

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

BETWEEN:

ECN FINANCIAL INC.

Applicant

- and -

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518
ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC.
formerly known as M. BLACHER DRUGS LTD., 2501380
ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC.,
2527475 ONTARIO INC. and GRACE DIENA

Respondents

**MOTION RECORD OF THE COURT-APPOINTED
RECEIVER, KSV RESTRUCTURING INC.**

(Grace Diena Settlement and Discharge Motion returnable November 9, 2020)

November 5, 2020

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000, P.O. Box 53
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Lawyers for the Receiver, KSV Restructuring Inc.

TO: THE SERVICE LIST

AND TO: THE PPSA REGISTRANTS SERVICE LIST

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

BETWEEN:

ECN FINANCIAL INC.

Applicant

- and -

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518
ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC.
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ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC.,
2527475 ONTARIO INC. and GRACE DIENA

Respondents

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TAB 1

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

B E T W E E N :

ECN FINANCIAL INC.

Applicant

- and -

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518
ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC.
formerly known as M. BLACHER DRUGS LTD., 2501380
ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC.,
2527475 ONTARIO INC. and GRACE DIENA

Respondents

NOTICE OF MOTION

(Grace Diena Settlement and Discharge Motion returnable November 9, 2020)

KSV Restructuring Inc. ("**KSV**") in its capacity as the Court-appointed receiver (in such capacity, the "**Receiver**") of the property, assets and undertaking of 2345760 Ontario Inc. ("**2345**"), Rando Drugs Ltd., 2275518 Ontario Inc. ("**Abira**"), Family Health Pharmacy West Inc. formerly known as M. Blacher Drugs Ltd., 2501380 Ontario Inc., 2527218 Ontario Inc., Dumopharm Inc., 2527475 Ontario Inc. (collectively, the "**Company**") and Grace Diena ("**Diena**" and together with the Company, the "**Respondents**"), will make a motion to a judge of the Commercial List of the Superior Court of Justice on **Monday, November 9, 2020** at 11:00 a.m. or as soon thereafter as the motion can be heard.

THE PROPOSED METHOD OF HEARING: The motion is to be heard via zoom videoconference.

THE MOTION IS FOR ORDERS:

1. Approving the settlement agreement dated November 4, 2020 (the "**Diena Settlement Agreement**") between the Receiver, ECN Financial Inc. ("**ECN**") and Diena (the "**Diena Settlement Parties**");
2. Discharging KSV as the Receiver of the assets of Diena; and
3. Amending the title of proceedings to remove Diena.

THE GROUNDS FOR THE MOTION ARE:

Background

4. Pursuant to an order (the “**Receivership Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on December 4, 2019, KSV was appointed as Receiver over the assets, property and undertaking of the Company.

5. Pursuant to a further Order of the Honourable Justice Hailey made on February 26, 2020, the Receivership Order was expanded to appoint KSV as receiver, for limited purposes, of the assets of Diena, the wife of Dani Diena, the principal of the Company (the “**Diena Receivership Order**”);

6. ECN is the senior secured creditor of the Company (other than Abira) and Diena pursuant to a promissory notes executed by 2345 between February 25, 2013 and March 31, 2017 (the “**Promissory Notes**”) as guaranteed by the Respondents (the “**Guarantees**”) and secured pursuant to various security agreements granted by the Respondents in favour of ECN (the “**Security**” and collectively with the Promissory Notes and Guarantees, the “**ECN Loan Documents**”)

7. There exist ongoing disputes as to entitlement and ownership of various assets including with respect to the Grace Family Trust (the “**Trust**”) and Dedicated National Pharmacies Inc. (“**DNPI**”);

8. The Diena Settlement Parties wish to settle certain of these matters on the terms set out below.

Diena Settlement Agreement

9. Following negotiations, the Diena Settlement Parties have agreed to the terms of the Diena Settlement Agreement. A summary of the material items is set out below:

- a) Diena shall pay to the Receiver \$150,000 (the “**Diena Settlement Amount**”) immediately upon the execution of the Diena Settlement Agreement;
- b) Diena irrevocably agrees for herself and on behalf of all members of her family, the Trust and any other company or entity which she may own, have a direct or indirect interest in, or of which she is an officer (collectively the “**Diena Parties**”

and each a “**Diena Party**”) that none of them shall oppose, assert a claim against or in any other way participate in:

