CITATION: Caisse Desjardins Ontario Credit Union Inc. v. GC King Bond Limited Partnership, 2026 ONSC 3286
COURT FILE NO.: CV-25-750862-00CL
DATE: 20260605

SUPERIOR COURT OF JUSTICE – ONTARIO [Commercial List]

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, R.S.O. 1990, C.C.43, AS AMENDED

RE: CAISSE DESJARDINS ONTARIO CREDIT UNION INC.

Applicant

AND:

GC KING BOND LIMITED PARTNERSHIP, by its general partner, GC KING BOND GP INC. and AVIVA INSURANCE COMPANY OF CANADA

Respondents

BEFORE: Justice Jana Steele

COUNSEL: *Haddon Murray*, for the Applicant

Helena Shao, for the Respondent GC King Bond Limited Partnership

David Ullmann & Stephen Gaudreau, for the Receiver Deloitte Restructuring Inc.

Mitch Stephenson, for Aviva Insurance Company of Canada

Graham Phoenix, for the Proposed Purchaser

Adam Slavens, for Tarion Warranty Corporation

Muhammad Baber Sher, for Muhammad Umar Javed

James Butson, for Vera & Monica Mendes

Haylee Alfred as Agent for Jeff Hamel, for Mr. Jasdip Dhindsa

HEARD: May 22, 2026

ENDORSEMENT

[1] The Receiver, Deloitte Restructuring Inc., brings a motion for, among other things, the approval of the sale of the majority of the assets of each of GC King Bond Limited Partnership ("King Bond LP") and GC King Bond GP Inc. ("King Bond GP", and together with King Bond LP, "King Bond" or the "Debtors").

[2] The applicant, the primary creditor, Caisse Desjardins Ontario Credit Union Inc. ("Desjardins"), supports the relief sought by the Receiver.

[3] King Bond was developing a 115-unit residential project, with freehold and condo units, on lands owned by them, known as Twelve Oaks Towns (the "Twelve Oaks Project" or the "Project"), when the Receivership Order was made. All the units (other than four) were either unfinished, or construction had not commenced at the time of the receivership order. King Bond had entered into pre-construction unit purchase agreements to sell the unfinished units in the Project to various unit purchasers, who paid deposits to King Bond.

[4] The proposed purchaser of the Project has agreed to assume a small number of the agreements for certain units under construction, on consent of the applicable unit purchaser. The vast majority of the unit purchase agreements will be disclaimed.

[5] Many of the potential unit purchasers are now faced with, not only the loss of their future home, but also, in the case of the freehold unit purchasers, the loss of a portion of their deposit monies. Numerous unit purchasers, most of whom were self represented, filed materials objecting to the approval of the proposed sale and/or the disclaimer of their respective unit purchase agreement.

[6] As noted by counsel for the Receiver at the outset of the motion, the law is clear that secured creditors are paid first. In this case, there is not enough money to satisfy the secured creditors. Many freehold unit purchasers, who are unsecured creditors, will suffer a financial loss for the uninsured portion of their deposit monies, in addition to the loss of the home they have been waiting for. By contrast, because of a difference in the law, deposits made by condo unit purchasers were held in trust.[1]

[7] The Debtors also objected to the proposed sale. The Debtors ask the court to dismiss the Receiver's motion for approval of the Approval and Vesting Order ("AVO") and request a six-month period to pursue a refinancing, restructuring, or alternate transaction. I have given little weight to the Debtors' evidence because of the spurious and unsupported nature of the affidavits filed. Among other things, one of the Debtors' affiants raises baseless allegations of conspiracy on the part of the Receiver, Desjardins, Westmount, and Tarion. The other affiant of the Debtor raises baseless allegations regarding a conspiracy among the Receiver, Desjardins and the

[1] The Receiver's Second Report indicates that Robins Appleby has advised the Receiver that there are sufficient funds held in the condo unit deposit account to repay the condo deposits that were made, plus accrued interest that may be owing.

proposed purchaser. These statements are mere speculation. It is inappropriate to make unfounded statements impugning the ethics of any party, particularly an officer of the court. Should the inappropriate conduct continue, this may give rise to further sanctions, including costs.

[8] For the reasons set out below, the Receiver's motion is granted.

[9] At the attendance, counsel for Vera and Monica Mendes indicated that they intended to bring a motion regarding Westmount's (defined below) security over the remaining freehold trust deposit monies. Subsequently, the court was notified that they do not intend to proceed with the motion.

Background

[10] King Bond LP is a limited partnership. King Bond GP was incorporated under the *Business Corporations Act* (Ontario).

