



SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-25-00741138-00CL

HEARING DATE: September 29, 2025  
NO. ON LIST: 01

TITLE OF PROCEEDING: MARPER HOLDINGS LIMITED v. FOXPARK DEVELOPMENT  
CORPORATION  
BEFORE: JUSTICE KIMMEL

**PARTICIPANT INFORMATION**

**APPLICANT:**

| Name of Person Appearing | Name of Party                                      | Contact Info        |
|--------------------------|----------------------------------------------------|---------------------|
| James S Quigley          | Counsel for the Applicant: Marper Holdings Limited | jsquigley@szklaw.ca |

**RECEIVER:**

| Name of Person Appearing | Name of Party                         | Contact Info            |
|--------------------------|---------------------------------------|-------------------------|
| Tali Green               | Counsel for the Receiver: Russo Corp. | tgreen@greenadvocacy.ca |
| Joanne Russo             | Receiver and Manager of Russo Corp    | russo@russocanhelp.com  |

**DEPOSITORS:**

| Name of Person Appearing | Name of Party                                                      | Contact Info                 |
|--------------------------|--------------------------------------------------------------------|------------------------------|
| Joshua Valler            | Counsel for depositor: Eunice Moore                                | jvaller@barristonlaw.com     |
| Scott Fairley            | Counsel for depositors: James Wenger and Catherine Riffer          | sfairley@gfwlaw.ca           |
| Michelle Charlebois      | Self-Represented: Michelle Charlebois as deposit holder of unit 43 | charleboism431@yahoo.ca      |
| Carl Strand              | Representative: Foxpark Development Corporation                    | carl@foxparkdevelopments.com |

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## **ENDORSEMENT OF JUSTICE KIMMEL:**

### **Background – Appointment Order**

1. Russo Corp. was appointed by order of this court dated July 7, 2025, (the “Appointment Order”), as receiver and manager (in such capacity, the “Receiver”), without security, over the real property municipally known as of 77 Fox Street, Penetanguishene, Ontario (the “Fox Street Property”), which is registered in the name of the Respondent, Foxpark Development Corporation (the “Debtor” or the “Company”).
2. The Debtor planned to develop a “life lease” residential townhouse community (called “Sunshine Village” or the “Project”) on the Fox Street Property that Carl Strand and his son John Strand marketed to senior citizens, wherein the senior citizens could acquire the right to occupy a unit for their lifetime in exchange for an upfront lump sum deposit.
3. As a result of the Strand” marketing efforts, the Debtor managed to enter into at least seven Life Lease Contracts and collected over \$1.2 million in pre-construction deposits from a variety of senior citizens (“Depositors”). The Receiver has identified another \$675,000 in funds that appear to have been received by the Debtor from Depositors. These deposit monies were received by the Debtor between November 2021 and August 2023.
4. At the time the Appointment Order was made, it was noted in the court’s July 7, 2025 endorsement that:
  - a. The Applicant holds the first mortgage on the Fox Street Property. The Applicant’s Loan matured on December 13, 2023, and the Debtor failed to repay the Loan upon maturity. The Applicant obtained a Judgment against the Debtor and guarantors in the amount of \$2,363,654.56.
  - b. The following encumbrances were also registered against title to the Fox Street Property in addition to the applicant’s first mortgage:
    - i. second-priority Charge registered in favour of 1599841 Ontario Inc. in the amount of \$650,000.00 on November 15, 2021, as Instrument No. SC1843679;
    - ii. a third-priority Charge registered in favour of 1599841 Ontario Inc. in the amount of \$2,350,000.00 on August 12, 2022, as Instrument No. SC1921855;
    - iii. a Construction Lien registered by Toromont Industries Ltd. on July 11, 2024, as Instrument No. SC2068826 claiming the sum of \$16,174.80; and
    - iv. a Certificate of Action registered by Toromont Industries Ltd. on September 10, 2024, as Instrument No. SC2081694.
  - c. The loans secured by the second and third mortgages in favour of 1599841 Ontario Inc. (“159 Ontario”) were fully advanced and in default.
  - d. There are currently property tax arrears owing with respect to the Fox Street Property in the amount of \$16,640.94.

