

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

ENLIGHTENED FUNDING CORPORATION

Applicant

- and -

**VELOCITY ASSET AND CREDIT CORPORATION AND 926749
ONTARIO LTD. O/A CLONSILLA AUTO SALES AND LEASING**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 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***

FACTUM OF THE RECEIVER

April 18, 2024

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PART I - NATURE OF THE MOTION

1. Deloitte Restructuring Inc. (“**Deloitte**”) was appointed as receiver (the “**Receiver**”) on October 26, 2023, over the property of Velocity Asset and Credit Corporation (“**Velocity**”) and certain property of 926749 Ontario Ltd. o/a Clonsilla Auto Sales and Leasing (the “**Dealer**” and, together with Velocity, the “**Debtors**”). The Receiver was appointed over the remainder of the Dealer’s property on December 8, 2023, following the discovery of numerous financial irregularities and concerning conduct of the Debtors.
2. Since that date, the Receiver has continued its investigation of the issues set out in the First Report and has identified evidence of misappropriation, transfers of property at undervalue and preferences. The Receiver’s investigation has been hampered by the lack of cooperation from Hugh Waddell (“**Waddell**”), the former principal of the Debtors, and members of his family.
3. The Receiver seeks the authority to assign the Debtors into bankruptcy and to act as the trustee in bankruptcy of the Debtors. This relief was previously adjourned at the hearing on December 8th. The Debtors have incontrovertibly committed an act of bankruptcy and have debts greater than \$1,000.
4. The Receiver also seeks approval of a sale process to market and sell the Dealer’s lease portfolio. The proposed sale process would be administered by the Receiver, provides for a robust process, and offers sufficient flexibility to address issues as they arise and maximize the value of the assets for the benefit of the Debtors’ creditors.

5. Finally, the Receiver seeks approval of its activities and fees. The Receiver's fees are reasonable and are supported by Peoples Trust Company ("**Peoples**"), who has funded the receivership.
6. For the reasons described above and as further set out below, the Receiver respectfully submits the relief sought should be granted.

PART II - THE FACTS

7. The facts relevant to the relief sought by the Receiver are set out in greater detail in the Third Report of the Receiver dated April 15, 2024 (the "**Third Report**") and are summarized below. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Third Report.

Background

8. On October 6, 2023, Enlightened Funding Corporation ("**Enlightened**") issued a Notice of Application (the "**Application**") for the appointment of a receiver over the Debtors.¹
9. The Application was initially scheduled to be heard on October 13, 2023, but was adjourned to October 26, 2023 to provide the Debtors with an opportunity to respond to the Application.²

¹ Third Report, para 1.

² Third Report, para 2.

10. On October 26, 2023, pursuant to an order of the Court (the “**Receivership Order**”), Deloitte was appointed as the Receiver over all property of Velocity and certain property of the Dealer.³
11. On December 8, 2023, Justice Conway granted an Amended and Restated Receivership Order (“**A&R Receivership Order**”) that expanded the receivership to all property of the Debtors (the “**Property**”) to “preserve, protect, and ultimately realize on the Property subject to the security of secured creditors”.⁴
12. The Dealership’s primary business activity was leasing used vehicles to customers with subprime credit ratings.⁵
13. Since the A&R Receivership Order, the Receiver took possession of the remaining Property for the purpose of preserving, protecting and safeguarding the assets in compliance with the A&R Receivership Order.⁶

Investigation of Dealer Operations and Flow of Funds

14. The Receiver has continued its investigation of the issues set out in the First Report and has identified additional issues that require further investigation.⁷

³ Third Report, at para 3.

⁴ Third Report, at para 4; Endorsement of Justice Conway dated December 8, 2023 at para 6.

⁵ Third Report, at para 12.

⁶ Third Report, at para 14.

⁷ Third Report, at para 36.

