trust for any other person or company, and, if so directed by the court, the receiver, receiver and manager, trustee or liquidator has the authority to wind up or manage the business and affairs of the person or company and has all powers necessary or incidental to that authority.

Directors' powers cease

(6) If an order is made appointing a receiver, receiver and manager, trustee or liquidator of the property of a person or company under this section, the powers of the directors of the company that the receiver, receiver and manager, trustee or liquidator is authorized to exercise may not be exercised by the directors until the receiver, receiver and manager, trustee or liquidator is discharged by the court. .

Fees and expenses

(7) The fees charged and expenses incurred by a receiver, receiver and manager, trustee or liquidator appointed under this section in relation to the exercise of powers pursuant to the appointment shall be in the discretion of the court. 194, c. 11, s. 375.

Variation or discharge of order

(8) An order made under this section may be varied or discharged by the court on motion.

Limitation period

129.1 Except where otherwise provided in this Act, no proceeding under this Act shall be commenced later than six years from the date of the occurrence of the last event on which the proceeding is based.

Directors and officers

129.2 For the purposes of this Act, if a company or a person other than an individual has not complied with Ontario securities law, a director or officer of the company or person who authorized, permitted or acquiesced in the non-compliance shall be deemed to also have not complied with Ontario securities law, whether or not any proceeding has been commenced against the company or person under Ontario securities law or any order has been made against the company or person under section 127.

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

137(2) Sealing documents

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.

ONTARIO SECURITIES COMMISSION

Applicant

and

GO-TO DEVELOPMENTS

HOLDINGS INC. et al

Respondents

Court File No: CV-21-00673521-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

Proceeding commenced at TORONTO

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