5. The Appointment Order granted the Receiver, among other powers, broad authority to manage, construct or sell the Fox Street Property. The practical reality is that the Receiver has to be funded. The Applicant has provided funding, by way of a loan to the Receiver, for some necessary expenses (construction reports, appraisals, insurance and other costs to secure and preserve the Fox Street Property).
6. The Appointment Order further empowered and authorized the Receiver to, among other things, engage agents and consultants to assist it, to market any or all of the Fox Street Property, including advertising and soliciting offers in respect of all or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate, to execute, assign, issue and endorse documents of whatever nature in respect of any part or all of the Fox Street Property, and to eventually apply for an approval and vesting order in respect of any proposed sale of the Fox Street Property (free and clear of liens and encumbrances).

### **The Receiver's Motion**

7. The Receiver seeks by its motion (the "Receiver's Motion"), court approval of:
  - a. a sale process, to be administered by the Receiver, to market and sell the Property (the "Sale Process");
  - b. its fees and those of its counsel, its interim statement of receipts and disbursements for the period July 7th, 2025 to September 5, 2025, its first report dated September 8, 2025 (the "First Report") and the Receiver's activities described in it, which include: steps taken by the Receiver to secure and insure the Fox Street Property, address various issues related to the partially-constructed residential townhome project on the Property (the "Project"), and its investigation of the Debtor's financial affairs in an attempt to account for and reconcile advances received by the Debtor in respect of the Project, described in more detail below; and
  - c. the authority to assign the Debtor into bankruptcy and to act as the trustee in bankruptcy of the Debtor.
8. Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the First Report.

### **Stakeholder Positions**

9. The entire service list was served with the Receiver's Motion, including all known secured creditors and Depositors.
10. The applicant/first mortgagee supports the Receiver's Motion.
11. The Receiver advised the court at the hearing that the second/third mortgagee, 159 Ontario, supports the Receiver's motion and the proposed Sale Process, in which it is considering participating as a bidder.
12. The only opposition to the Receiver's Motion was by Carl Strand, who was granted leave to represent the Debtor Company for purposes of this motion (for reasons detailed later in the endorsement). The opposition is described in detail in a document that was filed titled "Respondent's Challenge to Motion" which itself seeks relief, described in the next section of this endorsement. The challenges broadly attack

the Receiver, the applicant and their counsel and are driven by Mr. Strand's belief that the Project should be refinanced and completed to generate the funds to satisfy all of the outstanding indebtedness and allow the Depositors to take possession of their units.

13. While not objecting *per se*, one of the Depositors in attendance, Ms. Charlebois, questioned why the Sale Process was proceeding without consideration of a possible refinancing, equity investment or other transaction to enable the Debtor to complete the Project so that the "life-leasers" can take possession of their units. The other Depositors, through counsel, indicated that they had no objection to the Receiver's Motion but sought to reserve their rights to assert claims as secured creditors (under equitable mortgages) in respect of their deposits.
14. One of the issues that has been identified by the Receiver is that the life leases contemplated that the deposits paid would be secured by a "Shared Mortgage" on the Fox Street Property in the amount of "75% of the completed value of the Project". No such mortgage was ever registered. Mr. Strand claims to have received in his own name for the benefit of all unsecured creditors (which would include the Depositors) a \$6 million "Floating Charge Debenture" dated October 6, 2024, that he argues provides better security than a mortgage to the depositors. The Receiver questions the veracity of this document which was produced for the first time as a schedule to Mr. Strand's factum. From the Receiver's perspective, based on the available information at the time it prepared the First Report, the Depositors are unsecured creditors.