15. The Receiver is aware that the Ontario Motor Vehicle Industry Council (OMVIC) and the Peterborough Police Department are also conducting investigations into the activities of the Dealer and Waddell.⁸
16. The additional issues that have been identified by the Receiver include:
- (i) **Deregistration of Lessee License Plates:** While operating, the Dealer deregistered or ‘unplated’ 22 leased vehicles as a result of its failure to repay the floor plan financing provided by NextGear. The Dealer did this without notice to the lessees, resulting in several lessees being pulled over by police.⁹
 - (ii) **Failure to Satisfy Liens on Trade-Ins:** The Receiver has discovered seven cases, and is investigating a further six potential cases, where the Dealer accepted a trade-in from a customer but failed to repay the outstanding loan on the trade-in vehicle, contrary to assurances made to the customers and customary industry practice.¹⁰
 - (iii) **Disposition of Property:** The Receiver has identified additional instances, both before and after the Date of Appointment, where Waddell inappropriately dealt with or disposed of (a) vehicles subject to

⁸ Third Report, at para 37.

⁹ Third Report, at para 41.

¹⁰ Third Report, at para 43.

Enlightened's (and now Peoples') security and (b) other Property, including cash in accounts held by the Dealer.¹¹

17. The Receiver is also conducting a comprehensive investigation of the Dealer's financial records to trace the movement of funds to identify and pursue recoveries related to reviewable transactions, including transfers at undervalue and other preferences ("**Reviewable Transactions**").¹²
18. As part of the investigation, on December 13, 2023, the Receiver delivered correspondence to various individuals, including members of the Waddell family, notifying them they may be examined in connection with their relationship with the Debtors.¹³
19. The Receiver's investigation subsequently revealed members of the Waddell family may have benefitted from reviewable transactions from the Debtors, including by way of direct transfers from the Dealer's accounts. Accordingly, on February 15, 2024, the Receiver delivered correspondence to members of the Waddell family demanding certain banking information to allow the Receiver to confirm if the Waddell family members or entities they controlled received transfers from the Debtors dating back to May 2022.¹⁴

¹¹ Third Report, at para 49.

¹² Third Report, at para 64.

¹³ Third Report, at para 65.

¹⁴ Third Report, at para 66.

20. In response, the Receiver and its counsel were contacted by Frank Bennett of Bennett Bankruptcy Law (“**Bennett**”) who advised that he represented members of the Waddell family and that they would not provide the requested information.¹⁵
21. The Waddell family’s refusal to provide the requested information was a violation of the terms of the A&R Receivership Order specifically obligating all persons to provide any bank account information related to the business or affairs of the Debtors or their property. This was also a violation of the general investigative powers granted to the Receiver under the A&R Receivership Order.¹⁶
22. The failure to provide the requested information has frustrated the Receiver’s ability to ascertain the movement of funds by the Debtors and has increased the cost to the estate to determine who has received these transfers.¹⁷
23. As a result, the Receiver is undertaking a reconciliation exercise using the books and records of the Debtors, including the bank statements of the Dealer dating back to the date of the funding agreement between the Dealer and Enlightened. This reconciliation is still ongoing and requires further information from the relevant banks, which is expected by the end of April.¹⁸

¹⁵ Third Report, at para 67.

¹⁶ Third Report, at para 67.

¹⁷ Third Report, at para 68.

¹⁸ Third Report, at para 69.

Sale Process

24. The Receiver has developed a sale process (the “**Sale Process**”) to solicit sale proposals from potentially interested parties in the Dealer’s lease portfolio. The key activities and milestones related to the Sale Process are as follows:¹⁹

Milestone	Timeline	Targeted Deadline
Commencement date	Immediately following the approval of the Sale Process	April 23, 2024
Preparation of Sale Process materials (i.e., Teaser, Investment Memorandum, Buyer list, Notices for trade publication, NDA, populate EDR)	10 days	May 3, 2024
Phase 1 Bid Deadline	45 days	June 17, 2024
Assessment of Phase 1 Bids	5 days	June 21, 2024
Phase 2 Bid Deadline	40 days	August 2, 2024
Auction Date (if applicable)	1 day	August 9, 2024
Finalize Transaction agreement	7 days	August 16, 2024
Sale Approval Motion (as defined below) in Court	As soon as reasonably practicable	August 30, 2024 (outside date)
Closing of the Transaction	As soon as reasonably practicable	September 6, 2024 (outside date)

25. Under the proposed Sale Process Procedures, the Receiver has the ability to extend these dates.

¹⁹ Third Report, at para 75-76.

