



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00693494-00CL

DATE: January 16, 2024

NO. ON LIST: 4

TITLE OF PROCEEDING: THE TORONTO DOMINION BANK v.
1871 BERKELEY EVENTS INC. et al

BEFORE: JUSTICE CONWAY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Tim Hogan	Counsel for msi Spergel Inc., Receiver	thogan@harrisonpensa.com
Matilda Lici	Counsel for The Toronto Dominion Bank, Applicant	mlici@airdberlis.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Jeff Larry	Counsel for Respondents	jeff.larry@paliaroland.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Mukul Manchanda	msi Spergel Inc.	mmanchanda@spergel.ca
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ENDORSEMENT OF JUSTICE CONWAY:

- [1] **All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Receiver dated January 10, 2024.**
- [2] The Receiver brings this motion for approval of the First Report, authorization to execute the Listing Agreement, approval of the Sale Process, approval of the Receiver's interim statement of receipts and disbursements as at December 31, 2023, approval of fees and disbursements of the Receiver and its legal counsel as set out in the First Report, and an order sealing the Confidential Appendices to the First Report.
- [3] The motion is unopposed. TD Bank, the senior secured creditor, supports the Sale Process proposed by the Receiver.
- [4] I am satisfied that the relief should be granted. In particular, the Sale Process involves marketing the Real Property together with the adjacent 311 Property, which is also in receivership. All of those parcels are owned by the same principal, Mr. Wheler. While the properties are to be marketed together, the process affords maximum flexibility for the purchaser to acquire the properties together or separately. The properties are to be marketed without a listing price to allow the market to speak to their fair value. The marketing period is satisfactory.
- [5] I am further satisfied that the Listing Agreement with Colliers should be approved in light of, among other things, its familiarity with the properties, and its favourable commission structure, all as set out in paragraph 35 of the First Report.
- [6] I approve the Receiver's activities as set out in the First Report and the fees and disbursements of the Receiver and its counsel.
- [7] I grant the sealing order for the Confidential Appendices to the First Report, which set out appraisals and broker proposals for the Real Property, pending the closing or further court order. I am satisfied that the sealing order for the Confidential Appendices meets the test in *Sierra Club/Sherman Estates* and that disclosure of this information would pose a risk to the public interest in enabling stakeholders of a company in receivership to maximize the realization of assets. **I direct counsel for the Receiver to file a hard copy of the Confidential Appendices with the Commercial List office in a sealed envelope with a copy of the Signed Order and this Endorsement.**
- [8] Order to go as signed by me and attached to this Endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

 Conway J.