[11] The Twelve Oaks Project includes freehold units and condominium units. As of the date of the Receiver's appointment, only four semi-detached units had been completed and delivered to their purchaser. With regard to the other 111 units, they were either unfinished or construction had not yet started.

[12] The Receiver's Second Report indicates that management of the Debtors has advised that in carrying out the Project, the Debtors relied significantly on the resources, personnel and infrastructure of Green City Investment Inc. and Green City Development Inc. (collectively, "Green City").

[13] The Debtors entered into a credit agreement in 2021 with Desjardins to finance the Twelve Oaks Project. Desjardins obtained security from the Debtors, including a general security agreement.

[14] Desjardins is owed approximately $30 million by the Debtors under their loan facility.

[15] Westmount Guarantee Services Inc. ("Westmount"), as administrative agent for Aviva Insurance Company of Canada ("Aviva") holds security over the deposits made by unit purchasers. Westmount, as agent for Aviva, had established a bonding facility in favour of Tarion in connection with the Project (the "Tarion Bond").

[16] The condo deposits and remaining freehold deposits are held by the Debtors' legal counsel, Robins Appleby LLP, as escrow agent. The deposits in respect of the condos were segregated and held in a separate trust account from the deposits made in respect of the freehold units. Under the Tarion Bond, at least $2.19 million is required to remain in the account holding the freehold deposits and is not available for general use. Approximately $2.2 million remains in the escrow account with Robins Appleby LLP related to freehold deposits (the "Remaining Freehold Deposits"), and approximately $5.7 million remains in the escrow account related to condo deposits (the "Remaining Condo Deposits").

[17] The Debtors did not obtain excess deposit insurance in respect of the deposits made by unit purchasers for the freehold units.

[18] Certain unit purchasers also paid additional deposit monies directly to King Bond in respect of upgrades to their units, which funds were not held in trust.

[19] On May 2, 2025, further to an application by Desjardins under s. 243(1) of the *Bankruptcy and Insolvency Act,* R.S.C., 1985, c. B-3 (the "BIA") and s. 101 of the *Courts of Justice Act,* R.S.O. 1990, c. C.43 (the "CJA"), the court appointed Deloitte as the Receiver of all the Debtors' assets, undertakings and properties, acquired for or used in relation to a business carried on by the Debtors, including the lands municipally known as 301, 311, 319, 329, 339, 349 King Road and 115, 119 Bond Crescent, Richmond Hill, Ontario (the "Property").

[20] On September 18, 2025, the Court granted the Sale and Investment Solicitation Order (the "SISP Order"), which, among other things, authorized the proposed sale and investment solicitation process in connection with the Debtors' Property.

[21] Following the sales process, an Agreement of Purchase and Sale (the "APS") was entered into with the Purchaser, Project Green Capital GP Inc., as general partner for Project Green Capital Limited Partnership ("Project Green" or the "Purchaser"), which is owned by Sunny Communities. The Receiver seeks approval of the proposed transaction with Project Green (the "Transaction").

[22] Under the APS, Project Green could determine which unit purchase agreements it wished to assume, provided that the respective unit purchaser also consented. Project Green selected 71 unit purchase agreements for potential assumption, but only 13 unit purchasers have consented to the assignment of their unit purchase agreement (the "Assumed UPAs").

[23] The Receiver seeks to disclaim the remaining unit purchase agreements (the "Unassumed UPAs").

[24] On or about March 2, 2026, the Receiver provided the unit purchasers with notice of the proposed Transaction and the anticipated treatment of unit purchase agreements.

[25] A further letter was sent by the Receiver on or about March 3, 2026 informing unit purchasers whether their unit purchase agreement would be disclaimed or had been selected for possible assumption by the Purchaser.

[26] The Receiver's motion was originally returnable on May 14, 2026. However, given that there were numerous unit purchasers who wished to file materials and/or make submissions, the motion was adjourned to May 22, 2026.

[27] On May 15, 2026, the Receiver delivered to all unit purchasers a detailed Q&A addressing the Transaction, deposits, the proposed deposit return protocol, and the legal framework.

Analysis

Should the Court approve the proposed Transaction and grant the Approval and Vesting Order?

[28] The Receiver has entered into an agreement with Project Green following the sales and marketing process approved by the court. The Receiver now seeks court approval of that Transaction.

