

COUNSEL SLIP

COURT FILE

NO.: CV-19-00623590-00CL

DATE: November.04.2019

NO. ON LIST

(6)

TITLE OF PROCEEDING

4055845 Canada Inc. et al v. 2547357 Ontario Inc.

COUNSEL FOR:

- PLAINTIFF(S)
- APPLICANT(S)
- PETITIONER(S)

Rosen Goldberg Inc., - Michael Bzezinski  
Receiver

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JUDICIAL NOTES:

THIRD PARTY - ~~XXXXXXXXXX~~ ATE CONTRACTING COMPANY LIMITED

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2547357 Ontario Inc

Nagartheepan Sivnanandarajah

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November 4, 2019

Please see endorsement attached -

Esther J.

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsment Continued

The Receiver seeks an order approving the sale transaction contemplated in an agreement of purchase and sale accepted by the Receiver on September 23, 2019. The Receiver also seeks an administration order approving its first report, permitting it to redact from the report three confidential appendices, including the sealing of those appendices, until the sale transaction is completed, and permission to make an interim distribution to the first mortgagees of the net proceeds less a holdback of \$215,903.13, subject to further order of this court. That amount exceeds the amount claimed by the construction lien claimant. The construction lien claimant and certain litigants who have registered certificates pending litigation have yet to prove their entitlement to share in these proceeds.

The respondent 2547357 Ontario Inc. was served in this proceeding but did not file any materials with the court. Mr. Nagashepar Sivanandarasah appeared without counsel on

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## FILE/DIRECTION/ORDER

## Judges Endorsment Continued

the motion. He says that he is the sole shareholder of the respondent that owned the land prior to the receivership. Mr. Sivasarasah did not appreciate that a corporation must be represented by legal counsel unless leave is otherwise given by the court. The respondent has had legal counsel in the past but that counsel declined to appear today.

Mr. Sivasarasah then sought an adjournment, which I declined to grant. He sought an adjournment so he could retain counsel to make an argument that the respondent had a commitment letter from someone who was prepared to purchase the land for a better price than that obtained by the Receiver and that this putative deal should be preferred by the court over the sale transaction proposed by the Receiver because it would yield a higher price.

Counsel for the Receiver opposed the adjournment and advised the court that the Receiver had had a chance to review the

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## Judges Endorsment Continued

commitment little and did not believe that it  
has a chance of success. The leader in that  
arrangement seeks confirmation that the  
property has a value of more than \$4 million,  
which the Receiver does not believe is  
realistic.

Having heard submissions from the  
Receiver and read the First Report of the  
Receiver Ross Goldenberg, which sets out the  
terms of the proposed sale, I am persuaded  
that ~~the~~<sup>the</sup> Agreement of Purchase and  
Sale described in the First Report should be  
approved by this court. Among other reasons,  
as set out in the Report, the property in  
question was widely exposed to the market  
by a reputable listing agent, the price payable  
is the highest that was offered, the purchase  
price exceeds the value of the property according to  
the appraisal, the purchaser has waived  
the conditions and is prepared to close within

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FILE/DIRECTION/ORDER

Judges Endorsment Continued

10 days of a court order approving the sale, the applicants support the proposed transaction and the Receiver does not believe that any further marketing of the property would result in a higher offer.

The Receiver's request to seal the confidential appendices until the sale transaction contemplated in the Approval and Vesting Order is ~~appropriate~~ <sup>inappropriate</sup> and granted.

The Approval and Vesting Order and the Administration Order shall issue in the form of the drafts signed by me today.

Richard J.