- (i) the proposed transaction with respect to the sponsorship agreement dated as of September 16, 2020 between the Receiver and 2775506 Ontario Inc. with respect to the acquisition of new shares of Rando and the making of a proposal (the “**Proposal**”) to the creditors of Rando or any other similar transaction with respect to Rando;
 - (ii) the Proposal or any other proposal made on behalf of Rando including at a meeting of creditors or Court hearings in connection with the same;
 - (iii) any motion for direction or distribution of the remaining sale proceeds from the sale of the Family Health Pharmacy-Pelham (the “**Pelham Proceeds**”); and
 - (iv) any further motions or matters within the Receivership of the remaining Debtors.
- c) Diena for herself and the other Diena Parties hereby agrees, to the extent possible, to assist the Receiver in recovery of the Pelham Proceeds and shall execute (or request that another Diena Party execute) any documents reasonably required by the Receiver in connection with the recovery of the Pelham Proceeds;
- d) The Receiver and ECN hereby agree that effective immediately upon receipt of the Diena Settlement Amount by the Receiver, the Receiver and ECN shall not pursue any further claims against the Diena Parties, nor shall the Receiver or ECN pursue any claim against the Trust or DNPI in connection with the ECN Loan Documents;

10. The proposed settlement will bring finality to many outstanding issues remaining in the receivership and eliminate the cost of litigating the issues addressed by the Diena Settlement Agreement;

11. It is a term of the proposed settlement that the Receiver be discharged from Diena upon satisfaction of the conditions set out therein;

12. Once Diena is discharged, the title of proceedings should be amended;

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- a) The Fourth Report of the Receiver including the First and Second Supplement thereto; and
- b) Such further and other evidence as counsel may advise and this Honourable Court may permit.

November 5, 2020

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Lawyers for the Receiver, KSV Restructuring Inc.

TO: THE SERVICE LIST

AND TO: THE PPSA REGISTRANTS SERVICE LIST

ECN FINANCIAL INC. and 2345760 ONTARIO INC., et al.
Applicant Respondents

Court File No.: CV-19-632106-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

NOTICE OF MOTION

(Grace Diena Settlement and Discharge Motion
returnable November 9, 2020)

NORTON ROSE FULBRIGHT CANADA LLP
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Lawyers for the Receiver, KSV Restructuring Inc.

TAB 2

Court File No. CV-19-632106-00CL

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

B E T W E E N :

ECN FINANCIAL INC.

Applicant

- and -

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518
ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC.
formerly known as M. BLACHER DRUGS LTD., 2501380
ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC.,
2527475 ONTARIO INC. and GRACE DIENA

Respondents

**SECOND SUPPLEMENT TO FOURTH REPORT OF KSV RESTRUCTURING INC.
AS RECEIVER OF THE ASSETS, UNDERTAKINGS AND PROPERTIES
OF RANDO DRUGS LTD. AND RELATED COMPANIES**

November 5, 2020

NORTON ROSE FULBRIGHT CANADA LLP
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Lawyers for the Receiver, KSV Restructuring Inc.

TO: THE SERVICE LIST

AND TO: THE PPSA SERVICE LIST



**Second Supplement to Fourth Report of
KSV Restructuring Inc.
as Receiver of the
assets, undertakings and properties of
Rando Drugs Ltd.
and Related Companies**

November 5, 2020

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COURT FILE NO.: CV-19-00632106-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)****BETWEEN:****ECN FINANCIAL INC.****APPLICANT****- AND -****2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518 ONTARIO INC., FAMILY
HEALTH PHARMACY WEST INC. FORMERLY KNOWN AS M. BLACHER DRUGS LTD.,
2501380 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC., 2527475 ONTARIO
INC. AND GRACE DIENA****RESPONDENTS****SECOND SUPPLEMENT TO FOURTH REPORT OF KSV RESTRUCTURING INC.
AS RECEIVER OF THE ASSETS, UNDERTAKINGS AND PROPERTIES OF
RANDO DRUGS LTD. AND RELATED COMPANIES****NOVEMBER 5, 2020****1.0 Introduction**

1. This report (the "Second Supplemental Report") further supplements the Fourth Report to Court dated September 23, 2020 (the "Report") and the Supplement to the Fourth Report to Court dated November 3, 2020.
2. This Second Supplemental Report is subject to the restrictions and qualifications set out in the Report.
3. Defined terms in the Second Supplemental Report have the meanings provided to them in the Report.

