

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

**TUNG AIR TRANSPORT LTD., 2527366 ONTARIO INC.,
R. LESSARD TRUCKING LIMITED and 1000101395 ONTARIO INC.**

Respondents

**APPLICATION UNDER SUBSECTION 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**

FACTUM OF THE RECEIVER

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PART I - OVERVIEW

1. This Motion is made by msi Spergel Inc. (“**Spergel**”), in its capacity as Court-appointed receiver (in such capacity, the “**Receiver**”) of the assets, property and undertaking of Tung Air Transport Ltd. (“**Tung Air**”), 2527366 Ontario Inc. (“**252**”), R. Lessard Trucking Limited (“**Lessard**”), and 1000101395 Ontario Inc. (“**10001**”, and collectively, the “**Debtors**”) for, *inter alia*:

(a) an Order:

- (i) approving the sale transaction (the “**Windsor Transaction**”) contemplated by an agreement of purchase and sale dated September 12, 2025 (the “**Windsor Agreement**”) between Vince Mocerri Holdings Inc. (the “**Windsor Purchaser**”) and the Receiver for the purchase and sale of a property located at 2260 Manning Road, Tecumseh, Ontario (the “**Windsor Property**”); and

- (ii) vesting in the Windsor Purchaser all of the Debtors' right, title and interest in and to the Windsor Property, free and clear of all encumbrances, except certain permitted encumbrances;
- (b) an Order:
 - (i) approving the auction services agreement between the Receiver and Ritchie Bros. Auctioneers (Canada) Ltd. (the "**Auctioneer**") (the "**Auction Agreement**");
 - (ii) authorizing the Auctioneer to conduct an auction of certain property and assets of the Debtors in accordance with the terms of the Auction Agreement (the "**Auction**"); and
 - (iii) vesting in each purchaser at the Auction (each an "**Auction Purchaser**") the Debtors' and Receiver's right, title, and interest in and to the Auction Assets purchased by such Purchaser at the Auction, free and clear of any claims and encumbrances; and
- (c) an Order:
 - (i) abridging the time for service of the Notice of Motion and the Motion Record and validating service so that the motion is properly returnable on October 14, 2025, and dispensing with the requirement for any further service thereof;
 - (ii) approving the report of Spergel, in its capacity as proposed receiver of the Debtors (in such capacity, the "**Proposed Receiver**"), dated April 2, 2025 and the appendices thereto (the "**Proposed Receiver's Report**") and the activities of the Proposed Receiver described therein;
 - (iii) approving the first report of the Receiver dated October 7, 2025 and the appendices thereto (the "**First Report**") and the activities of the Receiver described therein;
 - (iv) approving the Receiver's Interim Statements of Receipts and Disbursements as of September 30, 2025;

- (v) approving the fees and disbursements of the Receiver for the period from March 13, 2025 to August 31, 2025;
- (vi) approving the fees and disbursements of the Receiver's legal counsel for the period from March 11, 2025 to September 30, 2025; and
- (vii) sealing certain confidential appendices to the First Report.

PART II - FACTS

A. Background

2. The relevant facts in connection with this motion are more fully detailed in the First Report and the appendices thereto. All capitalized terms herein not otherwise defined shall have the meaning ascribed to them in the First Report.

B. Appointment of the Receiver

3. On March 7, 2025, RBC brought an application returnable March 12, 2025, seeking to appoint Spergel as Receiver. Pursuant to the Endorsement of Justice Black dated March 12, 2025, the hearing of RBC's application was adjourned to April 14, 2025.¹

4. On March 13, 2025, RBC, through its counsel, retained Spergel as a consultant for the purpose of, among other things, reviewing and reporting on the Debtors' financial and operational performance.²

5. Upon return of the application on April 14, 2025, Justice J. Dietrich made an Order appointing Spergel as the Receiver (the "**Appointment Order**").³

C. Activities of the Receiver

6. In connection with this motion, the Receiver has prepared the First Report which provides a detailed summary of its activities since April 14, 2025.

¹ First Report of the Receiver dated October 7, 2025 ("**First Report**"), Motion Record of the Receiver ("**MR**"), Tab 2, para. 6.