Bankruptcy Assignment

26. The Receiver initially sought the authority to assign the Debtors into bankruptcy and serve as the trustee in bankruptcy at the motion in respect of the A&R Receivership Order. This aspect of the motion was adjourned and the Receiver is now bringing it back on for determination in this motion.²⁰
27. The Receiver's investigation is ongoing. The Receiver has already discovered numerous transactions that, in its view, constitute Reviewable Transactions.²¹
28. In order to maximize recovery for the Debtors' creditors, the Receiver may seek to reverse these transfers in accordance with the applicable lookback periods under the BIA.²² The lookback periods for reviewing these transfers under the BIA are calculated from the date of the initial bankruptcy event of the Debtors. If the Receiver's request for authority to assign the Debtors into bankruptcy is granted, the date of the initial bankruptcy event of the Debtors will be October 6, 2023, being the date that the Application for the Receivership Order was issued.
29. On February 29, 2024, the CRA delivered a Notice of Reassessment in respect of the Dealer, advising that as a result of the reassessment, the Dealer owes the CRA \$883,176.47 in respect of unpaid GST and HST. Upon the bankruptcy of the Dealer, the CRA's deemed trust in respect of GST/HST will be inapplicable and will rank as an unsecured claim in the

²⁰ Third Report, at para 79.

²¹ Third Report, at para 86.

²² Third Report, at para 86.

bankruptcy.²³ Waddell previously represented to the Receiver that Clonsilla was expecting a \$1.4 million HST refund.²⁴

30. The Debtors easily meet the test of a bankruptcy application:²⁵
- (a) Each of the Debtors owes over \$1,000 to its creditors and the value of the property of the Debtors subject to the security of secured creditors will result in a material shortfall (greater than \$1,000) to the Debtors' creditors.
 - (b) The Debtors have ceased meeting their liabilities generally as they became due.
31. Peoples has indicated its willingness to bring an application to assign the Debtors into bankruptcy, if necessary.²⁶ If Peoples were to bring an application to assign the Debtors into bankruptcy, the initial bankruptcy event would occur on the future date that Peoples' application was issued. This would result in shorter lookback periods for reviewing Reviewable Transactions than would be available if the Receiver assigned the Debtors into bankruptcy.

²³ Third Report, at para 87,

²⁴ First Report, at para 61.

²⁵ Third Report, at para 88.

²⁶ Third Report, at para 88.

Fees of the Receiver and Counsel

32. The Receiver and its legal counsel, TGF, have maintained detailed records of their professional time and costs since the date of the Receivership Order.²⁷
33. The total fees of the Receiver during the period from October 26, 2023, to March 31, 2024, are \$1,166,606, together with expenses and disbursements in the sum of \$62,317 and HST in the amount of \$159,760, totaling \$1,388,683.²⁸
34. The total fees of TGF, in its capacity as counsel to the Receiver, during the period from September 19, 2023, to March 31, 2024, are \$339,840.50, together with expenses and disbursements in the sum of \$10,207.23 and HST in the amount of \$45,504.67, totaling \$395,552.40.²⁹
35. The Receiver's fees and disbursements, as well as those of its legal counsel, have been presented to Peoples, who has advanced funding to the Receiver for the purpose of funding the Receiver's mandate. Peoples has no objections or concerns with the fees presented.³⁰

PART III - ISSUES

36. There are five issues to be determined:
- (a) should the Receiver be authorized to assign the Debtors into bankruptcy;

²⁷ Third Report, at para 92.

²⁸ Third Report, at para 93,

²⁹ Third Report, at para 94.

³⁰ Third Report, at para 95.

