Court File No.: CV-19-00612265-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF AN APPLICATION PURSUANT TO 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

BETWEEN:

TEMISKAMING DEVELOPMENT FUND CORPORATION

Applicant

- and –

1793082 ONTARIO LTD., o/a K.D. QUALITY PELLETS

Respondent

FACTUM OF THE RECEIVER

May 21, 2019

Cassels Brock & Blackwell LLP
Barristers & Solicitors
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Larry C. Ellis LSO# 49313K
Tel: 416.869.5406
Fax: 416.350.6923
lellis@casselsbrock.com

Monique Sassi LSO# 63638L
Tel: 416.860.6886
Fax: 416.640.3005
msassi@casselsbrock.com

Lawyers for the Receiver, Grant Thornton Limited

TO: THE SERVICE LIST

INDEX

Court File No.: CV-19-00612265-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF AN APPLICATION PURSUANT TO 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

BETWEEN:

TEMISKAMING DEVELOPMENT FUND CORPORATION

Applicant

\- and –

1793082 ONTARIO LTD., o/a K.D. QUALITY PELLETS

Respondent

FACTUM OF THE RECEIVER,

PART I – OVERVIEW

1. This factum is filed in support of a motion by Grant Thornton Limited in its capacity as court appointed receiver and manager (the "**Receiver**") of 1793082 Ontario Ltd., o/a K.D. Quality Pellets[1] (the "**Debtor**" or "**Company**") seeking:

(a) an order substantially in the form attached as Schedule "A" to the Receiver's notice of motion returnable May 22, 2019 (the "**Approval and Vesting Order**"), (i) approving the Sale Transaction and authorizing the Receiver to take such additional steps and do such additional things as required to complete the Sale Transaction and upon completion of the Sale Transaction and filing of the Receiver's Certificate, vesting absolutely all of the Company's right, title and

[1] Defined terms not otherwise defined herein have the meaning provided to them in the First Report to Court of the Receiver dated May 14, 2019 (the "**First Report**").

interest in and to the Purchased Assets, in the Purchaser, free and clear of and from all Claims (ii) upon closing of the Sale Transaction, permitting the Receiver to hold $300,000.00 of the sale proceeds in escrow as the Disputed Collateral Escrow Amount pending an agreement reached between the Receiver, the Purchaser and Axiom or by further order of the Court; (iii) sealing Confidential Appendices 1 through 3 to the First Report until further order of this Court or filing of the Receiver's Certificate;

(b) an order substantially in the form attached as Schedule "B" to the Receiver's notice of motion returnable May 22, 2019, (the "**Order Approving Activities and Fees**") (i) Directing Mr. Doupe, the principal of the Company to deliver certain outstanding documents and assets of the Company to the Receiver pursuant to the Receivership Order, (ii) approving the Proposed Receiver's Report, the Interim Receiver's Report and the First Report and the conduct and activities of GTL as described therein; and (vii) approving the fees and disbursements of the Receiver and its legal counsel, Cassels up to and including April 30, 2019 as set out in the Wootton Affidavit and the Ward Affidavit.

PART II- FACTS

2. Temiskaming Development Fund Corporation ("**Temfund**" or the "**Applicant**"), a secured creditor of the Company sent the Company a Notice to Enforce Security on December 11, 2018 under section 244 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**").[2]

3. On January 9, 2019 Temfund served a motion record returnable on January 10, 2019 which sought, among other things an order (the "**Receivership Order**") appointing GTL as receiver and manager over the property, assets and undertakings of the Debtor (the "**Property**")

[2] First Report at para. 13.

pursuant to section 243 of the BIA and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**").[3]

4. On January 10, 2019 the Court issued an order which, among other things, authorized Temfund to appoint a representative (the "**Representative**") to gain immediate, reasonable and unrestricted access to the premises of the Debtor located at 999582 Highway 11 North, Harley, Ontario (the "**Premises**") and directed the Debtor to maintain the Property and the Premises. Accordingly, on January 15, 2019 Temfund appointed GTL as its Representative.[4]

5. Thereafter, on January 22, 2019 the Court appointed GTL as interim receiver of the Property of the Debtor[5] and on February 22, 2019 the Court granted the Applicant the full Receivership Order which appointed GTL as Receiver over the Property of the Debtor.[6]

