



SUPERIOR COURT OF JUSTICE

**COUNSEL SLIP**

COURT FILE NO.: CV-22-00680668-00CL DATE: 8 July 2022

NO. ON LIST: 01

TITLE OF PROCEEDING: RBC V CNS IRON FABRICATION LTD

BEFORE JUSTICE: PENNY

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Tim Hogan	Royal Bank of Canada	thogan@harrisonpensa.com

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
Dom Magisano	Receiver	dmagisano@lernalers.ca
Rob Smith	Receiver	Rob.smith@mnp.ca
Spencer Jones	Receiver	sjones@lernalers.ca
Stewart Thom	Purchaser	sthom@torkinmanes.com

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info

**ENDORSEMENT OF JUSTICE PENNY:**

The Receiver moves for approval of a sale and other corollary relief. There is no opposition to the order sought. The Sound Air principles involve the exercise of discretion, as the factors are not to be applied mechanically. Although there were some unusual features to the sales process, there were liquidity constraints, and there was, accordingly, no way to fund a more involved process. In the end, the original owners of the business, who held a subsequent mortgage, were the only ones willing to acquire the assets at a price that was better than that available on a liquidation. There were significant efforts undertaken to maximize value. For these reasons, I find the Sound Air principles have been satisfied. The sale is approved.

The evidence supports the conclusion that Royal Bank has a priority interest with respect to the Volvo lease.

The sealing order is warranted and meets the *Sherman Estate* test. A hard, sealed copy of the sealed documents shall be filed with the CL office.

I accept the Receiver's report. The fees sought are reasonable in the circumstances.

Order to issue in the form signed by me this day.

A handwritten signature in blue ink, appearing to read "Penny J.", with a stylized flourish at the end.

Penny J.