

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

1871 BERKELEY EVENTS INC., 1175484 ONTARIO INC., 111 KINGS STREET EAST INC.,
504 JARVIS INC. and SOUTHLINE HOLDINGS INC.

Respondents

FACTUM OF THE RECEIVER

(Receiver's Motion for Approval and Vesting Order returnable October 28, 2025)

October 23, 2025

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TO: SERVICE LIST

PART I – NATURE OF MOTION

This is a motion by msi Spergel inc. ("**Spergel**"), in its capacity as court-appointed Receiver (the "**Receiver**"), appointed pursuant to an order of the Ontario Superior Court of Justice – Commercial List (the "**Court**") dated July 7, 2023 and effective on July 31, 2023 (the "**Appointment Order**") of the Property (as defined in the Appointment Order) of the Respondents, 1871 Berkeley Events Inc. ("**Berkley Events**"), 1175484 Ontario Inc. ("**117 Ontario**"), 111 King Street East Inc., 504 Jarvis Inc. and Southline Holdings Inc. (collectively, the "**Debtors**"), for, *inter alia*, the following relief:

1. An Approval and Vesting Order, substantially in the form attached to the Notice of Motion at Schedule "A" (the "**Approval and Vesting Order**"), approving the transaction (the "**Transaction**") contemplated by the Agreement of Purchase and Sale (the "**Sale Agreement**") contained in the Second Report of the Receiver dated October 8, 2025 (the "**Second Report**") and the confidential appendices to the Second Report (the "**Confidential Appendices**"), and vesting all of the right, title and interest in and to the Real Property (as defined below) absolutely in and to the purchaser (the "**Purchaser**"), free and clear of any claims and encumbrances save and except for the Permitted Encumbrances, as defined in the Sale Agreement;
2. An Ancillary Order, substantially in the form attached to the Notice of Motion at Schedule "B" (the "**Ancillary Order**"), for among other related relief:
 - a) 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;
 - b) approving the Second Report, and the activities and conduct of the Receiver set out therein;
 - c) approving the Commission Agreement entered into between the Receiver and Colliers Macaulay Nicolls Inc. ("**Colliers**") dated August 13, 2025 (the "**Commission Agreement**");
 - d) sealing the Confidential Appendices until the completion of the Transaction, or until a further order of this Court;

- e) approving the Receiver's Interim Statement of Receipts and Disbursements as detailed in the Second Report;
 - f) approving the fees and disbursements of the Receiver and its counsel, Harrison Pensa LLP, and authorizing payment of same.
3. It is the position of the Receiver that that the actions of the Receiver and the Transaction subject to the Approval and Vesting Order sought should be approved as:
- a) The Transaction represents a commercially reasonable transaction which meets the principles of *Soundair*, and is a result of the Receiver completing the Sales Process as approved by the Sales Process Order (each as defined below);
 - b) The Sales Process included the marketing of the Property with the professional broker Colliers for a period of 18 and ½ months, which resulted in substantial market exposure and interest;
 - c) The Sale Agreement has the highest deal certainty, with the Purchaser securing financing and already conducting significant due diligence, and is only conditional on Court approval;
 - d) The Receiver's actions as reported in the Second Report were reasonable and were conducted within the ambit of its court-appointed powers; and,
 - e) The fees and disbursements of the Receiver and its counsel are reasonable in the circumstances and should be approved.
4. The principal of the Respondents, Douglas Wheler, is a non-lawyer and was granted leave by this Court to represent the Respondents. The Receiver is requesting that the Court redact certain paragraphs of the affidavit of Douglas James Wheler dated October 20, 2025 (the "**Wheler Affidavit**") which disclose confidential evidence contained in the Receiver's Confidential Appendices provided to Mr. Wheler under the terms of a confidentiality undertaking.

PART II – THE FACTS

Background

5. 117 Ontario is the owner of the real property located at 315-317 King Street East, Toronto, Ontario (the “**Real Property**”).