6. Included in its application for the Receivership Order, the Applicant also sought an order (the "**Sale Process Order**") approving a marketing and sale process ("**Sale Process**") for the Property. The Court granted the Sale Process Order on February 22, 2019.[7]

SALE PROCESS

7. As described in the First Report in order to maximize recoveries, the Receiver sought to run an efficient and cost-effective Sale Process.[8]

8. Based on limited books and records, the Receiver determined that the assets of the Company comprised of 9 parcels which included (i) the Premises; (ii) the Pellet Plant; (iii) general machinery and equipment; and (iv) office furniture and equipment. The Receiver excluded the Company's books and records, accounts receivable, and intellectual property from the Sale Process.[9]

---

[3] First Report at para. 13
[4] *Ibid* at para 14 and 15.
[5] *Ibid* at para 19.
[6] *Ibid* at para 25.
[7] *Ibid* at para 25- 26.
[8] *Ibid* at para 31
[9] *Ibid* at 28 and 29

9. Prior to the granting of the Receivership Order, on or around February 20, 2019, the Receiver identified and began to prepare a broad list of approximately 187 parties to be approached who may be interested in participating in the Sale Process and bidding on the Property of the Company. This list of potential bidders included parties located in the U.S. and throughout Canada.[10] The Receiver has provided the Court with a summary of the parties who were approached and which summary the Receiver is seeking to be sealed due to confidentiality.

10. The Sale Process permitted parties six (6) weeks to conduct due diligence with respect to the Company and the deadline to submit Offers was April 17, 2019 (the "**Offer Deadline**").[11]

11. The Receiver, set up an electronic data room[12] (the "**Data Room**") with pertinent Company documents, published a notice of sale process and sale advertisements in the *National Post* (National Edition) and industry publications, prepared a solicitation email, an information memorandum and a form agreement of purchase sale to be used in the Sale Process and distributed to interested parties (collectively, the "**Company Sales Documents**").[13]

12. The Receiver reached out to the various potential bidders[14] and approximately 38 who indicated their interest, were provided with access to the Data Room and the Company Sales Documents.[15] The Receiver updated the documents in the Data Room as needed[16] and the interested parties were encouraged to review the materials and documentation in the Data Room and to forward any questions or requests for supplementary information to the Receiver.[17] The Receiver also conducted site visits of the Premises as required.[18]

---

[10] First Report at para. 32
[11] *Ibid* at para 31
[12] *Ibid* at para 34
[13] *Ibid* at para 35
[14] *Ibid* at para 36 - 37
[15] *Ibid* at para 39
[16] *Ibid* at para 40
[17] *Ibid* at para. 40
[18] *Ibid* at para. 41

13. By the Offer Deadline, the Receiver received a total of six (6) Offers on a combination of different asset parcels and only one going concern Offer, by the Purchaser, for substantially all of the parcels.[19] The Receiver has provided the Court with a confidential Offer summary which it is seeking to have sealed due to confidentiality.

14. Having regard to the entire Sale Process, the Receiver reviewed the Offers received and determined that based on the following quantitative and qualitative reasons the Purchaser's bid was the successful bid:[20]

(a) The Purchaser's Offer was the product of the commercially reasonable, court-approved Sale Process;

(b) The Purchasers offer contemplated the re-hiring of past employees of the Company and the preservation of employment opportunities in the New Liskeard area;

(c) There was no substantive conditions attached to the Purchaser's Offer as opposed to other Offers[21], save for Court-approval of the Sale Agreement;

(d) The Cash Consideration (as discussed below) of the Purchaser's Offer was substantially higher than any other bid received and the Purchaser's Offer was the only Offer for all of the Property of the Debtor and not for isolated parcels of Property; and

(e) The Purchaser's Offer also included a release of its secured claims against the Property.

