Court File No: CV-24-00719261-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ROYAL BANK OF CANADA

Applicant

\- and -

COMMERCIAL PACKAGING SOLUTIONS INC. and
2777463 ONTARIO LTD.

Respondents

FACTUM OF THE RECEIVER

(Motion returnable August 27, 2024)

August 22, 2024

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Grant Thornton Limited

TO: SERVICE LIST

NATURE OF MOTION

1. This motion by Grant Thornton Limited ("**GTL**"), in its capacity as court-appointed receiver and manager (the **"Receiver**"), appointed pursuant to an order of the Ontario Superior Court of Justice – Commercial List (the "**Court**") dated May 21, 2024 (the "**Appointment Order**") of the Property (as defined in the Appointment Order) of the Respondents, Commercial Packaging Solutions Inc ("**CPSI**") and 2777463 Ontario Ltd. ("**2777463**" and collectively, the "**Debtors**") for, *inter alia*, the following relief:

   a) An Approval and Vesting Order, substantially in the form at Schedule "A" to the Notice of Motion, approving the transaction (the "**Sale Transaction**") contemplated by the Agreement of Purchase and Sale (the "**Sale Agreement**") contained in the First Report of the Receiver dated August 15, 2024 (the "**First Report**") and the Confidential Appendices, for the sale of the Real Property (as defined below) and vesting all of the right, title and interest in and to the Real Property of 2777463 absolutely in and to Khattra Group Inc. (the "**Purchaser**"), free and clear of and from any security, charge or other encumbrance.

   b) An Ancillary Order, substantially in the form at Schedule "B" to the Notice of Motion:

      (i) abridging the time for service, filing and confirmation of the Notice of Motion and the Motion Record, and validating service so that this motion is properly returnable on August 27, 2024;

      (ii) in the event that the Sale Transaction does not close on terms to the satisfaction of the Receiver, authorizing and directing the Receiver to execute a Listing Agreement (the "**Listing Agreement**"), on terms acceptable to the Receiver, between the Receiver and Colliers International Group Inc. ("**Colliers**"), for the sale of the Real Property and to take such steps as the Receiver deems necessary or advisable to carry out the terms thereof;

      (iii) in the event that the Sale Transaction does not close on terms to the satisfaction of the Receiver, authorizing and directing the Receiver, with Colliers as its real estate consultant, to carry out the sale process (the

"**Sale Process**"), as described in the First Report and to take such steps and execute such documentation as the Receiver considers necessary or desirable in carrying out its obligations thereunder, subject to prior approval of this Court being obtained before completion of any transaction Sale Process;

(iv) approving the First Report, and the activities and conduct of the Receiver set out therein, provided, however, 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 the approval of the First Report;

(v) approving the Receiver's Interim Statement of Receipts and Disbursements as detailed in the First Report;

(vi) directing Samuel Arutsothy ("**Mr. Arutsothy**") to immediately pay to the Receiver all funds collected by Mr. Arutsothy which were owing to the Debtors;

(vii) directing the Toronto-Dominion Bank ("**TD Bank**") to provide the name of the owner of the bank account into which funds were deposited that were owing to the Debtors;

(viii) authorizing the Receiver to dispose of the Third-Party Property (as defined below) located at the Real Property, if not claimed by August 31, 2024

(ix) sealing the Confidential Appendices to the First Report (the "**Confidential Appendices**") until the completion of the sale of the Real Property, or until a further order of this Court; and,

(x) approving the fees and disbursements of the Receiver and its counsel, Harrison Pensa LLP, and authorizing payment of same.

2. It is the position of the Receiver that:

   a) the actions of the Receiver should be approved;

   b) the Sale Transaction meets the "*Soundair*" principals as detailed below;

   c) in the event that the Sale Transaction does not close on terms to the satisfaction of the Receiver, the Sale Process will be conducted in conjunction with an experienced real estate broker, and will encourage a competitive environment for the solicitation of offers; and,

   d) the relief sought by the Receiver in relation to the recovery of funds, banking information and disposal of Property relate to actions that are appropriate for the Receiver to take and are authorized by the Appointment Order.

THE FACTS

<u>The Debtors and the Real Property</u>

3. GTL was appointed as Receiver over the property of the Debtors pursuant to the Appointment Order, including the real property owned by 2777463, located at 890 Dillingham Road, Pickering, Ontario (the "**Real Property**").