1.1 Purposes of this Report

1. The purposes of this Second Supplemental Report are to:
 - a) summarize a settlement among the Receiver, ECN and Ms. Diena dated November 4, 2020 (the "Settlement"); and
 - b) recommend that the Court issue an Order approving the Settlement.

2.0 Settlement

1. As set out in the Report and the Supplemental Report, the Receiver and Mr. Diena have differing views as to the ownership of Rando. The Receiver has produced evidence that Rando is owned by 2345 and therefore its shares are subject to the Receivership Order.
2. In addition to Rando, the Receiver and ECN have reviewed evidence that certain other assets associated with Mr. Diena or Ms. Diena, a secured guarantor of the ECN Facility, are subject to the security interests of ECN. While the Dienas dispute ECN's interest in those assets, including DNPI and companies owned by the Trust, they have agreed to the terms of Settlement as summarized below:
 - a) Ms. Diena shall pay to the Receiver \$150,000 (the "Settlement Amount") immediately upon the execution of this Settlement.
 - b) Ms. Diena and all members of her family, the Trust and any other company or entity which she may own, have a direct or indirect interest in, or of which she is an officer (collectively the "Diena Parties" and each a "Diena Party") will not oppose, assert a claim against or in any other way participate in:
 - i. the proposed transaction contemplated by the Sponsorship Agreement;
 - ii. the Proposal;
 - iii. any motion for direction or distribution of the remaining sale proceeds (the "Pelham Proceeds") from the sale of a pharmacy completed in July 2018 associated with Rando; and
 - iv. any further motions or matters within the receivership;
 - c) To the extent possible, the Diena Parties will assist the Receiver to recover the Pelham Proceeds and shall execute (or request that another Diena Party execute) any documents (the "Pelham Support Documents") reasonably required by the Receiver in connection with the recovery of the Pelham Proceeds.
 - d) The Receiver and ECN agree that upon receipt of the Settlement Amount by the Receiver and the Pelham Support Documents, the Receiver and ECN shall not pursue any further claims against the Diena Parties, nor shall the Receiver or ECN pursue any claim against the Trust or DNPI in connection with the ECN Facility.
 - e) The Receiver shall bring a motion to approve the Settlement and discharge the receivership as against Ms. Diena, which motion shall not be opposed by ECN.
3. A copy of the Settlement is provided in Appendix "A".

2.1 Recommendation

1. The Receiver respectfully recommends that the Court issue an Order approving the Settlement for the following reasons:
 - a) It avoids litigation related to the ownership of Rando and the transaction contemplated by the Sponsorship Agreement;
 - b) It maximizes recoveries in the circumstances and will allow for the receivership, which commenced in December 2019, to be completed without further delays; and
 - c) It is supported by ECN, the Company's senior secured creditor and the party with the most significant economic interest in these proceedings.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER OF
THE ASSETS, UNDERTAKINGS AND PROPERTIES OF
RANDO DRUGS LTD. AND RELATED COMPANIES
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

Appendix “A”

SETTLEMENT

Dated this 4 day of November, 2020.

BETWEEN:

KSV Restructuring Inc. in its capacity as receiver of
the property, assets and undertaking of Rando Drugs
Ltd. and related companies (the "**Receiver**")

- and -

ECN Financial Inc. ("ECN")

- and -

Grace Diena ("Ms. Diena")

WHEREAS:

A. Pursuant to an order (the "**Receivership Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") made on December 4, 2019, KSV Kofman Inc. (now KSV Restructuring Inc., "**KSV**") was appointed as Receiver over the assets, property and undertaking of Rando Drugs Ltd., 2345760 Ontario Inc., 2275518 Ontario Inc. ("**Abira**"), Family Health Pharmacy West Inc., formerly known as M. Blacher Drugs Ltd., 2501380 Ontario Inc., 2527218 Ontario Inc. Dumopharm Inc. and 2527475 Ontario Inc. (collectively, the "**Debtors**").