[19] *Ibid* at para 44 and 46
[20] *Ibid* at para 54
[21] *Ibid* at para 45

15. The Receiver and the Purchaser and their respective counsel, worked to finalize the terms of an agreement of purchase and sale and agreed to a clarification of terms in a letter between counsel to the Purchaser and the Receiver.[22]

16. The Receiver contacted the secured Community Lenders, including the Applicant, who confirmed their support of the Purchaser's offer.[23]

ASSET PURCHASE AGREEMENT

17. The Receiver and the Purchaser executed the Sale Agreement on April 25, 2019.[24]

18. The material terms of the Sale Agreement include:

(a) Purchase Price: The Purchase Price is comprised of the substantial Cash Consideration and a release of certain secured claims against the Property.[25] For the reasons discussed below, the Receiver proposes that the amount of the Cash Consideration remain confidential and sealed;

(b) Deposit: The Purchaser submitted a deposit representing 10% of the Cash Consideration[26] with the balance due on Closing;

(c) Closing Date: The Closing is scheduled for 10 business days following the granting of the Approval and Vesting Order[27];

(d) Approval and Vesting Order: The Sale Agreement is subject to the court granting the Approval and Vesting Order.[28]

(e) Purchased Assets: the Sale Agreement pertains to substantially all of the Company's business and assets with the exception of:

(i) Parcel 5 which the Receiver and the Purchaser have agreed to exclude from the Sale Transaction once it was determined that those assets had

[22] First Report at para 47
[23] *Ibid* at para 48
[24] *Ibid* at para 49
[25] *Ibid* at para 50
[26] *Ibid* at para 51
[27] *Ibid* at para 51
[28] *Ibid* at para 54

already been sold. and were no longer in the possession of the Company.[29]

(ii) Parcel 4 and 6, which pertain to the Disputed Collateral as discussed below.

19. A copy of a redacted version of the Sale Agreement was attached to the Receiver's motion record. The Receiver has filed an un-redacted copy of the Sale Agreement with all financial terms disclosed which the Receiver is seeking to have sealed due to confidentiality.

DISPUTED COLLATERAL ESCROW AMOUNT

20. The Approval and Vesting Order contemplates that three pieces of equipment (the "**Disputed Collateral**") be held by the Receiver in escrow as well as, an amount of $300,000 of the sale proceeds (the "**Disputed Collateral Escrow Amount**") in connection with the Disputed Collateral.[30] The Receiver has become aware of competing claims in respect of the Disputed Collateral including claims made by Axiom Leasing Inc. ("**Axiom**"), a party who has a registration in respect of such Disputed Collateral under the *Person Property Security Act (Ontario)*.[31]

21. The Receiver is unable at this time to determine who has an entitlement in the Disputed Collateral and therefore out of an abundance of caution, is proposing to hold the Disputed Collateral and the Disputed Collateral Escrow Amount in escrow pending resolution of these claims.[32]

PART III– ISSUES

22. The key issues on this Motion are as follows:

(a) In respect of the proposed Approval and Vesting Order:

(i) Should the Court approve the Sale Transaction and vest the Purchased Assets in the Purchaser save for the Disputed Collateral which is to be held in escrow?

[29] *Ibid* at paras 30 and 74
[30] *Ibid* at para 77
[31] *Ibid* at para 67 and 73
[32] *Ibid* at para 77

(ii) Should the Court approve the requested sealing order?

(b) In respect of the proposed Order Approving Activities and Fees:

(i) Should the Court approve the activities and activities of the Receiver as set out in the Proposed Receiver's Report, the Interim Receiver's Report and the First Report? and

(ii) Should the Court approve the relief in respect of Mr. Doupe?

PART IV- LAW

I. APPROVING THE SALE TRANSACTION

23. Section 3(l) of the Receivership Order empowers and authorizes the Receiver to apply for any vesting order or other orders necessary to convey the Property (as defined in the Receivership Order) or any part or parts thereof to a purchaser free and clear of any liens or encumbrances affecting the Property.[33]

24. In *Royal Bank v Soundair Corp.* ("***Soundair***")[34] the Ontario Court of Appeal articulated the following factors to consider when determining whether to approve a sale by a receiver:

(a) whether the receiver has made a sufficient effort to get the price and has not acted improvidently;

(b) the interests of all the parties;

(c) the efficacy and integrity of the process by which offers are obtained; and

(d) whether there has been unfairness in the working out of the process.[35]

---

[33] First Report at Appendix "1", Receivership Order at para 3(l).
[34] *Royal Bank v Soundair Corp.*, 1991 CarswellOnt 205 (Ont CA), per Galligan J.A. ["***Soundair***"] [Book of Authorities at Tab 1].
[35] *Ibid* at para 16.

