

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION
101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS
AMENDED**

B E T W E E N:

1000688136 ONTARIO INC.

Applicant

and

20 CALDARI DEVELOPMENT INC.

Respondent

RESPONDENT'S FACTUM

April 1, 2026

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PART I. OVERVIEW

1. 20 Caldari Development Inc. (the “**Respondent**”) makes submissions only to comment on two aspects of the sale process proposed in this motion: the \$400,000 break fee payable if the credit bid at issue is not successful; and the fact that the sales process’ fails to provide for a redemption of the mortgages at issue.

2. While the Respondent is unopposed to the sale of the Property (defined below), the Respondent argues that this Court should (i) adjust the break fee to actual expenses incurred by the credit bidders (instead of its current operation as a fixed sum); and (ii) confirm that the debtor retains its right of redemption until one week prior to the bid deadline in the sales process.

PART II. FACTS

3. MSI Spergel Inc. (the “**Receiver**”) was appointed as Receiver of all of the assets, undertakings and properties of the Respondent pursuant to the order of Justice Wilkinson dated June 3, 2025 (the “**Order**”).¹

4. The Respondent owns the property municipally known as 20 Caldari Road, Vaughan, Ontario (the “**Property**”).² The sale process proposed by the Receiver seeks to sell the Property.

5. The Property is charged by a first and second mortgage, securing indebtedness owing to 1000688136 Ontario Inc. (the “**First Mortgagee**”) and J.I.S. Contract Furniture

¹ Supplemental Report to the Second Report (“**Supplemental Report**”), at ¶3, Receiver’s Supplementary Motion Record (“**SMR**”) Tab 2, p. 15.

² Supplemental Report, at ¶2, SMR, Tab 2, p.15.

Inc. (the “**Second Mortgagee**”, and together with the First Mortgagee, the “**Mortgagees**”). The Respondent is currently indebted to the Mortgagees in the amount of approximately \$16 million (the “**Indebtedness**”).³

6. The principal of the Second Mortgagee, Jay Khanna, is a 50% shareholder of the Respondent.⁴

7. On December 23, 2025, the Respondent and Receiver agreed to an interim occupancy agreement (the “**Occupancy Conditions**”) to formalize the Respondent’s tenants’ continued occupation of the Property (since the Order) while the Respondent attempted refinancing of the Property.

8. Under the Occupancy Conditions, the Respondent undertook to not oppose the sale of the Property and acknowledged that the Receiver could exercise its discretion to propose a stalking horse sale process to this Court (among other potential options). The Respondent did not consent to any particular process and simply acknowledged that the Receiver could pursue a process before this Court in the exercise of its lawful discretion pursuant to the Order.⁵ The Respondent did not give up any rights to comment on or make submissions to the Court about the appropriateness of certain aspects of any sales process.

9. On March 5, 2026, the Receiver delivered its motion record for this motion, informing the Respondent that it intended to pursue a sale process which includes a

³ Supplemental Report, at ¶4, SMR, Tab 2, p.15.

⁴ Second Report, Appendix 2, at Section 9, Receiver’s Motion Record (“**AMR**”), Tab 2, p. 55.

⁵ Second Report, Appendix 2, at Section 2 and 4, AMR, Tab 2, pp. 53-54.

stalking horse agreement with the Mortgagees as purchasers, pursuant to the Agreement of Purchase of Sale dated March 4, 2026, between the Receiver and Mortgagees (the “**Credit Bid APS**”).

10. Under the Credit Bid APS and pursuant to the sale process proposed by the Receiver, a \$400,000 break fee applies if the Mortgagees are not the successful purchasers at the conclusion of the sales process envisaged by the Receiver (the “**Break Fee**”).⁶

PART III. LAW AND ARGUMENT

A. The legal test for a credit bid’s break fee is demanding, and it is not met here

1. The Respondent has not waived rights to comment on the sale process before this Court

11. While the Occupancy Conditions require that the Respondents do not oppose the Receiver’s application for sale, they do not provide the Receiver *carte blanche* to secure approval of any sales process by this Court. Any sale process proposed is subject to the Receiver’s lawful and reasonable discretion, and subject to this Court’s supervision, which includes the consideration of the whole economic community of stakeholders (including the Respondent and other third parties).⁷

⁶ Supplemental Report, Appendix A, at s. 11, SMR, Tab 2, pp. 31-32.