B. Pursuant to an Order of the Court made on February 26, 2020, the Receivership Order was expanded to include the property, assets and undertaking of Ms. Diena.

C. ECN is the senior secured creditor of the Debtors (other than Abira) and Ms. Diena pursuant to a promissory notes executed by 2345 between February 25, 2013 and March 31, 2017 (the "**Promissory Notes**") as guaranteed by the other Debtors and Ms. Diena (the "**Guarantees**") and secured pursuant to various security agreements granted by the Debtors and Ms. Diena in favour of ECN (the "**Security**" and collectively with the Promissory Notes and Guarantees, the "**ECN Loan Documents**"). ECN is a secured creditor of Abira.

D. There exist ongoing disputes as to entitlement and ownership of various assets including with respect to the Grace Family Trust (the "**Trust**") and Dedicated National Pharmacies Inc. ("**DNPI**").

E. The parties wish to settle certain of these matters on the terms set out below.

NOW THEREFORE IN CONSIDERATION OF \$10.00 AND THE OTHER CONSIDERATION SET OUT BELOW, THE SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED AND AGREED, THE PARTIES AGREE AS FOLLOWS:

1. Ms. Diena shall pay to the Receiver \$150,000 (the "**Settlement Amount**") immediately upon the execution of this Settlement.
2. Effective immediately, Ms. Diena hereby irrevocably agrees for herself and on behalf of all members of her family, the Trust and any other company or entity which she may own, have a direct or indirect interest in, or of which she is an officer (collectively the "**Diena Parties**" and each a "**Diena Party**") that none of them shall oppose, assert a claim against or in any other way participate in:
 - a. the proposed transaction with respect to the sponsorship agreement dated as of September 16, 2020 between the Receiver and 2775506 Ontario Inc. with respect to the acquisition of new shares of Rando and the making of a proposal (the "**Proposal**") to the creditors of Rando or any other similar transaction with respect to Rando;
 - b. the Proposal or any other proposal made on behalf of Rando including at a meeting of creditors or Court hearings in connection with the same;
 - c. any motion for direction or distribution of the remaining sale proceeds from the sale of the Family Health Pharmacy-Pelham (the "**Pelham Proceeds**"); and
 - d. any further motions or matters within the Receivership of the remaining Debtors.
3. Ms. Diena for herself and the other Diena Parties hereby agrees, to the extent possible, to assist the Receiver in recovery of the Pelham Proceeds and shall execute (or request that another Diena Party execute) any documents (the "**Pelham Support Documents**") reasonably required by the Receiver in connection with the recovery of the Pelham Proceeds.
4. The Receiver and ECN hereby agree that effective immediately upon receipt of the Settlement Amount by the Receiver and the Pelham Support Documents, the Receiver and ECN shall not pursue any further claims against the Diena Parties, nor shall the Receiver or ECN pursue any claim against the Trust or DNPI in connection with the ECN Loan Documents.
5. The Receiver shall bring a motion to approve this settlement and discharge the receivership as against Ms. Diena (the "**Discharge Order**"), which motion shall not be opposed by ECN. Provided this Settlement is entered into on or before November 4, 2020, the Receiver shall endeavor to obtain such Discharge Order on November 9, 2020 or such other next Court date as it may otherwise need to schedule. For greater certainty, the Receiver shall have no obligation to schedule a motion solely for the purpose of obtaining the Discharge Order.
6. The Parties represent and warrant that they have not assigned to any person or

corporation the claims released above, and with respect to which the Parties agree not to make any claims or take any proceedings.

7. The Parties hereto acknowledge that each of them have received independent legal advice prior to the execution and delivery of this Settlement, or have waived their right to same.
8. This Settlement and each of its provisions shall enure to the benefit of and shall be binding on the personal representatives of each of the Parties hereto and their respective heirs, beneficiaries, successors, and assigns.
9. The terms of this Settlement shall be construed exclusively in accordance with the laws of the Province of Ontario.

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IN WITNESS WHEREOF, the Parties hereto have executed this Settlement effective as of the date first above written.


KSV RESTRUCTURING INC. solely in its capacity as receiver of the property, assets and undertaking of RANDO DRUGS LTD. and related companies and not in its personal capacity




Per: Mitch Vininsky
I have the authority to bind the corporation listed above.

