Court File No. CV-25-00742524-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

1001116006 ONTARIO INC.

Applicant

- and -

2568551 ONTARIO INC., carrying on business as CALIBREX DEVELOPMENT GROUP INC, 2847990 ONTARIO INC., 2847991 ONTARIO INC., 2847992 ONTARIO INC., 2847993 ONTARIO INC., 2847994 ONTARIO INC., 2741854 ONTARIO LIMITED, 2678514 ONTARIO INC., 2678517 ONTARIO INC., CHARLES HUNTER MILBORNE and ANDRZEJ ROMAN KEPINKSI

Respondents

IN THE MATTER OF AN APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 190, c. C.43, as amended

FACTUM OF THE RECEIVER (SALE PROCESS ORDER) MOTION RETURNABLE SEPTEMBER 17, 2025

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TO: SERVICE LIST

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FACTUM OF THE RECEIVER
(SALE PROCESS ORDER)

PART I - INTRODUCTION

1. This factum is filed by Grant Thornton Limited, in its capacity as Receiver (as defined below), in support of its motion for an order (the "**Sale Process Order**"), *inter alia*[1]

   (a) authorizing the Receiver to conduct the sale process with respect to the Real Property (as defined below) (the "**Sale Process**") as described in the First Report, and to enter into an agreement with Cushman & Wakefield ULC (the "**Broker**" or "**Cushman**") with respect to the listing and marketing of the Real Property;

[1] Any capitalized terms not defined herein shall have the same meanings as set out First Report of the Receiver dated September 11, 2025 (the "**First Report**") or the Receivership Order.

(b) sealing Confidential Appendix "1" to the First Report (the "**Confidential Appendix**") until the earlier of closing of the transaction for the sale of the Real Property or further order of the Court; and

(c) approving the First Report and the activities of the Receiver as described therein.

PART II - SUMMARY OF FACTS

A. OVERVIEW

2. On July 31, 2025, pursuant to an application by 1001116006 Ontario Inc. (the "**1001 Ontario**"), the Honourable Justice Kimmel of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued an order appointing Grant Thornton Limited as receiver (the "**Receiver**") (the "**Receivership Order**"), without security over (a) the real property described in appendices 1 and 2 of the Receivership Order, and all proceeds thereof (the "**Real Property**"), owned by the corporate respondents; and (b) the personal property of 2741854 Ontario Limited, 2678514 Ontario Inc., and 2678517 Ontario Inc., (together with the Real Property, the "**Property**").[2]

3. The Real Property includes multiple vacant lots, several stand alone commercial buildings, and a non-operational motel. The Real Property largely consists of either vacant land or vacant buildings.[3]

4. The mortgagee of the Real Property, 1001 Ontario, has funded the receivership to date by advancing funds in exchange for Receiver's Certificates.[4]

B. THE PROPOSED SALE PROCESS

5. The Receivership Order authorizes the Receiver to, among other things, market and sell

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[2] First Report at para 1; *1001116006 Ontario Inc. v 2568551 Ontario Inc., et al.*, (July 31, 2025), ONSC (Commercial List), Court File No. CV-25-00742524-00CL (*Receivership Order*) [*Receivership Order*].
[3] First Report at para 2.
[4] First Report at para 37.

the Real Property.[5]

6. As further detailed in the First Report, the Receiver invited four experienced commercial real estate brokers to submit proposals to market the Real Property and received complete proposals from two of the invited brokers (collectively, the "**Proposals**").[6] The Proposals contain, among other things, each broker's experience and knowledge of the geographical market, a proposed marketing plan, estimates of the Real Property's value, and their proposed compensation.[7] The Confidential Appendix consists of a summary of key aspects of the Proposals, especially the brokers' estimates of value.[8]

7. Subject to court approval, the Receiver has selected Cushman to market and sell the Real Properties. This decision was made based on, among other things, Cushman's proposed marketing process, the proposed commission structure, and local expertise.[9]

8. The Sale Process was developed by the Receiver, with the Broker's assistance, to generate the highest possible price for the Real Property by exposing it to the market for an estimated 17-19 weeks.[10] The details of the proposed Sale Process are detailed in the First Report and are summarized as follows:

