Court File No.: CL-24-00096502-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

-and –

2460467 ONTARIO INC.

Respondent

IN THE MATTER OF AN APPLICATION UNDER 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

FACTUM OF THE RECEIVER
(Motion Returnable September 22, 2026)

September 22, 2026

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PART I - OVERVIEW[1]

1. AlixPartners Restructuring, Inc., formerly KSV Restructuring Inc. (“**KSV**”), has been appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of 2460467 Ontario Inc. (the “**Debtor**”).

2. The Debtor’s principal asset is the real property at 240 Yeomans Street, Belleville (the “**Real Property**”), intended for a 62 unit stacked townhouse development known as “Yeo Towns”, which was partially completed at the time of appointment (the “**Project**”). Of the 62 residential units, 37 remain unsold (the “**Available Units**”).

3. As construction approaches final stages, the Receiver has engaged an experienced sales agent and developed a Sale Process for the Available Units that will facilitate the efficient and effective sale of the Available Units for the benefit of the Debtor’s creditors. A confidential Pricing Schedule has been developed including Target Prices for each of the Available Units.

4. The Receiver brings this motion for an order (the “**Sale Approval Order**”), among other things,

   (a) authorizing and directing the Receiver to enter into a Listing Agreement with Forest Hill Real Estate Inc. (the “**Sales Agent**”);

   (b) approving the Sale Process for the Available Units, on terms summarized in the Fourth Report;

   (c) authorizing the Receiver to complete Permitted Transactions for the Available

[1] Capitalized terms used and not defined in this overview have the meanings given to them elsewhere in this factum. Capitalized terms used and not otherwise defined in this factum have the meanings given to them in the Fourth Report of the Receiver dated July 8, 2026 (the “**Fourth Report**”), Motion Record of the Receiver, dated September 22, 2026 (“**Motion Record**”), Tab 2.

Units without further approval from the Court. Permitted Transactions are transactions that achieve a Target Price pursuant to the Pricing Schedule; a Permitted Transaction does not include an *En Bloc* transactions, which would require further Court approval;

(d) approving a form of approval and vesting order ("**AVO**") and a mechanism that will allow the Receiver to have an AVO issued for Permitted Transactions without the need for a further Court attendance;

(e) sealing the confidential Pricing Schedule; and

(f) approving an Agreement among the Receiver, Fusioncorp Developments Inc. ('**Fusioncorp**"), and its principal, Mr. Nick Ainis, to facilitate completion of the construction management contract by Fusioncorp, in light of the apparent diversion by Mr. Ainis of funds away from the Project;

5. The relief sought is appropriate and necessary for maximizing realizations upon the Property subject to the receivership and should be granted by the Court.

PART II – FACTS

A. <u>Background</u>

(i) The Project

6. The Project comprises four townhouse blocks at varying stages of completion, with construction previously halted for several months. In late 2025, the Receiver retained 59 Project Management Inc. to winterize the site.[2] Prior to the Receiver's appointment, the

[2] Fourth Report at para. 2.0.2, Motion Record, Tab 2.

Debtor had sold 61 of 62 units.[3]

7. Construction delays prevented the Receiver from delivering occupancy of the Units by the outside occupancy date of May 1, 2026. As a result, purchasers were entitled to terminate their purchase agreements between May 2 and June 1, 2026. Thirty-seven purchasers exercised the right to rescind their purchase agreements due to delayed occupancy and other matters.

(ii) The Secured Lenders and the Appointment of the Receiver

8. Duca Financial Services Credit Union Ltd. (the "**Duca**") applied for the Receiver's appointment under s. 243(1) of the BIA and s. 101 of the Courts of Justice Act.[4]

9. Secured claims include Duca's first ranking mortgage and GSA (approximately $7.5 million owed as of June 12, 2024 plus a letter of credit facility of approximately $200,000), Westmount's deposit insurance charge (registered against the Real Property in the amount of $7 million) and prefiling construction liens totaling $321,280.[5]