25. Where the Court finds that the receiver has acted reasonably, prudently and fairly and not arbitrarily, the Court will only decline to approve a sale recommended by a receiver in exceptional cases.[36]

26. The Receiver respectfully submits that the Sale Process, Sale Agreement and the Sale Transaction satisfy the requirements of the *Soundair* principles and should be approved by the Court.

(a) The Receiver made sufficient effort to obtain the best price and has not acted improvidently

27. The Receiver carried out the Sale Process in accordance with the provisions of the Proposed Receiver's Report[37] and the terms of the Sale Process Order. No party objected to the Sale Process Order being granted nor has an appeal of such order been sought.

28. In these circumstances, the Receiver is of the view that the duration, timelines, and breadth of market canvassing and the Sale Process were commercially reasonable for among other reasons: (i) the Receiver undertook an extensive canvassing of industry participants to determine interest[38] and reached out to more than 187 potential bidders; (ii) the Receiver spent time and effort working with all interested parties to assist in their due diligence of the assets of the Company,[39] (iii) interested parties were permitted a full six week period for due diligence,[40] and (iv) the liquidity of the Company required an efficient and cost-effective process. [41]

---

[36] *Ibid* at para 58.
[37] First Report at para 25 and Appendix "2", Proposed Receiver's Report at para 12
[38] First Report at para 32, 33 and 37
[39] *Ibid* at para 39-42
[40] *Ibid* at para 31
[41] *Ibid* at para 31

29. After receiving each of the Offers submitted by the bidders on the Offer Deadline, the Receiver considered each offer in detail[42] and proceeded to work with the Purchaser to clarify the terms of the Offer.[43] The Receiver's analysis, with input from the Community Lenders,[44] determined that the Purchaser's bid offered the highest value for the assets of the Company for among other reasons: (i) it was the only offer for all of the parcels of Property; (ii) it was the only offer for a purchase of the Property as a going concern with the prospect of re-hiring employees of the Company, (iii) the Offer had no pejorative or restrictive conditions, and (iv) the Offer had the highest Cash Consideration and also included a release of certain existing security of the Company.[45]

30. As a result, the Receiver believes that it has not acted improvidently and that its conclusion that the Purchaser's bid offered the best value should be approved by this honourable Court.

(b) The Interests of all the Parties

31. The Receiver obtained an independent security opinion from its counsel to verify the security interests held by the Community Lenders[46] and all the offers received appear to be insufficient to satisfy the entirety of the outstanding indebtedness owing to the Community Lenders.[47] The Sale Transaction is supported by the Community Lender's who have the primary vested interest the Purchased Assets[48] notwithstanding that they are projected to incur a shortfall on the indebtedness owed to them by the Company.[49]

---

[42] *Ibid* at para 44-46
[43] *Ibid* at para 47
[44] *Ibid* at para 48
[45] *Ibid* at para 54
[46] *Ibid* at para 69
[47] *Ibid* at para 71
[48] *Ibid* at para 48
[49] *Ibid* at 69 and 71

32. The Purchaser's offer was the only going concern offer[50] and the Purchaser intends to recommence the operations of the Pellet Plant and re-hire certain past employees of the Company which beneficial for the economy of New Liskeard.[51]

33. The interests of Axiom and any other parties who may have an interest in the Disputed Collateral remain protected with the escrow provisions of the Order. No party, including Axiom, will be materially prejudiced if the Disputed Collateral is held in escrow pending a resolution of the claims.

34. The Receiver respectfully submits that the Sale Transaction is the best transaction in the circumstances and is in the best interests of the Company's employees, key stakeholders, and all parties generally.

(c) Efficacy and Integrity of the Process by which Offers are Received

35. As noted above, the Receiver conducted the Sale Process in accordance with the Sale Process Approval Order granted by this Court and with the intention of running an efficient and cost-effective process.[52]

36. In accordance with the Sale Process, the Receiver made information available to interested parties and the Receiver was responsive to the requests of prospective bidders organizing site visits[53] and updating the Data Room.[54]

37. Given the circumstances, parties were each given reasonable time to perform diligence and to submit bids.

38. As demonstrated above, the Receiver submits that the process for receiving and evaluating offers was fair and reasonable, and conducted in accordance with the Court-approved Sale Process.