- (b) whether the date of the initial bankruptcy event is the date of issuance of the Application;
- (c) should the Receiver be entitled to act as the trustee in bankruptcy;
- (d) should the Sale Process be approved; and
- (e) should the Court approve the activities of the Receiver as well as the fees and disbursements of the Receiver and its counsel.

PART IV - LAW & ARGUMENT

(a) THE RECEIVER SHOULD BE AUTHORIZED TO ASSIGN THE DEBTORS INTO BANKRUPTCY

37. The Receiver seeks the Court's authorization to assign the Debtors into bankruptcy and to act as the trustee in bankruptcy.
38. This relief is not extraordinary and has been commonly granted by this Court in other matters. In *RBC v Gustin*, the Ontario Superior Court confirmed that this Court has the authority to empower a Receiver to file an assignment in bankruptcy on behalf of a debtor company.³¹
39. In *Bank of Montreal v Owen Sound Golf and Country Club*, Justice Brown stated as follows:

It is well settled that a court possesses the power to authorize a receiver to file an assignment in bankruptcy or consent to a bankruptcy order.³²

³¹ *RBC v Gustin*, 2019 ONSC 5370 at [para 15](#) [*Gustin*].

³² *Bank of Montreal v Owen Sound Golf and Country Club*, 2012 ONSC 557 at [para 7](#).

40. In granting such authority to receivers, the Court should consider the specific facts of the case to understand whether bankruptcy might be preferable.³³ The Court has granted such authority for the purpose of permitting the receiver to avail itself of the enhanced investigative powers available to a trustee where there is a lack of cooperation by the debtor as is the case here.³⁴ The Court has further held that it is not necessary for the receiver to exhaust its remedies under other legislation before resorting to a bankruptcy assignment as such steps could prove to be needlessly inefficient and expensive.³⁵
41. In this case, the Receiver's opinion is that bankruptcy is appropriate because it will:
- (a) be for the general benefit and efficiency of the estate, including by:
 - (i) avoiding an application for bankruptcy brought by Peoples; and
 - (ii) avoiding unnecessary litigation relating to the investigative powers of the Receiver as compared to a trustee,
 - (b) render the statutory deemed trusts for GST/HST inapplicable, which will increase the assets of the estate that are available to the Debtors' creditors;
 - (c) grant the trustee investigative powers and, if appropriate, the power to commence proceedings under ss. 95 and 96 of the BIA to recover Reviewable Transactions;
and

³³ *Royal Bank v Sun Squeeze Juices Inc.*, 1994 CarswellOnt 266, [1994] O.J. No. 567 (Gen. Div. [Commercial List]), aff'd 1994 CarswellOnt 310, 28 C.B.R. (3d) 201 (CA) at [para 11](#).

³⁴ *Gustin*, *supra* note 30, at [para 8](#).

³⁵ *Ibid* at [para 17](#).

(d) cause the lookback period for the calculation of the Reviewable Transactions to be calculated from October 6, 2023.

(b) THE INITIAL BANKRUPTCY EVENT IS THE DATE THE APPLICATION SEEKING THE RECEIVERSHIP ORDER WAS ISSUED

42. Sections 95 and 96 of the BIA empower a bankruptcy trustee to challenge Reviewable Transactions made by a debtor prior to bankruptcy. These sections set limits on the timeframe within which such transactions can be reviewed.³⁶

43. A transfer at undervalue or preference can only be impeached if it occurred during the applicable time period before the date of the initial bankruptcy event and ending on the date of bankruptcy. The date of the initial bankruptcy event in respect of a debtor means the earliest of the day on which any one of the following is made, filed or commenced, as the case may be:

- (a) an assignment by or in respect of the person,
- (b) a proposal by or in respect of the person,
- (c) a notice of intention by the person,
- (d) the first application for a bankruptcy order against the person, in any case
 - (i) referred to in paragraph 50.4(8)(a) or 57(a) or subsection 61(2), or
 - (ii) in which a notice of intention to make a proposal has been filed under section 50.4 or a proposal has been filed under section 62 in respect of the

