

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

**IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended**

**B E T W E E N:**

**PS HOLDINGS 1 LLC, PS HOLDINGS 2 LLC and PS HOLDINGS 3 LLC**

Applicants

- and -

**2738283 ONTARIO INC., 2738284 ONTARIO INC. and 2738285 ONTARIO INC.**

Respondents

**FACTUM OF THE RECEIVER**

**March 7, 2022**

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## Table of Contents

PART I – OVERVIEW.....	- 1 -
PART II – STATEMENT OF FACTS .....	- 3 -
Background.....	- 3 -
7 Generations Management Agreement.....	- 4 -
The Sale Process .....	- 5 -
The Purchase Agreement .....	- 7 -
Proposed Distributions.....	- 8 -
Proposed Claims Process .....	- 10 -
Morris Group Motion.....	- 12 -
PART III – LAW AND ANALYSIS.....	- 13 -
Issue #1: This Court should grant the Approval and Vesting Order.....	- 13 -
Issue 2: This Court should approve the Sealing Request.....	- 16 -
Issue #3: This Court should approve the Claim Process Order .....	- 18 -
Issue 4: The Court should dismiss the Morris Group Motion .....	- 21 -
PART V – ORDER REQUESTED.....	- 24 -

## PART I – OVERVIEW

1. By order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated November 9, 2021 (the “**Appointment Order**”), MNP Ltd. was appointed receiver (in such capacity, the “**Receiver**”), without security, of those assets, undertakings and properties of 2738283 Ontario Inc., 2738284 Ontario Inc. and 2738285 Ontario Inc. (collectively, the “**Debtors**”) described in Schedule “A” to the Appointment Order, pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*<sup>1</sup> (the “**BIA**”) and section 101 of the *Courts of Justice Act*.<sup>2</sup>
  
2. This factum is submitted in support of the Receiver’s motion returnable on March 10, 2022 (the “**Receiver’s Motion**”) for:
  - (1) An Order (the “**Approval and Vesting Order**”), *inter alia*:
    - a) approving the agreement of purchase and sale between the Receiver, as vendor, and 2771280 Ontario Inc. d/b/a Ark Capital Group as subsequently assigned to Essa Rd Development Ltd. (the “**Purchaser**”), as purchaser, dated February 4, 2022 (the “**Purchase Agreement**”), and authorizing the Receiver to complete the transaction contemplated thereby (the “**Transaction**”);
    - b) with respect to the completion of the Transaction, vesting in the Purchaser, the Debtors’ right, title and interest in and to the Purchased Assets (as

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<sup>1</sup> [R.S.C., 1985, c.B-3.](#)

<sup>2</sup> [R.S.O. 1990, c. C.43.](#)

defined in the Purchase Agreement), free and clear of any claims and encumbrances;

- c) sealing Confidential Appendices “1”, “2”, “3” and “4” attached to the First Report of the Receiver dated March 3, 2022 (the “**First Report**”) until completion of the Transaction and further order of this Court;
- d) approving distributions to the Secured Creditors (as defined in the First Report) upon the Receiver receiving satisfactory payout statements, in the Receiver’s sole discretion;
- e) approving the Receiver’s Interim Statement of Receipts and Disbursements as at February 28, 2022;
- f) approving the First Report and the actions of the Receiver described herein, including, without limitation, the Sale Process (as defined below); and
- g) approving the fees and disbursements of the Receiver and the Receiver’s counsel; and

(2) An Order (the “**Claims Process Order**”), *inter alia*, approving and authorizing the Receiver to conduct a claims process (the “**Claims Process**”) to call for, assess and determine claims against the Debtors and 7 Generations Development Group Limited (“**7 Generations**”) in relation to the Real Property (as defined below) and authorizing, directing, and empowering the Receiver to administer the Claims Process in accordance with the terms of the proposed Claims Process Order.

3. Further, on March 2, 2022, Morris Group Financial, Inc. (“**Morris Group**”) served the Receiver with a Notice of Motion for a motion returnable on March 10, 2022 (the “**Morris**

**Group Motion**”) seeking an order from the Court to lift the stay of proceedings to, *inter alia*:

- (a) permit Morris Group to make a bankruptcy application under section 43 of the BIA in respect of the Debtors; and
  - (b) continue its action against the Debtors pursuant to the Statement of Claim issued against the Debtors (among other defendants) (the “**Morris Group Action**”).
4. The Receiver requests that this Court (i) grant the Approval and Vesting Order, (ii) grant the Claims Process Order, and (iii) dismiss the Morris Group Motion, for the reasons set out below.