10. At the date of the Receivers appointment, the Debtor's bank account had a nil cash balance, and Duca agreed to fund the receivership and construction costs by Receiver's Certificates.[6] The Receiver's Borrowing Charge has been increased by subsequent Orders,[7] and advances under the Charge total approximately $13.5 million of $16.15 million authorized as of the Fourth Report.[8]

B. Sales Agent

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[3] Fourth Report at para. 2.0.1, Motion Record, Tab 2.
[4] Fourth Report at para. 1.0.3, Motion Record, Tab 2.
[5] Fourth Report at para. 2.1.1, Motion Record, Tab 2.
[6] Fourth Report at para. 2.0.3, Motion Record, Tab 2.
[7] Fourth Report at paras. 1.0.5-6, Motion Record, Tab 2.
[8] Fourth Report at para. 2.1.1(c), Motion Record, Tab 2.

11. Subject to Court approval, the Receiver intends to retain the Sales Agent to provide sales and marketing services in respect of the of the Available Units.[9]

12. The Sales Agent is familiar with the Project as it prepared marketing materials in consultation with the Receiver and Duca. The Sales Agent has significant experience marketing residential properties, its proposed fee structure is consistent with market and Duca, as senior secured creditor, consents to its retention pursuant to the terms of the Listing Agreement. The Sales Agent intends to work with Remax Quinte Ltd., which is based in Belleville and is highly familiar with the local market.[10]

13. The Sales Agent's services, as outlined in the proposed Listing Agreement, include developing a marketing and sales strategy for the Available Units, assisting the Receiver to obtain the Target Price for each Available Unit and providing the Receiver with written reports on a regular basis in respect of sales activity.[11]

14. To incentivize sales of the Available Units, the Sales Agent's proposed commission is 4.5% of the sale price of each Available Unit sold, net of HST; where the Agent represents the purchaser, the total commission is 4%; where there is a co-operating brokerage, the total commission is 4.5% (with 2.5% to the co-operating brokerage and 2% to the Agent).[12]

15. The Sales Agent is additionally entitled to reimbursement of pre-approved marketing costs capped at $22,000.[13]

C. <u>Sale Process</u>

(i) Sale Plan, Pricing Schedule, and Marketing

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[9] Fourth Report at para. 4.0.1, Motion Record, Tab 2.
[10] Fourth Report at para. 4.0.5, Motion Record, Tab 2.
[11] Fourth Report at para. 4.1.3, Motion Record, Tab 2.
[12] Fourth Report at para. 4.0.4(a), Motion Record, Tab 2.
[13] Fourth Report at para. 4.0.4(b), Motion Record, Tab 2.

16. The Receiver, in consultation with Duca and with the Sales Agent's assistance, developed the Sale Process to sell the Available Units, individually and/or *en bloc* (each, a "**Unit Transaction**"). Target prices and a confidential pricing schedule (the "**Pricing Schedule**") were prepared with the Sale Agent's market research and comparable analysis.[14]

17. If approved, the Sales Agent intends to commence marketing the Available Units immediately, including MLS listings, outreach to purchasers and the brokerage community, open houses, and maintenance of at least one model suite, with regular reporting to the Receiver.[15]

(ii) Permitted Transactions Mechanism and Registrar-Issued AVOs

18. To minimize the number of Court attendances required to complete the anticipated sales of Available Units, the Receiver is seeking an amendment to the Receivership Order authorizing the Receiver to complete any transaction for one or more of the Available Units, without the approval of the Court, provided that:

    (a) the total accepted sale price for each such Available Unit is not less than the percentage of the Target Price pursuant to the Pricing Schedule; and

    (b) the agreement of purchase and sale is in the form of the template agreement attached to the Receiver's Fourth Report (the "**Template APS**"), subject to such modifications as may be necessary to reflect changes in the form of the Tarion Addenda or registration of the condominium corporation

    (each such transaction being a "**Permitted Transaction**").[16]

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[14] Fourth Report at para. 4.1.1, Motion Record, Tab 2.
[15] Fourth Report at para. 4.1.3, Motion Record, Tab 2.
[16] Fourth Report at para. 4.3.1, Motion Record, Tab 2.

