

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

B E T W E E N:

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

**SUPPLEMENTARY THIRD REPORT OF
IRA SMITH TRUSTEE & RECEIVER INC.**

**IN ITS CAPACITY AS COURT-APPOINTED INTERIM RECEIVER AND RECEIVER
AND MANAGER OF 1539304 ONTARIO INC.**

DATED SEPTEMBER 24, 2009

IRA SMITH TRUSTEE & RECEIVER INC.

Suite 6-167 Applewood Crescent
Concord, ON L4K 4K7

Ira Smith MBA CA·CIRP

P: 905.738.4167

F: 905.738.9848

E: ira@irasmithinc.com

**SUPPLEMENTARY THIRD REPORT OF
IRA SMITH TRUSTEE & RECEIVER INC.**

**IN ITS CAPACITY AS COURT-APPOINTED INTERIM RECEIVER AND RECEIVER
AND MANAGER OF 1539304 ONTARIO INC.**

DATED SEPTEMBER 24, 2009

INDEX

REPORT	<u>Page</u>
1.0 Introduction	1
<i>1.1 Purpose of this Report</i>	2
2.0 Background and overview	3
3.0 Events since the Receiver's Third Report to Court	3
EXHIBITS	
Receivership Appointment Order dated November 12, 2008	"A"
First Approval Order dated February 27, 2009	"B"
First Supplement Approval Order dated March 10, 2009	"C"
Second Approval Order dated June 11, 2009	"D"
Endorsement of Mr. Justice Morawetz dated September 22, 2009	"E"
Letter agreement dated September 22, 2009	"F"

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

SUPPLEMENTARY THIRD REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.

**IN ITS CAPACITY AS COURT-APPOINTED INTERIM RECEIVER AND RECEIVER
AND MANAGER OF 1539304 ONTARIO INC.**

DATED SEPTEMBER 24, 2009

1.0 INTRODUCTION

This Supplementary Third Report to Court (the “**Supplementary Third Report**”) is filed by Ira Smith Trustee & Receiver Inc. (“**ISI**”) in its capacity as court- appointed interim receiver and receiver and manager (the “**Receiver**”), pursuant to section 47.1 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3, as amended (the “**BIA**”), and section 101 of the *Courts of Justice Act*, R.S.O 1990, c. C.43, as amended (the “**CJA**”), without security, of all of the assets, undertaking and property of 1539304 Ontario Inc. (the “**Company**” or the “**Debtor**”).

The Honourable Madam Justice Pepall made an order dated November 12, 2008 (the “**Receivership Order**”) appointing the Receiver. A copy of the Receivership Order is attached hereto as **Exhibit “A”**.

The Receiver has filed the following Reports with the Court:

a) The First Report to Court dated February 20, 2009 (the “**First Report**”) and a Supplement to the First Report dated March 4, 2009 (the “**Supplementary First Report**”). The First Report was approved by order of the Honourable Madam Justice Pepall dated February 27, 2009, (the “**First Approval Order**”), and the Supplement to the First Report was approved by order of the Honourable Madam Justice Pepall dated March 10, 2009, (the “**First Supplement Approval Order**”).

Attached hereto as **Exhibits “B” and “C”** is the First Approval Order and the First Supplement Approval Order (with Her Honour’s Reasons).

b) The Second Report to Court dated June 8, 2009 (the “**Second Report**”). The Second Report was approved by order of the Honourable Madam Justice Pepall dated June 11, 2009, (the “**Second Approval Order**”). Attached hereto as **Exhibit “D”** is the Second Approval Order.

1.1 Purpose of this Report -

On September 22, 2009, the Receiver’s motion for, inter alia, approval of the sale of the Project (as hereinafter defined) to Canlight Realty Corporation (“**Canlight**”), or to a purchaser as it may direct, was heard before Mr. Justice Morawetz. One of the stakeholders, Mr. H. Ganatra, the principal of the Debtor, requested an adjournment of the Receiver’s motion in order for him to further review the Receiver’s Motion Record and to submit material.

Mr. Justice Morawetz directed that the Receiver’s motion be adjourned to September 25, 2009 in order to allow any party further time to review the Receiver’s Motion Record and to file their

own material. Attached as **Exhibit “E”** is a copy of His Honour’s endorsement dated September 22, 2009.

2.0 BACKGROUND AND OVERVIEW

In its capacity as Receiver, ISI has reported to this Honourable Court on the nature of the Debtors’ business operation and sole known asset, a condominium project under construction, located at 80 King William Street, in the City of Hamilton (the “**Project**”). The Receiver refers the readers of this Supplementary Third Report to the First Report for a complete overview of the business and its sole asset.