ECN FINANCIAL INC.

Per:
I have the authority to bind the corporation listed above.



Witness

Grace Diena

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement effective as of the date first above written.

KSV RESTRUCTURING INC. solely in its capacity as receiver of the property, assets and undertaking of RANDO DRUGS LTD. and related companies and not in its personal capacity

Per: Mitch Vininsky
I have the authority to bind the corporation listed above.

ECN FINANCIAL INC.

Per: *Asan Fromen*, VICE PRESIDENT
I have the authority to bind the corporation listed above.

Laura Lee

Witness

Grace Diena

Grace Diena

ECN FINANCIAL INC. and 2345760 ONTARIO INC., et al.
Applicant Respondents

Court File No.: CV-19-632106-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**SECOND SUPPLEMENT TO FOURTH REPORT OF
KSV RESTRUCTURING INC. AS RECEIVER OF
THE ASSETS, UNDERTAKINGS AND
PROPERTIES OF RANDO DRUGS LTD. AND
RELATED COMPANIES**

November 5, 2020

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000, P.O. Box 53
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Jennifer Stam LSO# 46735J
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Lawyers for the Receiver, KSV Restructuring Inc.

TAB 3

Court File No.: CV-19-632106-00CL

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

THE HONOURABLE)	MONDAY, THE 9TH
)	
JUSTICE HAINEY)	DAY OF NOVEMBER, 2020
)	

B E T W E E N :

ECN FINANCIAL INC.

Applicant

- and -

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518
ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC.
formerly known as M. BLACHER DRUGS LTD., 2501380
ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC.,
2527475 ONTARIO INC. and GRACE DIENA

Respondents

DISCHARGE ORDER
(Diena Receivership Discharge)

THIS MOTION, made by KSV Restructuring Inc. ("**KSV**") in its capacity as the Court-appointed receiver (the "**Receiver**") of the property, assets and undertaking of 2345760 Ontario Inc., Rando Drugs Ltd., 2275518 Ontario Inc., Family Health Pharmacy West Inc. formerly known as M. Blacher Drugs Ltd., 2501380 Ontario Inc., 2527218 Ontario Inc., Dumopharm Inc., 2527475 Ontario Inc. (collectively, the "**Company**") and Grace Diena ("**Diena**" and together with the Company, the "**Respondents**") (as defined in the Orders of this Court made on December 4, 2019 and February 26, 2020 in these proceedings, respectively the "**Receivership Order**" and the "**Diena Receivership Order**"), for an order:

1. Approving the settlement agreement dated November 4, 2020 (the "**Diena Settlement Agreement**") between the Receiver, ECN Financial Inc. ("**ECN**") and Diena (the "**Diena Settlement Parties**");
2. Discharging KSV as the Receiver of the assets of Diena as set out in the Diena Receivership Order; and

3. Amending the title of proceedings to remove Diena,

was heard this day at via videoconference.

ON READING the Second Supplement to the Fourth Report of the Receiver dated November 5, 2020 (the “**Second Supplement**”), and hearing the submissions of counsel for the Receiver and ECN Financial Inc., no one else appearing although served as evidenced by the Affidavit of Service of Gianni Bianchi sworn November 5, 2020, filed;

Sufficiency of Service

1. **THIS COURT ORDERS** that the time for service of the Receiver’s Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

Diena Settlement Approval

2. **THIS COURT ORDERS** that the Diena Settlement Agreement is hereby approved, and the Diena Settlement Parties are hereby bound by this Order and by those terms of the Diena Settlement Agreement that are conditional upon the granting of this Order and are authorized and directed to comply with their obligations thereunder.

Diena Receivership Discharge

3. **THIS COURT ORDERS** that upon the filing of the Receiver of a certificate (the “**Discharge Certificate**”) confirming the conditions to the discharge have been met as set out in the Diena Settlement Agreement, the Receiver shall be discharged as the Receiver of the Diena assets as set out in the Diena Receivership Order.

4. **THIS COURT ORDERS AND DECLARES** that KSV is hereby released and discharged from any and all liability that KSV now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of KSV while acting in its capacity as the Receiver of the Diena assets, save and except for any gross negligence or wilful misconduct on the Receiver’s part. Without limiting the generality of the foregoing, KSV is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings with relation to the Diena assets, save and except for any gross negligence or wilful misconduct on the Receiver’s part.