(a) Weeks 1 to 3: Pre-Marketing: the Receiver and the Broker will prepare marketing and due diligence materials which will include a marketing flyer, a confidentiality agreement ("**CA**"), a confidential information memorandum ("**CIM**"), a form of an

[5] First Report at para 11; *Receivership Order* at para 3(j).
[6] First Report at paras 12 & 16.
[7] First Report at para 16.
[8] First Report at para 18.
[9] First Report at para 17.
[10] First Report at paras 21 & 22-35.

agreement of purchase and sale (the "**APS**") to be used by all prospective bidders, and an online data room containing due diligence information.[11]

(b) Week 4 to 8: Marketing & Due Diligence: the Broker and Receiver will market the Real Property by, among other things: (i) disseminating marketing materials to prospective purchasers; (ii) placing an advertisement in a national newspaper; (iii) facilitating tours of the Real Property; and (iv) providing access to the data room and CIM to prospective purchasers upon execution of the CA.[12]

(c) Weeks 21 to 23: Review of Offers & Buyer Selection: After the Real Property has been exposed to the market for 120 days, prospective purchasers shall submit their APS, subject to the discretion of the Receiver, in consultation with the Broker, to set an earlier date for submission of all APS. The Receiver will then establish a bid deadline and communicate such deadline to potential purchasers and the Broker shall summarize the offers submitted by such bid deadline for the Receiver's review. 13 In order to maximize the value of any transaction, the Receiver may, following the bid deadline, ask some or all of the prospective purchasers to re-submit offers for subsequent rounds of offers. The Receiver will identify the best offer(s) by analyzing how to maximize recovery and dispose of the widest scope of Real Property. The Receiver will then negotiate with those offeror(s) to select the successful bidder and finalize and execute an APS subject to Court approval.[14]

[11] First Report at para 23.
[12] First Report at paras 24-28.
[13] First Report at paras 29-31.
[14] First Report at paras 32-34.

(d) Weeks 24-27: Court approval: The Receiver will prepare and serve motion materials for approval of the APS(s).[15]

9. The mortgagee of the Real Property, 1001 Ontario, may be interested in submitting a credit bid for some or all of the Real Property (the "**Credit Bid**"), which would involve the bidding of the mortgage debt over the Real Property and/or all of the value of the Receiver Certificates.[16]

10. As more fully set out in the First Report, to ensure the integrity of the Sale Process, the Receiver proposes that

(a) 1001 Ontario shall deliver notice in writing to the Receiver by no later than October 1, 2025 if it intends to submit a Credit Bid (a "**Credit Bid Notice**");

(b) 1001 Ontario shall not be obligated to submit a Credit Bid should it deliver a Credit Bid Notice; and

(c) should 1001 Ontario deliver a Credit Bid Notice[17]

(i) it shall not receive copies of bids provided by other bidders,

(ii) the Receiver will select the successful bids without any input by 1001 Ontario, and

(iii) such Credit Bid shall include at least sufficient cash consideration to satisfy any priority payment or obligation required to be paid that ranks ahead of the mortgage security held by 1001 Ontario provided, however, that indebtedness evidenced by Receiver's Certificates issued to 1001 Ontario

[15] First Report at para 35.
[16] First Report at para 37.
[17] First Report para 38.

shall be permitted to form part of the non-cash consideration included in the Credit Bid.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

11. The issues on this motion are whether this Court should

(a) authorize the Receiver to conduct proposed Sale Process;

(b) seal the Confidential Appendix to the First Report; and

(c) approve the First Report and the activities of the Receiver as described therein.

C. THE RECEIVER SHOULD BE AUTHRORIZED TO CONDUCT THE SALE PROCESS

12. Section 243(1) of the BIA permits the Court broad discretion as to the powers it grants receivers to exercise control over the property of a company in a receivership proceeding and in making orders generally:[18]

> **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.

13. The Receivership Order was granted pursuant to Section 243(1) of the BIA and Section 101 of the CJA and explicitly authorizes and empowers the Receiver to market any and all of the

[18] *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 s. 243(1) [*BIA*].