³⁶ BIA, s. [95\(1\)](#) and [96\(1\)](#).

person and the person files an assignment before the court has approved the proposal,

- (e) the application in respect of which a bankruptcy order is made, in the case of an application other than one referred to in paragraph (d), or
 - (f) proceedings under the Companies' Creditors Arrangement Act;
44. In *National Telecommunications*, an application for a court-appointed receiver was filed on March 26, 2015. An order appointing a receiver was granted on April 9, 2015, and the receiver assigned the debtor into bankruptcy on July 10, 2015. The Court held that the date of the initial bankruptcy event was the date on which the Notice of Application in respect of the receivership was issued (the March 26, 2015, date) on the basis that this application was the one in respect of which a bankruptcy order was made under paragraph (e) of the definition.³⁷
45. If the Court grants the Receiver the authority to assign the Debtors into bankruptcy, the date of the initial bankruptcy event of the Debtors is October 6, 2023 (being the date when the Application seeking the Receivership Order was issued). The corresponding look back periods for reviewing Reviewable Transactions under the BIA will be calculated from October 6, 2023.

³⁷ 2017 ONSC 1475 at para [10](#).

(c) **THE RECEIVER SHOULD BE AUTHORIZED TO ACT AS TRUSTEE IN BANKRUPTCY**

46. The BIA also permits receivers appointed in respect of a debtor to also act as trustees in bankruptcy of the debtor, as long as at the time of being appointed as trustee and at the first meeting of creditors, full disclosure of that fact and of the potential conflict of interest is disclosed.³⁸
47. This is not a single secured creditor receivership. There are multiple secured creditors, and the Receiver is not the agent or enforcement officer for any single secured creditor. The Receiver is empowered with maximizing value for all of the stakeholders of the Debtors.
48. With respect to the appointing creditor, the Receiver's counsel has independently reviewed the security granted by the Debtors to Enlightened, as assigned to Peoples. TGF has opined to the Receiver that Peoples' security interests in the property of the Debtors are valid and enforceable against the Debtors.
49. The practice of appointing a receiver previously appointed as the trustee in respect of a debtor is routinely approved in scenarios encompassing receiverships and bankruptcies.³⁹

³⁸ BIA, s. [13.3\(2\)](#).

³⁹ *Ethier, Re 1991 CarswellOnt 213* (Ont. Gen. Div., in Bankruptcy) at para [25](#); *Pinnacle v. Kraus*, 2012 ONSC 6376 at paras [5-6](#); *HSBC Bank Canada v Kupritz*, 2011 BCSC 788 at para [4](#).

50. When a bankruptcy order is being made, the court shall appoint a licensed trustee as the trustee in bankruptcy having regard, as far as the court considers just, to the wishes of the creditors.⁴⁰ The wishes of the debtor as to the identity of the trustee are not relevant.⁴¹
51. No creditor of the Debtors has raised any perceived conflict of interest or other objection to the Receiver acting as trustee.
52. Authorizing the Receiver to act as the trustee will significantly reduce the costs associated with the bankruptcy. The Receiver has extensive familiarity with the Debtors' affairs and creditors through its role as the Receiver. If another licensed trustee was required to get up to speed it would result in considerable duplication of efforts and increased cost, which would deplete the estate's funds available for recovery to creditors.⁴²
53. Accordingly, the Receiver respectfully submits that in the circumstances, it is appropriate for this Court to grant the Receiver the authority to assign the Debtors into bankruptcy and to act as the trustee in bankruptcy of the Debtors.

(d) THE SALE PROCESS SHOULD BE APPROVED

54. The Sale Process proposed by the Receiver and the procedures attached at Schedule "A" to the draft Sale Process Approval Order should be approved.

⁴⁰ BIA, s. [43\(9\)](#).

⁴¹ *Terrace Sporting Goods Ltd., Re*, [1979 CarswellOnt 221 \(Ont. S.C., in Bankruptcy\)](#).

⁴² [Canadian Encyclopedic Digest, Bankruptcy and Insolvency, s. 63](#).