### **Relief Sought by/on Behalf of the Debtor Corporation**

15. A "Respondent's Challenge to Motion" was delivered by Mr. Strand. The primary relief sought as stated in the first paragraph is for leave to be granted to Mr. Strand to represent the Debtor corporation ("Mr. Strand's Leave Motion") in this proceeding and in another proceeding commenced in Barrie (the "Barrie Proceeding") in which judgment has already been rendered in favour of Marper Holdings Limited ("Marper") against the Company and Mr. Strand and his son (the "Marper Judgment"), in Action No. CV- 24-00000527-0000 (see *Marper Holdings Limited v. Foxpark Development Corporation*, 2025 ONSC 1240).
16. In the narrative of the "Respondent's Challenge to Motion" Mr. Strand also seeks on behalf of himself and the Debtor, the dismissal of the Receiver's motion and the discharge and replacement of the Receiver on various alleged grounds of fraud, misrepresentation, collusion and other misconduct of the Receiver, the Applicant and their counsel. Various other accusations are also asserted against the Applicant and its counsel.

### **Preliminary Issues**

17. The court identified two preliminary issues that had to be addressed at the outset of the hearing on September 29, 2025. Mr. Strand's Leave Motion and a new issue that Mr. Strand identified for the first time at the outset of the hearing, namely that because the applicant had described the Company as a federally incorporated company in the Barrie Proceeding, the Marper Judgment rendered in that proceeding was invalid and, because that judgement was considered in connection with the Appointment Order, it might be a nullity as well. Mr. Strand submitted that this issue had to be determined before any further relief should be granted in this proceeding that might need to be unwound if it was later determined to be a nullity.

## Jurisdiction of Incorporation of the Debtor

18. The issue regarding the jurisdiction of incorporation of the Debtor corporation was not briefed, but counsel for Marper and for the Receiver both argued that it had no bearing on the validity of the Marper Judgment or the Appointment Order. After confirming with Mr. Strand that he does not dispute that Foxpark Development Corporation is a validly subsisting provincially incorporated company in Ontario (as the corporation profile report attached to the Receiver's First Report confirms), the court determined at the outset of the hearing that this new argument did not create an impediment to the court considering the pending motions.
19. The court was not directed to any authority upon which the jurisdiction of incorporation of a validly subsisting company would impact the continuation of these receivership proceedings. Neither the Appointment Order nor the Marper Judgment make reference to the jurisdiction of incorporation of the Debtor corporation so there is nothing that needs to be regularized in any prior court orders.

## Mr. Strand's Leave Motion

20. Mr. Strand identifies himself as a director, officer and the sole shareholder of the Debtor. He previously appeared and was granted leave to speak on behalf of the Debtor corporation at the return of the receivership application on July 7, 2025 when he unsuccessfully opposed the appointment of the Receiver. Mr. Strand had not formally brought a motion for leave to represent the Company at that time, but he did make a formal request for leave to represent the Debtor and the Fox Street Property as part of the "Respondent's Challenge to Motion" filed in advance of the September 29, 2025 motion.
21. No party in attendance opposed Mr. Strand's request for leave to represent the Debtor corporation.
22. The court noted, as had been noted in a previous proceeding by Healey J. (see *Marper Holdings Limited v. Foxpark Development Corporation*, 2025 ONSC 1240, at paras. 13-18), that there are procedural and evidentiary requirements that must be met for a non-lawyer to be granted leave under Rule 15.01(2) of the *Rules of Civil Procedure* to represent a corporation in ongoing proceedings before this court. One of the key factors that the court takes into consideration when asked to exercise its discretion to grant leave is whether the person seeking leave is a senior representative of the Company who has been duly authorized by a duly elected board of directors to do so.
23. The other director of the Debtor company who has been identified in the record is Mr. William Carley. He was served with all of the material for the September 29, 2025 motions but did not appear. No one is aware of any objection that Mr. Carley has raised to Mr. Strand representing the Debtor company, however, Mr. Carley was also not asked when he was examined and has not affirmatively indicated that he consents. He did confirm when he was cross-examined that he believes he is still a director of the Company although he had not anticipated remaining a director for as long as he has been.
24. Mr. Strand asked the court to accept that there is evidence before the court that he is the sole shareholder of the Debtor corporation and thus can appoint and remove directors as he sees fit. On this basis, he argues that it is only his approval that is required for him to represent the Company, even though he acknowledges that Mr. Carley is still a director. Mr. Strand relies upon his factum as evidence because he signed the factum before a notary. He advised the court at the hearing that he attests that everything he has written in the sixty-six paragraphs of that factum is true.