   First Report to the Court of Grant Thornton Limited in its capacity as receiver and manage of the Debtors dated August 15, 2024 (the "First Report"), paras 1 and 3 and Appendix "A" thereto.

4. The primary secured creditor of the Debtors is Royal Bank of Canada.

   First Report, para 2.

5. CPSI is a packaging manufacturing company, which operated from the Real Property, and manufactured a range of products including packaging film and garbage bags. CPSI owns plastic extrusion equipment as well as inventory and other equipment located at the Real Property.

   First Report, paras 3 and 4.

6. Mr. Arutsothy is the principal of the Debtors.

First Report, para 5.

The Sale Transaction

7. The Real Property has been listed for sale by CBRE Limited ("**CBRE**") since November 28, 2023, which has resulted in the Sale Agreement with the Purchaser.

First Report, paras 43 to 55 and Confidential Appendices "1" and "2" thereto

8. The Sale Agreement required that the Purchaser pay the deposit by August 20, 2024. The deposit has not yet been paid therefore it remains uncertain if the Sale Transaction will be completed.

Supplemental Report to the First Report to the Court of Grant Thornton Limited in its capacity as receiver and manager of the Debtors dated August 22, 2024 ("Supplemental Report"), para 8.

9. The proposed selling price pursuant to the Sale Agreement appears commercially reasonable given appraised values of the Real Property and the proposed listing prices in the CBRE and Colliers listing proposals. The Receiver therefore believes, with the prior exposure of the Real Property through a professional broker, and the indication of value through the appraisal and listing proposals, that the Sale Transaction represents a commercially reasonable transaction which will maximize the recovery and is in the best interests of all stakeholders.

First Report, para 55.

The Proposed Sale Process

10. In the event that the Sale Transaction does not close, the Receiver requests that the Court authorize and direct the Receiver to enter into an MLS listing agreement with Colliers for the sale of the Real Property, on terms satisfactory to the Receiver, with a listing price of $10,200,000.

First Report, at para 57.

11. Pursuant to the Appointment Order, the Receiver is empowered and authorized to obtain appraisals of and to market any or all of the property of the Debtors, including the Real Property, including advertising and soliciting offers in respect of the property of the Debtors.

First Report, Appendix "1", at paras 3(j), (k), and (l).

12. The Receiver obtained appraisals of the Real Property.

First Report, para 45 and Confidential Appendix "1" thereto.

13. The Receiver contacted three commercial realtors and asked them to provide listing proposals for the Real Property. CBRE and Colliers responded to the Receiver's request and submitted listing proposals.

First Report, para 47 and Confidential Appendix "1".

14. Following a review of the listing proposals, the Receiver recommends and requests that it be authorized to retain Colliers as the listing agent as a result of Colliers knowledge of area surrounding the Real Property and a shorter duration of the listing agreement.

First Report, para 57.

15. The Receiver recommends the approval of the proposed Sale Process for the following reasons:

a) The Sale Process is a fair, open and transparent sale process; and

b) The Sale Process is intended to canvass the market on an efficient basis to interested parties.

First Report, paras 58 to 59.

16. In the event that the Sale Transaction does not close, the Receiver is of the view that, in the circumstances, the proposed Sale Process represents the best opportunity to

identify a potential sale for the Real Property and to maximize value for the benefit of stakeholders.

Statement of Receipts and Disbursements

17. The Receiver's Interim Statement of Receipts and Disbursements as at July 31, 2024 are appended to the First Report, and it is the Receiver's position that such receipts and disbursements are reasonable and should be approved.

First Report, para 60 and Appendix "5" thereto.

Funds of the Debtors

18. It appears that funds to be paid to the Debtors were accepted by Mr. Arutsothy and not deposited into the Debtors' bank accounts.

First Report, paras 25 and 35.

19. The Receiver requests that this Court issue an order directing Mr. Arutsothy to to immediately pay to the Receiver all funds collected by Mr. Arutsothy which were owing to the Debtors, and an accounting of same.

First Report, para 36.

20. It appears that funds to be paid to CPSI were deposited into a bank account at TD Bank.

First Report, para 26.

