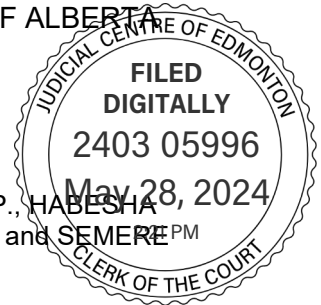


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COURT FILE NUMBER	2403 - 05996
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
PLAINTIFF	<b>ROYAL BANK OF CANADA</b>
DEFENDANTS	BEREKET & G HOLDINGS CORP., HABESHA AFRICAN SUPERMARKET LTD., and SEMERE BERHANE
DOCUMENT	<b><u>BENCH BRIEF FOR RESTRICTED ACCESS AND TEMPORARY SEALING ORDER</u></b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	MILLER THOMSON LLP Barristers and Solicitors 2700, Commerce Place 10155-102 Street Edmonton, AB, Canada T5J 4G8 Phone: 780.429.1751 Fax: 780.424.5866  Lawyer's Name: Spencer Norris  Lawyer's Email: snorris@millerthomson.com  File No.: 0249783.0002



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**BENCH BRIEF OF THE APPLICANT, BDO CANADA LTD..**

**DATE OF HEARING: June 7, 2024**

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## I. INTRODUCTION

1. This brief is submitted on behalf of BDO Canada Ltd. (the “**Receiver**”) in support of its application for a Restricted Access and Temporary Sealing Order.
2. It is necessary for the Receiver to carry out its duties that a Restricted Access and Sealing Order be granted with respect to the Confidential Supplemental (the “**Confidential Supplemental**”) to the First Report of the Receiver dated May 27, 2024 (the “**First Report**”)
3. The salutary effects of granting such Order outweigh the deleterious effects in these circumstances.

## II. BRIEF SUMMARY OF FACTS

4. Bereket & G Holdings Corp. (the “**Debtor**”) is a corporation incorporated pursuant to the laws of the Province of Alberta.

1. The Debtor’s sole physical asset is a office/retail building located at 10709 105 Street NW, Edmonton, Alberta, and legally described as follows:

Lots 239 – 241

Block 4

Plan B4

EXCEPTING THEREOUT ALL MINES AND MINERALS

(the “**Lands**”)

5. Royal Bank of Canada (“**RBC**”) holds a mortgage over the Property in the amount of \$3,750,000 (among other security) and is owed \$2,534,212.80 as at March 13, 2024.
6. On April 4, 2024, the Honourable Justice J.S. Little of the Court of King’s Bench of Alberta granted an Order (the “**Receivership Order**”) appointed the Receiver over the Debtor’s current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the “**Property**”).
7. Pursuant to the Receivership Order, the Receiver, among other things, is expressly empowered and authorized to:

- (a) To market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate; and
  - (b) To engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by the Receivership Order.
8. On May 2, 2024, the Receiver conducted a request for proposals to market and sell the Lands which concluded on May 13, 2024. The Receiver reached out to seven (7) commercial real estate brokers in Edmonton, Alberta. Four proposals were submitted to the Receiver (the "**Proposals**"). The Proposals contain, among other things, commentary on the value of the Lands and terms upon which each broker would be willing to market the Lands. Details of the Proposals are summarized in the Confidential Supplemental.
9. The Confidential Supplemental contains commercially sensitive information that could inhibit the Receiver's ability to market the Lands (the "**Sales Process**") to the best of its ability if made public prior to the conclusion of the sale of the Lands.

### III. RELIEF SOUGHT

10. The Receiver seeks a time-limited Restricted Access and Sealing Order with respect to Confidential Supplemental.
11. The issues this Court must determine is whether:
- (a) the availability of the Confidential Supplemental to the public pose a serious risk to an important public interest;
  - (b) the order sought necessary to prevent this serious risk to the identified interest because reasonable alternative measures will not prevent this risk; and
  - (c) as a matter of proportionality, does the benefits of the order outweigh its negative effects?

#### IV. RESTRICTED ACCESS ORDER

12. The Receiver seeks a Restricted Access and Sealing Order with respect to the Confidential Supplemental until sixty (60) days after the discharge of the Receiver or such earlier order of the Court.

##### A. LAW

13. The Court's authority to grant sealing orders is contemplated under Rule 6.28 and Division 4 of Part 6 of the Alberta Rules of Court.

*Alberta Rules of Court*, AR 124/2010  
Division 4 of Part 6 including Rule 6.28.

14. The seminal case of *Sierra Club of Canada v Canada (Minister of Finance)* [**"Sierra"**] provides the guiding principles in granting sealing orders and publications bans. Justice Iacobucci for the Court accepted that a confidentiality or sealing order could be granted when:

- (a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
- (b) the salutary effects of the confidentiality order outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.

*Sierra Club of Canada v Canada (Minister of Finance)*  
2002 SCC 41 at para 45 [TAB 2]

15. Most recently, the Supreme Court of Canada in *Sherman Estate v Donovan*, 2021 SCC 25 restated the test upon which an applicant must satisfy in asking a court to exercise discretion in a way that limits the open court presumption. An applicant must demonstrate:

- (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.

*Sherman Estate v Donovan*  
2021 SCC 25, at para 38 [TAB 3]

## **B. ARGUMENT**

16. The Receiver submits that in order to avoid compromising of the Receiver's Sales Process, it is necessary to grant a Restricted Access and Sealing Order with respect to the Confidential Supplemental and the Proposals.
17. The Receiver further submits that the commercial interests of the stakeholders in the Debtor should, in these circumstances, outweigh the deleterious effects a Restricted Access and Sealing Order would have on the right to free expression and open and accessible court proceedings.
18. There is a real and substantive risk of harm to the commercial interests of the Debtor, RBC and other stakeholders if the results of the RFP Process were made public and accessible by other brokers and potential purchasers prior to the sale of the Building.
19. There is a risk to obtaining the best price for the Building if the information contained in the Proposals and Confidential Supplemental in made public and the best offers for brokers in the event that the Receiver must retain further professionals to assist in the Sales Process.
20. The Receiver submits that there is no reasonable alternative to the Restricted Access and Sealing Order that would not compromise the Receiver's Sales Process.
21. Proportionally, the benefit to the Debtor, RBC, and the stakeholders of the Debtor outweigh negative effects of sealing the Confidential Supplemental, albeit on a limited time basis.

## **V. SUMMARY AND RELIEF REQUESTED**

22. Given the commercial sensitive information contained in the Confidential Supplemental, it is necessary in these circumstances to grant an Restrictive Access and Sealing Order. The salutary effects of not compromising the Receiver's Sales Process outweighs the deleterious effects resulting from such order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 28th DAY of MAY, 2024

**MILLER THOMSON LLP**

Per: \_\_\_\_\_

**Spencer Norris**  
**Counsel for BDO Canada Ltd.**

**TABLE OF AUTHORITIES**

**TAB**

1. *Sierra Club of Canada v Canada (Minister of Finance)* 2002 SCC 41.
2. *Sherman Estate v Donovan* 2021 SCC 25, 2021.