Amendment to Title of Proceedings

5. **THIS COURT ORDERS** that upon the filing of the Discharge Certificate, the title of proceedings shall be amended in the form attached hereto as **Schedule "A"** to remove Grace Diena as a Respondent to these proceedings.

Recognition and Enforcement

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Receiver and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and their respective agents in carrying out the terms of this Order.

Schedule "A"
Form of Amended Title of Proceedings

Court File No. CV-19-632106-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ECN FINANCIAL INC.

Applicant

- and -

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518
 ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC.
 formerly known as M. BLACHER DRUGS LTD., 2501380
 ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC.,
and 2527475 ONTARIO INC. ~~and GRACE DIENA~~

Respondents

ECN FINANCIAL INC. and 2345760 ONTARIO INC., et al.
Applicant Respondents

Court File No.: CV-19-632106-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

DISCHARGE ORDER
(Diena Receivership Discharge)

NORTON ROSE FULBRIGHT CANADA LLP
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Lawyers for the Receiver, KSV Restructuring Inc.

TAB 4

Court File No. ~~_____~~: CV-19-632106-00CL

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

THE HONOURABLE _____)
)
JUSTICE ~~_____~~ HAINEY)
)
DAY OF ~~MONTH~~ NOVEMBER, 20~~YR~~ 20

~~BETWEEN:~~

PLAINTIFF

Plaintiff

BETWEEN:

ECN FINANCIAL INC.

Applicant

- and -

DEFENDANT

Defendant

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518
ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC.,
formerly known as M. BLACHER DRUGS LTD., 2501380
ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC.,
2527475 ONTARIO INC. and GRACE DIENA

Respondents

DISCHARGE ORDER
(Diena Receivership Discharge)

THIS MOTION, made by ~~[RECEIVER'S NAME]~~ KSV Restructuring Inc. ("KSV") in its capacity as the Court-appointed receiver (the "Receiver") of the ~~undertaking~~, property ~~and~~, assets ~~of [DEBTOR] (the "Debtor")~~ and undertaking of 2345760 Ontario Inc., Rando Drugs Ltd., 2275518 Ontario Inc., Family Health Pharmacy West Inc. formerly known as M. Blacher Drugs

Ltd., 2501380 Ontario Inc., 2527218 Ontario Inc., Dumopharm Inc., 2527475 Ontario Inc. (collectively, the “Company”) and Grace Diena (“Diena” and together with the Company, the “Respondents”) (as defined in the Orders of this Court made on December 4, 2019 and February 26, 2020 in these proceedings, respectively the “Receivership Order” and the “Diena Receivership Order”), for an order:

~~1. approving the activities of the Receiver as set out in the report of the Receiver dated [DATE] (the “Report”); 2. approving the fees and disbursements of the Receiver and its counsel;~~ Approving the settlement agreement dated November 4, 2020 (the “Diena Settlement Agreement”) between the Receiver, ECN Financial Inc. (“ECN”) and Diena (the “Diena Settlement Parties”);

~~3. approving the distribution of the remaining proceeds available in the estate of the Debtor; and~~

~~2. 4. discharging [RECEIVER'S NAME] Discharging KSV as the Receiver of the undertaking, property and assets of the Debtor; and 5. releasing [RECEIVER'S NAME] from any and all liability,~~ Diena as set out in paragraph 5 of this Order¹the Diena Receivership Order; and

3. Amending the title of proceedings to remove Diena,

was heard this day at ~~330 University Avenue, Toronto, Ontario~~ via videoconference.

ON READING the Second Supplement to the Fourth Report, ~~the affidavits~~ of the Receiver ~~and its counsel as to fees~~ dated November 5, 2020 (the “Fee Affidavits” “Second Supplement”), and ~~on~~ hearing the submissions of counsel for the Receiver and ECN Financial Inc., no one else appearing although served as evidenced by the Affidavit of ~~[NAME]~~ Service of Gianni Bianchi sworn ~~[DATE]~~ November 5, 2020, filed²;

Sufficiency of Service

1. **THIS COURT ORDERS** that the ~~activities of the Receiver, as set out in the Report, are hereby approved.~~ time for service of the Receiver’s Notice of Motion and the Motion Record is

¹ If this relief is being sought, stakeholders should be specifically advised, and given ample notice. See also Note 4, below.