² First Report, MR, Tab 2, para. 7; Report of the Proposed Receiver dated April 2, 2025, MR, Tab 2, Appendix 1.

³ Order of Justice J. Dietrich dated April 14, 2025 ("**Appointment Order**"), MR, Tab 2, Appendix 2.

7. Since April 14, 2025, the Receiver has, among other things:
- (a) attended at, and taken possession of, the Windsor Property and the Debtors' premises located at 1244 Kamato Road, Mississauga, Ontario (the "**Mississauga Property**");
 - (b) attended at various premises in order to take possession of, among other things, certain trucks and trailers owned and/or leased by the Debtors;
 - (c) facilitated the completion of outstanding shipments and turnover of third parties' freight to collect upon accounts receivable and recover certain property and assets;
 - (d) managed the ongoing collection of accounts receivable outstanding as of the date of the Appointment Order, of which over 57% has since been collected;
 - (e) communicated with various parties, including but not limited to the Debtors, the Superintendent of Bankruptcy, the Canada Revenue Agency, and secured creditors holding purchase-money security interests in certain of the Debtors' property;
 - (f) obtained two appraisals in respect of the Windsor Property;
 - (g) requested and obtained sales and marketing proposals from three commercial real estate brokerages in respect of the Windsor Property;
 - (h) entered into the listing agreement with Cushman & Wakefield ULC ("**Cushman**");
 - (i) negotiated the Windsor Agreement and the Auction Agreement with the Windsor Purchaser and the Auctioneer, respectively;
 - (j) reviewed and analyzed offers received from prospective purchasers of the Windsor Property and negotiated with prospective purchasers; and
 - (k) liaised with its legal counsel, Borden Ladner Gervais LLP ("**BLG**"), in respect of various aspects of these receivership proceedings.⁴

⁴ First Report, MR, Tab 2, para. 15.

D. The Auction Agreement

8. Since the date of its appointment, the Receiver has taken possession of over 70 trucks and trailers (the “**Tung/Lessard Vehicles**”). The Receiver estimates that the realizable value of the Tung/Lessard Vehicles exceeds the threshold of \$200,000 set out at paragraph 3(k) of the Appointment Order.⁵

9. Pursuant to the Auction Agreement, the Auctioneer has agreed to conduct an unreserved public auction of the Tung/Lessard Vehicles. The Auction will take place at the Auctioneer’s next scheduled auction following the expiry of the appeal period of the Order approving same.⁶

10. The Auction Agreement provides that the Auctioneer shall be entitled to a commission calculated as a percentage of the gross sale price of each Auction Asset, subject to a nominal minimum commission per Auction Asset (the “**Auctioneer’s Commission**”).⁷

E. The Windsor Agreement

11. The Windsor Property is a 39.4-acre, largely vacant tract of commercial land featuring a truck repair building, a storage building, and a tenanted residence. The Windsor Property is covered by two PINs, the registered owners being Lessard and 10001.⁸

12. Before taking steps to sell the Windsor Property, the Receiver obtained appraisals thereof from Fuerland Realty Ltd. Brokerage and Bower Appraisal (together, the “**Appraisals**”).⁹

13. After obtaining the Appraisals, the Receiver requested and obtained sales and marketing proposals from Avison Young Commercial Real Estate Services LP, CBRE Land Specialists, and Cushman. Given the favorable commission structure and its extensive experience, the Receiver chose to retain Cushman.¹⁰

⁵ First Report, MR, Tab 2, para. 19; Appointment Order, MR, Tab 2, Appendix 2, para. 3(k).

⁶ First Report, MR, Tab 2, para. 22.

⁷ First Report, MR, Tab 2, para. 21.

⁸ First Report, MR, Tab 2, para. 27; Parcel Registers for PIN 75009-0015 (LT) and PIN 75009-0016 (LT), MR, Tab 2, Appendix 6.

⁹ First Report, MR, Tab 2, para. 28.

¹⁰ First Report, MR, Tab 2, para. 29.