Property, including advertising and soliciting offers in respect of the Property and negotiating such terms and conditions to sale as the Receiver in its discretion may deem appropriate.[19]

14. The Court has held that the reasonableness and adequacy of any sales process proposed by a court-appointed receiver must be assessed in light of the factors that the Court will later take into account when considering the approval of the proposed sale resulting from that sale process.[20]

15. In *Royal Bank v Soundair*, the Ontario Court of Appeal held that a court was to consider the following factors when deciding whether to approve the sale of property subject to a receivership:[21]

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

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

(c) whether there has been unfairness in the working out of the process; and

(d) the interests of all parties.

16. In *CCM Master Qualified Fund Ltd v blutip Power Technologies Ltd*, the Court held that the criteria identified in *Soundair* also inform the determination of whether to approve a court-appointed receiver's proposed sale process. Specifically, the Court is to assess[22]

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[19] First Report para 11; *Receivership Order* at para 3(j).
[20] *CCM Master Qualified Fund v blutip Power Technologies*, 2012 ONSC 1750 at para 6 [*CCM*]; citing *Royal Bank of Canada v Soundair*, 1991 CanLII 2727 (ONCA) at para 16 [*Soundair*].
[21] *Soundair* at para 16.
[22] *CCM* at para 6.

(a) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver;

(b) the fairness, transparency and integrity of the proposed process; and

(c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

17. When reviewing a sales process (or the conduct thereof), the court generally defers to the business expertise of the receiver and does not intervene or "second-guess" the receiver's recommendations.[23] It is only in "exceptional" circumstances that a court should intervene and proceed contrary to the recommendation of the receiver.[24]

18. Each of the factors outlined in *CCM* supports the approval of the SISP:

(a) The Sale Process is commercially efficient. The Sale Process will be overseen and conducted by the Receiver and the Broker. The Broker is well known in commercial real estate sales. The Receiver identified the Broker's proposal as the most likely proposal to maximize the value of the Real Property in consideration of a series of factors. The assistance and involvement of the Broker with the Sale Process will ensure the Sale Process is efficient and maximizes the recovery available.[25]

(b) The Sale Process is fair and transparent. The Sale Process is a fair, open and transparent process that contemplates a broad public marketing process, pursuant to which the Broker and the Receiver will engage with prospective purchasers and,

[23] *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857 at paras 43-45 [*Bridging Finance*] citing *Marchant Realty Partners Inc. v. 2407533 Ontario Inc.*, 2021 ONCA 375 at para 15.
[24] *Bridging Finance* at para 43.
[25] First Report at paras 12-18.

upon execution of the CA, provide access to the CIM and the data room. Further, the Sale Process requires all bids submitted to conform with the form APS, thereby ensuring that all considered bids are required to conform with a set of basic criteria. Finally, the entering into of any transaction or transactions pursuant to the Sale Process is subject to court approval.[26]

(c) The Sale Process optimizes the chance of securing the best possible price. The proposed length of the Sale Process (being 17-19 weeks) is sufficient to ensure the Broker is capable of broadly market the Real Property, while also being sufficiently succinct to provide interested bidders with the requisite certainty. This extended marketing period reflects the fact that the Real Property consists primarily of either vacant land or unoccupied commercial buildings. By offering the sale of the Real Property on an *en bloc* or individual basis, the Sale Process is flexible enough to accommodate more bids and maximize the value returnable. Further, the Receiver is permitted to engage with any interested bidders to ask them to re-submit or increase their offers, in subsequent rounds, to maximize the value of any transaction.[27]

19. For the reasons set out above, the Receiver submits that the proposed Sale Process is consistent with the criteria established in *CCM*, in that it will optimize the chance of securing the best possible price for the Real Property in a manner that satisfies the *Soundair* criteria. Accordingly, the Receiver submits that the Court should approve the Sale Process.

D. THE CONFIDENTIAL APPENDIX TO THE FIRST REPORT SHOULD BE SEALED

20. The Receiver is seeking sealing relief in the Sale Process Order in respect of the

[26] First Report at paras 24-29.
[27] First Report at paras 31-34.

