



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CL-25-00753618-0000

DATE: June 05, 2026

NO. ON LIST: 2

TITLE OF PROCEEDING:

BDC Capital Inc. v. BlueRush Inc.; BlueRush Digital Media Corp

BEFORE: Justice Jana Steele

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Eric Dwyer	The Receiver, BDC Capital Inc.	edwyer@brazeauseller.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Danny Nunes	The Respondents, Directors and Officers of BlueRush Inc.	dn@capstonelegal.ca
Andrew Harmes	The Purchaser, Kaltura Inc.	aharmes@goodmans.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Philip Gennis	Receiver, MSI Spergel Inc.	

ENDORSEMENT OF JUSTICE STEELE:

- [1] The Receiver seeks court authorization of a proposed sale transaction with Kaltura and an approval and vesting order. The Receiver seeks a second order with certain ancillary relief, including an order sealing the confidential appendices to the First Report, and approving the Receiver's First Report and Supplemental Report (collectively, the "Reports"), and fees.
- [2] Capitalized terms used in this endorsement that are not defined herein have the meaning set out in the Receiver's factum.
- [3] The fulcrum creditor, BDC, supports the proposed Transaction.
- [4] No one opposes the relief sought.
- [5] I am satisfied that the two requested orders should be granted.

Should the court approve the Transaction contemplated in the Kaltura APA and grant the AVO, including the assignment of the Assigned Agreements?

- [6] 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: (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 the receiver in respect of a sale in all but exceptional circumstances.
- [7] In considering the factors set out in *Soundair*, I am satisfied that the APS and the Transaction should be approved for the reasons set out at paras. 41 and 42 of the Receiver's factum. Among other things, the proposed sale or refinancing of BlueRush was given significant market exposure for about a year, and the Receiver is of the view that further marketing of the BlueRush assets or a formal SISP would not have resulted in a superior offer. The market was broadly canvassed both before and after the Receiver's appointment. Further, the Transaction will mean the continuation of BlueRush's core business and continued employment of certain employees. The Transaction provides the maximum recovery to BlueRush's secured creditors in the circumstances and is supported by BDC, BlueRush's fulcrum creditor. The Receiver is of the view that there has been no unfairness in the conduct of the marketing of the BlueRush assets, the sales process, or the negotiation of the APA with Kaltura.
- [8] A formal sales process was not conducted by the Receiver. However, as noted by the Receiver, the Receiver's primary task is to maximize the return for the creditors. In *Elleway Acquisitions Ltd. v. 4358376 Canada Inc.*, Morawetz J. (as the then was) approved a sales transaction without a further formal sales process being undertaken where there had already been extensive marketing, the company lacked the financial resources to undertake a further sales process, and there was no evidence that such a further process would produce a more favourable outcome.
- [9] The Receiver submits that the instant case is similar, in that there has already been extensive marketing and BlueRush lacks the financial resources to undertake a further sales process. Further, there is no evidence here that a further process would produce a more favourable outcome.
- [10] The Kaltura APA is conditional on the assignment of the Assigned Agreements (Customer Contracts listed at Confidential Appendix 2 of the Supplemental Report). As set out by the Receiver, at paras. 47-50

of the Receiver's factum, even though there is no provision in Part XI of the BIA that corresponds with s. 84.1 of the BIA and s. 11.3 of the CCAA, the Court has jurisdiction to consider an assignment of the debtor's agreements, either under s. 243(1)(c) of the BIA in conjunction with s. 100 of the *Courts of Justice Act*, or pursuant to the court's inherent jurisdiction.

[11] The applicable criteria for the court to consider when determining whether to authorize a proposed assignment of an agreement, includes the following:

- (a) The burden is on the party seeking the assignment;
- (b) The mandatory aspects of the legislative scheme must be complied with, meaning that any cure costs must be paid, but the factors generally are not mandatory or exhaustive but inform the analysis;
- (c) The standard is reasonableness and the analysis is fact-specific;
- (d) There must be an evidentiary basis in the record for a finding of fact that the proposed assignee would be able to perform the obligations, both from a monetary and non-monetary (to the reasonableness standard) – his standard does not require a guarantee from the assignee of such performance;
- (e) If the assignment is part of an asset sale, the *Soundair* principles must be considered;
- (f) Consent to the proposed assignment of the contractual counterparty or lack thereof is irrelevant to the analysis;
- (g) The remaining term of the agreement to be assigned;
- (h) Whether the proposed assignment would be appropriate includes consideration of:
 - i. What would be just and equitable in all the circumstances;
 - ii. The interest of all stakeholders, including the debtor, the proposed assignee, the contractual counterparty, and secured and unsecured creditors;
 - iii. Whether the proposed assignment is in furtherance of a going concern outcome with the attendant preservation of a business enterprise, customer and supplier relationships and jobs for employees, or whether it is in furtherance of an asset sale in a liquidating proceeding;
 - iv. The relative importance and materiality of the proposed assignment to the overall restructuring or liquidation;
 - v. Whether the contract is proposed to be assigned without amendments, thereby preserving the rights and obligations of the assignor (debtor) and assignee at the date of the proposed assignment, or whether the assignment is proposed to be effected subject to amendments to the contract;

In Re Hudson's Bay Company, 2025 ONSC 5998, para. 43.

[12] I am satisfied that the assignment of the Assigned Agreements should be approved. The Receiver is of the view that the proposed assignment is commercially reasonable and necessary to the Transaction. Kaltura, the proposed assignee, is a market leader in the industry and is therefore well positioned to perform the obligations under the Assigned Agreements. There are no cure costs owing to the counter parties. The counter parties have received notice of the proposed assignment and have either consented or not opposed. The remaining term of the Assigned Agreements are generally short. The Assigned Agreements are being assigned without any amendments. The Receiver is of the view that the proposed assignment would be just and equitable in all the circumstances.

[13] The Receiver has recommended that the Court approve the Transaction, including the assignment of the Assigned Agreements. The commercial decisions of a receiver regarding a sale process are afforded broad deference by the courts: *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, 2021 ONCA 375, 90 C.B.R. (6th) 39, at para. 19.

[14] The Court of Appeal in *Ravelston Corp (Re)*, (2005) 24 C.B.R. (5th) 256, at para. 40, leave to appeal refused, (2005) 24 C.B.R. (5th) 256, indicated that:

If the receiver’s decision is within the broad bounds of reasonableness, and if it proceeds fairly, having considered the interests of all stakeholders, the court will support the receiver’s decision.

[15] Chief Justice Morawetz (as he then was) in *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857, 99 C.B.R. (6th) 139, noted, at para. 45: “it is only in ‘exceptional’ circumstances will a court intervene and proceed contrary to the recommendation of its officer, the Receiver.”

[16] I am satisfied that the Transaction, recommended by the Receiver is “within the broad bounds of reasonableness” and should be approved.

Should the Court grant the requested Sealing Order in respect of the Confidential Appendices?

[17]The Receiver seeks a sealing order in respect of the Confidential Appendices. The Confidential Appendices contain (i) information about the sales and marketing process of BlueRush, including financial aspects and commercially sensitive information about the business, and; (ii) commercially sensitive information regarding the Transaction and its negotiation and includes lists of key employees and customers. The time-limited sealing order being sought is necessary to preserve the Receiver’s ability to maximize the value of the property in the event of the Transaction does not close. I am satisfied that the requested sealing order for the Confidential Appendices meets the test in *Sherman Estate v. Donovan* 2021 SCC 25 at para 38.

[18]It is customary to seek a time limited sealing order in the context of a sale approval motion: *B&M Handelman Investments Limited v. Mass Properties Inc.*, 2009 CanLII 37930 (ON SC), para. 26.

[19]Protecting the information contained in the Confidential Appendices is an important commercial interest. Should the Transaction not proceed, the information could cause a reduction in any future sale prices and harm creditors of the Debtors if made public. The requested sealing order is time limited (until the closing of the Transaction or Court Order).

[20]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.

Other Relief

[21] The request to approve the Reports is not unusual and there are good policy and practical reasons for doing so: see *Laurentian University of Sudbury*, 2022 ONSC 2927 at paras. 13-14. The observations in this case 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. No opposition to the approval of the Reports has been raised and the approval of such 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.

[22] The Receiver also seeks approval of its fees and disbursements up to April 30, 2026 (as supported by fee affidavit). 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 are appropriate and are approved.

[23] Two Orders attached.

Date: Jun 05, 2026



Justice J. Steele