21. The Receiver requests that the Court issue an order requiring TD Bank to provide the Receiver with details of the ownership of the bank account into which these funds were deposited. Counsel for TD Bank has contacted counsel for the Receiver and the terms of an order satisfactory to both parties have been agreed to.

First Report, para 27. Supplemental Report, para. 16.

<u>The Third-Party Property</u>

22. The Receiver identified various assets, including restaurant inventory, storage trailers, tractors and car hauling trailers both inside and outside the building at the Real Property which did not appear to relate to the Debtors' operations (the "**Third-Party Property**").

First Report, para 34.

23. The Receiver has been in contact with various third parties claiming an interest in certain of the Third-Party Property, however some of the Third-Party Property has not been claimed.

First Report, para 38.

24. The Receiver requests that the Court authorize the Receiver to engage a liquidator to sell any equipment remaining at the Real Property on September 1, 2024, in order to complete a sale of the Real Property.

First Report, para 40.

<u>Professional Fees and Disbursements</u>

25. The current fees and disbursements of GTL, in its capacity as Receiver, inclusive of HST, total $105,156.11 as at August 14, 2024, as detailed in the First Report.

First Report, para 63 and Appendix "6" thereto.

26. The current fees and disbursements of Harrison Pensa LLP, as counsel for the Receiver, inclusive of HST, total $13,911.18 as at August 15, 2024.

First Report, para 64 and Appendix "7" thereto.

27. It is the position of the Receiver that such fees and disbursements as set out above are reasonable and necessary and should be approved by this Honourable Court.

First Report, para 65.

Sealing Order

28. The Receiver is of the view that the information and documentation contained in the Confidential Appendices contain commercially sensitive information and should be sealed in order to avoid the negative impact that the dissemination of the confidential information contained therein would have if the sale of the Real Property is not completed. As a result, the Receiver is seeking a sealing order in respect of the Confidential Appendices until such time as a sale is complete, or until further order of this Court.

> ***First Report, paras 66 and 67.***

ISSUES, LAW AND ARGUMENT

The Court's Procedural Powers

29. The Court may, by order, extend or abridge any time prescribed by the Rules on such terms as are just. Further, the Court may dispense with compliance with any Rule at any time where and as necessary in the interest of justice. Finally, the Court may dispense with service where it is impractical to effect prompt service and/or it may validate service where it is satisfied that the document came to the notice of the person to be served.

> ***Rules 2.03, 3.02, 16.04 and 16.08, Rules of Civil Procedure, R.R.O. 1990, Reg. 194***

The Receiver's Activities

30. The Receiver's activities in these proceedings have been undertaken in furtherance of the Receiver's duties and are consistent with the Receiver's powers, as set out in the Appointment Order. The Receiver has acted reasonably and in the best interests of the Debtors' stakeholders, and this Court has the inherent jurisdiction to approve such activities.

> ***Bank of America Canada v. Willann Investments Ltd. (1993) 20 C.B.R. (3d) 223 (ONSC), at paras 3 and 4, referenced in the Receiver's Book of Authorities at Tab 1.***

31. All of the Receiver's activities were conducted within the ambit of its powers granted by the Appointment Order and each of the activities were necessary to ensure that the proceedings were as orderly, effective and fair to all stakeholders as possible.

32. The Receiver therefore respectfully submits that the First Report, and its activities to date as set out therein, should be approved by this Court.

The Sale Transaction Should be Approved

33. It is well established that the Court places a large degree of confidence in the actions taken and in the opinions formed by a receiver. The Court assumes that a receiver is acting properly unless the contrary is clearly shown and is reluctant to second guess the considered business decisions made by the receiver.

> ***Royal Bank of Canada v. Soundair Corp., 1991 CanLII 2727 (ON CA), at para 14.***

34. The Court of Appeal summarizes the principles applicable when reviewing a sale by a court-appointed receiver as follows:

> Underlying these considerations are the principles the courts apply when reviewing a sale by a court-appointed receiver. They exercise considerable caution when doing so, and will interfere only in special circumstances -- particularly when the receiver has been dealing with an unusual or difficult asset. Although the courts will carefully scrutinize the procedure followed by a receiver, they rely upon the expertise of their appointed receivers, and are reluctant to second-guess the considered business decisions made by the receiver in arriving at its recommendations. The court will assume that the receiver is acting properly unless the contrary is clearly shown.
>
> ***Regal Constellation Hotel Ltd., Re, 2004 CanLII 206 (ON CA), at para 23.***

35. A receiver's decision will be supported so long as it is within the bounds of reasonableness, and the Court will only intervene and proceed contrary to a receiver's recommendation in the most exceptional circumstances.