## **PART II – STATEMENT OF FACTS**

### ***Background***

5. The Debtors are private Ontario corporations all incorporated on January 21, 2020 and the sole officer and director of each of the Debtors is Blake Larsen. The Debtors’ assets principally consist of vacant real properties (subject to certain leases) in Barrie, Ontario located at (i) 320 Mapleview Drive West, (ii) 366 Mapleview Drive West, (iii) 664 Essa Road, and (iv) 674 Essa Road (collectively, the “**Real Property**”), which the Debtors were in the process of developing for mixed industrial and residential use.<sup>3</sup>
6. In order to perform its statutory obligations under the BIA and as authorized by the Appointment Order, the Receiver borrowed the amount of \$13,500 from 683728 Ontario

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<sup>3</sup> First Report at paras. 3-4, Motion Record, Tab 2.

Ltd. via a Receiver's Certificate dated December 21, 2021 (the "**Receiver's Borrowing**") to fund the ongoing operating expenses of the Receiver and the Real Property.<sup>4</sup>

***7 Generations Management Agreement***

7. To facilitate the development of the Real Property, the Debtors and 7 Generations entered into a Management/Service Agreement dated May 13, 2020 (the "**Management Agreement**"), pursuant to which 7 Generations was authorized to act as agent on behalf of the Debtors to engage services and contractors in respect of the development of the Real Property. Although the Debtors and 7 Generations are separate legal entities, Blake Larsen is also the principal of 7 Generations.<sup>5</sup>
  
8. 7 Generations was authorized to supervise all aspects of the development and construction of improvements upon the Real Property.<sup>6</sup> Pursuant to its authority and obligations under the Management Agreement, 7 Generations had contracted with various professionals and service providers to prepare development plans and studies related to the Real Property and had submitted applications to the City of Barrie to request an amendment to the City's Official Plan and zoning by-law on behalf of the Debtors.<sup>7</sup>

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<sup>4</sup> First Report at para. 15, Motion Record, Tab 2.

<sup>5</sup> First Report at para. 8, Motion Record, Tab 2.

<sup>6</sup> First Report at para. 25(a), Motion Record, Tab 2.

<sup>7</sup> First Report at para. 26, Motion Record, Tab 2.

9. Further, pursuant to the Management Agreement, the Debtors are responsible for the costs and expenses incurred by 7 Generations with respect to the Real Property.<sup>8</sup>
10. Despite the Receiver's requests for 7 Generations to provide all documents relating to the development of the Real Property, Mr. Larsen refused to provide such documents to the Receiver without payment.<sup>9</sup> The books and records provided in respect of the Debtors and 7 Generations were also insufficient and not reliable for the Receiver to determine the Debtors' payables.<sup>10</sup>

### ***The Sale Process***

11. Prior to the Appointment Order, 7 Generations entered into a listing agreement with a broker to sell the Real Property, which resulted in the submission of at least two offers to purchase the Real Property.<sup>11</sup> The Debtors requested an adjournment to the application to appoint the Receiver in order to provide the Debtors an opportunity to enter into a purchase agreement and close a sale transaction, however, the Court denied such request and appointed the Receiver, given certain concerns with the proposed purchase agreement.<sup>12</sup>

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<sup>8</sup> First Report at para. 25(c), Motion Record, Tab 2.

<sup>9</sup> First Report at para. 27, Motion Record, Tab 2.

<sup>10</sup> First Report at para. 77, Motion Record, Tab 2.

<sup>11</sup> First Report at paras 30-31, Motion Record, Tab 2.

<sup>12</sup> First Report at paras 31-33, Motion Record, Tab 2.