[29] In *Royal Bank of Canada v. Soundair Corp.*, (1991) 4 O.R. (3d) 1 (C.A.), at p. 6, the Court of Appeal set out the factors for the court to consider when determining whether to approve a proposed sale:

a. Whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;

b. The efficacy and integrity of the process by which offers are obtained;

c. Whether there has been unfairness in the working out of the process; and

d. The interests of all parties.

[30] The affidavit evidence filed by the Debtors baldly asserts that the sale was not conducted in a manner that meets the *Soundair* principles. However, there is no evidence to support this assertion. The evidence filed includes outdated valuations and unsupported statements regarding how the market has been impacted by certain legislative changes, among other things.

[31] Following the Court's authorization of the SISP, the Receiver commenced the process in accordance with the court order. CBRE Limited was selected as listing agent for the sales process. The sales process was launched on or about September 22, 2025. CBRE marketed the property through its database of about 1,000 subscribed contacts, among other things.

[32] Thirty parties executed non-disclosure agreements and were provided with access to the virtual data room. At the initial bid deadline, five parties submitted offers for the property. Four of the offerees were instructed to continue their due diligence and resubmit their highest and best offers by November 17, 2025. The Receiver selected the highest and best offer as the successful purchaser and entered into an agreement with the initial purchaser[2], which was subject to further due diligence.

[33] Following further due diligence, the initial purchaser informed CBRE that it was not prepared to proceed with the deal unless the purchase price was significantly reduced[3]. The initial purchaser had determined through its due diligence that there was an issue regarding the treatment of development charges. The Receiver was unwilling to agree to the requested price reduction.

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[2] The proposed purchase price with the initial purchaser was still below the amount owed to Desjardins.
[3] The initial purchaser sought to pay just over half what it had originally bid for the property.

Instead, the Receiver instructed CBRE to contact the next two highest bidders and ask them to resubmit their best offer for the property. The Receiver, in consultation with Desjardins, selected the Purchaser's offer, which was the highest bid.

[34] The APS with the Purchaser was entered into on or about February 6, 2026. As is frequently the case in purchases in an insolvency, the Transaction is structured as a court-supervised "as is, where is" deal and requires the issuance of an approval and vesting order to close.

[35] The Property was broadly marketed, and the market has spoken regarding its value. Although the initial purchaser had first made a much higher offer, the initial purchaser's due diligence revealed that the Property was not worth that price, because, among other things, there was an issue regarding the treatment of development charges. While the outdated appraisals filed by the Debtors were much higher than any of the bids, it is unclear whether the appraisers were aware of the treatment of the development charges, or any other issues uncovered through the due diligence process. The open market dictates what the Property is worth, not an appraisal, which is based on certain information (or lack thereof) and various assumptions.

[36] I am satisfied that the *Soundair* factors have been met. The sales process was conducted in accordance with the terms of the SISP Order in a fair and transparent manner. CBRE, the listing agent that was selected, has extensive experience selling development properties in the GTA. The property was actively marketed, including publication of advertisements in the *Globe and Mail* (National Edition) on September 30, 2025 and October 2, 2025, publication of the sale process in the Insolvency Insider website and through its newsletter, and distribution of a teaser summary of the Project and sale process to potential interested parties.

[37] Potential purchasers were able to access a virtual data room for due diligence. The market was widely canvassed, and Project Green's offer was ultimately accepted because, among other things, it was the highest bid. The Receiver and Desjardins support the proposed Transaction. As discussed further below, certain unit purchasers oppose the Transaction largely because their UPAs will not be assumed by Project Green, and certain freehold unit purchasers will suffer a loss of a portion of their deposit monies. The Receiver is aware of these objecting unit purchasers and continues to recommend the proposed sale. The Receiver states that it has no reasonable basis to believe that further marketing of the Property would result in a higher or better offer given the broad marketing process already run by CBRE.

[38] While several unit purchasers filed objections, as discussed below, there was no evidence adduced by them to suggest that the *Soundair* principles had not been satisfied. One unit purchaser noted that they did not oppose the Transaction and that the "Receiver ran a proper process." The unit purchaser noted that the issue from their perspective was about the treatment of the deposit funds (discussed below).

[39] As noted by the Receiver, the commercial decisions of a receiver regarding a sale process are afforded broad deference by the courts: *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, 2021 ONCA 375, 90 C.B.R. (6th) 39, at para. 19.