25. While it is highly irregular for a factum to also serve as an affidavit, for purposes of the present motions the court determined that it would accept certain non-controversial facts the Mr. Strand has attested to in his factum as proven in this manner. One such apparently non-controversial fact is that Mr. Strand is the sole shareholder of the Debtor, so he says in paragraph 1 of the factum.
26. The court accepts that the other factors relevant to Mr. Strand's leave request, concerning the fairness to the corporation of this matter proceeding without it being represented and the ability and willingness of the proposed non-legal representative to carry out the duties of the Company as a litigant under the *Rules of Civil Procedure* weigh in favour of granting the leave request. Mr. Strand assured the court that he is willing and able, to the best of his abilities, to take on this role.
27. Although the record was not robust, it was sufficient to satisfy the court that leave should be granted to Mr. Strand to represent the Debtor at the September 29, 2025 hearing and for purposes of the relief sought that day, as was also done when the Appointment Order was made. However, if Mr. Strand wants to be appointed as the representative of the Debtor for all purposes in the ongoing receivership proceeding, the court will need to receive written evidence from Mr. Carley, the other director, confirming that he approves of Mr. Strand doing so, or receive evidence that Mr. Carley has resigned or been removed as a director and that there are no other directors of the Debtor corporation. If that is not forthcoming, then the matter of the continued representation of the Debtor by Mr. Strand for any other purpose in this proceeding will have to be reconsidered on a proper record with evidence.
28. Mr. Strand also asked for leave of this to represent the Company in *Marper Holdings v Foxpark Development Corporation*, Court File No. CV-24-00000527-0000. That request was denied. I am not prepared to make that order, or any order in that other action, which has already been decided and judgment rendered on February 24, 2025 (the "Marper Judgment").

### **Summary of Outcome**

29. The court provided its decision orally at the outset of the September 29, 2025 hearing on the preliminary issues, and at the end regarding most of the balance of the relief sought in both the Receiver's Motion and the Respondent's Challenge to Motion. In summary:
  - a. This jurisdiction of incorporation of the Debtor in Ontario (as opposed to Federal incorporation) does not pose an impediment to the motions proceeding or render this proceeding a nullity.
  - b. Mr. Strand can represent the Debtor Company for purposes of the matters before the court on September 29, 2025.
  - c. The Receiver is not being discharged or replaced at this time.
  - d. A Sale Process will be approved, after the Receiver retains a listing agent or broker and develops, with them, a revised Sale Process that the agent/broker and the Receiver both recommend.
  - e. The Sale Process will expressly allow for the possibility of redemption of the existing encumbrances with refinancing or equity investment backing.
  - f. A sealing order is granted over the confidential appendices to the Receiver's First Report, until the closing of a transaction or further court order.

- g. The Depositors' status as unsecured vs. secured creditors will need to be determined at some future time, and the approval of the listing and sale of the Fox Street Property is without prejudice to their position.
- h. The Receiver's request for approval of its First Report, Interim Statement of R&D and its fees and those of its counsel is adjourned and may be returned on notice when the parties are next before the court.
- i. The Receiver's request for leave to assign the Debtor into bankruptcy is premature.