12. After the Receiver was appointed, it was contacted by several interested purchasers desiring to make a quick deal to purchase the Real Property.<sup>13</sup> Given the significant interest in the Real Property, and that all interested parties would have the opportunity to fairly participate in a sale process, the Receiver proceeded with the sale process contemplated by the Appointment Order, which authorized the Receiver to market and sell the Real Property (the “**Sale Process**”).<sup>14</sup>
  
13. Pursuant to its authority under the Appointment Order, the Receiver received and reviewed marketing proposals from three real estate brokers (collectively, the “**Brokers**”). After considering the commission fee structure of each of the Brokers (as the remaining terms of the proposals were similar), the Receiver entered into a listing agreement with Avison Young Commercial Real Estate Service, LP (“**Avison Young**”) on December 2, 2021, pursuant to which the Real Property was marketed as an unpriced offering on MLS with a sealed bid deadline by no later than 5:00 p.m. on January 31, 2022 (the “**Bid Deadline**”).<sup>15</sup>
  
14. Eight offers from six different bidders were received by the Bid Deadline, of which three offerors were invited to submit enhanced offers by 5:00 p.m. on February 3, 2022 (the “**Extended Bid Deadline**”).<sup>16</sup>

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<sup>13</sup> First Report at para. 35, Motion Record, Tab 2.

<sup>14</sup> First Report at para. 37, Motion Record, Tab 2.

<sup>15</sup> First Report at paras. 40-42, Motion Record, Tab 2.

<sup>16</sup> First Report at paras. 47-49, Motion Record, Tab 2.



15. The offer submitted by the Purchaser on the Extended Bid Deadline was considered the superior offer. On February 4, 2022, the Receiver accepted and executed the Purchase Agreement (which was subsequently assigned to the Purchaser).<sup>17</sup>
16. The opportunity to purchase the Real Property was widely marketed as a result of Avison Young's and the Receiver's efforts, which included:
  - (a) listing the Real Property on both the Barrie and Toronto MLS systems;
  - (b) placing of advertisements for several days in the *Globe & Mail* and on LinkedIn;
  - (c) sending over 16,500 emails to potential purchasers;
  - (d) execution of 41 non-disclosure agreements ("NDAs") during the almost 8-week marketing period;
  - (e) granting access to the data room to 70 individuals pursuant to those NDAs, as certain parties were represented by a number of individuals; and
  - (f) advertising the Sale Process in *Insolvency Insider*, a weekly email newsletter distributed to a database of Canadian insolvency and restructuring professionals.<sup>18</sup>

### ***The Purchase Agreement***

17. A redacted copy of the Purchase Agreement (which is redacted only with respect to the purchase price and deposit amount thereunder) is attached as Appendix "F" to the First Report.

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<sup>17</sup> First Report at paras. 50 and 52, Motion Record, Tab 2.

<sup>18</sup> First Report at paras. 44-45, Motion Record, Tab 2.

18. Pursuant to the Purchase Agreement, the Purchaser has paid to the Receiver a deposit equal to 19.24% of the Purchase Price (which, notably, is nearly double the 10% deposit requested by the Receiver in the Sale Process), which shall be released to the Receiver if closing of the Transaction does not occur by reason of an uncured default of the Purchaser or the Purchaser's failure to close the Transaction (subject to the limited exceptions set out in the Purchase Agreement).<sup>19</sup>
19. The closing of the Transaction is to take place on the later of (i) March 15, 2022, or (ii) 10 days after the date on which the Approval and Vesting Order is granted by the Court, or such other date as the parties may agree to in writing. The only outstanding condition to closing is the Court's granting of the Approval and Vesting Order.<sup>20</sup>
20. The sale of the Real Property is on an "as is, where is" basis, with no representation or warranties provided by the Receiver.<sup>21</sup>

### *Proposed Distributions*

21. Various secured creditors as described in the First Report (collectively, the "**Secured Creditors**") have registrations against the title to the Real Property (collectively, the "**Security Registrations**").<sup>22</sup> The Receiver has received an independent security opinion from real estate counsel and, subject to the usual qualifications, assumptions and

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<sup>19</sup> First Report at para. 53(a), Motion Record, Tab 2.

<sup>20</sup> First Report at paras. 53(b)-(c), Motion Record, Tab 2.

<sup>21</sup> First Report at para. 53(d), Motion Record, Tab 2.