55. The A&R Receivership Order authorizes the Receiver to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof. The A&R Receivership Order requires court approval in respect of any transaction exceeding \$500,000. The Receiver seeks approval of the Sale Process, and any transaction entered into thereunder would also be subject to court approval at a later date.
56. In *Nortel*, the Court identified several factors to be considered in determining whether to approve a sale process, which have since been consistently applied:
- (a) Is a sale warranted at this time?
 - (b) Will the sale be of benefit to the whole “economic community”?
 - (c) Do any of the debtors’ creditors have a *bona fide* reason to object to a sale of the business?
 - (d) Is there a better viable alternative?⁴³
57. These criteria have also been applied by this Court in receivership proceedings.⁴⁴
58. Courts have also considered these additional factors:
- (a) the fairness, transparency and integrity of the proposed process;
 - (b) the commercial efficacy of the proposed process in light of the specific circumstances; and

⁴³ *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 (ON SC), at para [49](#).

⁴⁴ *In The Matter of A Plan of Compromise or Arrangement of Green Growth Brands Inc* [2020 ONSC 3565](#) at para [61](#).

- (c) whether the sale process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.⁴⁵

59. Although the decision to approve a particular form of sale process is distinct from the approval of a proposed sale, the reasonableness and adequacy of any sale process must be assessed in light of the factors that a court will consider when considering the approval of a proposed sale.⁴⁶

60. In consideration of the above criteria and factors, the Sale Process should be approved as:

- (a) there is no viable alternative outside of a court-supervised sale process;
- (b) a sale of the lease portfolio is the best path forward to maximize recoveries for all of the Debtors' stakeholders;
- (c) the duration of the Sale Process is reasonable and appropriate in the circumstances to ensure a robust and fair process; and
- (d) the Sale Process includes the opportunity to conduct an auction if the Receiver believes it will secure the best possible price for the lease portfolio.

(e) **APPROVAL OF THE RECEIVER'S ACTIVITIES AND FEES**

61. The Receiver respectfully submits the Court should approve the Third Report and the activities of the Receiver as well as the fees and disbursements of the Receiver and its counsel.

⁴⁵ *CCM Master Qualified Fund v blutip Power Technologies*, 2012 ONSC 1750 at para 6 [CCM Master].

⁴⁶ *Ibid.*

62. The Third Report sets out the activities the Receiver has undertaken to date. The Receiver seeks approval of the Third Report and the activities described therein.
63. This Court has held that there are good policy and practical reasons for approving a court officer's report and the activities described therein, including:
- (a) allowing the court officer to bring its activities before the Court;
 - (b) allowing an opportunity for stakeholders' concerns to be addressed;
 - (c) enabling the Court to satisfy itself that the court officer's activities have been conducted in a prudent and diligent manner;
 - (d) providing additional protection for the court officer; and
 - (e) protecting creditors from delay that may be caused by re-litigation of steps or potential indemnity claims by the court officer.⁴⁷
64. The actions, conduct and activities of the Receiver, as set forth in the Third Report, were necessary and undertaken in good faith pursuant to the Receiver's powers and duties under the BIA and the A&R Receivership Order, and were in each case in the best interests of the Debtors' stakeholders generally.
65. Pursuant to the A&R Receivership Order, the Receiver and its counsel are entitled to be paid their reasonable fees and disbursements, each at their standard rates and charges.⁴⁸

⁴⁷ [Hangfen Evergreen Inc. \(Re\)](#), 2017 ONSC 7161 at paras. 15-17.

⁴⁸ Amended and Restated Receivership Order dated December 8, 2023 [Court File No. CV- 23-00707330-00CL] at para 21.