[40] The Court of Appeal in *Ravelston Corp (Re)*, (2005) 24 C.B.R. (5th) 256, at para. 40, leave to appeal refused, (2005) 24 C.B.R. (5th) 256, noted that receivers are often faced with "difficult business choices that require a careful cost/benefit analysis and the weighing of competing, if not irreconcilable, interests." The Court of Appeal elaborated that the receiver "must consider all of the available information" and "the interests of all legitimate stakeholders," however considering the interests of all "does not mean that all stakeholders must be equally satisfied with the course of conduct chosen by the receiver." The Court of Appeal indicated that:

> If the receiver's decision is within the broad bounds of reasonableness, and if it proceeds fairly, having considered the interests of all stakeholders, the court will support the receiver's decision.

[41] Chief Justice Morawetz (as he then was) in *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857, 99 C.B.R. (6th) 139, noted, at para. 45: "it is only in 'exceptional' circumstances will a court intervene and proceed contrary to the recommendation of its officer, the Receiver."

[42] I am satisfied that the Transaction, recommended by the Receiver following a fair and transparent, court-approved sale process, is "within the broad bounds of reasonableness" and should be approved.

[43] I am also satisfied that the Debtors' request for dismissal of the Receiver's motion, and a six-month period to pursue a refinancing, restructuring, or alternate transaction, should be dismissed. While James Zhang, a shareholder of Green City, sent an email in February 2026 regarding a potential $27 million offer in respect of the Property, when the Receiver attempted to engage, Mr. Zhang confirmed that "this email does not constitute a bid," and acknowledged that he could not meet the criteria for a late bid under the SISP. The alternative proposed by the Debtors is also not commercially viable in the circumstances. A new sales process requested by the Debtors would result in additional professional fees and carrying costs. Further, there would be no assurance of a more favourable outcome. In fact, as set out above, when the initial purchaser pulled its bid, resulting in a new round of bids, the price for the Property went down. As discussed above, the commercial decisions of a receiver are entitled to broad deference from the court.

Should the Court authorize the assignment and amendment of the Assumed UPAs?

[44] The assignment of the Assumed UPAs is not opposed.

[45] Project Green is only assuming the Assumed APSs where the unit purchaser has provided consent. As noted above, Project Green selected a number of potential UPAs it was willing to assume. Only where consent to the assignment and amendment of the UPA has been obtained by the unit purchaser will the UPA be assigned. Where a purchaser declined to have their UPA amended and assigned, that purchaser will instead participate in the deposit return protocol ("DRP"), discussed below.

[46] I am satisfied that the Court should authorize the assignment and amendment of the Assumed UPAs.

Should the Court authorize the termination and disclaimer of the Unassumed UPAs?

[47] The proposed Transaction with Project Green includes the requested disclaimer of most of the unit purchase agreements (13 UPAs are to be assumed by Project Green, four have already been completed and transferred, and the balance will be disclaimed).

[48] Many of the purchasers with Unassumed UPAs object to the proposed termination and disclaimer of their agreement. Of the approximately 100 UPAs, about 23 unit purchasers have objected to the disclaimer of their respective UPA and/or the proposed Transaction. Accordingly, about 75% of the unit purchasers whose UPAs will be disclaimed have not objected to the proposed Transaction or disclaimer.

[49] As discussed further below, the impact on condo unit purchasers is different from the impact on freehold unit purchasers. Accordingly, the objections to the disclaimers were primarily made by freehold unit purchasers.

[50] I am satisfied that the Court should authorize the termination and disclaimer of the Unassumed UPAs.

[51] The court has the jurisdiction to authorize a receiver to disclaim agreements of purchase and sale in the context of real property developments: *Forjay Management Ltd. v. 0981478 BC Ltd.*, 2018 BCSC 527, 11 B.C.L.R. (6th) 395, at paras. 131-132, aff'd 2018 BCCA 251, 11 B.C.L.R. (6th) 429; *Cameron Stephens Mortgage Capital Ltd. v. 2011836 Ontario Corp. et al.*, 2024 ONSC 3507, at paras. 17 and 42.

[52] In *Forjay Management*, the British Columbia Supreme Court set out the following factors for the Court to consider when determining whether to authorize a receiver to disclaim pre-sale purchase agreements, at paras. 41-44:

a. The respective legal priority positions as between the competing interests;

b. Whether a disclaimer would enhance the value of the assets, and, if so, whether a failure to disclaim would amount to a preference in favour of one party; and

c. If a preference would arise, whether the party seeking to avoid a disclaimer has established that the equities support that result.

[53] The test set out in *Forjay* was recently confirmed by the Court of Appeal in *Constantine Enterprises Inc. v. Mizrahi (128 Hazelton) Inc.*, 2025 ONCA 710, 64 B.L.R. (6th) 1, at para. 14.