<sup>22</sup> First Report at para. 59, Motion Record, Tab 2.

disclaimers expected with such an opinion, the opinion confirms the validity and enforceability of the Security Registrations.<sup>23</sup>

22. The Receiver is undertaking a further review in respect of certain amounts being claimed by certain of the Secured Creditors in their respective payout statements, which were in dispute as at the date of the First Report (the “**Disputed Amounts**”). After closing of the Transaction, subject to the Court’s approval, the Receiver proposes to pay the amounts owing to the Secured Creditors less the Disputed Amounts (the “**Approved Distributions**”), and to make further distributions upon satisfactory resolution of the Disputed Amounts.<sup>24</sup>
23. The Receiver obtained Certificates of property tax arrears from the City of Barrie for the Real Property dated December 3, 2021 in the total amount of \$44,546.75 (the “**Tax Arrears**”). Arrears have continued to accrue since that date and are expected to be paid in full upon completion of the Transaction.<sup>25</sup>
24. Subject to the Court’s approval, from the net proceeds of the sale of the Real Property, the Receiver proposes to distribute funds to repay in full, in addition to all outstanding fees and disbursements of the Receiver and its counsel, (i) the Receiver’s Borrowing, (ii) the Tax Arrears; (iii) the Approved Distributions to the Secured Creditors pursuant to the

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<sup>23</sup> First Report at para.60, Motion Record at Tab 2.

<sup>24</sup> First Report at paras.62-63, Motion Record, Tab 2.

<sup>25</sup> First Report at para.65, Motion Record, Tab 2.

Security Registrations; and (iv) the construction lien filed by Glen Schnarr & Associates Inc. against the Real Property in the amount of \$20,001.02 (the “**Schnarr Lien**”). The Disputed Amounts (or the agreed portion thereof) shall be distributed upon receiving satisfactory documentation from the applicable Secured Creditors.<sup>26</sup>

***Proposed Claims Process***

25. Unless otherwise defined in this section, capitalized terms not otherwise defined shall have the meaning ascribed to them pursuant to the Claims Process Order.
26. Given that the purchase price under the Purchase Agreement is sufficient to repay all secured claims in full, the Receiver proposes the Claims Process to call for, review and assess the extent of unsecured creditor claims against both (i) the Debtors, and (ii) 7 Generations in respect of Claims related to the Real Property (such Claims, the “**7 Generations Claims**”) given that, pursuant to the Management Agreement, the Debtors are liable for such 7 Generations Claims and wishes to ensure that any such creditors are known to the Receiver.<sup>27</sup>
27. The proposed Claims Process will also enable the Receiver to identify all applicable expenses so as to properly calculate the Debtors’ tax liability arising from the sale of the Real Property.<sup>28</sup>

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<sup>26</sup> First Report at para.66, Motion Record, Tab 2.

<sup>27</sup> First Report at para.77, Motion Record, Tab 2.

<sup>28</sup> First Report at para.78, Motion Record, Tab 2.

28. The proposed Claims Process, including the Receiver's authority to resolve, settle and adjudicate Claims, is described in the First Report. A summary of the Claims Process is as follows:<sup>29</sup>

- (a) Any Claimant that has a Claim against either the Debtors or as against 7 Generations in relation to the Real Property, with the exception of claims from Canada Revenue Agency with respect to any assessments arising from the filing of corporate tax returns filed in relation to the disposition of the Real Property, is required to submit a Proof of Claim to the Receiver by April 29, 2022 (the “**Claims Bar Date**”), failing which, any such Claims as against the Debtors or 7 Generations Claims against 7 Generations shall be extinguished and barred;
- (b) the proposed Claims Process Order approves the forms of Notice to Claimants, Proof of Claim and Notice of Revision or Disallowance for the purpose of administering the Claims Process, and authorizes the Receiver to distribute and publish same;
- (c) subject to the terms of the Claims Process Order, the Receiver shall review all Proofs of Claim and may, resolve, settle, accept, revise or disallow any Claims;
- (d) the Receiver is authorized to consult with 7 Generations and Blake Larsen in respect of any Claims;

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<sup>29</sup> First Report at para.79, Motion Record, Tab 2.

- (e) where a Claimant has received a Notice of Revision or Disallowance and wishes to dispute same, it shall file with the Receiver a Dispute Notice by no later than fourteen days upon receipt of the Notice of Revision or Disallowance; and
- (f) the Receiver may attempt to resolve the disputed Claim as set out in the Dispute Notice, or refer such disputed Claim to the Court or a Claims Officer for adjudication.