Second Report of the Receiver dated October 8, 2025 (the “Second Report”), para 3

6. Berkley Events operated an event venue from the building located at the Real Property, which event venue operations ceased immediately after the appointment of the Receiver.

Second Report, para 4

7. Spergel was appointed as Receiver over the assets, undertakings, and properties of the Debtors, including the Real Property, pursuant to the Appointment Order, upon the application of The Toronto-Dominion Bank (“**TD Bank**”).

Second Report paras 6 and 7 and Appendices “1” and “2”

8. The property adjoining the Real Property, being 301-311 Queen Street East, Toronto, Ontario (the “**Adjoining Property**”), is under the care and control of MNP Ltd. (“**MNP**”), as receiver pursuant to an Order of the Court dated August 8, 2023.

Second Report, paras 21 and 22

9. On January 16, 2024, the Receiver brought a motion for, among other things, approval of its proposed sales process of the Real Property (the “**Sales Process**”). On January 16, 2024, the Honourable Justice Conway issued an Endorsement and Order in these proceedings, authorizing the Sales Process (the “**Sales Process Order**”).

Second Report, para 10 para 11 and Appendices “4” and “5” thereto

10. The Sales Process has been completed in accordance with the Sales Process Order, and the Receiver seeks the Approval and Vesting Order, authorizing the Transaction.

The Receivers Activities

11. Since the date of its appointment, the Receiver has attended to, *inter alia*, the following:
 - a. Engaging a property manager to inspect the Real Property in accordance with the insurance over the Real Property, attend to clean-up of debris, general maintenance and repairs of the Real Property as required, and efforts to prevent unwanted squatters from entering the premises;
 - b. Obtaining two (2) full narrative appraisals of the Real Property;
 - c. Entering into a listing agreement with Colliers dated January 31, 2024 (the "**Listing Agreement**"); and
 - d. Marketing the Real Property, with the assistance of Colliers pursuant to the Listing Agreement.

Second Report, paras 20, 25 and 26, Confidential Appendix "1" and Appendix "8"

The Sales Process

12. In conjunction with MNP, the Sales Process commenced as a joint marketing effort of the Real Property and the Adjoining Property.

Second Report, para 27

13. As approved by the Court, the Sales Process included, among other things, that all offers received for each respective property shall be kept confidential and not shared with the other receiver without prior written consent, and each receiver shall maintain absolute discretion to accept an offer made to it, regardless of whether the offer is made to one or both receivers.

Second Report, para 28

14. Commencing January 31, 2024, Colliers widely marketed the Real Property and the Adjoining Property in an effort to garner maximum interest. The marketing included:

- a. Listing the Real Property and the Adjoining Property on MLS and establishing a website;
- b. Establishing an electronic data room which contained all available information with respect to the Real Property and the Adjoining Property;
- c. Preparing a confidential information memorandum that was made available in the data room to parties who signed non-disclosure agreements; and,
- d. Utilizing social media and e-mail contacts to notify parties of the listings.

Second Report, para 29 and Confidential Appendix "2"

15. The marketing pursuant to the Sales Process resulted in 43 interested parties executing Confidentiality Agreements, 43 parties accessing the data room and approximately 6 interested parties touring the Real Property.

Second Report, para 30

16. Colliers provided to the Receiver weekly disposition progress reports detailing Collier's marketing efforts, data room activity and market feedback.

Second Report, para 31 and Confidential Appendix "3"

17. Colliers also provided to the Receiver a Marketing and Sales Report dated October 6, 2025 (the "**Marketing Report**"), which details the marketing process from January 31, 2024, to the bid deadline of April 30, 2024.

Second Report, para 32 and Confidential Appendix "4"

18. As a result of Colliers marketing of the Real Property and the Adjoining Property, one offer and two letters of intent were received by April 30, 2024. The conditions put forward by such prospective purchasers however were too onerous. As detailed in the Marketing Report, transactions to sell both the Real Property and the Adjoining Property by April 30, 2024, could not be reached.

