



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00738703-00CL

DATE: September 9, 2025

NO. ON LIST: 01

TITLE OF PROCEEDING: CERRUTI INVESTMENTS INC. v 2616766 ONTARIO LIMITED

BEFORE: JUSTICE J. DIETRICH

PARTICIPANT INFORMATION

For Plaintiff:

Name of Person Appearing	Name of Party	Contact Info
Jeffrey Levine	Counsel for: Cerruti Investments Inc.	Jeffrey.levine@mcmillan.ca
Alexander Overton		Alexander.overton@mcmillan.ca

For Defendant:

Name of Person Appearing	Name of Party	Contact Info
David Im	Counsel for: 2763161 Ontario Limited	Dim@chaitons.com
Rodney Godard	Counsel for: AQUA Temp Mechanical Contractors Limited & Windsor Power & Light Ltd	Rgodard@kirwinpartners.com
Chris Armstrong	Counsel for: KSV as Receiver	Carmstrong@goodmans.ca
Josh Sloan		Jsloan@goodmans.ca

Other:

Name of Person Appearing	Name of Party	Contact Info
David Kirwin	Counsel for: Tatro Horizons Ltd.	Dkirwin@lawhouse.ca
Joseph Ma	Counsel for: Vipen Chauser	Jma@mlflitigation.com
Charles Iun		CI@mlflitigation.com
Eric Florjancic	Counsel for: Joe's Cement Work (2019) Inc.	Eric@legalfocus.ca
Ben Blay	Counsel for: Vanrobys enterprises Ltd.	Bblay@scottpetrie.com
Stephen Marentette	Counsel for: Fulger Transport	Stephen.marentette@swslitigation.com

ENDORSEMENT OF JUSTICE J. DIETRICH:

Introduction

- [1] KSV Restructuring Inc. as the receiver (the “**Receiver**”) of all of the assets, undertakings and properties of 2616766 Ontario Limited (the “**Debtor**”) seeks two orders.
- [2] First, an order, the (the “**Sale Process Approval Order**”) is sought approving: (i) approving a sale process (the “**Sale Process**”) for the Property, including the real property municipally known as 6500 Cantelon Drive, Windsor, Ontario (the “**Real Property**”); (ii) approving the listing agreement, engaging CBRE Limited (“**CBRE**”) as the broker in the Sale Process; (iii) amending the Receivership Order to increase the Receiver’s Borrowing Limit from \$1,000,000 to \$2,000,000 and granting a corresponding increase to the Receiver’s Borrowings Charge; (iv) approving the First Report of the Receiver dated September 3, 2025 (the “**First Report**”), including the Receiver’s activities described therein; and (v) approving the fees and disbursements of the Receiver and those of its counsel for the periods set out in First Report.
- [3] Second, an order (the “**Construction Lien Claims Process Order**”) is sought approving the proposed process to identify and determine construction liens registered against the Real Property.
- [4] No opposition was raised with respect to the relief sought by the Receiver, however, Vipen Chauser, a shareholder of the Debtor sought a short adjournment with respect to the Sale Process related relief.
- [5] Counsel for Mr. Chauser advised they were just retained and intend to bring a motion to determine certain amounts owing the Applicant. The request was that the Sale Process relief be adjourned to provide an opportunity to advance that relief.
- [6] As noted in my endorsement from April 17, 2025, Mr. Chauser was represented by counsel at the hearing where the Receiver was appointed (by former counsel). At that

time, counsel for Mr. Chauser advised that his client had concerns with the calculation of amounts owing to the Applicant. However, almost five months have passed and no relief has yet been sought in that regard.

- [7] I am not prepared to adjourn the Sale Process relief. Mr. Chauser has had a number of months to move forward his concerns regarding the calculation of amounts owing to the Applicant and has not yet done so. The Sale Process does not formally commence until the end of September. If Mr. Chauser wishes to bring a motion he can seek a scheduling case conference from the Commercial List Office in the ordinary course. Nothing in today's relief determines the amounts owing to the Applicant. However, as noted at today's hearing, if Mr. Chauser seeks to redeem secured debt, he should move swiftly to do so.
- [8] Defined terms used but not otherwise defined herein have the meaning provided to them in the factum of the Receiver filed for use on this motion.