> ***Ravelston Corp. (Re), 2005 CanLII 63802 (ON CA), para. 40.***
>
> ***Soundair, para. 21.***

The *Soundair* Principles are Met

36. The Court has consistently and uniformly applied the following factors outlined in *Royal Bank of Canada v. Soundair Corp* ("***Soundair***") when determining whether to approve a sale transaction in a receivership:

i. whether the receiver made a sufficient effort to obtain the best price and to not act improvidently;

ii. the interests of all parties;

iii. the efficacy and integrity of the process by which the party obtained offers; and,

iv. whether the working out of the process was unfair.

***Soundair, para. 16*.**

37. The evidence set out by the Receiver in the First Report demonstrates that each of the *Soundair* principles has been satisfied.

i. The Receiver made a Sufficient Effort to get the Best Price and Has Not Acted Improvidently

38. The Real Property has been listed for sale by CBRE, a professional broker, since November 28, 2023, which is an adequate amount of time for the Real Property to be known to the market and for prospective purchasers to make an offer.

39. The Receiver obtained appraisals of the Real Property to satisfy itself that the proposed selling price was commercially reasonable.

40. Based on the indication of value through the appraisals and listing proposals, the Receiver believes that the proposed selling price pursuant to the Sale Agreement is reasonable.

41. In the Receiver's business judgment, there is no guarantee that any further marketing of the Real Property will result in finding a superior transaction, and any delay to do so could jeopardize the Sale Transaction contemplated in the Sale Agreement.

42. The Receiver has acted impartially and exercised its business judgment in a reasoned manner throughout the process. In the Receiver's view, the Sale Transaction maximizes recovery, and therefore is in the best interests of the estate and its stakeholders.

ii. The Transaction is in the Interests of All Parties

43. Although the Receiver owes a duty to all stakeholders, its primary task is to maximize the return for the creditors.

Soundair, at para 39.

44. The Debtors' primary secured creditor, Royal Bank of Canada, supports the Sale Transaction.

45. The support of a secured creditor with an economic interest in the proceeds of a sale transaction is an important factor in determining whether a sale transaction should be approved. Where the highest price attainable will not result in recovery for all other creditors or shareholders, the wishes of the parties with a real interest in the proceeds should be very seriously considered by the receiver.

Soundair, at para 73.

46. The Sale Transaction is also in the best interests of the Purchaser. Where a purchaser has bargained at some length and at a considerable expense, the interests of the purchaser should be taken into account.

Soundair, para. 40.

47. The Purchaser pursuant to the Sale Agreement has spent considerable time finalizing the Sale Agreement. If the Sale Transaction is not approved, the Purchaser will have expended such resources for nothing.

48. The Sale Agreement and the Sale Transaction are in the best interests of all parties with a real economic interest in these proceedings. The Sale Agreement results in the best most certain to close Sale Transaction available to the Receiver.

iii. The Efficacy and Integrity of the Process

49. To the best of the Receiver's knowledge, CBRE marketed the Real Property with efficacy and integrity, with all reasonable requests for information made by prospective purchasers being satisfied.

50. Permitting other bidders to submit offers now would jeopardize the efficiency and integrity of the sale process completed by CBRE, and result in additional, unnecessary costs.

***Soundair*, para. 44.**

51. Purchasers should know that, if they act in good faith, bargain seriously and enter into an agreement with a receiver, the Court will not lightly interfere with the commercial judgment of the receiver.

***Soundair*, para. 46.**

iv. No Unfairness in the Working Out of the Process

52. To the best of the Receiver's knowledge, CBRE conducted its sale process in good faith and was fair and reasonable, which was conducted in a transparent manner.

53. All prospective bidders for the Real Property had equal opportunity to participate in the process and submit offers in respect of the Real Property.

54. Accordingly, the principles of *Soundair* have been met and the Receiver respectfully requests the Court's approval of the Sale Transaction.