14. On July 30, 2025, the Receiver entered into a listing agreement with Cushman, pursuant to which the Windsor Property was listed for sale for \$4,000,000, with a bid deadline of September 8, 2025 at 5:00 PM EST (the “**Bid Deadline**”).¹¹

15. Cushman widely marketed the Windsor Property, which included listing the Windsor Property on MLS and reaching out to over 1512 contacts. Cushman’s efforts resulted in twelve interested parties executing confidentiality agreements, twelve such parties accessing the virtual data room established by Cushman for the Windsor Property, and a number of interested parties touring the Windsor Property. As of the Bid Deadline, the Receiver had received eight offers.¹²

16. In the Receiver’s view, the Windsor Agreement represents the best outcome for the receivership estate in the circumstances as it contemplates a sale of the Windsor Property on an “as-is, where-is” basis for a purchase price that is consistent with the appraised market value.¹³

PART III - ISSUES

17. The Receiver’s motion raises the following issues:

- (a) Should the Court approve the Auction, the Auction Agreement, and the transactions resulting therefrom?
- (b) Should the Court approve the Windsor Agreement and the transaction contemplated therein?
- (c) Should the Court approve the Proposed Receiver’s Report, the First Report, and the activities described therein?
- (d) Should the Court approve the professional fees and disbursements of the Receiver and BLG?
- (e) Should the Court seal Confidential Appendices “A”, “B”, “C”, “D”, and “E” to the First Report (the “**Confidential Appendices**”) until the Windsor Transaction has closed?

¹¹ First Report, MR, Tab 2, para. 29; Listing Agreement dated July 30, 2025, MR, Tab 2, Appendix 7.

¹² First Report, MR, Tab 2, paras. 30-31.

¹³ First Report, MR, Tab 2, para. 36.

PART IV - LAW AND ARGUMENT

A. The Windsor Agreement and Auction Agreement, and the Transactions Resulting Therefrom, Should Be Approved

i. Court Approval of Sale Transactions

18. On the within motion, the Receiver seeks approval of (1) the transaction contemplated by the Windsor Agreement, and (2) the transactions resulting from the Auction, in accordance with the Auction Agreement.

19. In *Royal Bank v. Soundair Corp.*, the Court of Appeal for Ontario set out the principles to be applied in determining whether to approve a sale transaction in a receivership. Pursuant to the *Soundair* principles, the Court must examine: (i) whether the party conducting the sale made sufficient efforts to obtain the best price and did not act improvidently; (ii) the interests of all parties; (iii) the efficacy and integrity of the process by which offers were obtained; and (iv) whether there has been unfairness in the working out of the process.¹⁴

20. In exercising its supervisory role over a transaction proposed by a Court-appointed Receiver, the Court should not withhold approval of the proposed transaction unless there has been some unfairness, or the transaction is improvident.¹⁵ The Receiver is under no duty to obtain the highest price, and other offers received by the Receiver are irrelevant to whether the proposed transaction is to be approved unless they demonstrate that the consideration to be received under the proposed transaction is so unreasonably low as to render the transaction improvident.¹⁶

21. The Receiver submits that the *Soundair* test is readily met in respect of the Windsor Agreement and the Auction Agreement, including the transactions resulting therefrom.

ii. Approval of the Windsor Agreement

22. In respect of the Windsor Agreement, the *Soundair* test is met on the basis that:

(a) prior to entering into the Windsor Agreement:

¹⁴ *Royal Bank v. Soundair Corp.*, 1991 CanLII 2727 (Ont. C.A.), Book of Authorities (“BOA”), Tab 1 at para. 16.

¹⁵ *Selkirk, Re*, 1987 CarswellOnt 177 (Sup. Ct.), BOA, Tab 2 at para. 4.

¹⁶ *Skyepharma PLC v. Hyal Pharmaceutical Corp.*, 1999 CanLII 15007 (Ont. S.C.J.), BOA, Tab 3 at para. 4.