Background

- [9] The Debtor is a single purpose entity whose principal asset is the Real Property, a 53.4 acre industrial lot in Windsor, Ontario with 499,263 square feet of net rentable area. Since the Appointment Date, the Receiver has undertaken significant steps to prepare the Real Property for sale including working with the tenants/occupants of the Real Property and their counsel to document and formalize leasing and occupancy arrangements, working to address various construction and permitting deficiencies, commissioning a Phase I Environmental Safety Assessment, with a Phase II assessment expected to be completed within the next one to two months, and corresponding with CBRE with respect to the status of the Real Property and the Debtor's prior efforts to market and sell the Real Property with the assistance of CBRE.
- [10] The lease between Ventra Assembly Company ("**Ventra**"), the tenant of the largest unit at the Real Property, and the Debtor includes a right of last refusal to purchase the Real Property in favour of Ventra (the "**Ventra ROLR**").
- [11] In connection with the proposed Sale Process, the Receiver selected CBRE to act as the proposed listing brokerage to market and sell the Real Property, in part, given CBRE's familiarity with the Real Property through its prior engagement by the Debtor to market and sell the Real Property.
- [12] The proposed Sales Process is set out in the First Report. Marketing is anticipated to start on or about September 30, 2025 and continue for approximately 6 weeks which will be followed by a deadline for submission of letters of intent. After short-listing the letters of intent received a final bid deadline is anticipated four weeks following. As well, unless Ventra waives the Ventra ROLR, the Receiver will provide the successful bid to Ventra for consideration pursuant to the Ventra ROLR. If Ventra

elects to exercise the Ventra ROLR and enters into an agreement of purchase and sale satisfactory to the Receiver, Ventra's bid will be deemed the successful bid, subject to Court approval. However, should the Receiver determine that the Ventra ROLR is impairing the Sale Process or the maximization of value of the Real Property, the Receiver reserves the right to seek relief from the Court with respect to the Ventra ROLR.

- [13] A total of nine parties have registered construction liens on title to the Real Property, which total approximately \$10.99 million. The Construction Lien Claims Process provides that any person asserting a Construction Lien Claim must deliver a completed Proof of Claim to the Receiver on or before October 9, 2025, at 5:00 p.m. The Receiver will then review the filed Proof of Claim, and, to the extent that the Receiver determines to revise or disallow any Proof of Claim, will notify the applicable Construction Lien Creditor in writing of its basis for doing so. A Construction Lien Creditor which wishes to dispute a Notice of Revision or Disallowance must in turn deliver a notice of dispute to the Receiver no later than 5:00 p.m. on the calendar day that is 14 calendar days after the delivery of the Notice of Revision or Disallowance (or such later date as the Receiver may agree in writing). The proposed order also provides that the Receiver may not admit a Construction Lien Claim in priority to a mortgagee without the consent of the relevant mortgagee(s) or further order of the Court.

Issues

- [14] The issues to be determined are should (i) the Sale Process, including the retention of CBRE be approved; the Receiver's Borrowings be increased from \$1 million to \$2 million; (iii) the First Report and the activities of the Receiver be approved; (iv) the fees and disbursements of the Receiver and counsel as set out in the First Report be approved; and (v) the proposed Construction Lien Claims Procedure be approved?