29. The Receiver seeks the Court's supervision and approval to administer the Claims Process with corresponding powers to determine and settle all Claims against the Debtors and/or 7 Generations in respect of the Real Property.<sup>30</sup>

***Morris Group Motion***

30. As mentioned above, prior to the Appointment Order, Morris Group issued a Statement of Claim against the Debtors, Mr. Larsen and other companies related to Mr. Larsen, for breach of contract and liquidated damages in the amount of \$633,750. The Morris Group Action is stayed as a result of the Appointment Order.<sup>31</sup>

31. On March 2, 2022, Morris Group served the Receiver with the Morris Group Motion seeking an order from the Court to lift the stay of proceedings to, *inter alia*:

- (a) permit Morris Group to make a bankruptcy application under section 43 of the BIA in respect of the Debtors; and

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<sup>30</sup> First Report at para.80, Motion Record, Tab 2.

<sup>31</sup> First Report at para.69, Motion Record, Tab 2.

(b) continue the Morris Group Action against the Debtors.<sup>32</sup>

32. Prior to serving the Morris Group Motion, Morris Group's counsel requested that the Receiver consent to lift the stay of proceedings in connection with the foregoing relief. On February 9, 2022, the Receiver's counsel advised Morris Group's counsel that the Receiver does not consent to such lift stay request.<sup>33</sup>

### **PART III – LAW AND ANALYSIS**

33. The issues before this Court are as follows:

- (a) whether the Approval and Vesting Order should be granted;
- (b) whether the Confidential Appendices to the First Report should be sealed;
- (c) whether the Claim Process Order should be granted; and
- (d) whether this Court should dismiss the Morris Motion.

#### **Issue #1: This Court should grant the Approval and Vesting Order**

34. The Receiver was granted the authority to conduct the Sale Process and market and sell the Real Property pursuant to the Appointment Order.<sup>34</sup>

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<sup>32</sup> First Report at para.70, Motion Record, Tab 2.

<sup>33</sup> First Report at para.71, Motion Record, Tab 2.

<sup>34</sup> First Report, Appendix "A", Appointment Order at paras. 3(j)-(k), Motion Record, Tab 2A.

35. It is well established by the Ontario Court of Appeal in *Royal Bank of Canada v Soundair Corp.*<sup>35</sup> that in reviewing a proposed sale of assets by a receiver, the Court will consider the following principles:

- (a) whether the receiver has made a sufficient effort to obtain the best price and has not acted improvidently;
- (b) whether the interests of all the parties have been considered;
- (c) the efficacy and integrity of the process by which offers had been obtained; and
- (d) whether there has been unfairness in the working out of the process.

36. The Purchase Agreement and Transaction contemplated thereunder should be approved because the *Soundair* principles have been met:<sup>36</sup>

- (a) ***Sufficient effort was made to obtain the best price.*** The objective of the Sale Process was to obtain the highest and best value for the Real Property. The Receiver, with the assistance of Avison Young, ran a robust process to extensively canvass the market and solicit interest from prospective purchasers. Interested parties were provided with a reasonable opportunity to conduct due diligence, consider the opportunity, and make an offer by the Bid Deadline and Extended Bid Deadline. The proposed purchase price under the Purchase Agreement is consistent with the estimates of value provided to the Receiver by the Brokers and represents

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<sup>35</sup> [\(1991\), 4 O.R. \(3d\) 1 \(C.A.\)](#) [*“Soundair”*].

<sup>36</sup> First Report at para.54, Motion Record, Tab 2.



the highest and best realization for the Real Property.<sup>37</sup> The Receiver is of the view that the purchase price is fair and reasonable and that further marketing efforts are unlikely to result in a superior transaction.

- (b) ***The interests of all parties have been served.*** The Transaction provides for the best possible outcome in the circumstances for all parties with an economic interest in these proceedings. Completion of the Transaction will allow for payment in full to the Secured Creditors and potentially full payment to all unsecured creditors of the Debtors (subject to the results of the Claims Process).<sup>38</sup> As such, the interests of all parties have been served and the underlying objective of these receivership proceedings has been achieved.
- (c) ***The Sale Process was run with integrity.*** The Real Property was extensively marketed by the Receiver with the assistance of Avison Young, a widely respected commercial real estate advisor. All interested parties were given a meaningful opportunity to participate in the Sale Process and were provided with access to the data room upon executing the appropriate confidentiality arrangements. The Sale Process was fair and transparent and allowed for sufficient exposure of the Real Property.<sup>39</sup> The Transaction was negotiated in good faith and with due diligence.