---

[50] *Ibid* at para. 46 and 54(b)
[51] *Ibid* at para 50
[52] First Report at para. 31
[53] *Ibid* at para. 41
[54] *Ibid* at para 40

(d) Whether there has been Unfairness in the Working Out of the Process

39. As mentioned above, all interested parties who requested information were granted the same access to the Data Room and given the same Company Sales Information[55] and had timely and equal access to the Receiver and to Company management.

40. The timelines to participate in the Sale Process were the same for all interested parties. As such, the Receiver submits there has been no unfairness in the process.

41. Based on the above, the Receiver respectfully requests that this Honourable Court approve the Sale Agreement and the Sale Transaction substantially in the form submitted in the Receiver's motion record.

II. DISPUTED COLLATERAL ESCROW AMOUNT

42. Pursuant to the Records of the Company the Disputed Collateral is "Property" of the Debtor and subject to the Receivership Order.

43. The Receiver has considered all the information provided by the parties claiming an interest in the Disputed Collateral including Axiom, and the Receiver is unable to make a determination at this time as to entitlement in respect of the Disputed Collateral.[56]

44. In order to allow the Sale Transaction to proceed and close, for the benefit of all stakeholders of the Company including potentially re-hired employees, the Receiver is proposing to keep the Disputed Collateral and the Disputed Collateral Escrow Amount in escrow which will permit the Sale Transaction to proceed while the Receiver and other parties resolve the claims in respect of the Disputed Collateral.

45. The Community Lenders and the Purchaser[57] as well as Axiom are supportive of this approach in connection with the Disputed Collateral.

---

[55] *Ibid* at para 39
[56] First report at para 77
[57] *Ibid* at para 77-78.

III. SEALING ORDER

46. The Confidential Appendices include unredacted copies of a schedule with the potential bidders who were contacted, offers summary and Sale Agreement. The information contained in the Confidential Appendices is commercially sensitive information related to the assets of the Company and industry participants and may affect the market value of the assets and potentially impair the ability of the Purchaser to conduct the business following closing of the Sale Transaction.[58]

47. Accordingly, the Receiver is seeking an order sealing the Confidential Appendices until further order of the Court.

48. Courts will grant sealing orders where:

(a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures would not prevent the risk; and

(b) the salutary effects of the confidentiality order, 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 includes the public interest in open and accessible proceedings.[59]

49. The requested sealing order is also necessary in order to protect the integrity and fairness of the Sale Process by ensuring that if the Sale Transaction does not close as intended, other potential purchasers in the Sale Process will not obtain an unfair advantage by obtaining sensitive valuation and other information in respect of the Company's assets contained in the Confidential Appendices, which would impair the Receiver's ability to negotiate with other parties. In the absence of a sealing order, third parties would have full knowledge of

---

[58] *Ibid* at para 55
[59] *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at para 53, [2002] 2 S.C.R. 522; ["***Sierra Club***"] [Books of Authorities at Tab 2].

the particulars of the Sale Process results and the Sale Agreement prior to completion, which may adversely affect future realizations.[60] Accordingly, sealing these materials outweighs the public interest of open and accessible court proceedings.

50. It is submitted that the Confidential Appendices contain information of the type covered by the test set out in *Sierra Club* and that no parties will be prejudiced by the sealing of the information.

IV. APPROVAL OF ACTIVITIES AND FEES

51. The Receiver is seeking approval of the Proposed Receiver's Report, the Interim Receiver's Report and the First Report and the activities described therein.

52. In addition, The Receiver is seeking approval of its fees and disbursements (including HST) since the commencement of these proceedings until April 30, 2019 in the amount of $115,038.71[61] and those of Cassels for the period ending April 30, 2019 in the amount of $108,854.27,[62] each as described in the Fee Affidavits.

53. The Receiver is not aware of any issues raised by the Community Lenders or any other parties in respect of the approval of the fees and disbursements incurred by the Receiver and its counsel.