[54] I am satisfied that the *Forjay* factors support the disclaimer of the Unassumed UPAs. As was the case in *Cameron Stephens*, the unit purchase agreements stipulate that they are subordinated and postponed to any mortgages granted by the Debtors and advances made thereunder. Section 18.4(t) of the unit purchase agreements provides:

> The purchaser agrees that the Purchase Agreement shall be, and is hereby, subordinated to and postponed to any mortgage(s) arranged by the Vendor and any advances made thereunder from time to time or liabilities secured thereunder and to any agreements, easements, licenses, rights covenants and restrictions referred to herein to which title to the Real Property may be subject. The Purchaser agrees to execute all necessary documents and assurances to give effect to the foregoing as requested by the Vendor.

[55] The UPAs expressly provide, in section 18.4(p) that "the Purchase Agreement creates no interest in Land." Similar to *Cameron Stephens*, the unit purchasers agreed to not register their UPAs on title to the property, and none have been registered on title to the Real Property. Section 12.1(a) of the UPAs provides:

> The Purchaser acknowledges that the Purchase Agreement does not create an interest in the Real Property and that until a Transfer/Deed of Land is registered in favour of the Purchaser, he or she shall have no interest in the Real Property. The Purchaser further covenants and agrees that he or she will not register or cause to permit the Purchase Agreement to be registered on title to the Land [...].

[56] Project Green is not willing to assume the Unassumed UPAs. As discussed above, Project Green's bid price was the highest offer in the final round of bids. It will generate the most money coming into an estate that is dreadfully underwater.[4] Disclaiming the Unassumed UPAs will enable the unit purchasers to participate in the deposit return protocol.

[57] The development company is in receivership. No one wins in this receivership. As noted above, Desjardins will suffer a significant loss on its loan. The freehold unit purchasers who stand to lose some of their deposit monies refer to the irreversible, permanent losses they will suffer if their UPAs are disclaimed, including loss of uninsured deposits, accumulated interest, opportunity costs, and other consequential damages. Some of the unit purchasers have waited more than five years for their home. The Project has been plagued with construction delays and uncertainty, impacting the unit purchasers. Now those unit purchasers with Unassumed UPAs will not get the home they have been waiting for. I am very sympathetic to these unit purchasers. Many unit purchasers will have been planning their lives around these new homes in respect of which they entered into UPAs years ago. They have waited patiently through delays, and additional costs, now to be faced with the Debtors' insolvency and the consequences.

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[4] The next highest bid would have required the court to order the assignment of all the UPAs. Given that some condo purchasers support the approval of the Transaction so that they can get their deposit monies back, selection of the next highest bid would have resulted in less money in the estate and, most likely, a different group of unhappy unit purchasers.

[58] The unit purchasers who have opposed the disclaimer of their UPA and/or approval of the Transaction have expressed that they have already suffered:

> "more than five years of waiting, uncertainty and financial strain."
>
> "years of construction delays, uncertainty, and financial hardship, all on the reasonable expectation that we would ultimately receive the home we contracted for."
>
> "Over the years, we have also dealt with ongoing delays, uncertainty about the project's future, and considerable financial stress while waiting for the construction to move forward."
>
> "Over the course of approximately five years, the project experienced prolonged delays, uncertainty, amendments, and receivership proceedings."

[59] The unit purchasers who oppose the proposed disclaimer of their UPAs and/or the approval of the proposed Transaction raised the following concerns, which I have heard, considered and address below:

a. Allegation that there may be connections among one or more of the following: Sunny Communities, Sunny Communities (King Bond) Inc., Project Green Capital, Green City, GC King Bond, Harbour Marketing, Henry Zhang, Jian Zhang, James Zhang, and 2717507 Ontario Inc.

b. Lack of access to the confidential materials (addressed below in the sealing order section).

c. Insufficient notice.

d. Unfair financial loss related to the uninsured portion of the deposit money on freehold units/adequacy of trust, insurance and other protections. The fact that the freehold deposits were not held in trust and condo deposits were held in trust.

e. Consideration of HCRA penalty.

f. No tracing exercise was conducted on freehold deposits.

g. Desire for Project Green to assume and complete the UPA.

h. Lack of transparency on Project Green's criteria for selecting UPAs to be assumed.

i. Request to pause or delay approval of the Transaction

[60] Alleged connections with the Purchaser: The Receiver investigated the alleged relationship through corporate registry, title and land registry, sale process record, and direct-inquiry searches, and did not uncover any evidence of any non-arm's length connections. Further, even if there was

such a connection, there was no prohibition on a non-arm's length person bidding in the sale process. As noted, Project Green had the highest bid.