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<sup>37</sup> First Report at para.54, Motion Record, Tab 2.

<sup>38</sup> First Report at para.54(g), Motion Record, Tab 2.

<sup>39</sup> First Report at para.54(a), Motion Record, Tab 2.

(d) *There was no unfairness.* The Sale Process was robust and conducted under the supervision of this Court. Further, the Receiver had direct involvement in negotiating the terms and conditions of the Transaction and believes that it is fair and reasonable in the circumstances.

37. Accordingly, for the foregoing reasons, the Receiver requests that this Court approve the Purchase Agreement and the Transaction.

**Issue 2: This Court should approve the Sealing Request**

38. The Receiver is seeking an order from the Court sealing Confidential Appendices “1”, “2”, “3” and “4” to the First Report (collectively, the “**Confidential Appendices**”), which, respectively, consist of (i) the unredacted ReMax Listing Agreement (as defined in the First Report), (ii) the unredacted listing proposals received from the Brokers, along with a summary of same, (iii) a summary of the offers received by the bidders in the Sale Process, and (iv) an unredacted Purchase Agreement. Unredacted versions of the Confidential Appendices (with the exception of Confidential Appendix “3”, being the summary of offers received) are attached to the First Report and the only redactions contained therein relate to the purchase price under the Purchase Agreement or previously undisclosed proposed indications of value of the Real Property (or proposed commission structures other than Avison Young).<sup>40</sup>

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<sup>40</sup> First Report at para.55, Motion Record, Tab 2.

39. Pursuant to the *Courts of Justice Act*, the Court has the discretion to order that any document filed in a civil proceeding be treated as “confidential”, sealed and not form part of the public record.<sup>41</sup>
40. The Supreme Court of Canada (“SCC”) in *Sherman Estate* recently refined the common law test for the granting of sealing orders in civil matters. In its decision, the SCC reiterated that it is a fundamental element of Canadian democracy that court proceedings are open to the public.<sup>42</sup>
41. The SCC established three core prerequisites in order for a Court to grant a sealing order:
- (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.<sup>43</sup>
42. The Receiver is of the view that the prerequisites in *Sherman Estate* have been satisfied. In this case, the Receiver has included unredacted versions of the Confidential Appendices as appendices to its First Report, and the only redactions contained therein are with respect to the purchase price and deposit amount under the Purchase Agreement, or with respect to

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<sup>41</sup> *Courts of Justice Act*, R.S.O. 1990, c C.43, [s. 137\(2\)](#).

<sup>42</sup> *Sherman Estate v. Donovan*, 2021 SCC 25 (“**Sherman Estate**”) at [para. 30](#).

<sup>43</sup> *Ibid* at [para. 38](#).

proposed indications of value of the Real Property (in addition to certain redactions of the Broker's proposed compensation fee structure, other than Avison Young).<sup>44</sup>

43. The release of this commercially sensitive information prior to closing of the Transaction may prejudice any future sale process the Receiver may have to undertake if the Transaction fails to close, and the ability for the Receiver to maximize value thereunder.<sup>45</sup> Redacting such sensitive information is therefore in the public interest to ensure the integrity of any future Sale Process.
44. Further, the Receiver only proposes to temporarily seal such confidential information until the closing of the Transaction.<sup>46</sup> During this interim period, there is no reasonable alternative to redacting such sensitive information.
45. Accordingly, the sealing request is proportional in the circumstances, and the benefits of preserving such confidential information pending the closing of the Transaction, which (if approved) is expected to close soon after the granting of the Approval and Vesting Order, outweigh any negative effects.

**Issue #3: This Court should approve the Claim Process Order**

46. This Court's power to appoint receivers originates from s. 243(1) of the BIA [Emphasis added]:

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<sup>44</sup> First Report at para.55, Motion Record, Tab 2.

<sup>45</sup> First Report at para.56, Motion Record, Tab 2.

<sup>46</sup> First Report at para.57, Motion Record, Tab 2.

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.