- (i) the Receiver obtained two appraisals from qualified appraisers;
 - (ii) the Windsor Property was thoroughly marketed by Cushman;
 - (iii) the Receiver reviewed, analyzed, and compared all eight bids received; and
 - (iv) the Receiver consulted with RBC, the Debtors' primary economic stakeholder, regarding the bids received;
- (b) RBC is supportive of the Windsor Agreement and the Windsor Transaction;
 - (c) the Windsor Agreement and the Windsor Transaction are the result of a fair and public process conducted in a commercially reasonable manner; and
 - (d) the purchase price under the Windsor Agreement is consistent with the market value of the Windsor Property, as supported by the Appraisals.¹⁷

iii. Approval of the Auction Agreement

23. With respect to the Auction, the *Soundair* test is met on the basis that:

- (a) the Auctioneer is the largest auction house in North America for trucks, trailers, and other equipment employed in the transport and logistics industry;
- (b) the Auction will involve a broad canvassing of the market to ensure that the Auction Assets are appropriately advertised as to maximize the number of bidders and bids, thus maximizing proceeds to the Debtors' estate;
- (c) the commission structure is fair and reasonable in that it both limits the Receiver's downside risk while incentivizing the Auctioneer to maximize recoveries; and
- (d) it would be unreasonable for the Receiver to conduct its own sales process for the Tung/Lessard Vehicles.¹⁸

¹⁷ First Report, MR, Tab 2, paras. 28-37.

¹⁸ First Report, MR, Tab 2, paras. 20-25.

B. Approval of the Proposed Receiver's Report, the First Report and Activities of the Proposed Receiver and the Receiver

24. In accordance with paragraph 3 of the Appointment Order, the Receiver is empowered and authorized to undertake certain activities with respect to the Debtors' assets, undertakings, and properties, including the sale and conveyance of property.¹⁹

25. This Court has the jurisdiction to approve the activities of a receiver. In *Bank of America Canada v. Willann Investments Ltd.*, Justice Farley held that the "court has the inherent jurisdiction to review and either approve or disapprove of the activities of a court appointed receiver". Justice Farley noted that retroactive approval of the Receiver's activities was akin to, and would have the same effect as, the Receiver having sought and received pre-emptive approval for its activities:

I pause to note that it would be unusual and illogical that the receiver could come to court for prior approval but not post approval. If that were the case, one might well expect the courts to be inundated with prior approval requests for virtually any activity.

It seems to me that a receiver should be able to come to court and bare its breast. Having done so, it has exposed itself to the sword of any interested party which may feel aggrieved of any action by that receiver. However, if the court feels that the receiver has met the objective test required of it, then the court may bestow a shield to the receiver for that reviewed and approved activity. If the activity is disapproved, then the receiver is in the unenviable position of watching itself.²⁰

26. All of the Receiver's activities in this matter were conducted in a manner consistent with the powers granted by the Appointment Order and each of the activities were necessary to ensure that the receivership proceedings were as orderly, effective, and fair to all stakeholders as possible. It is respectfully submitted that the Receiver's activities should be approved by this Court.

27. Accordingly, the Receiver respectfully submits that the First Report, and the activities of the Receiver set out therein, should be approved by this Court.

¹⁹ Appointment Order, MR, Tab 2, Appendix A at para. 3.

²⁰ *Bank of America Canada v. Willann Investments Ltd.*, [1993] O.J. No. 1647 (Sup. Ct.), BOA, Tab 4 at paras. 3-4.

C. Approval of Fees and Disbursements of the Receiver and its Legal Counsel

28. Pursuant to paragraph 19 of the Appointment Order and section 243(6) of the BIA, the Receiver and its counsel shall be paid their reasonable fees and disbursements upon passing their accounts on referral to the Court.²¹

29. In exercising its discretion to approve the fees of a receiver and its counsel, the Court should consider whether the remunerations and disbursements incurred were fair and reasonable in consideration of the following:

[...] the nature, extent and value of the assets handled, the complications and difficulties encountered, the degree of assistance provided by the company, its officers or its employees, the time spent, the receiver's knowledge, experience and skill, the diligence and thoroughness displayed, the responsibilities assumed, the result of the receiver's efforts, and the cost of comparable services when performed in a prudent and economical manner.²²

30. Further factors set out in *Bank of Nova Scotia v. Diemer* include, among other things:

- (a) the principle of proportionality; "there must be practical and reasonable limits to the amounts awarded and those amounts should bear some reasonable connection to the amount that should reasonably have been contemplated";
- (b) the Court ought not to second guess the amount of time claimed "unless it is clearly excessive or overreaching";
- (c) the Courts should award the costs on a more "holistic manner"; and
- (d) an order appointing the receiver and/or counsel "at standard rates" does not detract from the requirement of proportionality vis-à-vis the size of the estate and the matter's complexity.²³

²¹ Appointment Order, MR, Tab 2, Appendix 2 at para. 19; *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended, Schedule B, s. 243(6).