⁷ *Brainhunter Inc. (Re)*, 2009 CanLII 72333 (ON SC), at ¶[13](#)

2. The special scrutiny of break fees in this context

12. Break fees in credit bids are subject to special scrutiny. In fact, it is only in “extremely rare” circumstances that a break fee reflective of additional risk be considered appropriate in a credit bid.⁸

13. This exact issue was addressed by Justice Osborne (as he then was) in a recent case before the Commercial List. In that case, Justice Osborne explained that break fees are generally not appropriate in credit bids because a credit bidder is not exposing capital to any new risk.⁹ This is the case here with the Mortgagees.

14. Justice Osborne went on to explain that where a credit bidder proposes a break fee, the Court will typically only approve it where the fee represents “reasonable reimbursement of the fees and costs incurred in negotiating and preparing the stalking horse bid.”¹⁰

15. The Mortgagees could have easily adduced evidence supporting that the Break Fee is a reasonable reimbursement but have not done so. Rather, the Mortgagees have submitted no evidence justifying the Break Fee at its current quantum.

16. While the Receiver asserts that the Break Fee’s relative percentage of the purchase price is consistent with other transactions generally, this assertion misses the point in the context of a credit bid. Both relative and absolute dollar amounts matter, but

⁸ *Trees Corporation et al. v. The Attorney General of Canada*, 2024 ONSC 1993, at ¶34.

⁹ *Trees Corporation et al. v. The Attorney General of Canada*, 2024 ONSC 1993, at ¶34.

¹⁰ *Trees Corporation et al. v. The Attorney General of Canada*, 2024 ONSC 1993, at ¶34.

the central consideration is ensuring reimbursement of reasonable fees and expenses, not providing for a penalty or other fixed payment.¹¹

17. In this case, justifying the Break Fee is even more important as the principal of the Second Mortgagee is a shareholder of the Respondent and credit bidder. He consequently already has substantial familiarity with the Property both through his shareholding and the diligence conducted in connection with the Second Mortgagee's lending. He certainly does not need any further incentive or protection to engage in the sales process.

B. A redemption is not considered in the sale process

18. Another non-standard feature of the sale process proposed by the Receiver is that there is no contemplated right to redeem within the sales process.

19. Mortgagors can propose a redemption, even within a court-approved sales process. The Court will then consider the proposal including whether the redemption provides enough value to displace the interest of preserving the integrity of the sales process.¹²

20. In this case, the sale process order proposed by the Receiver does not address what occurs in the event of the mortgagor's redemption, beyond providing that the Break Fee would be payable. It appears that the Respondent will lose its right to redeem as soon as the sale process order is issued.¹³ As noted above, the Court would consider

¹¹ *Trees Corporation et al. v. The Attorney General of Canada*, 2024 ONSC 1993, at ¶36.

¹² *Rose-Isli Corp. v. Smith*, 2023 ONCA 548, at ¶9, *Cameron Stephens Mortgage Capital Ltd. v. Spotlight on Lawrence Inc.*, 2025 ONCA 374, at ¶12.

¹³ Supplemental Report, at ¶11, SMR, Tab 2, p.18.

permitting a redemption if it provides significant value. The Receiver cites no authority that would permit it to pre-emptively bar any redemption effort. The Respondent accordingly proposes that it be expressly permitted to redeem until one week prior to the bid deadline proposed by the Receiver.

21. As well, in this context, any break fee asserted by a bidder in the event of redemption must only represent reimbursement of reasonable compensation to the date of redemption.¹⁴

22. Here, the Break Fee currently applies as a \$400,000 penalty or payment for redemption from the first day of the sales process, irrespective of the costs and expenses incurred. This fixed fee is not permissible.

PART IV. ORDER REQUESTED

23. The sales process order proposed by the Receiver, without paragraph 7, and with appropriate updates to paragraph 6 thereto, adjusting the Break Fee to only reasonable fees and expenses of the credit bidders. In addition, an order providing that the Respondent may move for directions before this Court if it is in a position to redeem one week prior to the bid deadline in the sale process.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 1st day of April, 2026.



Jeffrey Larry

¹⁴ *Peakhill Capital Inc. v. 1000093910 Ontario Inc.*, 2024 ONCA 584, at ¶12 and 18.

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SCHEDULE "A"
LIST OF AUTHORITIES

1. *Brainhunter Inc. (Re)*, [2009 CanLII 72333 \(ON SC\)](#)
2. *Trees Corporation et al. v. The Attorney General of Canada*, [2024 ONSC 1993](#)
3. *Rose-Isli Corp. v. Smith*, [2023 ONCA 548](#)
4. *Cameron Stephens Mortgage Capital Ltd. v. Spotlight on Lawrence Inc.*, [2025 ONCA 374](#)
5. *Peahill Capital Inc. v. 1000093910 Ontario Inc.*, [2024 ONCA 584](#)

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date April 1, 2026

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PROCEEDING COMMENCED AT
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