Second Report, paras 33 and 34 and Confidential Appendix “5”

19. Colliers, on the instructions of the Receiver, continued to market the Real Property, which resulted in two offers in late July/August 2025 to purchase the Real Property, with the Sale Agreement being presented, negotiated and ultimately accepted by the Receiver, conditional upon the approval of this Honourable Court.

Second Report, paras 35, 36 and 37 and Confidential Appendix “6”

20. Upon finalizing the Sale Agreement, the Receiver and Colliers entered into the Commission Agreement in order to compensate Colliers for their efforts in this regard. The Commission Agreement was drafted upon the same terms and conditions as the expired Listing Agreement.

Second Report, para 38 and Appendix “9” thereto

21. The benefits of proceeding with the Transaction include:
 - a. The Transaction has the highest deal certainty, with the Purchaser securing financing and already conducting significant due diligence;
 - b. The Sale Agreement is on an “as-is, where-is” basis, conditional only upon the issuing of the Approval and Vesting Order by the Court; and
 - c. The Receiver will be in a position to complete the administration of the estate in a timely and cost-effective manner.

Second Report, paras 39 and 40, Appendix “10” and Confidential Appendix “7”

22. Leading up to the Sale Agreement, the Real Property was marketed by Colliers for over 18 months. The Receiver is of the view that the Sales Process:
 - a. Resulted in the best sale price for the Real Property under the circumstances;
 - b. Considered the interests of all parties;

- c. Accounted for the declining market;
- d. Was a fair and public process; and
- e. Was conducted in a commercially reasonable manner in line with *Soundair*.

Second Report, para 41

23. The Receiver is of the view that the market for the Real Property was extensively canvassed pursuant to Colliers' marketing efforts, in accordance with professional and industry standard.

Second Report, paras 42

24. TD Bank has been consulted with respect to the Transaction and supports the completion of same and the relief sought by the Receiver.

Second Report, para 43

25. Accordingly, the Receiver respectfully requests the Court to approve the Transaction.

Second Report, para 46

Confidential Appendices and Sealing Order

26. On October 8, 2025, Justice Conway granted leave for Wheler to act as a representative of the Debtors.
27. On October 9, 2025, Wheler executed a Confidentiality Undertaking (the "**Confidentiality Undertaking**"), in which the Receiver agreed to provide Wheeler copies of the Confidential Appendices, subject to the Confidentiality Undertaking.
28. Pursuant to the Confidentiality Undertaking, Wheler agreed to keep the Confidential Appendices confidential, and not disclose same in any manner, including in respect of any motion materials or submissions in the within motion.

29. The Wheler Affidavit is in direct breach of the Confidentiality Undertaking, as it references and discloses the confidential information in the Confidential Appendices.
30. In accordance with the Confidential Undertaking, Wheler also agreed to not assist, advise or encourage any other person to effect, seek, offer or propose any acquisition of the Real Property.
31. As set out in the Wheler Affidavit, Wheler is in active discussions with a potential purchaser of the Real Property.
32. 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 Transaction is not completed. As a result, the Receiver is seeking a sealing order in respect of the Confidential Appendices until such time as the Transaction is complete, or until further order of this Court.
33. The Receiver requests that the above noted portions of the Wheler affidavit be redacted.

Second Report, para 46

Professional Fees and Disbursements

34. The Receiver and its counsel have properly incurred fees and disbursements as detailed in the Second Report (the “**Professional Fees**”).

Second Report, paras 47 and 48 and Appendices “15” and “16” thereto

35. It is the position of the Receiver that the Professional Fees as set out in the Second Report are reasonable and necessary and should be approved by this Honourable Court.