²² *Confectionately Yours, Inc. (Re Bakemates International Inc.)*, 2002 CanLII 45059 (Ont. C.A.), BOA, Tab 5 at para. 45 ["*Confectionately Yours*"], citing *Federal Business Development Bank v. Belyea and Fowler*, 1983 CanLII 4086 (N.B. C.A.), BOA, Tab 6 at para. 9.

²³ *Bank of Nova Scotia v. Diemer*, 2014 ONSC 365, BOA, Tab 7 at para. 19; aff'd 2014 ONCA 851, BOA, Tab 8.

31. In order to be reasonable, a receiver need not be administered as inexpensively as possible. Rather, in determining whether fees are reasonable, the Court shall take into account the effectiveness of the receiver:

While sufficient fees should be paid to induce competent persons to serve as receivers, receiverships should be administered as economically as reasonably possible. Reasonably is emphasized. It should not be based on any cut rate procedures or cutting corners and it must relate to the circumstances. It should not be the expensive foreign sports model; but neither should it be the battered used car which keeps its driver worried about whether he will make his destination without a breakdown.²⁴ [Citations omitted]

32. Accordingly, the Court ought to approach its assessment of fees with a degree of deference unless there is cause for concern:

In reviewing a claim for costs, the Court does not undertake a line by line analysis of the hours claimed, and should not second-guess the amount claimed, unless it is clearly excessive or overreaching. It considers what is reasonable in the circumstances and, taking into account all the relevant factors, awards costs in a global *fashion*.²⁵

33. Where chartered accountants are retained to perform the duties of a receiver-manager (or similar), “there is no reason why they should not get paid at the going rate they charge all of their clients for the services they render.”²⁶ In the present context, the comments of Deputy Registrar Wellburn in *Re G.A. Ross Hearing Instruments Inc.* are informative:

The trustee has charged fees on an hourly rate basis. Mr. Rogers’ hourly rate is \$260.00 per hour. He has been a licensed trustee for six years and a chartered accountant for thirty years. [...]

These rates may appear high to a member of the public, even when compared to other professions, when one considers that a firm of chartered accountants may bill the time of the accountants and the time of all levels of support staff based on the decision of *Bank of Montreal v. Nican Trading Co.* (1990) 1990 CanLII 454 (BC CA), 78 C.B.R. 85 (B.C.C.A.). However, in my experience the rates charged by the trustee are comparable to those of other large accounting firms. Given the complexity of this insolvency, it was not unreasonable for this

²⁴ *Confectionately Yours*, BOA, Tab 5 at para. 49.

²⁵ *David v. TransAmerica Life Canada*, 2016 ONSC 1777, BOA, Tab 9 at para. 22. [“*Transamerica*”]

²⁶ *Prairie Palace Motel v. Carlson*, 1980 CarswellSask 25 (Q.B.), BOA, Tab 10 at para. 6.

firm of accountants to act as the trustee and to charge their time at their usual rates.²⁷ [Emphasis added]

34. In *Ross*, the debtor had previously sold hearing aids and related equipment. The trustee was primarily tasked with handling landlord claims for unpaid rent and the estate was liquidated for roughly \$200,000.²⁸

35. The present receivership is more complicated and involved than the bankruptcy in *Ross*. Among other things:

- (a) the Debtors' assets, including the Windsor Property, the Mississauga Property, and the Tung/Lessard Vehicles, are of greater value;
- (b) the Receiver has continued to occupy and maintain the Windsor Property and the Mississauga Property; and
- (c) the Receiver has been required to expend substantial effort marshaling the Debtors' property, which has included:
 - (i) locating and recovering trucks and trailers from various locations across Canada and the United States; and
 - (ii) facilitating the completion of outstanding shipments and the turnover of freight in the Debtors' possession as of the date of the Receiver's appointment.²⁹

36. With respect to legal accounts, the above commentary is equally applicable. The nature of this receivership has required the Receiver's counsel to, among other things, (i) address a high volume of secured claims of equipment financiers and facilitate the turn-over of collateral, and (ii) negotiate and enter into agreements with pre-receivership customers with respect to the turn-over and/or delivery of freight.³⁰

²⁷ *Ross (Trustee of)*, 1998 CanLII 5409 (B.C. Sup. Ct.), BOA, Tab 11 at paras. 29-30. [*"Ross"*]

²⁸ *Ross*, BOA, Tab 11 at paras. 15-18.