3.0 EVENTS SINCE THE RECEIVER’S THIRD REPORT TO COURT

Since September 17, 2009, the date of the Third Report, in addition to attending at the Receiver’s Motion, two main events have transpired:

- Legal counsel for Canlight and the Receiver’s legal counsel, on behalf of their respective clients, confirmed prior oral agreements in a letter dated September 22, 2009. Attached as **Exhibit “F”** is a copy of the agreement letter; and
- an unsolicited oral offer was communicated to the Receiver by Mr. J. Lefurgey of Martens Lingard LLP, legal counsel to Basic Drywall, a lien claimant against the Project, to purchase the Project for \$2.4 million, subject to twenty (20) day due diligence period.

Attached as **Exhibit "G"** are two emails confirming the oral offer. The Receiver advised Mr. Lefurgey that the Receiver was under a contractual obligation to make application to Court seeking the approval of the Canlight Agreement of Purchase and Sale and accordingly, could not deal with Mr. Lefurgey's client's offer.

**

**

**

All of which is respectfully submitted at Toronto, Ontario this 24th day of September, 2009.

IRA SMITH TRUSTEE & RECEIVER INC.
solely in its capacity as Court-Appointed Interim Receiver
and Receiver and Manager of 1539304 Ontario Inc.
and not in its personal Capacity

Per:



President

Court File No. CV-08-7714-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MADAM
JUSTICE PEPALL

)
)
)

WEDNESDAY, THE 12th DAY
OF NOVEMBER, 2008

BETWEEN:

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

APPLICATION UNDER s. 47(1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985 c. B-3, s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43
and Rules 14.05(2) and (3) (d), (g) and (h) of the *Rules of Civil Procedure*

ORDER

THIS APPLICATION made by ICICI Bank Canada (the "**Bank**") for an Order pursuant to section 47.1 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Ira Smith Trustee & Receiver Inc. ("**Smith**") as interim receiver and receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of 1539304 Ontario Inc. (the "**Company**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Lionel Meunier, sworn September 4, 2008 and the Exhibits thereto, and on hearing the submissions of counsel for the Bank, no other parties appearing although duly served as appears from the affidavit of service of Fiorella Sasso sworn September 10, 2008, and on reading the consent of Smith to act as the Receiver, *the City of Hamilton + from 1539304*
advised
me.
87P

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 47.1 of the BIA and section 101 of the CJA, Smith is hereby appointed Receiver, without security, of all of the Company's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate and carry on the business of the Company, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Company
- (d) 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 powers and duties conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Company or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Company and to exercise all remedies of the Company in collecting such monies, including, without limitation, to enforce any security held by the Company;
- (g) to settle, extend or compromise any indebtedness owing to the Company;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Company, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Company;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Company, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (k) to market any or all of 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;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* and subsection 31(1) of the Ontario *Mortgages Act* shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Company;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Company, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Company;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Company may have; and

(s) to take any steps reasonably incidental to the exercise of these powers; and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Company, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that: (i) the Company, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Company, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to

the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE COMPANY OR THE PROPERTY

8. **THIS COURT ORDERS** that that no Proceeding against or in respect of the Company or the Property shall be commenced or continued except with the

written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Company or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that all rights and remedies against the Company, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Company to carry on any business which the Company is not lawfully entitled to carry on, (ii) exempt the Receiver or the Company from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien for the purpose of perfecting such lien.

NO INTERFERENCE WITH THE RECEIVER

10. **THIS COURT ORDERS AND DECLARES** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Company, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Company or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Company are hereby restrained until further Order of this Court from discontinuing, altering, interfering

with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Company's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Company or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Interi Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. **THIS COURT ORDERS** that all employees of the Company shall be considered the employees of the Company until such time as the Receiver, on the Company's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay,

or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.

14. **THIS COURT ORDERS** that that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of current employees only to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**") and for the sole purpose of assisting or facilitating the prospective purchaser's or bidder's negotiations or discussions with said employees in respect of future employment with the prospective purchaser or bidder. Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Company, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or

relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. **THIS COURT ORDERS** that any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "**Receiver's Charge**").
18. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver

and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed ~~\$800,000~~ ^{200,000} (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge.

21. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
23. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

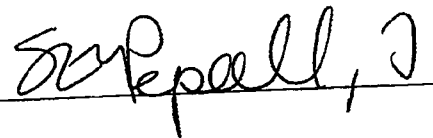
GENERAL

24. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
25. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Company.
26. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
27. **THIS COURT ORDERS** that that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or

administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

28. **THIS COURT ORDERS** that the applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Company's estate with such priority and at such time as this Court may determine.

29. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order, provided that nothing in this section operates to extend any applicable appeal period.