[61] Insufficient notice: The motion was scheduled for May 14, 2026. At that attendance, I adjourned the motion to May 22, 2026, so that, among other things, there would be sufficient opportunity for any person objecting to the motion to file materials and be heard. Further, as set out above, the unit purchasers were first notified of the potential Transaction and potential disclaimers by the Receiver on or about March 2, 2026.

[62] Treatment of deposits: Most of the objecting freehold unit purchasers raised the issue of the deposits. With regard to the $16.93 million paid in deposits by freehold unit purchasers, approximately $6.43 million was refunded before the receivership[5], approximately $8.63 million was released to the Debtors[6], and about $2.25 million remains. Freehold unit purchasers object that Westmount is expected to realize on the remaining balance, resulting in freehold unit purchasers with Unassumed UPAs left with seeking recovery from Tarion's warranty program, subject to eligibility requirements and coverage limits.

[63] As noted by the Receiver, the shortfall on the deposit recovery arises from the insolvency and the applicable statutory and contractual framework, not from the Transaction or sales process. Unlike deposits made on account of an agreement of purchase and sale of a proposed condominium unit[7], there is no statutory requirement that deposits in respect of purchases of freehold units be held in trust. Instead, freehold unit purchasers have a higher limit on compensation for lost deposits under the regulations to the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31 ("ONHWPA"):

a. For freehold homes, the greater of (1) $60,000, and (2) the lesser of 10% of the sale price of the home and $100,000; and

b. For condominiums, $20,000 plus interest.

[64] The Regulations under the ONHWPA were amended effective January 2018 with the current limits. It may be that the concerns regarding the current limits are valid, but that is not an issue that the court can address. Sometimes developers will obtain excess deposit insurance, but they are not required to do so. Again, this is not an issue that the court can address. One of the unit purchasers in their materials stated: "I strongly believe that the government and relevant authorities should be more responsible in addressing the actions of many builders who are not taking adequate

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[5] The refunds were made in respect of pre-construction freehold UPAs that were terminated pursuant to mutual releases prior to the date the Receiver was appointed.

[6] The Receiver notes that management indicated that amounts released to King Bond were applied to construction activities or other activities to advance the construction of the Project.

[7] Section 81 of the *Condominium Act*.

measures to protect home purchasers." Another of the unit purchasers in their materials asserted that "Tarion coverage is woefully inadequate."

[65] The deposits made by many of the freehold unit purchasers far exceed the $100,000 that will be covered pursuant to the ONHWPA, some by more than $150,000. Because the unit purchasers are unsecured creditors for their claims in damages, and for the freehold purchasers their deposit funds were not held in trust, many purchasers with Unassumed UPAs will suffer a significant loss.

[66] No tracing exercise: Certain freehold unit purchasers object to the fact that the Receiver did not conduct a tracing exercise to determine where the freehold deposits went. As noted above, there is no statutory requirement to hold the freehold deposits in trust. As noted by the Receiver, a forensic tracing exercise would be costly. Desjardins, the primary secured creditor, which would ultimately bear the cost of any forensic tracing exercise, does not want such an investigation. Desjardins noted that even if the Receiver were to find that there was a misappropriation of funds, any recovered money would be paid to Desjardins.

[67] HCRA penalty: The Home Construction Regulatory Authority ("HCRA") previously investigated the Debtors and imposed a fine of more than $6 million related to certain conduct affecting unit purchasers in the Twelve Oaks Project. For some unit purchasers, HCRA determined that a certain amount was to be credited back to the unit purchaser when the purchase of the unit closed. Certain unit purchasers with Unassumed APSs seek credit for these funds. As with the uninsured deposit funds, affected purchasers are unsecured creditors with regard to this claim.

[68] Assumption of UPAs by Project Green: Project Green, the Purchaser, contracted with the Receiver. In the APS, the contracting parties agreed, among other things, that the UPAs (other than any Assumed UPAs) are "Excluded Assets," meaning the Purchaser is not acquiring those assets in the deal. In section 2.2 of the APS, Project Green is given discretion to select any UPAs that it wishes to assume on closing of the Transaction. In order for a UPA to be an "Assumed Unit Purchase Agreement" under the APS, Project Green must have agreed to assume the agreement and the unit purchaser must have consented to the assignment of the UPA to Project Green. Because the deal was structured as an asset purchase, the contracting parties could determine which assets the purchaser would buy/assume.