Second Report, para 49

Statement of Receipts and Disbursements

36. The Receiver's Interim Statement of Receipts and Disbursements as of October 6, 2025, is appended to the Second Report, and it is the Receiver's position that such receipts and disbursements are reasonable and should be approved.

Second Report, para 51 and Appendix "17" thereto

PART III – ISSUES

37. The issues before this Honourable Court is whether to:
- a) approve the Transaction and granting the Approval and Vesting Order;
 - b) grant the sealing of the Confidential Appendices;
 - c) approving the Second Report, and the activities and conduct of the Receiver set out therein;
 - d) approving the Receiver's Interim Statement of Receipts and Disbursements;
 - e) approving the Professional Fees, and payment of same; and,
 - f) abridging the time for service and filing of the Motion Record.

PART IV – THE LAW AND ARGUMENT

a) The Sale Agreement Should be Approved

38. 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.*](#)

39. 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.](#)

40. 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.](#)

41. It is respectfully submitted that the Sales Process is the most important indicator of whether a sale transaction recommended by a Receiver should be approved, and not appraisals. When considering the Receiver's decision on the recommend sale, it is respectfully submitted that the Court should consider *Stanbarr Services Limited et al. v. Reichert*, as Tzimas, J. stated "... the real proof in the pudding lies with actual offers, it does not lie with the appraisals; they are just estimates."

[Stanbarr Services Limited et al. v. Reichert, 2014 ONSC 6435 \(CanLII\), at para. 15](#)

The Soundair Principles are Met

42. 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.](#)

43. It is respectfully submitted that the evidence set out by the Receiver in the Second 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

44. Colliers implemented an extensive marketing process with a view of obtaining the best price for the Real Property. Colliers adequately canvassed the market for prospective purchasers for the Real Property, with the Real Property marketed for over 18 months, and all interested parties being provided an opportunity to make an offer.
45. The Sale Agreement includes the best price available in the circumstances and is provident to accept after 18 and ½ months of marketing. Colliers' position is that the market is deteriorating.

[Soundair, at para 24.](#)

46. Further marketing of the Real Property will result in further costs being incurred, and will not guarantee the finding of a superior transaction, and any delay to do so could jeopardize the Transaction contemplated in the Sale Agreement.
47. It is respectfully submitted that there is no merit to any suggestion that the Receiver acted improvidently. The Receiver has acted impartially and exercised its business judgment in a reasoned manner throughout the process. The Receiver's efforts resulted in the entering into of the Sale Agreement which, in the Receiver's view, is highest deal certainty, has the shortest time to close and maximizes recovery, and therefore is in the best interests of the estate and its stakeholders.
48. It is respectfully submitted that no credible evidence exists that create an exceptional circumstance where the Court should reject the Receiver's recommendation. The Sales

Process was Court approved and was followed. The Receiver ran a fair process as an officer of the Court and the Transaction was the best offer received

[Soundair, at paras 21 and 29](#)

ii. The Transaction is in the Interests of All Parties

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

[Soundair, at para 39.](#)

50. The Debtor's senior secured creditor, TD Bank, supports the Transaction.
51. 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.](#)

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

[Soundair, para. 40.](#)

53. The Purchaser pursuant to the Sale Agreement has spent time and resources conducting due diligence and finalizing the Sale Agreement. If the Transaction is not approved, the Purchaser will have expended such resources for nothing.
54. The Sale Agreement and the Transaction is 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 transaction available to the Receiver.

iii. The Efficacy and Integrity of the Process

55. The integrity of the Sales Process is an important consideration. Colliers' sale process was robust. To the best of the Receiver's knowledge, all interested parties had access to the same information, there was no asymmetry in information, and all reasonable requests for information made by prospective purchasers were satisfied.

[Soundair, para. 42.](#)

56. Any relisting of the Real Property to permit other bidders to submit offers now would result in additional, unnecessary costs. There is no evidence that any further marketing will bring a better price.