TOR_LAW 69318071

ENTERED AT / INSCRIT & TO...
ON / BOOK NO:
LE / DANS LE...
... 2 2008

PERIPAH-TV

Schedule "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. ●

AMOUNT \$●

1. THIS IS TO CERTIFY that Ira Smith Trustee & Receiver Inc., the interim receiver and the receiver and manager (the "Receiver") of the assets, undertakings and properties of 1539304 Ontario Inc. (the "Company") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the 12th day of November, 2008 (the "Order") made in an action having Court file number CV-08-7714-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$●, being part of the total principal sum of \$● which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 2008.

IRA SMITH TRUSTEE & RECEIVER INC.
solely in its capacity as Receiver of the
Property (as defined in the Order), and not
in its personal capacity

Per: _____

Name:

Title:

B E T W E E N:
ICICI BANK CANADA
Applicant

- AND -

1539304 ONTARIO INC.

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

(PROCEEDING COMMENCED AT TORONTO)

ORDER

GOWLING LAFLEUR HENDERSON LLP
Barristers & Solicitors
1600 -- 1 First Canadian Place
100 King Street West
Toronto, Ontario
M5X 1G5

Heath P.L. Whiteley
(L.S.U.C. No. 38528P)

Tel: (416) 862-4400
Fax: (416) 862-7661

Solicitors for the Applicant

Court File No.: CV-08-7714-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) THURSDAY, THE 26TH DAY
JUSTICE PEPALL) OF FEBRUARY, 2009

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

APPLICATION UNDER s.47(1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985 c. B-3, s. 101 of the *Courts of Justice Act*, R.S.O. c. C-43 and
Rules 14.05(2) and (3) (d), (g) and (h) of the *Rules of Civil Procedure*.

ORDER

THIS MOTION, made by Ira Smith Trustee & Receiver Inc., in its capacity as court-appointed interim receiver and receiver and manager (the "Receiver") of all the assets, undertaking and property of 1539304 Ontario Inc. (the "Debtor"), for an order, *inter alia*, approving the First Report of the Receiver dated February 20, 2009, (the "First Report") and the actions and activities of the Receiver as detailed therein, and for an order approving the sales process outlined in the First Report (the "Sales Process") in relation to the assets, undertaking and property of the Debtor was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver and the exhibits thereto, filed, and upon hearing the submissions of counsel for the Receiver, and ~~no one appearing for the other parties~~ *ICICI Bank Canada, the City of Hamilton + Mr Ganatra on behalf of 1539304 Ontario Inc,*

served with the Receiver's Motion Record, although duly served as appears from the affidavit of service of Deborah Russell sworn February 20, 2009:

SERVICE

1. ~~THIS COURT ORDERS~~ that the time for service of the Receiver's Notice of Motion and Receiver's Motion Record herein is abridged, that this motion is properly returnable today, the service, including the manner of service, of the Motion Record is hereby approved and that ~~further service is dispensed with.~~

SNP

FIRST REPORT

2. THIS COURT ORDERS that the First Report and the actions of the Receiver as reported therein be and are hereby approved

with exception of approval of the PwI contract which is adjourned to be addressed before me on March 10, 2009 + attention directed to 1539304 custans inc to please advise court of any cooperation set forth in written.

SNP

3. THIS COURT ORDERS that the Receiver's fees and disbursements from November 13, 2008 to February 15, 2009, and the fees and disbursements of its legal counsel, Lang Michener LLP, from November 11, 2008 to December 17, 2008 and from January 5, 2009 to January 30, 2009, all as detailed in the First Report, be and are hereby approved.

4. THIS COURT ORDERS the Volume 2 of the First Report shall be treated as confidential and shall be sealed, segregated from and not form a part of the public record pending further order of this Court and shall be filed with this Court in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order.

SALE PROCESS

5. THIS COURT ORDERS that the sale process as described in the First Report and as specifically described in Exhibit "F" to the First Report and procedures and conditions contained therein including the Terms and Condition of Sale at Exhibit "G" to the First Report

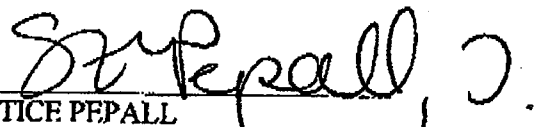
- 3 -

(collectively, the "Sale Process") is approved, and the Receiver is authorized and directed to implement and to take all steps necessary or desirable to complete and fulfill all requirements, terms, conditions and steps contemplated therein, and any information received by the Receiver or its respective directors, officers, counsel, agents, professional advisors or employees related to or arising from the Sale Process shall be kept confidential and be utilized only for the purposes of the Sale Process and for no other purpose.

6. **THIS COURT ORDERS** that the confidentiality agreement to be executed by all prospective purchasers seeking to participate in the Sales Process, attached as Exhibit "F" to the First Report, is hereby approved.