### **Refinancing Efforts**

30. In his initial opposition to the Appointment Order, Mr. Strand relied, on his affidavit and exhibits that included a letter of interest dated June 20, 2025 from VERICO Allendale Mortgage Services Ltd. (the "Letter of Interest") offering to refinance the Applicant's first mortgage, provide construction and other financing for a total loan amount of \$5.7 million, to be secured by a first mortgage over the Foxpark Property and guarantees from Carl Strand, Raymond Jarvis and two companies. Mr. Jarvis confirmed his willingness to provide the personal guarantee in a letter dated July 4, 2025. This refinancing was conditional upon the agreement of the second/third mortgagee to postpone and was also subject to approval by the mortgagee after payment of a \$10,000 deposit. There is no evidence that the Letter of Interest was ever accepted by Mr. Strand on behalf of the Debtor, that the deposit was ever paid, or that the required VERICO approvals were sought. It was noted by Cavanagh J. in his endorsement of July 7, 2025 at the time the Appointment Order was made that:

[26] The letter of interest is non-binding and highly conditional. The second mortgagee was represented by its principal at the hearing, and he expressed support for the application to appoint a receiver. He did not indicate that the second mortgagee would agree to postpone its security to new mortgage financing. Without a postponement, the letter of interest is unviable. The letter of interest which, apparently, is expired, is not likely to result in a successful refinancing of the Fox Street Property, even if it were to be renewed.

31. There was no indication at the September 29, 2025 hearing that the VERICO would still be prepared to provide financing, nor was there evidence of a current financing commitment or letter of interest from any alternative lender or equity investor. Mr. Strand's opposition to the Proposed Sale Process was nonetheless heavily reliant upon his assertion that the Receiver should be attempting to find construction financing to allow for the Project to be completed rather than sold. This appears to be predicated, at least in part, upon a misconstruction of the following paragraphs of the endorsement of Cavanagh J. dated July 7, 2025:

[27] The Debtor has had many months to arrange refinancing to pay out the existing mortgages and has been unsuccessful. The development of the Fox Street Property is not progressing. There is no insurance coverage. I see no reason why the proposed lender and guarantor cannot make a proposal to a court-appointed receiver if there is a viable path to successful completion of the Fox Street Property development.

[28] I have considered the circumstances and I am satisfied that it is just and convenient for a receiver to be appointed for the following reasons:

d. The fact that there are depositors and a construction lien claimant support a court supervised process, as opposed to private mortgage enforcement, because a court supervised process will allow interested parties to have their interests represented in a transparent process.

e. A receiver would be an officer of the court with duties to all interested parties. A sale by a court-appointed receiver would need approval from the court on notice to interested parties. A court-appointed receivership is preferable to private enforcement of the Mortgage.

32. During the proceeding, Ms. Charlebois referred to other Canada Mortgage and Housing Corporation (“CMHC”) insured mortgage financing that was being considered dating back to May of 2024. This was reviewed with Mr. Carley during his cross-examination and he confirmed that it had been considered but did not come to fruition. Mr. Strand attached an email from Mr. Carley dated September 25, 2025 to his sworn factum in which Mr. Carley outlines amounts he says he advanced to the Debtor by way of loan or for employee payroll, and he states that he has “been working with Ray Jarvis and Carl to refinance the project with CMHC approved financing which would allow us to complete total project”. The Receiver did not receive this email and questions its veracity. Reference was also made to a March 2025 commitment letter from a Quebec based lender, M Commercial, that was looking into qualifying for CMHC insurance to provide financing to complete the project, but no evidence of this prospective financing was tendered.
33. The evidence about any recent refinancing opportunities exists only through attachments to the notarized factum that Mr. Strand signed and filed on behalf of the Debtor. There was no new evidence about recent efforts since the Appointment Order. As indicated earlier in this endorsement, something more than the factum, even if notarized, is required to support a contentious point of evidence such as attempts to refinance the Fox Street Property. The prospect of refinancing this Project has been held out as a work in progress for a number of months with nothing in writing from any third-party lender or investor to back it up. Mr. Strand’s offer to the Receiver that they work together to find a third-party lender to fund the completion of the Project by Mr. Strand under the Receiver’s supervision is not a concrete proposal nor one that the Receiver could be expected to act upon.
34. There was not at the time of the Appointment Order, and still is not, any firm proposal for alternative financing that would enable the completion of the Project.