[Soundair, para. 44.](#)

57. Further, the Court should be reluctant to adopt a "wait and see" approach to determine if the market improves or a better offer appears.

[Choice Properties Limited Partnership v. Penady \(Barrie\) Ltd., 2020 ONSC 3517, at para. 35](#)

58. 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

59. To the best of the Receiver's knowledge, the Sales Process was undertaken by Colliers in good faith and was fair and reasonable, which was conducted in a transparent manner.
60. All prospective bidders for the Real Property had equal opportunity to participate in the process and submit offers in respect of the Real Property.

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

b) The Sealing Order Should be Granted

62. 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 Debtor.

Jurisdiction

63. 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\(2\).](#)

64. 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

65. 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 in 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.](#)

66. 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 Sale Agreement; 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.](#)

67. 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.](#)

68. The Confidential Appendices contain sensitive commercial information. Should the sale of the Real Property not proceed pursuant to the Sale Agreement, the information contained within this confidential report could cause a reduction in any future sale of the Real Property and harm the creditors of the Debtor 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 the Confidential Appendices from becoming public.
69. With regard to the Confidential Appendices, 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.

c) The Receiver's Activities Should be Approved

70. 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 debtor's 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

71. 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.
72. The Receiver therefore respectfully submits that the Second Report, and its activities to date as set out therein, should be approved by this Court.

d) The Interim Statement of Receipts and Disbursements should be Approved

73. The Receiver's Interim Statement of Receipts and Disbursements is appended to the Second Report, and are reasonable. The Receiver respectfully requests that such receipts and disbursements be approved by this Honourable Court.

e) The Fees and Disbursements of the Receiver and its Counsel Should Be Approved

74. The Receiver respectfully submits that the Professional Fees of the Receiver and the Receiver's counsel, as detailed in the Second Report, should be approved.
75. 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, at paras. 33 and 45.

76. 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.

f) Abridging the Time for Service and Filing of the Motion Record

77. 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

PART V – ORDER REQUESTED

78. For the reasons set forth herein and in the Second Report, the Receiver respectfully requests that the Court grant the Approval and Vesting Order and the Ancillary Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of October, 2025.



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**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Bank of America Canada v. Willann Investments Ltd.* (1993) 20 C.B.R. (3d) 223 (ONSC)
2. [*Royal Bank of Canada v. Soundair Corp.* \(1991\), 4 OR \(3d\) 1 \(ONCA\)](#)
3. [*Regal Constellation Hotel Ltd., Re*, 2004 CanLII 206 \(ON CA\)](#)
4. [*Ravelston Corp. \(Re\)*, 2005 CanLII 63802 \(ON CA\)](#)
5. [*Fairview Donut Inc. v. The TDL Group Corp.*, 2010 ONSC 789 \(CanLII\)](#)
6. [*Sierra Club of Canada v. Canada \(Minister of Finance\)*, 2002 SCC 41 \(CanLII\), \[2002\] 2 SCR 522](#)
7. [*Sherman Estate v. Donovan*, 2021 SCC 25 \(CanLII\)](#)
8. [*B&M Handelman Investments Limited v. Mass Properties Inc.*, 2009 CanLII 37930 \(ON SC\)](#)
9. [*Maxtech Manufacturing Inc. \(Re\)*, 2010 ONSC 1161 \(CanLII\)](#)
10. [*Bank of Nova Scotia v. Diemer*, 2014 ONCA 851](#)
11. [*Stanbarr Services Limited et al. v. Reichert*, 2014 ONSC 6435 \(CanLII\)](#)
12. [*Choice Properties Limited Partnership v. Penady \(Barrie\) Ltd.*, 2020 ONSC 3517](#)

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.

THE TORONTO-DOMINION BANK

v.

1871 BERKELEY EVENTS INC., et al.

Applicant

Respondents

Court File No. CV-23-00693494-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO, ONTARIO

FACTUM OF THE RECEIVER

HARRISON PENZA LLP

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