Confidential Appendix. The Confidential Appendix consists of a summary of the terms of the Proposals, which includes estimates of value provided by the two brokers that submitted definitive proposals. The proposed order would seal the Confidential Appendix until the earlier of a closing of a sale transaction or further order of the Court.[28]

21. In *Sierra Club of Canada v Canada (Minister of Finance)*, the Supreme Court of Canada held that courts should exercise their discretion to grant sealing orders where (i) the order is necessary to prevent a serious risk to an important interest, including a commercial interest; and (ii) the salutary effects of the order outweigh its deleterious effects.[29]

22. In *Sherman Estate v Donovan*, the Supreme Court of Canada held that a party requesting that a court exercise its discretion in a way that limits the 'open court' presumption must establish that: (i) the 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 measures will not prevent said risk; and (iii) the benefits of the request outweigh the negatives as a matter of proportionality.[30]

23. If made public, the summary of the Proposals could materially negatively impact the ability of the Receiver to maximize the value of the Real Property because the document outlined two brokers' view of the value of the various parcels that make up the Real Property. The Receiver submits that there is no other reasonable way to preserve the Receiver's ability to maximize the value of the Real Property, apart from sealing this information until the completion of a transaction.[31] The benefits of sealing the Confidential Appendix outweigh any deleterious impact

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[28] First Report at para 44.
[29] 2002 SCC 41 at para 53.
[30] 2021 SCC 25 at para 38.
[31] First Report at para 44.

on the "open court" principle, because there is a significant benefit to having potential bidders make an independent decision about the value of the Real Property.[32] Further, any impact of the sealing order will be short-lived because the Receiver proposes to unseal the confidential appendix several months from now once the sale transaction(s) are approved and completed. No stakeholder will be materially prejudiced by any of the sealing relief, if granted.

E. THE RECEIVER'S ACTIVITIES OUGHT TO BE APPROVED

24. This Court has inherent jurisdiction to approve a Court-appointed receiver's report and present and past activities.[33]

25. It is common practice for court officers to seek approval of their reports and the activities set out therein. Court approval, among other things, allows the court officer to bring its activities before the court and presents an opportunity to address concerns of stakeholders, while enabling the Court to satisfy itself that the court officer's activities have been conducted in a prudent and diligent manner.[34]

26. The activities of the Receiver described in the First Report were all necessary and undertaken in good faith pursuant to the Receiver's duties and powers set out in the Receivership Order and to provide assistance to this Court as appropriate.[35]

27. The Receiver therefore respectfully submits that the First Report and the activities described therein should be approved at this time.

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[33] BIA, s 183(1); *Bank of America Canada v Willann Investments Ltd.*, 1996 CanLII 2782 (ONCA).
[34] *Target Canada Co. (Re)*, 2015 ONSC 7574 at paras 2 & 23; *Triple-I Capital Partners Limited v 12411300 Canada Inc*, 2023 ONSC 3400 at paras 65-66.
[35] First Report at para 17.

PART IV - ORDER REQUESTED

28. For the reasons stated herein, the Receiver respectfully requests that the Court grant the Sale Process Order, approving the relief set out herein.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of September, 2025.

John N. Birch

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SCHEDULE "A"

LIST OF AUTHORITIES

1. *1001116006 Ontario Inc. v 2568551 Ontario Inc., et al.*, (July 31, 2025), ONSC (Commercial List), Court File No. CV-25-00742524-00CL **(***Receivership Order*)
2. *Bank of America Canada v Willann Investments Ltd.*, 1996 CanLII 2782 (ONCA).
3. *CCM Master Qualified Fund v blutip Power Technologies*, 2012 ONSC 1750
4. *Marchant Realty Partners Inc. v. 2407533 Ontario Inc.*, 2021 ONCA 375
5. *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857
6. *Royal Bank of Canada v Soundair*, 1991 CanLII 2727 (ONCA)
7. *Target Canada Co. (Re)*, 2015 ONSC 7574
8. *Triple-I Capital Partners Limited v 12411300 Canada Inc*, 2023 ONSC 3400

I, Eva Hyderman, am satisfied as to the authenticity of every authority cited in this factum, in accordance with Rule 4.06.1(2.1) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194.

Dated as of September 15, 2025

Eva Hyderman

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

***Bankruptcy and Insolvency Act*, R.S.C. 1985, c C-36**

Courts vested with jurisdiction

183 (1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

(a) in the Province of Ontario, the Superior Court of Justice;

[…]

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.

[…]

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

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.

Terms

(2) An order under subsection (1) may include such terms as are considered just

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Applicant | Respondents

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PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE RECEIVER
(SALE PROCESS ORDER)

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