47. This section been interpreted to give supervising judges the broadest possible mandate in insolvency proceedings to enable them to react to any circumstances that may arise.<sup>47</sup> The Canadian insolvency system supports flexibility to deal with a debtor's assets while ensuring that third party interests are not inappropriately violated.<sup>48</sup>
48. Given that, pursuant to the Management Agreement, the Debtors are responsible for any liabilities incurred by 7 Generations in respect of the Real Property, it is appropriate in these circumstances for the Receiver to call for Claims against 7 Generations (in respect of the Real Property), to ensure an orderly distribution of the Debtors' assets.
49. Further, 7 Generations has not provided satisfactory evidence of all payables owing to third parties, for which the Debtors could be responsible. The Receiver must determine whether

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<sup>47</sup> *Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 at [paras 57-58](#) [*"Third Eye Capital"*].

<sup>48</sup> *Ibid*, [para. 86](#).

there may be outstanding unsecured creditors with potential claims against the Debtors and/or 7 Generations in relation to the Real Property, under various contracts entered into by 7 Generations with third parties pursuant to the Management Agreement.<sup>49</sup> The Receiver wishes to settle and resolve any potential Claims against the Debtors, which, in these circumstances, includes parties that were engaged by 7 Generations.

50. The proposed Claims Process is a fair, open and transparent method to enable the Receiver to call on Claims from potential creditors so they can be identified and settled in an orderly fashion to the benefit of both the Debtors and their stakeholders. Further, the proposed Claims Bar Date provides a sufficient opportunity for parties to file a Proof of Claim with the Receiver.
51. When speaking of the court's power under s. 243(1) to appoint a receiver, the Ontario Court of Appeal, in quoting Justice Farley, described it as permitting the Court to do not only "what justice dictates" but also what "practicality demands".<sup>50</sup> In this case, practicality demands that the Court permit the Receiver to conduct the Claims Process, which includes calling for 7 Generations Claim.
52. Courts give substantial deference to the decisions and recommendations of a court-appointed Receiver, if the Receiver's decisions are within the broad bounds of reasonableness and will be proceeded with fairly in consideration of the interests of all

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<sup>49</sup> For example, the Schnarr Lien was registered against the Real Property with respect to professional planning services that were contracted for by 7 Generations relating to the rezoning of the Real Property. It is therefore probable that there are other unsecured claims against the Debtors by parties that have been engaged by 7 Generations.

<sup>50</sup> *Third Eye Capital*, *supra* note 25 at [paras. 53](#) and [57](#).

stakeholders.<sup>51</sup> The Receiver submits that its request to approve the Claims Process, as designed by the Receiver, is reasonable in the circumstances and that the proposed Claims Process Order be approved.

**Issue 4: The Court should dismiss the Morris Group Motion**

53. In the Morris Group Motion, Morris Group makes the following statements in support of its request to lift the stay of proceedings:

- (a) “The sale of the Real Property will benefit the secured creditors; however, in the absence of an order appointing a trustee in bankruptcy for the estates of the [Debtors], the remaining assets after the sale of the Real Property and the completion of the Receivership Order will be returned to the [Debtors], to the detriment of all unsecured creditors”;<sup>52</sup> and
- (b) “the Receiver would be conflicted if it acted on behalf of both the secured and unsecured creditors. The Receiver’s obligation under the [Appointment Order] is to maximize the repayment of debts owing to the secured creditors”.<sup>53</sup>

54. These assertions are not correct based on the facts of this case, and are not correct in law, for the following reasons:

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<sup>51</sup> *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, 2021 ONCA 375, at [para. 19](#).

<sup>52</sup> Affidavit of Parjot Benipal sworn March 1, 2022 [“**Benipal Affidavit**”] at para. 17.

<sup>53</sup> Benipal Affidavit at para. 18.

- (a) The Receiver is appointed by the Court to act in the interests on behalf of all stakeholders, including both secured and unsecured creditors of the Debtors, and deals with the realization proceeds for all stakeholders.<sup>54</sup> There is no conflict in this position;
- (b) The sale of the Real Property will benefit all stakeholders, including unsecured creditors;<sup>55</sup>
- (c) To further that effort, the Receiver is proposing to conduct the Claims Process, in an effort to determine all Claims against the Debtors and 7 Generations in respect of the Real Property and distribute funds from the sale of the Real Property in an orderly and efficient manner; and
- (d) It is incorrect to state that the proceeds of the Real Property will be returned to the Debtors after distribution to the Secured Creditors. That is not within any of the relief sought by the Receiver, and in fact, the Receiver will seek distributions to unsecured creditors of the Debtors and 7 Generations once the results of the Claims Process are known. The Receiver is the sole person with the authority to take possession and control over proceeds of the Real Property, to the exclusion of all other persons.<sup>56</sup>

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<sup>54</sup> *Petrowest Corporation v Peace River Hydro Partners*, 2020 BCCA 339 at [paras. 37](#) and [44](#);

<sup>55</sup> First Report at para.54(g), Motion Record, Tab 2.