The A&R Receivership Order also requires the Receiver and its counsel to pass their accounts.⁴⁹ A summary of the fees for Deloitte and TGF for the period of September 19, 2023, through March 31, 2024, are set out in the fee affidavits appended to the Third Report.⁵⁰

66. The focus on a motion to pass accounts is to consider “what was accomplished, and not on how much it took.”⁵¹ In making this assessment, all the below factors, including time spent, should be considered. However, value provided should pre-dominate over the aggregate amount.⁵²
67. The Court has articulated the following non-exhaustive list of factors when evaluating the fairness and reasonableness of a court-appointed officer’s fees:
- (a) the nature, extent and value of the assets being handled;
 - (b) the complications and difficulties encountered;
 - (c) the degree of assistance provided by the company, its officers or its employees;
 - (d) the time spent;
 - (e) the Receiver’s knowledge, experience and skill;
 - (f) the diligence and thoroughness displayed;

⁴⁹ *Ibid*, at para 22.

⁵⁰ Third Report, Kennedy Affidavit at Exhibit V; Sleeth Affidavit at Exhibit U.

⁵¹ *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at [para 45](#).

⁵² *Ibid*.

- (g) the responsibilities assumed;
- (h) the results of the receiver's efforts; and
- (i) the cost of comparable services when performed in a prudent and economical manner.⁵³

68. Applying these factors, it is respectively submitted that the accounts of Deloitte and TGF are fair and reasonable for the following reasons:

- (a) there have been considerable complications and difficulties encountered by the Receiver and its counsel caused by the lack of cooperation from Waddell and the disarray of the books and records of the Debtors;
- (b) reconciling the lease portfolio of the Debtors has been an enormous undertaking as a result of the poor state of the books and records;
- (c) the Receiver had to service the lease portfolio for the first few months of the receivership before Northlake took over the servicing in February;
- (d) there has been little to no assistance provided by the company or its officers;
- (e) despite the challenges, the Receiver has been able to collect lease proceeds of almost \$1 million since being appointed;
- (f) the time spent is reasonable; and
- (g) Peoples, who has provided funding for the costs of the receivership, does not have any concerns with the fees sought to be approved.

⁵³ *Ibid*, at para [33](#).

PART V - RELIEF REQUESTED

69. For all of the foregoing reasons, the Receiver requests that this Court grant an Order substantially in the form of the draft orders attached at Tabs 3-5 of the Receiver's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of April, 2024.



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**SCHEDULE “A”
LIST OF AUTHORITIES**

1. [*Bank of Montreal v Owen Sound Golf and Country Club*, 2012 ONSC 557](#)
2. [*Bank of Nova Scotia v. Diemer*, 2014 ONCA 851](#)
3. [*RBC v Gustin*, 2019 ONSC 5370](#)
4. [*Royal Bank v Sun Squeeze Juices Inc.*, 1994 CarswellOnt 266, \[1994\] O.J. No. 567 \(Gen. Div. \[Commercial List\]\), aff’d 1994 CarswellOnt 310, 28 C.B.R. \(3d\) 201 \(CA\)](#)
5. [*CCM Master Qualified Fund v blutip Power Technologies*, 2012 ONSC 1750](#)
6. [*Ethier, Re* 1991 CarswellOnt 213](#)
7. [*Hangfen Evergreen Inc. \(Re\)*, 2017 ONSC 7161](#)
8. [*HSBC Bank Canada v Kupritz*, 2011 BCSC 788](#)
9. [*In The Matter of A Plan of Compromise or Arrangement of Green Growth Brands Inc* 2020 ONSC 3565](#)
10. [*Pinnacle v. Kraus*, 2012 ONSC 6376](#)
11. [*Nortel Networks Corporation \(Re\)*, 2009 CanLII 39492 \(ON SC\)](#)
12. [*Re: National Telecommunications Inc., a bankrupt* 2017 ONSC 1475](#)
13. [*Terrace Sporting Goods Ltd., Re* 1979 CarswellOnt 221](#)

**SCHEDULE “B”
RELEVANT STATUTES**

Bankruptcy and Insolvency Act, R.S.C., 1985, C. B-3

Where disclosure required

- **13.3(2)** No trustee shall act as a trustee in relation to the estate of a debtor where the trustee is already
 - (a) the trustee in the bankruptcy of, or in a proposal concerning, any person related to the debtor, or
 - (b) the receiver, within the meaning of [subsection 243\(2\)](#), or the liquidator of the property of any person related to the debtor,

without making, at the time of being appointed as trustee in relation to the estate of the debtor and at the first meeting of creditors, full disclosure of that fact and of the potential conflict of interest.