[69] Lack of criteria regarding assumption of UPAs by Project Green: Certain unit purchasers raised the fact that the criteria used by Project Green to select 71 of 99 UPAs for potential assignment were not disclosed. The APS between the Receiver and Project Green provides that Project Green, in its sole discretion, can determine which UPAs it wishes to assume. As noted by the Receiver, the selection criteria were Project Green's commercial decision.

[70] Pause or delay approval of the Transaction: Certain unit purchasers requested that the Court pause approval until unit purchaser rights are reviewed. As discussed above, the Transaction is the highest and best offer received following a Court approved sale process. Further delay would

increase professional fees and carrying costs, among other things. In addition, there is no assurance that delay would result in a more favourable outcome.

[71] Written and oral submissions were made by a condo unit purchaser who did not oppose the Transaction. The condo unit purchaser asked the court to immediately implement a deposit return protocol so that unit purchasers could get their deposit monies returned.

[72] I am satisfied that the proposed disclaimer of the Unassumed UPAs should be approved.

Should the Court authorize the Deposit Return Protocol?

[73] The Receiver seeks Court approval of its proposed deposit return protocol ("DRP"). No one objected to the form of the DRP (objections were to the Transaction proceeding and/or the disclaimers, as discussed above).

[74] As noted by the Receiver, it is practical for the Court to approve the DRP because:

a. It is needed to create an orderly and efficient deposit return process for the unit purchasers whose UPAs are being disclaimed;

b. It will minimize delay and uncertainty among the parties involved;

c. It will ensure Unit Purchasers receive their deposits, in whole or in part, as quickly as possible; and

d. The DRP was negotiated by Tarion and Westmount, in consultation with the Receiver, ensuring that all relevant interests are considered. Tarion and Westmount have reviewed and approved the DRP.

[75] The Court has previously approved protocols governing the return of deposits paid by purchasers under pre-construction sale agreements in real estate development insolvencies: *Hazelton Development Corporation (Re)* (February 10, 2023), Toronto, CV-23-00679931-00CL (S.C); *Kingsett Mortgage Corporation v. Mapleview Developments Ltd et. al.* (January 16, 2025), Toronto, CV-24-00716511-00CL (S.C). The proposed DRP includes terms substantially similar to protocols used in comparable cases.

[76] The Court's jurisdiction to approve such deposit return protocols in the context of a receivership arises from, among other things, the expansive wording of s. 243(1)(c) of the BIA, which provides that if it considers it to be just or convenient to do so, a court may authorize "any other action that the court considers advisable." As noted by the Court of Appeal in *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508, 435 D.L.R. (4th) 416, at para. 55, courts have interpreted the authority in s. 243(1)(c) to permit courts to do not only what "justice dictates" but also what "practicality demands." As noted by the Receiver, the DRP will provide an orderly process for deposit returns or applicable warranty claims.

[77] I am satisfied that the DRP should be approved.

Should the Court grant the limited sealing order?

[78] The Receiver seeks a time-limited sealing order over the confidential appendices, which include: bid summaries (appendices 1-3); unredacted APS with Project Green (appendix 4); and a schedule regarding the assignment status of the UPAs (appendix 5).

[79] Again, the affidavit evidence filed by the Debtors baldly asserts that the test in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 S.C.R. 522, and modified in *Sherman Estate v. Donovan,* 2021 SCC 25, [2021] 2 S.C.R. 75, has not been satisfied. There is no evidence to support this assertion.

[80] I provided the Debtors' counsel (who had not filed a factum in advance of the attendance, despite my having requested counsel to do so) with an opportunity to file written submissions to address this issue. The Debtors submit that the sealing order should not be granted "because this transaction is highly questionable and lacking integrity and transparency." As discussed above, the *Soundair* test has clearly been satisfied. A robust, fair and transparent sale process was run in accordance with the court approved SISP.

[81] *Jaycap Financial Ltd. v. Snowdon Block Inc.*, 2019 ABCA 47, 68 C.B.R. (6th) 7, referenced by the Debtors is distinguishable. In that case, the Alberta Court of Appeal was satisfied that there were deficiencies with how the receiver proceeded and accordingly the integrity of the sales process was compromised. The Alberta Court of Appeal found that the sale process that was conducted by the Receiver was not transparent. By contrast, in the instant case, the sale process was transparent. In *Jaycap* the Court noted at para. 36, that "the parties ought to be more thoughtful in drafting their materials, in seeking bans, and in drafting those ban orders carefully, limiting public access to what is truly sensitive confidential information that could prejudice the insolvency process." However, in *Jaycap,* the Alberta Court of Appeal "was unable to discern the scope of the sealing orders," partially as a result of the "numerous blanket orders that were taken over information that probably should not have been sealed.": *Jaycap,* at para. 35. That is simply not the case here. The Receiver has requested a sealing order over specific and limited commercially sensitive information.