²⁹ See e.g., First Report, MR, Tab 2, paras. 15 & 19.

³⁰ First Report, MR, Tab 2, para. 15.

37. On a motion seeking approval of fees, the motion record ought to include detailed records of the work performed by the professionals who rendered services:

As for the procedure that applies to the passing of the accounts, *Bennett* indicates at p. 460 that there is no prescribed process. Nonetheless, the case law provides some requirements for the substance or content of the accounts. The accounts must disclose in detail the name of each person who rendered services, the dates on which the services were rendered, the time expended each day, the rate charged and the total charges for each of the categories of services rendered. The accounts should be in a form that can be easily understood by those affected by the receivership (or by the judicial officer required to assess the accounts) so that such person can determine the amount of time spent by the receiver's employees (and others that the receiver may have hired) in respect to the various discrete aspects of the receivership. [Citations omitted; emphasis added]³¹

38. Finally, the Court ought to approach its assessment of fees with a degree of deference unless there is cause for concern:

In reviewing a claim for costs, the Court does not undertake a line by line analysis of the hours claimed, and should not second-guess the amount claimed, unless it is clearly excessive or overreaching. It considers what is reasonable in the circumstances and, taking into account all the relevant factors, awards costs in a global fashion.³²

39. For the period of March 13, 2025 to August 31, 2025, the professional fees of the Receiver are in the amount of \$304,790.61, inclusive of HST and disbursements.³³

40. For the period of March 11, 2025 to September 30, 2025, the professional fees of BLG are in the amount of \$325,581.29, inclusive of HST and disbursements.³⁴

41. The Receiver respectfully submits that the Receiver's fees and disbursements and those of BLG, each as detailed in the First Report, should be approved.

D. The Sealing Orders Should Be Granted

42. The Receiver seeks an Order sealing the Confidential Appendices. The Confidential Appendices contain commercially sensitive information regarding the Windsor Property, the

³¹ *Confectionately Yours*, BOA, Tab 5 at para. 37.

³² *TransAmerica*, BOA, Tab 9 at para. 22.

³³ Affidavit of Philip Gennis sworn October 7, 2025, MR, Tab 2, Appendix 9.

³⁴ Affidavit of Alex MacFarlane sworn October 6, 2025, MR, Tab 2, Appendix 10.

premature disclosure of which may hinder the Receiver's ability to maximize recoveries in these proceedings.

43. Section 137(2) of the *Courts of Justice Act* allows this Court to order that a document be "treated as confidential, sealed and not form part of the public record."³⁵

44. In *Sierra Club of Canada v. Canada (Minister of Finance)*, the Supreme Court of Canada held that a sealing order may be granted when:

(a) such an order is necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation, because reasonably alternative measures will not prevent the risk; and

(b) the salutary effects of the order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right of free expression, which in this context includes the public interest in open and accessible court proceedings.³⁶

45. In Supreme Court's decision in *Sherman Estate v. Donovan*, sealing orders constitute a "discretionary [limit] on presumptive court openness". In granting such an order, the Court must be satisfied that:

(1) court openness poses a serious risk to an important public interest;

(2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,

(3) as a matter of proportionality, the benefits of the order outweigh its negative effects.³⁷

46. In the context of insolvency proceedings, value maximization in respect of the debtor and its assets "is well recognized as a public interest worthy of protection which has minimal public interest detriment under the *Sherman Estate* test."³⁸

47. Relying upon the prerequisites in *Sherman Estate* and for the purpose of ensuring value maximization, this Court has granted sealing orders to temporarily prevent disclosure of, among

³⁵ *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, Schedule B, s. 137(2).

³⁶ *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, BOA, Tab 12 at paras. 45 & 53.

³⁷ *Sherman Estate v. Donovan*, 2021 SCC 25, BOA, Tab 13 at para. 38.