19. The Receiver seeks an Order authorizing it to complete an AVO form for each Permitted Transaction by filling in purchaser identity, legal descriptions, and encumbrance details, and presenting them with a Receiver's certificate to the Court Registrar for issuance without attendance.[17]

20. Any *En Bloc* Transaction will require further Court approval and will not be a Permitted Transaction.[18]

D. Sealing

21. The Receiver seeks to seal Confidential Appendix 1 (the Pricing Schedule) until all Available Units are sold or further Order of the Court, in order to prevent undermining the Sale Process by disclosure of minimum acceptable pricing.[19]

E. Project Completion Agreement and Funds Diversion Issue

22. The Receiver recently identified an apparent diversion of funds advanced by the Receiver to Fusioncorp for the purpose of satisfying Fusioncorp's obligations to subcontractors and trades working on the Project. The Receiver has commenced an investigation to identify the magnitude of the diverted funds, has sought statements of account from trades, and engaged in discussions with Fusioncorp's counsel, Tarion, and others.[20]

23. To facilitate completion of the Project, the Receiver seeks approval of a Project Completion Agreement dated September 15, 2026 with Fusioncorp, and Nick Ainis, which will implement controls to prevent potential fraud and diversion of funds, including delegated day-to-day management, direct invoice flows to the Receiver, payments through counsel in trust to suppliers, execution of outstanding trade contracts, cooperation and delivery of

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[17] Fourth Report at para. 4.3.2, Motion Record, Tab 2.
[18] Fourth Report at para. 4.2.1(b), Motion Record, Tab 2.
[19] Fourth Report at paras. 5.1-2, Motion Record, Tab 2.
[20] Fourth Report at paras. 6.0.2-4, Motion Record, Tab 2.

documents and information by Fusioncorp, and removal of Mr. Ainis from further project communications with suppliers.[21]

24. Tarion has been advised[22] of the terms of the Project Completion Agreement and, as understood by the Receiver, approves of the Agreement.

25. The Receiver anticipates seeking a further increase to the Borrowing Charge to address the apparent diversion of funds and resulting cost impacts on Project costs.[23]

PART III – ISSUES AND THE LAW

26. The issues on this motion and the position of the Receiver on each are:

(a) Should the Listing Agreement be approved, including retention of the Sales Agent? ***Yes, the Sales Agent is experienced and knowledgeable and its compensation is appropriate.***

(b) Should the Sale Process and the Permitted Transactions Mechanism be approved? ***Yes, the Sale Process will facilitate an appropriate market outreach and the Permitted Transactions Mechanism will allow transactions to be completed in a timely, efficient and cost-effective manner.***

(c) Should Confidential Appendix 1 to the Fourth Report be sealed? ***Yes, disclosure of the Pricing Schedule would undermine the Sale Process and impact the Receiver's ability to maximize recoveries.***

(d) Should the Project Completion Agreement in the form attached as Appendix "F" to the Fourth Report be approved? ***Yes, the Project Completion Agreement will***

[21] Fourth Report at paras. 6.0.4-5, Motion Record, Tab 2.
[22] Fourth Report at paras. 6.0.6, Motion Record, Tab 2.
[23] Fourth Report at paras. 6.0.8, Motion Record, Tab 2.

implement project-management safeguards and controls to address the diversion of funds by Mr. Ainis.

A. The Listing Agreement Should Be Approved

27. Section 3(j) of the Receivership Order authorizes the Receiver to enter into engagements with brokers or listing agents on such terms as the Receiver deems appropriate.

28. This Court regularly exercises its discretion to authorize Court-appointed receivers to enter into key agreements, including the retention of real estate brokers and sales agents to assist with a sale process.[24]

29. The terms of the Listing Agreement, including the proposed fee structure, are consistent with the market, acceptable to Duca. and commercially reasonable in the circumstances.

30. Accordingly, it is appropriate for this Court to approve the Listing Agreement and the retention of the Sales Agent by the Receiver under the terms thereof.