Appointment of Trustee

- **43 (9)** On a bankruptcy order being made, the court shall appoint a licensed trustee as trustee of the property of the bankrupt, having regard, as far as the court considers just, to the wishes of the creditors.

Preferences

- **95 (1)** A transfer of property made, a provision of services made, a charge on property made, a payment made, an obligation incurred or a judicial proceeding taken or suffered by an insolvent person
 - (a) in favour of a creditor who is dealing at arm’s length with the insolvent person, or a person in trust for that creditor, with a view to giving that creditor a preference over another creditor is void as against — or, in Quebec, may not be set up against — the trustee if it is made, incurred, taken or suffered, as the case may be, during the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy; and
 - (b) in favour of a creditor who is not dealing at arm’s length with the insolvent person, or a person in trust for that creditor, that has the effect of giving that creditor a preference over another creditor is void as against — or, in Quebec, may not be set up against — the trustee if it is made, incurred, taken or suffered, as the case may be, during the period beginning on the day that is 12 months before the date of the initial bankruptcy event and ending on the date of the bankruptcy.
- **Preference presumed**

- (2) If the transfer, charge, payment, obligation or judicial proceeding referred to in paragraph (1)(a) has the effect of giving the creditor a preference, it is, in the absence of evidence to the contrary, presumed to have been made, incurred, taken or suffered with a view to giving the creditor the preference — even if it was made, incurred, taken or suffered, as the case may be, under pressure — and evidence of pressure is not admissible to support the transaction.

- **Exception**

- (2.1) Subsection (2) does not apply, and the parties are deemed to be dealing with each other at arm's length, in respect of the following:
 - (a) a margin deposit made by a clearing member with a clearing house; or
 - (b) a transfer, charge or payment made in connection with financial collateral and in accordance with the provisions of an eligible financial contract.

Transfer at undervalue

- **96 (1)** On application by the trustee, a court may declare that a transfer at undervalue is void as against, or, in Quebec, may not be set up against, the trustee — or order that a party to the transfer or any other person who is privy to the transfer, or all of those persons, pay to the estate the difference between the value of the consideration received by the debtor and the value of the consideration given by the debtor — if
 - (a) the party was dealing at arm's length with the debtor and
 - (i) the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and that ends on the date of the bankruptcy,
 - (ii) the debtor was insolvent at the time of the transfer or was rendered insolvent by it, and
 - (iii) the debtor intended to defraud, defeat or delay a creditor; or
 - (b) the party was not dealing at arm's length with the debtor and
 - (i) the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and ends on the date of the bankruptcy, or
 - (ii) the transfer occurred during the period that begins on the day that is five years before the date of the initial bankruptcy event and ends on the day before the day on which the period referred to in subparagraph (i) begins and
 - (A) the debtor was insolvent at the time of the transfer or was rendered insolvent by it, or

- **(B)** the debtor intended to defraud, defeat or delay a creditor.

- **Establishing values**

- **(2)** In making the application referred to in this section, the trustee shall state what, in the trustee's opinion, was the fair market value of the property or services and what, in the trustee's opinion, was the value of the actual consideration given or received by the debtor, and the values on which the court makes any finding under this section are, in the absence of evidence to the contrary, the values stated by the trustee.

- **Meaning of person who is privy**

- **(3)** In this section, a **person who is privy** means a person who is not dealing at arm's length with a party to a transfer and, by reason of the transfer, directly or indirectly, receives a benefit or causes a benefit to be received by another person.

IN THE MATTER OF AN APPLICATION UNDER SECTION 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*

ENLIGHTENED FUNDING CORPORATION and **VELOCITY ASSET AND CREDIT CORPORATION AND 926749 ONTARIO LTD.**

Applicant

Respondents

Court File No.: CV-23-00707330-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

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