



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00731923-00CL

DATE: September 22, 2026

NO. ON LIST: 6

TITLE OF PROCEEDING: EMPIRICAL CAPITAL CORP. v. TERRABONA 7115 YONGE LTD.

BEFORE: JUSTICE J. DIETRICH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Wendy Greenspoon-Soer	Empirical Capital Corp.	wgreenspoon@garfinkle.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Rosemary A. Fisher	Counsel for Receiver	fisherr@simpsonwiggles.com

ENDORSEMENT OF JUSTICE J. DIETRICH:

- [1] msi Spergel Inc. in its capacity as court-appointed receiver of the property of Terrabona 7115 Yonge Ltd. (the “**Debtor**”), seeks an order:
- (a) approving the sale transaction (the “**Transaction**”) contemplated by an Agreement of Purchase and Sale (the “**Sale Agreement**”) between the Receiver, as Vendor, and 2158046 Ontario Inc. (the “**Purchaser**”) dated June 18, 2026, in respect of the land and buildings located at 7115 Yonge Street, Markham, Ontario, and 8-14 Grandview, Markham, Ontario, and legally described below, (the “**Properties**”).
 - (b) sealing the Confidential Appendices to the First Report of the Receiver until the earlier of the completion of the Transaction or further Order of the Court;
 - (c) approving the First Report of the Receiver (the “**First Report**”) and the conduct, activities and actions to date including the Receiver's Interim Statement of Receipts and Disbursements as of September 3, 2026;
 - (d) approving the professional fees of the Receiver and its counsel as set out in fee affidavits attached to the First Report;
 - (e) approving, authorizing and directing the Receiver to distribute the net proceeds from the sale of the Properties in accordance with the recommendations set out in the First Report;
 - (f) discharging msi Spergel Inc. as the Receiver upon the Receiver filing the Certificate certifying that it has completed the activities detailed in the First Report.
- [2] Defined terms not otherwise defined herein have the meaning provided to them in the statement of law of the Receiver filed for use on this motion.
- [3] The relief sought by the Receiver is not opposed.
- [4] The Receiver was appointed by Order dated December 1, 2025. The Properties were previously approved for a high density residential development.
- [5] The principles to be applied when determining whether to approve a sale transaction were articulated by the Ontario Court of Appeal in *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (“**Soundair**”): (a) whether the receiver has made sufficient effort to obtain the best price and has not acted improvidently; (b) the efficacy and integrity of the process by which offers have been obtained; (c) whether the interests of all parties have been considered; and (d) whether there has been unfairness in the working out of the process. Further, as set out in *Soundair*, the Court should accept the recommendation of Receiver in respect of sale in all but exceptional circumstances.

- [6] I am satisfied that the Transaction should be approved. The Receiver obtained two appraisals of the Properties and sought sales and marketing proposals from four commercial real estate brokers. The Receiver selected the proposal from Lennard Commercial Realty who widely marketed the Properties. Twenty-eight Non-Disclosure Agreements were executed and seven offers were received. The Receiver ultimately accepted the Purchaser's conditional offer on June 19, 2026 and the conditions were waived on August 19, 2026. The Transaction represents the highest value of the offers received. The Receiver has consulted with Home Trust, as the senior priority lender, relative to this Transaction and Home Trust supports the completion of same.
- [7] The limited sealing order being sought is necessary to preserve the Receiver's ability to maximize the value of the Properties in the event of the Transaction does not close. I am satisfied that the requested sealing order for the confidential appendices to the First Report (being a summary of offers received, an unredacted version of the Sale Agreement, copies of the appraisals obtained by the Receiver, the listing proposal and marketing summary) meets the test in *Sherman Estate v. Donovan* 2021 SCC 25 at para 38 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. The Receiver is directed to follow the applicable guidelines for the filing of sealed material with the court, and to eventually apply, at the appropriate time, for an unsealing order, if necessary.
- [8] The Receiver is proposing to make a distribution (after payment of the fees and disbursements of both the Receiver and the Receiver's Counsel): to the City of Markham in the amount of \$217,603.37 or such amount accrued at the closing of the Transaction for outstanding property tax arrears, to Empirical, or such other party as Empirical might direct, for the repayment of the Borrowings, pursuant to Receiver Certificate in the amount of \$40,000.00, plus interest with the balance of any and all funds available in the Debtor's estate to Empirical, on account of the Debtors' secured indebtedness to Empirical. In this regard, the Receiver has received an opinion from independent counsel that, subject to customary assumptions and qualifications for opinions of this nature, the security interests in favour of Empirical are valid and enforceable. It is anticipated that Empirical will suffer a shortfall, and accordingly there will be no funds available for distribution for the other stakeholders. In the circumstances, I am satisfied that the proposed distribution is appropriate. CRA has verbally advised the Receiver that no amounts were owing, was served with the material and took no position today.
- [9] With respect to the Receiver's request for a discharge and release upon filing a certificate that remaining matters have been completed, I am not prepared to grant that relief at this time. The remaining activities include closing the transaction and making the distribution. I appreciate the Receiver's request for this relief is based on efficiency, but the remaining activities are substantial and should be completed prior to a Court order for discharge being granted.
- [10] The request to approve the First Report is not unusual and there are good policy and practical reasons for doing so: see *Target Canada Co. (Re)*, 2015 ONSC 7574 at paras. 2, 12, 22. The observations in those cases while made in the context of a *Companies' Creditors Arrangement Act* proceeding apply to the activities of a court appointed receiver: see *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, 2023 ONSC 3400 at para 66.
- [11] No opposition to the approval of the First Report has been raised and the approval of the First Report is appropriate in the circumstances as the Receiver has acted reasonably and in good faith. The draft order provided contains the typical language that only the Receiver is entitled to rely on the approval.

- [12] The Receiver also seeks approval of the fees and disbursements of itself and its legal counsel, including a fee accrual to complete matters. In this respect, as the Court of Appeal for Ontario held in *Bank of Nova Scotia v Diemer* 2014 ONCA 851 at paras 33 and 45, this Court does not undertake a line-by-line analysis of the invoices. Rather, the guiding principles on fee approvals of this nature are whether the fees are fair, reasonable, and proportionate given the value of the property and liabilities as well as the complexity of the Proceeding. In considering these guiding principles, the fees of the Receiver and its counsel as set out in the fee affidavits attached to the First Report are appropriate and are approved, however, the approval of a fee accrual is premature given the discharge of the Receiver is not being granted at this time.
- [13] Order to go in the form signed by me this day with immediate effect.



Date: Sep 22, 2026

Justice J. Dietrich