Approval of the Proposed Sale Process

55. In the event that the Sale Transaction does not close on terms to the satisfaction of the Receiver, the Receiver seeks the authorization and direction to execute the Listing Agreement and to carry out the Sale Process.

56. Receivers are clothed with the powers set out in the order appointing them. Receivers are consistently granted the power to market and sell property belonging to a debtor.

> ***Integrated Building Corp. v. Bank of Nova Scotia, 1989 ABCA 114 (CanLII).***
>
> ***Battery Plus Inc., Re, 2002 CanLII 49569 (ON SC) at paras 2-3, 19, 22-23, 34-35.***

57. The are four factors the court should consider in exercising its discretion whether to authorize a sale process. The factors are:

a) Is the sale transaction warranted at this time;

b) Will the sale benefit the "economic community";

c) Do any of the creditors have a bona fide reason to object to the sale of the business or assets; and

d) Is there a better viable alternative.

> ***Crate Marine*, 2015 ONSC 1062 (CanLII), at para 14.**

58. After the court is satisfied that it is appropriate to approve a sale process, when reviewing a sale process proposed by a receiver a court should consider the following factors:

a) the fairness, transparency and integrity of the proposed process;

b) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; 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.

CCM Master Qualified Fund v. blutip Power Technologies, 2012 ONSC 1750 (CanLII), at para 6.

59. Although the decision to approve a particular form of sales process is distinct from the approval of a proposed sale, the reasonableness and adequacy of any sales process proposed by a court-appointed receiver must be assessed in light of the factors which a court will take into account when considering the approval of a proposed sale. Those factors were identified by the Court of Appeal in *Soundair,* as set out above.

Royal Bank of Canada v. Soundair Corp., 1991 CanLII 2727 (ON CA), at para 16.

CCM Master Qualified Fund v. blutip Power Technologies, 2012 ONSC 1750 (CanLII), at para 6.

60. In reviewing a receiver's decisions and recommendations, the court exercises considerable caution and grants considerable deference to the receiver. As noted above and repeated below, the Court of Appeal in *Regal Constellation Hotel Limited* stated:

> Although the courts will carefully scrutinize the procedure followed by a receiver, they rely upon the expertise of their appointed receivers, and are reluctant to second-guess the considered business decisions made by the receiver in arriving at its recommendations. The court will assume that the receiver is acting properly unless the contrary is clearly shown.

Regal Constellation Hotel Ltd., Re, 2004 CanLII 206 (ON CA), at para 23.

61. The Sale Process recommended by the Receiver is a reasonable, robust and transparent sale process, designated to realize the fair value for the Real Property, and satisfies the criteria for approval.

62. Based on the foregoing, it is respectfully submitted that this Honourable Court should approve the Sale Process. It is the Receiver's position that any sale resulting from the

Sale Process would be in accordance with the *Soundair* principles, for the following reasons:

a) The Sale Process includes reasonably lengthy marketing periods to expose the Real Property to the open market;

b) The Receiver has engaged an experienced real estate brokerage firm in Colliers, which is familiar with the area where the Real Property is located; and

c) The Sale Process will provide all interested parties with an equal opportunity to bid on the sale of the Real Property.

63. The Receiver respectfully submits that the Sale Process should be approved.

The Sealing Order Should be Granted

64. It is submitted that it is just, appropriate and necessary to the integrity of this receivership proceeding that the Confidential Appendices be sealed by this Court. The Confidential Appendices contain sensitive information, the release of which prior to the completion of the sale of the Real Property could be prejudicial to the stakeholders of the Debtors.

Jurisdiction

65. The Court's jurisdiction to seal documents filed with it is found in s. 137(2) of the *Courts of Justice Act* (Ontario):

> 137(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form a part of the public record.
>
> ***Courts of Justice Act*** **(Ontario), s. 137(2).**

66. In addition to statutory jurisdiction, the Court also has inherent jurisdiction to issue sealing orders: "there is no doubt that the court has inherent jurisdiction, and jurisdiction under s. 137(2) of the *Courts of Justice Act*, to seal a portion of the court file."

