

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

THE HONOURABLE) FRIDAY THE 29TH DAY
JUSTICE CONWAY) OF SEPTEMBER, 2023

DORR CAPITAL CORPORATION

Applicant

- and -

HIGHVIEW BUILDING CORP INC.

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985 c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

ANCILLARY RELIEF ORDER

THIS MOTION, made by KSV Restructuring Inc. ("**KSV**") in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**") without security, of the property, assets and undertakings of Highview Building Corp Inc. ("**Highview**"), pursuant to the Order of this Court dated May 2, 2023 (the "**Receivership Order**"), for an order, among other things: (i) approving the Fourth Report of the Receiver dated September 22, 2023 (the "**Fourth Report**") and the Receiver's conduct and activities described therein; (ii) approving the fees and disbursements of the Receiver, as set out in the affidavit of Robert Kofman sworn September 22, 2023 and of the Receiver's counsel, Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**"), as set out in the Affidavit of Beatrice Loschiavo sworn September 22, 2023; and (iii) authorizing and directing the Receiver to make certain payments and distributions and establish, hold and

maintain certain reserves as recommended and described in the Fourth Report, was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Notice of Motion of the Receiver, the Fourth Report and the Appendices thereto, and on hearing the submissions of counsel for the Receiver, and the other parties listed on the counsel slip, no one appearing for any other party although duly served as appears from the affidavit of service of Beatrice Loschiavo sworn September 22, 2023.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the 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.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Agreement of Purchase and Sale between the Receiver and 2133904 Ontario Inc. (the "**Purchaser**") dated August 10, 2023, and amended on August 25, 2023, attached at Appendix "G" to the Fourth Report (as amended, the "**APS**"), as applicable.

APPROVAL OF RECEIVER'S REPORTS, FEES AND COSTS

3. **THIS COURT ORDERS** that the Fourth Report, and the activities of the Receiver described therein are hereby approved provided that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

4. **THIS COURT ORDERS** that Confidential Appendices 1 and 2 to the Fourth Report be and are hereby sealed until the closing of the sale of the Purchased Assets (as defined in the Fourth Report).
5. **THIS COURT ORDERS** that the fees and disbursements of the Receiver from the commencement of the receivership to and including August 31, 2023, as set out in the Affidavit of Robert Kofman sworn September 22, 2023 and attached at Appendix “I” to the Fourth Report, be and are hereby approved.
6. **THIS COURT ORDERS** that the fees and disbursements of Paliare Roland from the commencement of the receivership proceeding to and including August 31, 2023, as set out in the Affidavit of Beatrice Loschiavo sworn September 22, 2023 and attached at Appendix “J” to the Fourth Report, be and are hereby approved.

RESERVES

7. **THIS COURT ORDERS** that the Receiver is authorized and directed to establish, hold and maintain reserves from the proceeds of the Transaction (the “**Highview Purchase Proceeds**”) as follows:
 - (a) the amount of \$1.7 million on account of the estimated maximum amount of the Marzanos’ Claim (as defined in the Fourth Report), plus \$3,500 for costs (the “**Marzanos Holdback**”), which amounts may be paid out or distributed to Dorr (up to the total amount of Highview’s indebtedness to Dorr), as determined by the Receiver, upon the resolution of the Marzanos’ Claim;
and

- (b) the amount of \$150,000 on account of additional fees, disbursements and costs of the Receiver and its counsel in connection with Highview (the **“Professional Fee Holdback”**).

INITIAL DISTRIBUTION

8. **THIS COURT ORDERS** that the Receiver is authorized and directed to distribute the Highview Sale Proceeds to Dorr as partial payment of the balance owing by Highview to Dorr less: (i) the Marzanos Holdback; (ii) the unpaid professional fees described in the Fourth Report; and (iii) the Professional Fee Holdback.

SUBSEQUENT DISTRIBUTIONS

9. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to make subsequent distributions to Dorr from the Marzanos Holdback (upon resolution of the Marzanos’ Claim) and/or the Professional Fee Holdback (to the extent not utilized to pay fees, disbursements and costs of the Receiver and its counsel in connection with Highview) up to the amount of indebtedness owing by Highview to Dorr.

GENERAL

10. **THIS COURT ORDERS** that notwithstanding anything else contained in this Order, each of the payments and distributions provided for in this Order shall be made free and clear of all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary

claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Steele dated May 2, 2023; and (ii) all charges security interests, liens, trusts, or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property or real property registry system.

11. **THIS COURT ORDERS** that the Receiver or any other person facilitating payments and distributions pursuant to this Order shall be entitled to deduct and withhold from any such payment or distribution such amounts as may be required to be deducted or withheld under any applicable law and to remit such amounts to the appropriate governmental authority or other person entitled thereto as may be required by such law. To the extent that amounts are so withheld or deducted and remitted to the appropriate governmental authority or other person entitled thereto, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order.

12. **THIS COURT ORDERS** that, notwithstanding:
 - (a) the pendency of these proceedings;

 - (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Highview and any bankruptcy order issued pursuant to any such application; and

(c) any assignment in bankruptcy made in respect of Highview;

any payment or distributions made pursuant to this Order are final and irreversible and shall be binding on any trustee in bankruptcy that may be appointed in respect of Highview and shall not be void or voidable by creditors of Highview, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

13. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.
14. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal and regulatory or administrative bodies, having jurisdiction in Canada or in any other foreign jurisdiction, to give effect to this Order and to assist the Receiver and its respective agents in carrying out the terms of this Order. All courts, tribunals and 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 or to assist the Receiver and its respective agents in carrying out the terms of this Order.

15. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Eastern Time) on the date of this Order without the need for entry or filing.



DORR CAPITAL CORPORATION
Applicant

-and-

HIGHVIEW BUILDING CORP INC.
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

155 Wellington Street West
35th Floor
Toronto, ON M5V 3H1
Tel: 416.646.4300
Fax: 416.646.4301

Jeffrey Larry (LSO# 44608D)
Tel: 416.646.4330
jeff.larry@paliareroland.com

Daniel Rosenbluth (LSO #71044U)
Tel: 416.646.6307
daniel.rosenbluth@paliareroland.com

Lawyers for the Receiver