



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL SLIP/ENDORSEMENT**

COURT FILE NO.: CV-23-00707172-00CL DATE: July 12, 2024

NO. ON LIST: 4

TITLE OF PROCEEDING: **TANDIA FINANCIAL CREDIT UNION LIMITED v. 1557113  
ONTARIO INC. et al**

BEFORE JUSTICE: **Justice STEELE**

**PARTICIPANT INFORMATION**

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

Name of Person Appearing	Name of Party	Contact Info
Miranda Spence	Lawyers for the Applicant	<a href="mailto:mspence@airdberlis.com">mspence@airdberlis.com</a>
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**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
Narinder Gill	Respondent for 1557113 Ontario Inc. et al. (self-represented)	<a href="mailto:gogagill@gmail.com">gogagill@gmail.com</a>

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Peter Crawley	BDO Canada Limited., Receiver	<a href="mailto:Pcrawley@bdo.ca">Pcrawley@bdo.ca</a>
Daniel Shunock	McDougall Energy Inc.	<a href="mailto:danielshunock@mcdougallenergy.com">danielshunock@mcdougallenergy.com</a>

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## **ENDORSEMENT of JUSTICE STEELE:**

1. Following the Receiver's motion on July 12, 2024, I released the orders and an endorsement indicating that my reasons would follow. These are my reasons.
2. BDO Canada Limited, the court-appointed Receiver, of the Respondents brings a motion seeking 4 approval and vesting orders and an administration order approving the Receiver's 2<sup>nd</sup> Report, approving the Receiver's and counsel's fees and disbursements, authorizing the Receiver to make an interim distribution to Tandia Financial Credit Union Limited, and a time limited sealing order, among other things.
3. No materials were filed in opposition to the relief sought. The debtors' first-ranking secured creditor, Tandia, supports the relief sought.
4. Narinder Gill, the principal of one of the debtor companies indicated that they were trying to finalize financing. Mr. Gill was not given leave of the court to represent the numbered company under Rule 15.01(2) of the *Rules of Civil Procedure*. The Court was informed that the numbered company has counsel, who did not attend the proceedings. In any event, no materials were filed by Mr. Gill or the company. There was no evidence before the Court such that the transaction in respect of the real property held by Mr. Gill's company should not proceed.

### **Background**

5. The Receiver was appointed over the debtors on or about November 17, 2023 further to an application made by the debtors' first-ranking secured creditor Tandia.
6. The debtors' indebtedness to Tandia is secured by mortgages and general security agreements over the debtors' properties and assets, including the 4 real properties, from which the debtors operated gas stations.
7. On or about February 7, 2024, the Court approved the marketing and sale process for the sale of the 4 real properties, including any personal property situate on the real properties and authorized the Receiver to engaged Colliers Macaulay Nicolls as listing broker.
8. Further to the marketing and sale process, agreements of purchase and sale were reached with regard to the 4 properties.

### **Analysis**

#### *Should the Court approve the Sale Agreements?*

9. In determining whether to approve a proposed sale of assets by a Court-appointed receiver, the Court applies the well-known principles set out in *Royal Bank of Canada v. Soundair Corp.*, [1991] O.J. No. 1137 (ONCA):

- a. Whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
  - b. Whether the interests of all parties have been considered;
  - c. The efficacy and integrity of the process by which offers are obtained; and
  - d. Whether there has been unfairness in the working out of the process.
10. Following the Court's approval of the sale process, the four properties were listed on MLS and Colliers distributed digital brochures to more than 1500 potential buyers. April 11, 2024 was established as the offer deadline. The Receiver received a total of 21 written offers (10 for the Kaladar Property, 5 for the Cloyne Property, 4 for the Trenton Property, and 2 for the Belleville Property). The Receiver identified a subset of these offers for Colliers to return to the offerors to request the submission of improved offers, which was done.
11. I am satisfied that the *Soundair* principles have been satisfied in respect of the 4 proposed transactions. First, the properties were marketed in accordance with the Court-approved sales process. Second, the properties were broadly canvassed to the market for an extensive period of time. Third, the agreements represent the highest and best offers received with the highest likelihood of closing. In this regard, I note that the offers are unconditional other than the Court approval requirement. In addition, the reasonableness of the purchase price is supported by the independent appraisals obtained for the properties. Finally, Tandia, which will suffer a shortfall on its loan to the debtors, supports the transactions.
12. I agree with the Receiver's submission that the Receiver has made a sufficient attempt to get the best price and has not acted improvidently. The sale process was fair and reasonable. As noted in *Soundair*, at para 16, "the court will be loathe to interfere with the business judgment of a Receiver and refuse to approve a transaction recommended by the Receiver acting properly in the fulfillment of its obligations as an officer of the court."
13. I am satisfied that the transactions should be approved.

*Should the Court grant the requested Sealing Order?*

14. The Receiver seeks an order sealing the confidential appendices to the Second Report pending the completion of the sales or further court order. The confidential appendices contain summaries of the offers received for each of the properties, the agreements of purchase and sale with the price unredacted, and appraisals of the properties.
15. Subsection 137(2) of the *Courts of Justice Act* provides that the Court may order that any document filed in a civil proceeding be treated as confidential, sealed, and not form part of the public record. In addition to the jurisdiction under the *Courts of Justice Act*, the Court has the inherent jurisdiction to issue sealing orders: *Fairview Donut Inc. v. The TDL Group Corp.*, 2010 ONSC 789, at para. 34.
16. It is common to temporarily seal bids and other commercially sensitive material in an insolvency context when assets are to be sold under a court process.
17. The requested sealing order is limited in scope and in time. The proposed sealing order balances the open court principle and legitimate commercial requirements for confidentiality in the circumstances.

In my view, the benefits of the requested sealing order outweigh the negative impact on the “open court” principle. If this information were released, it may impact the Receiver’s ability to maximize value and maintain integrity of any future marketing of the properties. No stakeholder will be materially prejudiced by the time limited sealing order, which applies to only a limited amount of information.

18. I am satisfied that the limited nature and scope of the proposed sealing order is appropriate and satisfies the *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, at para. 53, requirements, as modified in *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 38.
19. The Receiver is directed to provide the sealed confidential appendices to the Court clerk at the filing office in an envelope with a copy of this endorsement and the signed order (with the relevant provisions highlighted) so that the confidential appendices can be physically sealed.

#### *Approval of Activities and Fees*

20. The Receiver seeks Court approval of its Second Report, and the activities set out therein. The principles set out by the Court regarding the approval of the activities of a receiver or monitor, and their reports, are well established: *Target Canada Co. Re*, 2015 ONSC 7574 at paras. 2 and 12; *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, 2023 ONSC 3400 at para. 66.
21. I am satisfied that the Receiver’s activities were appropriate and consistent with the Receiver’s mandate and that the Receiver’s activities should be approved as requested.
22. I am also satisfied that the fees and disbursements of the Receiver and its counsel are fair, reasonable and justified in the circumstances. I note that fee affidavits have been filed.
23. I am satisfied that the other relief sought in the Administration Order should be granted and accept the submissions of the Receiver set out in para. 21 of its factum.



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Justice STEELE

Date of Release: July 15, 2024