³⁸ *U.S. Steel Canada Inc. (Re)*, 2025 ONSC 1759, BOA, Tab 14 at para. 123.

other things, the purchase price and information regarding other offers received by the receiver in the context of a Court-approved sale transaction.³⁹

48. Here, the commercially sensitive information contained in the Confidential Appendices includes (i) the Purchase Price payable under the Windsor Agreement, (ii) the appraised value of the Windsor Property, and (iii) information regarding the bids received in respect of the Windsor Property, as well as the analyses of Cushman and the Receiver regarding the bids.

49. Disclosure of this commercially sensitive information would pose a material risk to the Receiver's ability to maximize recoveries for the benefit of the creditors. If the Windsor Agreement fails to close, disclosure of the aforementioned information would materially compromise the Receiver's ability to obtain the highest and best value for the Windsor Property in the event that it is necessary to remarket this asset.

50. Accordingly, the Confidential Appendices should be sealed until the Windsor Transaction has closed, at which point the commercial sensitivity of the information contained therein will have been mitigated.


51. Only by sealing the Confidential Appendices will the serious risk to the interests of the Debtors' creditors and other stakeholders be prevented; there is no reasonable alternative to a sealing order in the present circumstances.

PART V - ORDER REQUESTED

52. The Receiver requests that this Court issue Orders substantially in the forms attached at Tabs 3, 4, and 5 to the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

October 8, 2025



Roger Jaipargas / Nick Hollard
Lawyers for the Receiver, msi Spergel Inc.

³⁹ See e.g., *First Source Financial Management v. Chacon Strawberry Fields Inc.*, 2024 ONSC 7229, BOA, Tab 15 at paras. 48-53.

Schedule “A” – Authorities Cited

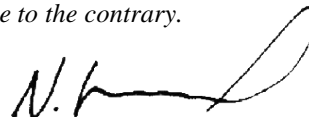
1. Royal Bank v. Soundair Corp., 1991 CanLII 2727 (Ont. C.A.)
2. Selkirk, Re, 1987 CarswellOnt 177 (Sup. Ct.)
3. Skyepharma PLC v. Hyal Pharmaceutical Corp., 1999 CanLII 15007 (Ont. S.C.J.)
4. Bank of America Canada v. Willann Investments Ltd., [1993] O.J. No. 1647 (Sup. Ct.)
5. Confectionately Yours, Inc. (Re Bakemates International Inc.), 2002 CanLII 45059 (Ont. C.A.)
6. Federal Business Development Bank v. Belyea and Fowler, 1983 CanLII 4086 (N.B. C.A.)
7. Bank of Nova Scotia v. Diemer, 2014 ONSC 365
8. Bank of Nova Scotia v. Diemer, 2014 ONCA 851
9. David v. TransAmerica Life Canada, 2016 ONSC 1777
10. Prairie Palace Motel v. Carlson, 1980 CarswellSask 25 (Q.B.)
11. Ross (Trustee of), 1998 CanLII 5409 (B.C. Sup. Ct.)
12. Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41
13. Sherman Estate v. Donovan, 2021 SCC 25
14. U.S. Steel Canada Inc. (Re), 2025 ONSC 1759
15. First Source Financial Management v. Chacon Strawberry Fields Inc., 2024 ONSC 7229

CERTIFICATE OF AUTHENTICITY

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

Note: Under Rule 4.06.1(2.2) of the Rules of Civil Procedure, an authority that is published on a government website or otherwise by a government printer, on the Canadian Legal Information Institute website (CanLII), on a court’s website or by a commercial publisher of court decisions is presumed to be authentic for the purposes of subrule (2.1), absent evidence to the contrary.

October 8, 2025



Nick Hollard

Schedule “B” – Legislation Cited

Bankruptcy and Insolvency Act, R.S.C., 1985, C. B-3, as amended

Orders respecting fees and disbursements

243 (6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver’s claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Courts of Justice Act, R.S.C., 1985, C. C.43, as amended

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.

Court File No. CV-25-00738060-00CL

ROYAL BANK OF CANADA

-and-

TUNG AIR TRANSPORT LTD., 2527366
ONTARIO INC., R. LESSARD TRUCKING
LIMITED and 1000101395 ONTARIO INC.

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

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