54. Pursuant to the Wootton and Ward Affdiavits, the Receiver and Cassels respectfully submit that their fees and disbursements are consistent with the rates charged by insolvency professionals in the Toronto market and that the fees charged are reasonable and appropriate in the circumstances.[63]

V. RELIEF IN RESPECT OF MR. DOUPE

55. The Receivership Order explicitly states that that all "current and former directors, officers, employees .... and all persons acting on its instructions or behalf" shall advise the

---

[60] First report at para 55
[61] First report at para 85 and Appendix "18"
[62] First report at para 86 and Appendix "19"
[63] *Ibid* at Appendix "18" and Appendx "19"

Receiver of any "Property in their possession or control and shall grant immediate and continued access to the Receiver and deliver all such Property to the Receiver.[64]

56. Furthermore the Receivership Order explicitly requires that all such Persons (as defined therein) shall advise the Receiver of any Records including "corporate or accounting records" and shall provide same to the Receiver or grant the Receiver unfettered access to such records.[65]

57. Mr. Doupe is the principal of the Company and was served with the Receivership Order. Thereafter, the Receiver has attempted to contact Mr. Doupe on numerous occasions, requesting he deliver the Records of the Company to the Receiver pursuant to the provisions of the Receivership Order.[66]

58. The Receiver has been advised by third parties that certain Property was removed from the Premises and placed on Mr. Doupe's private property.[67] Since these missing pieces of equipment are assets of the Company based on the Company's books and records, Mr. Doupe is required to grant the Receiver immediate and continued access to that Property pursuant to paragraph 5 of the Receivership Order. Although the Receiver has requested the return of the Missing Assets[68] in various correspondence with Mr. Doupe these assets have not been returned.

59. The Receivership Order clearly addresses the missing Records and Missing Assets as "Property" of the Company and Mr. Doupe's refusal to relinquish same to the receiver is in direct violation of the Receivership Order.

---

[64] First Report at Appendix "1A", Receivership Order at para 4,
[65] First Report at Appendix "1A", Receivership Order at para 5,
[66] First Report at para 59, 60, 61
[67] *Ibid* at para 62
[68] *Ibid* at para 63-65

PART V- RELIEF SOUGHT

60. The Receiver therefore respectfully requests that this Honourable Court grant the relief requested by the Receiver in its motion returnable May 22, 2019.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of May, 2019

Cassels Brock & Blackwell LLP

Lawyers for Grant Thornton Limited in its capacity as court appointed Receiver and Receiver and manager of the assets, properties and undertakings of 1793082 Ontario Ltd., o/a K.D. Quality Pellets

SCHEDULE "A"

LIST OF AUTHORITIES

1 *Royal Bank v Soundair Corp.*, 1991 CarswellOnt 205 (ONCA) [Commercial List Authorities Book].

2 *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 (SCC) [Commercial List Authorities Book].

SCHEDULE "B"

RELEVANT STATUTES

Bankruptcy and Insolvency Act, RSC 1985, c B-3

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

(a) the insolvent person consents to an earlier enforcement under subsection 244(2); or

(b) the court considers it appropriate to appoint a receiver before then.

Definition of *receiver*

(2) Subject to subsections (3) and (4), in this Part, ***receiver*** means a person who

(a) is appointed under subsection (1); or

(b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under

(i) an agreement under which property becomes subject to a security (in this Part referred to as a "security agreement"), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of *receiver* — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition ***receiver*** in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of *disbursements*

(7) In subsection (6), ***disbursements*** does not include payments made in the operation of a business of the insolvent person or bankrupt.

Advance notice

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

(a) the inventory,

(b) the accounts receivable, or

(c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

No advance consent

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

Exception

(3) This section does not apply, or ceases to apply, in respect of a secured creditor

(a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or

(b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

Idem

(4) This section does not apply where there is a receiver in respect of the insolvent person.

<u>Courts of Justice Act, RSO 1990, c C.43</u>

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

TEMISKAMING DEVELOPMENT FUND CORPORATION Applicant	and	1793082 ONTARIO LTD., o/a K.D. QUALITY PELLETS Respondent

Court File No. CV-19-00612265-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE RECEIVER

Cassels Brock & Blackwell LLP
Barristers & Solicitors
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Larry C. Ellis LSUC# 49313K
Tel: 416.869.5406
Fax: 416.350.6923
lellis@casselsbrock.com

Monique Sassi LSO # 63638L
Tel: 416.860.6886
Fax: 416.640.3005
msassi@casselsbrock.com

Lawyers for the Receiver, Grant Thornton Limited