[82] I am satisfied that the time limited, and limited in scope, sealing order that is sought satisfies the test set out in *Sierra Club*, at para. 53, as modified by *Sherman Estate*, at para. 38. It is common to temporarily seal commercially sensitive material when assets are to be sold under a court process. The Receiver seeks to temporarily seal an unredacted version of the APS, which includes the purchase price, as well as summaries of prior offers received, and a summary of the treatment of UPAs that Project Green contemplated assuming. As noted by Penny J. in *Danier Leather Inc. (Re)*, 2016 ONSC 1044, 33 C.B.R. (6th) 221, at para. 84, disclosure of an offer summary "could undermine the integrity of the SISP." He further referred to the fact that "[t]here is a public interest in maximizing recovery in an insolvency that goes beyond each individual case." In *Yukon (Government of) v. Yukon Zinc Corporation*, 2022 YKSC 2, 96 C.B.R. (6th) 255, at para. 39, the Yukon Supreme Court commented that "[i]n the insolvency context, especially

where there is a sale process, it is a standard practice to keep all aspects of the bidding or sales process confidential."

[83] The confidential appendices would be sealed pending the closing of the Transaction or further court order. The disclosure of the confidential appendices could have a detrimental impact on any future sale process should one be required. No stakeholder will be materially prejudiced by the requested sealing order, which applies to only a limited amount of information for a short period of time.

Should the Court authorize the Receiver to make a distribution to Desjardins?

[84] The Receiver seeks authorization to distribute the proceeds of sale from the Transaction to repay amounts owing under the Receiver's Borrowing Charge, and a portion of the amount owing to Desjardins (subject to a holdback reserve).

[85] I am satisfied that the proposed distribution may be made. The Receiver's counsel has provided the Receiver with a legal opinion confirming that Desjardins' security constitutes valid and enforceable security interests over the Property, registered against title to the Real Property and perfected under the *Personal Property Security Act,* R.S.O. 1990, c. P.10 (Ontario). Desjardins is in first position. The Receiver proposes to withhold certain amounts to ensure that there is sufficient liquidity to address potential priority claims, including a potential GST/HST assessment, and to fund any remaining costs of the proceedings. Among other things, partial repayment to Desjardins will reduce future interest accruals.

Should the Court approve the Receiver's reports, and activities, and the professional fees and disbursements?

[86] The Receiver seeks approval of its activities and conduct as set out in the Second Report. The approval of a court officer's activities and reports is "routinely granted": *Target Canada Co (Re)*, 2015 ONSC 7574, 31 C.B.R. (6th) 311, at paras. 2 and 23.

[87] I am satisfied that the activities of the Receiver as set out in the Second Report were necessary and undertaken in good faith pursuant to the Receiver's powers and duties and should be approved.

[88] The Receiver seeks Court approval of the fees and disbursements of the Receiver and its counsel. At least one of the objecting unit purchasers argued that the Receiver's fees are substantial and should be scrutinized.

[89] When considering whether to approve professional compensation, the court may have regard to the following factors, set out in *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, 20 C.B.R. (6th) 292, at para. 33:

a. The nature, extent and value of the assets;

b. The complications and difficulties encountered;

c. The degree of assistance provided by the debtor;

d. The time spent;

e. The receiver's knowledge, experience and skill;

f. The diligence and thoroughness displayed;

g. The responsibilities assumed;

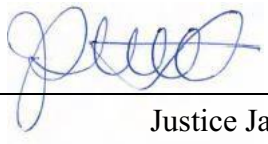
h. The results of the receiver's efforts; and

i. The cost of comparable services when performed in a prudent and economical manner.

[90] The Court of Appeal directed in *Diemer*, at para. 45, that in determining whether compensation sought is fair and reasonable, the above factors should be considered. The Court of Appeal noted that "value provided should pre-dominate over the mathematical calculation reflected in the hours times hourly rate equation." The Court of Appeal elaborated that "[t]he focus of the fair and reasonable assessment should be on what was accomplished, not on how much time it took."

[91] The Receiver and its counsel have kept detailed records of their time expended on this matter. The professional rates that are charged are in line with other industry professionals in the Toronto market.

[92] I am satisfied that the fees and disbursements of the Receiver and its counsel (as set out in the fee affidavits) are fair and reasonable and should be approved.



Justice Jana Steele

Date: June 5, 2026