B. The Sale Process Should Be Approved

(i) Jurisdiction to Approve the Sale Process

31. The test for approval of a receivership sale process is set out in *CCM Master Qualified Fund v. blutip Power Technologies.*[25] The Court should 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,

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[24] See e.g. Cerruti Investments Inc. v. 2616766 Ontario Limited (9 September 2025), Ont Sup Ct J [Commercial List] CV-2500738703-00CL (Sale Process Approval and Ancillary Relief Order) at para. 3; Keb Hana Bank v Mizrahi Commercial (The One) LP (6 June 2024), Ont Sup Ct J [Commercial List] CV-23-00707839-00CL (Order (Approval of SISP)) at para. 3; 30 Roe Investments Corp (14 December 2022), Ont Sup Ct J [Commercial List] CV-22-00674810-00CL (Amended Sale Process Approval Order) at para. 4.

[25] *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750 [*CCM*].

(c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.[26]

32. The *CCM* test is based on the test in *Royal Bank of Canada v. Soundair Corp.* for approval of a sale by a receiver in which the Court considers (i) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently; (ii) the interests of all parties; (iii) the efficacy and integrity of the process by which offers are obtained; (iv) whether there has been unfairness in the working out of the process.[27]

33. Deference is to be afforded to the Receiver with respect to its proposed Sale Process, especially considering its particular expertise in the marketing of condominium developments. As Chief Justice Morawetz stated in Ontario Securities Commission v. Bridging Finance Inc.:

> The law is clear that in reviewing a sales process, the court is to defer to the business expertise of the Receiver and should not intervene or "second-guess" the Receiver's recommendations.[28]

34. The Sale Process is fair, transparent, commercially efficacious, tailored to this Project, and includes MLS exposure, open houses, a model suite, regular reporting, Target Prices informed by market data, and Court oversight for below-floor and *En Bloc* Transactions.

35. Courts have previously granted similar "umbrella" approvals in insolvency proceedings involving the sale of units in a residential condominium developments, and have recognized that the typical "one at a time" approval process would incur significant legal

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[26] *CCM* at para. 6. The *CCM* test has been applied in a variety of cases, including *West End Motors v. 189 Dundas Street West Inc.*, 2019 ONSC 5124 at para. 14.
[27] *Royal Bank of Canada v. Soundair Corp*., 1991 CanLII 2727 (ON CA).
[28] *Ontario Securities Commission v. Bridging Finance Inc*., 2022 ONSC 1857 at paras. 43-45.

expenses, reduce the net proceeds available to creditors, and represent an inefficient use of judicial resources.[29]

C. The Pricing Schedule Should Be Sealed

36. The Receiver seeks an order sealing Confidential Appendix 1 to the Fourth Report, being the Pricing Schedule, which sets out the Target Price and related information for each Available Unit (collectively, the "**Confidential Information**").

37. The Supreme Court in Sherman Estate v. Donovan sets out the test that must be met by an applicant for a sealing order. Such an applicant must establish that:

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

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

(c) as a matter of proportionality, the benefits of the order outweigh its negative effects.[30]

38. Courts have acknowledged that there is a public interest in the "general commercial interest of preserving confidential information" and in maximizing recoveries in an insolvency.[31]

39. The Confidential Information is commercially sensitive information that, if released, may allow a prospective purchaser to determine the minimum price the Receiver is prepared to accept for any Available Unit, which would undermine the integrity of the Sale Process and prejudice the Receiver's ability to maximize recoveries. Further, this Court has held that

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[29] United Overseas Bank Limited v. Nova Ridge (Manderley) Limited Partnership et al. (5 August, 2026), Ont Sup Ct J [Commercial List] CL-26-00000276-0000 (Sale Approval Order) at paras. 6-9; Royal Bank of Canada v. 2668979 Ontario Inc., Court File No. CL-25-00753532-0000, Endorsement of Myers J. dated May 28, 2026 at paras. 21-23.
[30] *Sherman Estate v. Donovan*, 2021 SCC 25 at para. 38 [***Sherman Estate***].
[31] *Sherman Estate* at para. 41; *Danier Leather Inc., Re*, 2016 ONSC 1044 at para. 84.