Analysis

- [15] Courts have held that the reasonableness and adequacy of any sale process proposed by a court-appointed receiver are to be assessed in light of the factors that a court will take into account when considering the approval of a proposed sale: see *CCM Master Qualified Fund v blutip Power Technologies*, 2012 ONSC 1750 at para 6 [**CCM Master**]. Those factors are: those factors in *Soundair* as follows: (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently; (b) whether the interests of all parties have been considered; (c) the efficacy and integrity of the process by which offers are to be obtained; and (d) whether there has been unfairness in the working out of the process: see *Royal Bank of Canada v Soundair Corp* (1991), 4 OR (3d) 1 (CA) at p 9 [**Soundair**].
- [16] In addition to the *Soundair* factors, the Court should also assess: (a) the fairness, transparency and integrity of the proposed process; (b) the commercial efficacy of the

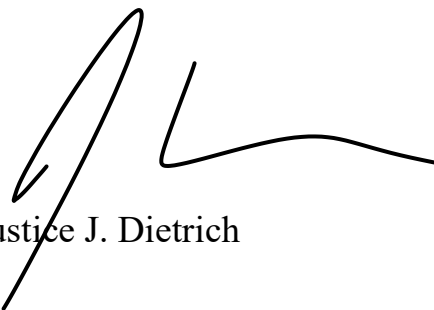
proposed process in light of the specific circumstances facing the receiver; and (c) whether the sale process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale: see *CCM Master* at para 6.

- [17] The Receiver recommends the Sales Process as it is designed to be a comprehensive, fair and transparent process that will broadly canvass the market for value-maximizing transactions. The Sale Process is also supported by Laminar and Cerruti, the Debtor's senior mortgagees. As described in greater detail in the First Report, the Receiver intends to engage with Ventra regarding the Ventra ROLR and, unless Ventra is prepared to waive the Ventra ROLR, comply with the Ventra ROLR in the context of the Sale Process; provided, however, that the Receiver reserves the right to return to Court to seek relief in respect of the Ventra ROLR should the Receiver determine it is impacting the Receiver's ability to maximize value or the integrity of the Sale Process. With respect to the retention of CBRE, given CBRE's history with the Real Property and broad experience, the retention is appropriate. The Receiver advises that the fees payable to CBRE are consistent with market practice and reduced fees have been specifically negotiated in the context of a Credit Bid Transaction and certain other circumstances. In the circumstances, the proposed Sale Process including the retention of CBRE is appropriate and is approved.
- [18] This Court will often extend a receiver's borrowing limit in response to evolving circumstances in a receivership, including to complete urgent activities while also maintaining a buffer for any unforeseen costs. To enable the Receiver to be able to complete its mandate, which, primarily, is to maximize the value of the Real Property through a Court-supervised sale process, the Receiver requires that its borrowing powers be increased by \$1,000,000 at this time. This increase will allow the Receiver to fund the necessary construction works to prepare the Real Property for sale, pay outstanding property taxes (which constitute a priority payable that will need to be addressed in the context of a transaction in any event) and fund interest on the senior mortgage registered on title, which has been requested by Laminar, who is also the party who has agreed to advance funds to the Receiver. In the circumstances, the increase in borrowings is appropriate and is approved.
- [19] The request to approve the First Report 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, citing *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.
- [20] 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.

- [21] The Receiver also seeks approval of the fees and disbursements of itself and its legal counsel, as set out in the First Report. 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 are appropriate and are approved.
- [22] This Court has on previously approved claims procedures in receivership proceedings specifically designed to call for and resolve construction lien claims: see for example *Peoples Trust Company et al. v Vandyk-Backyard Queensview Limited et al.* (6 March 2024) Ont Sup Ct J [Commercial List] CV-24-00713783-00CL.
- [23] The Construction Lien Claims Process is fair and reasonable in the circumstances. It will allow the Receiver to identify, review and address the Construction Lien Claims with a view to facilitating any future distributions from any potential transaction resulting from the Sale Process, and also allow the Receiver to consider how the Construction Lien Claims may impact any credit bid that is submitted in the Sale Process by a mortgagee. The process is appropriately undertaken now so that any issues identified through the Construction Lien Claims Process – including potential priority disputes between the Construction Lien Creditors and mortgagees – do not unduly delay distributions and a conclusion of these receivership proceedings should a transaction be identified and implemented.

Disposition

- [24] Orders to go in the form signed by me this day.



Justice J. Dietrich

September 9, 2025