<sup>56</sup> First, Report, Appendix “A”, Appointment Order at para. 3(a), Motion Record, Tab 2A.



55. On a motion to lift a stay of proceedings in a receivership, the moving party bears the onus of convincing the Court that the relief should be granted, and in considering such a request, the Court should look at the totality of the circumstances and the relative prejudice to both sides.<sup>57</sup> Morris Group has failed to satisfy this onus and it has failed to demonstrate any prejudice that it is suffering, requiring the lift stay it requests.
56. With respect to its request to lift the stay of proceedings to continue the Morris Group Action as against the Debtors, any Claim asserted by Morris Group pursuant to the Morris Group Action will be dealt with pursuant to the proposed Claims Process. The proposed Claims Process includes the ability to refer any dispute to the Court or a Claims Officer (as defined in the Claims Process Order) for adjudication.<sup>58</sup> Accordingly, there is already a proposed mechanism for the orderly and efficient resolution of the Morris Group Action. There is no basis for Morris Group to be put on better or different footing than any of the other contingent or unsecured creditors of the Debtors.
57. With respect to Morris Group's request to lift the stay of proceedings to assign the Debtors into bankruptcy, any distribution available to Morris Group from the sale of the Real Property will be carried out by the Receiver. Morris Group would not be placed in any better position if a trustee in bankruptcy were appointed.<sup>59</sup> Rather, such result would lead

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<sup>57</sup> *Peoples Trust Company v. Rose of Sharon (Ontario) Retirement Community*, 2012 ONSC 7319 at [para. 5](#).

<sup>58</sup> First Report at para.79(h), Motion Record, Tab 2.

<sup>59</sup> The Morris Group Action would be automatically stayed upon the bankruptcy pursuant to section 69.3(1) of the BIA.

to duplicative costs and efforts, which would deteriorate any assets available to distribute to creditors or other stakeholders.

58. Further, it is expected that the purchase price of the Transaction will exceed all Claims against the Debtors,<sup>60</sup> so there is no commercial basis for a bankruptcy application. The orderly administration of the Debtors' assets is already being conducted by the Receiver.

**PART V – ORDER REQUESTED**

59. Based on the above, and any further oral submissions to be made at the hearing, the Receiver asks that all relief sought be granted.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 7<sup>th</sup> day of March, 2022.

per:



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Lawyers for the Court-Appointed Receiver

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<sup>60</sup> First Report at paras. 54(g) and 71, Motion Record, Tab 2.

**SCHEDULE “A” - LIST OF AUTHORITIES**

1. [\*Royal Bank of Canada v Soundair Corp.\*, \(1991\), 4. O.R. \(3d\) 1 \(C.A.\)](#)
2. [\*Sherman Estate v. Donovan\*, 2021 SCC 25](#)
3. [\*Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc.\*, 2019 ONCA 508](#)
4. [\*Marchant Realty Partners Inc. v. 2407553 Ontario Inc.\*, 2021 ONCA 375](#)
5. [\*Petrowest Corporation v Peace River Hydro Partners\*, 2020 BCCA 339](#)
6. [\*Peoples Trust Company v. Rose of Sharon \(Ontario\) Retirement Community\*, 2012 ONSC 7319](#)

## SCHEDULE "B" - TEXT OF STATUTES, REGULATIONS & BY-LAWS

### Bankruptcy and Insolvency Act, RSC 1985, c B-3

#### **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, R.S.O. 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. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

#### **Terms**

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

#### **Documents public**

**137 (1)** On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

#### **Sealing documents**

(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.

**IN THE MATTER OF 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**

**PS HOLDINGS 1 LLC, PS HOLDINGS 2 LLC  
and PS HOLDINGS 3 LLC**                      - and -

**2738283 ONTARIO INC., 2738284 ONTARIO INC.  
and 2738285 ONTARIO INC.**

Applicants

Respondents

Court File No.: CV-21-00670723-00CL

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

Proceedings commenced at Toronto

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**FACTUM OF THE RECEIVER**

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