there is no reasonable alternative to protect the highly confidential commercial information contained in a target price list.[32]

40. It is in the financial interests of the creditors to maximize recovery on the Available Units.[33]

41. The Receiver is not aware of any party that will be prejudiced if the information is sealed and, accordingly, believes that the proposed Sealing Order is appropriate in the circumstances.[34]

42. The Receiver proposes that the sealing order remain in effect until (i) all Available Units have been sold, or (ii) further order of the Court.[35] This approach will balance the principle of court openness while minimizing risks to privacy. The salutary effects of granting this order outweigh any deleterious effects. The three factors of *Sherman Estate* have been satisfied and the sealing order should be granted.

D. <u>The Project Completion Agreement Should Be Approved</u>

43. Approval of the Project Completion Agreement is appropriate as it will stabilize construction, protect purchasers and trades, and mitigate increased costs and delay resulting from Fusioncorp's conduct. In addition, Tarion agrees that the Receiver's approach adopted in the Project Completion Agreement is reasonable in the circumstances.

PART IV - ORDER REQUESTED

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[32] *Re LJM Developments (Hamilton) Inc.*, (Court File No. CL-2600000053-0000) ONSC 2114 at para. 13.
[33] *Romspen Investment Corporation v. Hargate Properties Inc.*, 2012 ABQB 412 at paras. 12-13.
[34] Fourth Report at para. 5.0.3, Motion Record, Tab 2.
[35] Fourth Report at para. 5.0.4, Motion Record, Tab 2.

44. For the reasons set out herein, the Sale Approval Order is appropriate in the circumstances and should be granted by the Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of September, 2026.

John D. Leslie/ Lisa S. Corne
Dickinson Wright LLP

Lawyers for the Receiver

SCHEDULE "A" – LIST OF AUTHORITIES

I, Lisa S. Corne, counsel for the Court-appointed Receiver, am satisfied as to the authenticity of every authority listed in the Factum of the Receiver as required by Rule 4.06.1.

Lisa S. Corne

1. *30 Roe Investments Corp* (14 December 2022), Ont Sup Ct J [Commercial List] CV-2200674810-00CL (Amended Sale Process Approval Order)

2. *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750

3. *Cerruti Investments Inc. v. 2616766 Ontario Limited* (9 September 2025), Ont Sup Ct J [Commercial List] CV-25-00738703-00CL (Sale Process Approval and Ancillary Relief Order)

4. *Danier Leather Inc., Re*, 2016 ONSC 1044

5. *Keb Hana Bank v Mizrahi Commercial (The One) LP* (6 June 2024), Ont Sup Ct J [Commercial List] CV-23-00707839-00CL (Order (Approval of SISP))

6. *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857

7. *Re LJM Developments (Hamilton) Inc*., (Court File No. CL-2600000053-0000) ONSC 2114

8. *Royal Bank of Canada v. Soundair Corp.* (C.A.), 4 O.R. (3d) 1 [1991] O.J. No. 1137

9. *Royal Bank of Canada v. 2668979 Ontario Inc.*, Court File No. CL-25-00753532-0000, Endorsement of Myers J. dated May 28, 2026.

10. Romspen Investment Corporation v. Hargate Properties Inc., 2012 ABQB 412

11. Sherman Estate v. Donovan, 2021 SCC 25 (CanLII), [2021] 2 SCR 75

12. United Overseas Bank Limited v. Nova Ridge (Manderley) Limited Partnership et al. (5 August, 2026), Ont Sup Ct J [Commercial List] CL-26-00000276-0000 (Sale Approval Order).

13. West End Motors v. 189 Dundas Street West Inc., 2019 ONSC 5124

SCHEDULE "B" – TEXT OF STATUTES

***Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 243**

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

***Courts of Justice Act*, RSO 1990, c C.43**

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

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PROCEEDING COMMENCED AT OTTAWA

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