² This model order assumes that the time for service does not need to be abridged.

hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

~~2. THIS COURT ORDERS that the fees and disbursements of the Receiver and its counsel, as set out in the Report and the Fee Affidavits, are hereby approved.~~

Diena Settlement Approval

~~2. 3. THIS COURT ORDERS that, after payment of the fees and disbursements herein approved, the Receiver shall pay the monies remaining in its hands to [NAME OF PARTY]³.~~ the Diena Settlement Agreement is hereby approved, and the Diena Settlement Parties are hereby bound by this Order and by those terms of the Diena Settlement Agreement that are conditional upon the granting of this Order and are authorized and directed to comply with their obligations thereunder.

Diena Receivership Discharge

~~3. 4. THIS COURT ORDERS that upon payment of the amounts set out in paragraph 3 hereof [and upon the Receiver filing a certificate certifying that it has completed the other activities described in the Report] the filing of the Receiver of a certificate (the "Discharge Certificate") confirming the conditions to the discharge have been met as set out in the Diena Settlement Agreement, the Receiver shall be discharged as the Receiver of the undertaking, property and assets of the Debtor, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of [RECEIVER'S NAME] in its capacity as Receiver~~ Diena assets as set out in the Diena Receivership Order.

~~4. 5. THIS COURT ORDERS AND DECLARES that [RECEIVER'S NAME] KSV is hereby released and discharged from any and all liability that [RECEIVER'S NAME] KSV now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of [RECEIVER'S NAME] KSV while acting in its capacity as the Receiver herein~~ of the Diena

³ ~~This model order assumes that the material filed supports a distribution to a specific secured creditor or other party.~~

assets, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, ~~{RECEIVER'S NAME}~~KSV is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings with relation to the Diena assets, save and except for any gross negligence or wilful misconduct on the Receiver's part.⁴

⁴~~The model order subcommittee was divided as to whether a general release might be appropriate. On the one hand, the Receiver has presumably reported its activities to the Court, and presumably the reported activities have been approved in prior Orders. Moreover, the Order that appointed the Receiver likely has protections in favour of the Receiver. These factors tend to indicate that a general release of the Receiver is not necessary. On the other hand, the Receiver has acted only in a representative capacity, as the Court's officer, so the Court may find that it is appropriate to insulate the Receiver from all liability, by way of a general release. Some members of the subcommittee felt that, absent a general release, Receivers might hold back funds and/or wish to conduct a claims bar process, which would unnecessarily add time and cost to the receivership. The general release language has been added to this form of model order as an option only, to be considered by the presiding Judge in each specific case. See also Note 1, above.~~

Amendment to Title of Proceedings

5. THIS COURT ORDERS that upon the filing of the Discharge Certificate, the title of proceedings shall be amended in the form attached hereto as Schedule "A" to remove Grace Diena as a Respondent to these proceedings.

Recognition and Enforcement

6. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Receiver and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and their respective agents in carrying out the terms of this Order.

Schedule "A"
Form of Amended Title of Proceedings

Court File No. CV-19-632106-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ECN FINANCIAL INC.

Applicant

- and -

2345760 ONTARIO INC., RANDO DRUGS LTD., 2275518
ONTARIO INC., FAMILY HEALTH PHARMACY WEST INC.
formerly known as M. BLACHER DRUGS LTD., 2501380
ONTARIO INC., 2527218 ONTARIO INC., DUMOPHARM INC.,
and 2527475 ONTARIO INC. and GRACE DIENA

Respondents

ECN FINANCIAL INC., and 2345760 ONTARIO INC., et al.
Applicant Respondents

Court File No.: CV-19-632106-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

DISCHARGE ORDER
(Diena Receivership Discharge)

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ECN FINANCIAL INC. and 2345760 ONTARIO INC., et al.
Applicant Respondents

Court File No.: CV-19-632106-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**MOTION RECORD OF THE COURT-APPOINTED
RECEIVER, KSV RESTRUCTURING INC.**
(Grace Diena Settlement and Discharge Motion
returnable November 9, 2020)

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