### **The Proposed Sale Process**

35. The Receiver’s proposed Sale Process is described in the First Report and in a schedule attached to the Receiver’s proposed Sale Process Approval Order. The court has jurisdiction to approve the Sale Process pursuant to section 243(1)(c) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.
36. The reasonableness and adequacy of any sales process proposed by a court-appointed receiver must be assessed in light of the factors which a court will take into account when considering the approval of a proposed sale. Those factors were identified by the Court of Appeal in its decision in *Royal Bank of*

*Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA), at para 16, adopted in *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750 (CanLII), at para.6. Specifically, the court is to 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 sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

37. The court has identified three general concerns with proposed Sale Process:

- a. Although the Appointment Order authorized the Receiver to engage agents and consultants to assist it, to market any or all of the Fox Street Property, including advertising and soliciting offers in respect of all or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate, the Sale Process was not developed with the benefit of advice from any agent or consultant and does not contemplate that the Fox Street Property will be listed on MLS through, which will limit its market exposure.
- b. The marketing and solicitation process is insular and targeted in a manner that appears to be time limited and directed to “known” potential purchasers.
- c. It does not expressly allow for alternative transactions to a sale.

38. Not addressing these concerns could impede the ability of the Receiver to obtain the highest and best price in a reasonable time period. While the court generally does grant considerable deference to the recommendation of a Receiver when there is no opposition (see *Regal Constellation Hotel Ltd., Re*, 2004 CanLII 206 (ON CA), at para 23; see also *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857, at paras. 43-45 citing *Marchant Realty Partners Inc. v. 2407533 Ontario Inc.*, 2021 ONCA 375 at para 15), there was opposition in this case, and the court has identified concerns which can and should be addressed.

39. The court understands the Receiver’s concern about moving quickly in an attempt to avoid the Fox Street Property being subjected to the elements of another winter. The Receiver and the Applicant say the Fox Street Property is under severe strain because it is a partially completed construction site and some materials that were left out and not secured before the Receiver was appointed have been damaged. However, the Construction Engineer’s report commissioned by the Receiver and the Receiver’s First Report indicate that the Fox Street Property has been secured. There is no indication of imminent deterioration. The desire for expediency cannot be pursued at the expense of a proper canvassing of the market and consideration of alternative transactions to a sale to maximize the recoveries for the benefit of all stakeholders.

40. Ordinarily, under a more fulsome sale and investment and solicitation process (“SISP”), interested parties are able to submit offers to: a) acquire all, substantially all or a portion of the Property (a “Sale Proposal”); b) make an investment in, restructure, reorganize or refinance the Business (an “Investment Proposal”); c) carry out any combination of a Sale Proposal and an Investment Proposal; or d) form a partnership with the Applicants, or any of them, by way of joint-venture or otherwise (a “Partnership Proposal”).

41. Even if the value and nature of this Project do not warrant a full blown SISP, something more is required. I am not satisfied that the Proposed Sale Process is robust enough or that it has sufficient time and flexibility in it to allow for a genuine pursuit of alternative transactions to a sale, which everyone acknowledges, based on current value estimates, is likely going to result the repayment of the first mortgage, but a shortfall to the second/mortgagee and no recoveries for any other creditors. While there is no evidence of any refinancing or investment to support an alternative transaction, discussions have continued and that prospect should not be foreclosed at this stage.
42. In response, the Receiver and the Applicant say that the proposed Sale Process would not foreclose the possibility of an alternative transaction for refinancing or investment. However, they acknowledge that this is not expressly provided for in the proposed Sale Process as it is currently drafted.
43. In response to the court's concerns, during a break at hearing the Receiver and the Applicant met and indicated a willingness to engage a listing agent/broker to allow for broader exposure of the Fox Street Property for sale (with a corresponding commission cost) and to expressly allow for the possibility of other transactions being considered by way of some additional language being added to the order approving the Sale Process.
44. The proposed language received by the court from the Receiver's counsel on September 30, 2025 (when the court was closed) made allowance for the possibility of a redemption or alternative transactions to a sale. It also included some requirements concerning the as of yet undetermined rights of the Depositors. Mr. Strand provided comments on the Receiver's proposed language on October 1, 2025, primarily to remove the requirement that the exercise of a right of redemption pay the Depositors in full. Ms. Charlebois sent some further requested language to be added to the order on the evening of October 2, 2025 that purports to have the court determine the Depositors rights as secured creditors.
45. The court is not prepared to make any order or determination now that determines or is dependent upon the determination of the rights of the Depositors. That will have to be determined at a later time. Accordingly, the court has revised and endorses and approves the following additional language to be added to the Sale Process Order dealing with the possibility of the exercise of a right or redemption or a refinancing:

**THIS COURT ORDERS that, notwithstanding anything contained in this Order or specific to the Sale Process, as herein defined, the Respondent may at anytime repay and redeem in full all encumbrances registered against title to the Fox Street Property, including all interest and enforcement costs to date. This right of redemption herein shall expire on the date this Court makes an order approving the Successful Bid. Each Bid received by the Receiver shall be conditional upon Court-approval. Actual payment of the encumbrances including all interest and enforcement costs to date must occur prior to the date of any Court Order approving a Successful Bid.**

**THIS COURT ORDERS that a Bid may constitute an offer to purchase one or more of the mortgages registered on title to the Fox Street Property (a refinancing bid); however, the purchase of the Applicant's first mortgage shall at a minimum be required and, if the other mortgages are to remain on title, then such a Bid shall include the remaining encumbrancer's written consent. In addition, any Bid must be sufficient to pay out any valid perfected construction lien claims. Such**

**a Bid, if selected by the Receiver, shall be submitted to the Court for approval. The same criteria set out in the Sale Process to be used by the Receiver to consider whether to accept a Bid shall apply to a refinancing Bid such as is described herein, and there is no obligation on the part of Receiver to automatically accept such a Bid or to prioritize this or any other Bid received.**

46. The Receiver and applicant confirmed that the Sale Process will not impose any restrictions on who can participate. Any proposed transaction coming out of the Sale Process will still be subject to court approval applying the usual criteria, on notice to all stakeholders. The Receiver's obligations as the court's officer apply to all possible forms that a transaction might take.
47. The added paragraphs requested by Ms. Charlebois do not have evidentiary support and the court is not prepared to include them in the Sale Process order. The Receiver shall, however, make any prospective bidder (whether for a purchase of the Fox Street Property or a refinancing transaction) aware of the Depositor's asserted claims. Any approval motion will be on notice to the Depositors and they will be made aware of how their deposits will be treated and can make submissions at the approval motion, as they deem appropriate, regarding any determinations or terms they seek, with appropriate evidentiary and legal support.
48. However, before finalizing the Sale Process Approval Order, the court requires that the Receiver first retain a listing agent/broker for the possible sale of the Fox Street Property. The Receiver may, but is not obligated to, seek recommendations and/or consult with the Applicant, the Debtor and/or any of the other stakeholders to identify reputable and experienced brokers, preferably with experience in the seniors' housing market, to market and sell the Fox Street Property. As soon as practicable, the Receiver shall seek proposals from reputable commercial real estate brokers for the marketing and sale of the Fox Street Property and select and retain a broker. Once that listing agent/broker has been retained, they shall be consulted and their input sought regarding the proposed Sale Process, including with respect to the Tender Package, due diligence, direct marketing efforts, listing and advertising timelines, bid deadlines etc.
49. The Receiver shall thereafter and as soon as possible, present a further recommended Sale Process Approval Order together with a further report that includes both the Receiver's and the listing broker/agent's recommendation. This may be done at a case conference to be scheduled before me through the Commercial List Office when it is ready. The concept of a Sale Process will not be revisited. This Case Conference will be for the purpose of settling the approval order and attached Schedule (details of the Sale Process) based on these updated recommendations, and to include the alternatives of redemption or a refinancing bid (language endorsed above). As a housekeeping matter, the date of the order will need to be updated and the preambles will need to be updated to include reference to all material that was before the court on September 29, 2025 as well as any additional material filed for this case conference.