> ***Fairview Donut Inc. v. The TDL Group Corp., 2010 ONSC 789 (CanLII), at para 34***

Discretion

67. Sealing Orders are granted regularly in the context of Court-appointed receiverships where court openness may pose a risk to the public interest in enabling stakeholders in an insolvency to maximize the realization of a debtor's assets. In this context, such an order is necessary in order to prevent a serious risk to an important commercial interest; and the salutary effects of the sealing order outweigh its deleterious effects, which is this context includes the public interest in open and accessible court proceedings.

> ***Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41 (CanLII), [2002] 2 SCR 522, at paras 53-57.***
>
> ***Sherman Estate v. Donovan, 2021 SCC 25 (CanLII), at para 38.***

68. The Receiver submits that there are no reasonable alternative measures to a sealing order which would fulfill the twin purposes of (i) allowing this Court to review the reasonableness of the proposed Sale Agreement and the Sale Process; and (ii) ensuring that the commercially-sensitive information contained within the Confidential Appendices is not available to the public prior to the completion of any sale of the Real Property.

> ***Sherman, supra, at para. 38.***

69. Ontario Courts have recognized the customary practice of seeking a sealing order in the context of a sale approval motion, to which this motion is analogous. In *Ron Handelman Investments Ltd. v. Mass Properties Inc.*, Madam Justice Pepall stated:

> [a]s is customary in sale approval motions, the Receiver seeks an order sealing the appraisal until the transaction is completed. This ensures the integrity of the process and avoids any prejudice to stakeholders in the event that the transaction does not close and a new purchaser must be sought.
>
> ***B&M Handelman Investments Limited v. Mass Properties Inc., 2009 CanLII 37930 (ON SC), at para 26.***

Maxtech Manufacturing Inc. (Re), 2010 ONSC 1161 (CanLII), at paras 29 and 30.

70. The Confidential Appendices contain sensitive commercial information. Should the sale of the Real Property not proceed, the information contained within the Confidential Appendices could cause a reduction in any future sale of the Real Property, and harm the creditors of the Debtors if made available to the public. Protecting the information contained within the Confidential Appendices is an important commercial interest that should be protected. There is no other reasonable alternative to sealing that will prevent Confidential Appendices from becoming public.

71. It is the Receiver's opinion that the Confidential Appendices should remain sealed until the completion of the sale of the Real Property, or an Order by this Court.

The Interim Statement of Receipts and Disbursements should be Approved

72. The Receiver's Interim Statement of Receipts and Disbursements as at July 31, 2024 is appended to the First Report, and are reasonable. The Receiver respectfully requests that such receipts and disbursements be approved by this Honourable Court.

The Funds of the Debtors and The Third-Party Property

73. In the Receiver's view, the Appointment Order clearly and unequivocally states what is required by Mr. Arutsothy in relation to the property of the Debtors.

74. However, the Receiver seeks an additional Order in the circumstances.

75. Section 243(1)(c) of the BIA has been interpreted as giving judges the broadest possible mandate in insolvency proceedings to enable them to react to any circumstances that may arise in relation to court ordered receiverships.

Peace River Hydro Partners v. Petrowest Corp., 2022 SCC 41 (CanLII) at para. 148.

76. The Receiver therefore respectfully requests that in the current circumstances this Honourable Court use its authority to grant the Orders sought by the Receiver to allow it to properly act as Receiver, including:

a) directing Mr. Arutsothy to to immediately pay to the Receiver all funds collected by Mr. Arutsothy which were owing to the Debtors;

b) directing TD Bank to provide the Receiver with details of the ownership of the bank account into which funds of the Debtors were deposited; and,

c) authorize the Receiver to dispose of any of the Third-Party Property remaining at the Real Property on September 1, 2024.

The Fees and Disbursements of the Receiver and the Receiver's Counsel Should Be Approved

77. The Receiver respectfully submits that the Professional Fees of the Receiver and the Receiver's Counsel, as detailed in the First Report, should be approved.

78. In determining whether to approve the fees of a receiver and its counsel, the Court should consider whether the remunerations and disbursements incurred in carrying out the receivership were fair and reasonable and take into consideration the following factors, which constitute a useful guideline, but are not exhaustive:

a) the nature, extent and value of the assets;

b) the complications and difficulties encountered;

c) the degree of assistance provided by the debtor;

d) the time spent;

e) the Receiver's knowledge, experience and skill;

f) the diligence and thoroughness displayed;

g) the responsibilities assumed;

h) the results of the receiver's efforts; and,

i) the cost of comparable services when performed in a prudent and economical manner.

***Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 (CanLII), at paras. 33 and 45.**

79. It is the Receiver's view that it and its counsel's fees and disbursements were incurred at the respective party's standard rates and charges, and are fair, reasonable and justified in the circumstances. Further, the fees and disbursements sought accurately

reflect the work done by the Receiver and by its counsel in connection with the receivership.

ORDER REQUESTED

80. The Receiver requests the relief as set forth in the Notice of Motion and the related Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of August, 2024.

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Lawyers for the Receiver,
Grant Thornton Limited

SCHEDULE “A”
LIST OF AUTHORITIES

1. *Bank of America Canada v. Willann Investments Ltd.* (1993) 20 C.B.R. (3d) 223 (ONSC)

2. *Bank of Nova Scotia v. Diemer,* 2014 ONCA 851 (CanLII)

3. *Battery Plus Inc.,* Re, 2002 CanLII 49569 (ON SC)

4. *B&M Handelman Investments Limited v. Mass Properties Inc.,* 2009 CanLII 37930 (ON SC)

5. *CCM Master Qualified Fund v. blutip Power Technologies,* 2012 ONSC 1750 (CanLII)

6. *Crate Marine,* 2015 ONSC 1062 (CanLII)

7. *Fairview Donut Inc. v. The TDL Group Corp.,* 2010 ONSC 789 (CanLII)

8. *Integrated Building Corp. v. Bank of Nova Scotia,* 1989 ABCA 114 (CanLII)

9. *Maxtech Manufacturing Inc. (Re),* 2010 ONSC 1161 (CanLII)

10. *Ravelston Corp. (Re),* 2005 CanLII 63802 (ON CA)

11. *Regal Constellation Hotel Ltd., Re*, 2004 CanLII 206 (ON CA)

12. *Royal Bank of Canada v. Soundair Corp.,* 1991 CanLII 2727 (ON CA)

13. *Sherman Estate v. Donovan,* 2021 SCC 25 (CanLII)

14. *Sierra Club of Canada v. Canada (Minister of Finance),* 2002 SCC 41 (CanLII), [2002] 2 SCR 522

15. *Peace River Hydro Partners v. Petrowest Corp., 2022 SCC 41 (CanLII)*

SCHEDULE "B"
RELEVANT STATUTES

Rules 2.03, 3.02, 16.04 and 16.08, Rules of Civil Procedure, R.R.O. 1990, Reg. 194.

COURT MAY DISPENSE WITH COMPLIANCE

2.03 The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

EXTENSIONS OR ABRIDGMENT

General Powers of Court

3.02(1) Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed.

Times in Appeals

(3) An order under subrule (1) extending or abridging a time prescribed by these rules and relating to an appeal to an appellate court may be made only by a judge of the appellate court.

Consent in Writing

(4) A time prescribed by these rules for serving, filing or delivering a document may be extended or abridged by filing a consent.

SUBSTITUTED SERVICE OR DISPENSING WITH SERVICE

Where Order May be Made

16.04 (1) Where it appears to the court that it is impractical for any reason to effect prompt service of an originating process or any other document required to be served personally or by an alternative to personal service under these rules, the court may take an order for substituted service or, where necessary in the interest of justice, may dispense with service.

Effective Date of Service

(2) In an order for substituted service, the court shall specify when service in accordance with the order is effective.

(3) Where an order is made dispensing with service of a document, the document shall be deemed to have been served on the date of the order for the purpose of the computation of time under these rules.

VALIDATING SERVICE

16.08 Where a document has been served in a manner other than one authorized by these rules or an order, the court may make an order validating the service where the court is satisfied that,

(a) The document came to the notice of the person to be served; or

(b) The document was served in such a manner that it would have come to the notice of the person to be served, except for the person's own attempts to evade service.

Section 137(2) Courts of Justice Act, R.R.O. 1990, Reg. 194.

SEALING DOCUMENTS

137(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

ROYAL BANK OF CANADA v. COMMERCIAL PACKAGING SOLUTIONS INC. and 2777463 ONTARIO LTD.

Applicant Respondents

Court File No. CV-24-00719261-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO, ONTARIO

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