### **Sealing Order**

50. If the Fox Street Property is sold, the expectation is that the sale proceeds will be sufficient to repay the first mortgagee and part of the debt owed to 159 Ontario (the second/third mortgagee), after payment of the priority construction lien claim (\$16,170,00). The property taxes have been paid by the Receiver.
51. The Receiver has obtained two confidential opinions as to the fair market value of the Fox Street Property, that are appendices to its First Report, over which it seeks a sealing order. They contain sensitive

commercial information about the value of the Fox Street Property which, if disclosed, could negatively impact the value obtained on a sale. This is an important commercial interest that should be protected. Sealing them will enhance the Receiver's value maximization efforts, in the interests of all stakeholders. It is only required until there is a transaction and the sealing is limited only to the two value opinions.

52. The court often grants partial sealing orders in these types of circumstances, on the basis that they satisfy the requirements of the test in *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 3. I am satisfied that those requirements are met with respect to the proposed sealing of the Confidential Appendices to the Receiver's First Report, at least until after the Sale Process has run its course and any transaction that it may produce has been completed, after which the Confidential Appendices shall be unsealed.
53. The sealing order language needs to be added to the Sale Process Approval Order when the next draft is provided to the court. In the meantime, the Confidential Appendices may be sealed on the basis of this endorsement if the Receiver considers that to be advisable rather than waiting for the order to be finalized.
54. **In either event, the Receiver shall be responsible for arranging for the filing the sealing of the confidential appendices with the court clerk in a sealed envelope. The Receiver shall also be responsible for applying at the appropriate time for an Order unsealing of the Confidential Appendices after any transaction that follows the Sale Process, or further order of the court.**

#### **Other Relief**

55. The Receiver's request for authorization to assign the Debtor into bankruptcy under the BIA and to act as the trustee in bankruptcy is adjourned until after Sale Process (as modified) has run its course. This relief is not urgent and may be premature, depending on the outcome of that process. The primary reason for this relief was to enable the Receiver to pursue potential claims for transactions at under value or preferences. There is no apparent urgency to the pursuit of those claims, and depending on the nature of the transaction, if any, that emerges, there may or may not be a continued need to investigate and pursue these claims.
56. The Receiver's request for approval of the Receiver's First Report and activities, the Interim Statement of R&D, and fees of the Receiver and its counsel is adjourned. There was not sufficient time to deal with this request given it is opposed. When it comes back it is expected that there will be a further report, an updated statement of R&D and additional fees (with supporting fee affidavits) and for which approval is being sought.
57. The broad reaching relief raised in the Respondent's Opposition to Motion involving the conduct of the Applicant, the Receiver or their counsel was not properly before the court. These allegations may be a function of a misunderstanding or misconstruction of the court's endorsement when the Appointment Order was made or about the roles and authority of the Receiver under the Appointment Order. However, whatever the source of these complaints, they were not properly before the court. They are serious allegations that would have to be supported by sworn evidence on a motion on proper notice, with a full opportunity to respond. The pursuit of these allegations will carry cost consequences if they are not successful and should be carefully considered.
58. The Depositors should consider whether they need to take steps to assert their claim for an equitable mortgage and have that determined before any transaction is concluded that their equitable mortgage claim might have a bearing upon, or that might have a bearing upon their interests, or otherwise put something in place to preserve their interests pending that determination.

59. The Receiver shall arrange for a case conference once the listing agent/broker has been retained, has vetted and had input in the revised proposed Sale Process, and the Receiver is ready to return to court with a jointly recommended revised proposed Sale Process Approval Order (that also incorporates the other revisions indicated earlier in this endorsement and the sealing order language).

A handwritten signature in cursive script that reads "Kimmel J." with a horizontal line underneath.

KIMMEL, J.  
October 3, 2025