FUNDING OF THE RECEIVERSHIP

7. **THIS COURT ORDERS** that the Receiver's authority to borrow monies for the purpose of funding the exercise of the powers and duties conferred upon it as interim receiver and receiver and manager of the Debtor and the Receiver's Borrowing Charge, both as set out in paragraph 20 of the Order Appointing the Receiver dated November 12, 2008, are hereby amended to increase the Receiver's authority to borrow monies and the Receiver's Borrowing Charge to \$450,000.


JUSTICE PEPALL

BETWEEN:

ICI BANK CANADA
Applicant

- AND -

1539304 ONTARIO INC.
Respondent

Court File No. CV-08-7714-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial Court)
Proceeding commenced at Toronto

ORDER

LANG MICHENER LLP
P.O. Box 747, Suite 2500
Brookfield Place, 181 Bay Street
Toronto, ON M5J 2T7

Leslie A. Wittlin
Law Society Registration #14629M
Tel: (416) 307-4087

Alex Ilchenko
Law Society Registration #33944Q
Tel: (416) 307-4116

Aaron Rousseau
Law Society Registration #53833E
Tel: (416) 307-4081
Fax: (416) 365-1719

Lawyers for Ira Smith Trustee &
Receiver Inc. in its capacity as
Interim Receiver and Receiver and
Manager of 1539304 Ontario Inc.

Court File Number: CV - 08 - 7714 - 00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

ICICI Bank Canada
Plaintiff(s)

AND

1539304 Ontario Inc
Defendant(s)

Case Management Yes No by Judge: Repall

Counsel	Telephone No.:	Facsimile No.:
Messrs Withler + Rousseau		416 - 304 - 3855
Mr Whiteley		416 - 863 - 3403
Mr Weston		905 - 639 - 8107
Mr Ganatra		416 - 778 - 5442

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: March 10, 2009
- Time Table approved (as follows):

The receiver seeks approval of its first report + its actions described therein, approval of fees, approval of a sales process, an increase of its bonding authority to \$40,000, + a sealing order for vol 2 of its 1st report. The Applicant, ICICI Bank Canada, supports the Receiver's Request. The Respondent City of Hamilton complains of the lack of tender for the PwI contract + initially took issue with the proposed sealing order but was able to reach agreement with the Receiver during the course of the motion. I adjourned that portion of the Receiver's motion dealing with approval of the PwI contract to March 10, 09 to permit the Receiver to file additional material. The only remaining party participant + objection is the debtor, 1539304 Ontario Inc, for whom Mr Ganatra was found to be a party to breach.

Feb 27, 2009
Date

80 Repall J
Judge's Signature

Additional Pages 2

Court File Number: CV - 08 - 7714 - 00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

He too took issue with PWI's contract + I will address that matter on March 10, 09. He also questions certain facts contained in the Receiver's report. He states that information has been provided by him as set forth in paragraphs 3.2 to 3.6 of his submission; so long as it is not the Co's principal asset; the information on the insurance is inaccurate. I am not in a position to assess what was or was not given to the Receiver but nothing turns on this issue. Clearly 80 King William Street is the principal asset although it may not be the duly asset of the company. Thirdly, the complaint relating to the misrepresentation of non-cooperation by the company with respect to the insurance would also appear to be immaterial.

In these circumstances, I am approving the 1st report of the Receiver + its actions described therein but not including the PWI contract + without prejudice to 1539304 Ontario Inc to raise the issue of the ^{appropriateness} allegations of non-cooperation if they become material.

No one takes issue with the proposed sale process. It appears to me to be commercially reasonable + designed to help maximize the value of the assets. The report for approval is granted.

While Mr. Garatra on behalf of 1539304 Ontario Inc takes exception to the increase to \$40,000 in the Receiver's borrowing authority, it clearly requires that increase to address any costs. The request is granted.

The Receiver seeks approval of its fees + those of its counsel. No one takes issue with them + I am satisfied

Court File Number: CV - 08-7714-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

that they are appropriate. Details of the work done + roles charged have been included. In haste, the Receiver requests a sealing order for volume 2 of its 1st report. It contains PW's report + other reports commissioned by PW. The former assesses the state of the project wherein as Trinity handling + which is the subject matter of the sales process + contains recommendations or instructions. It is the Receiver's position that it is in the best interests of stakeholders that disclosure to potential purchasers should be made through the sales process. This ensures a level playing field, no prejudice to any participant, protection of sensitive commercial information + the integrity of the process, all for the benefit of stakeholders. The Receiver has agreed to make a presentation to the City of Hamilton who is allegedly owed approximately \$1.2 million + the Bank who is allegedly owed between \$5 + \$6 million. Agreements beforehand + on the understanding that no written materials would be provided. Mr. Ganation or an affiliated or related party could be a bidder so that a management is unavailable to him. *Senior Club of Canada - Canada (2002) SCC 41* for no the granting of a confidentiality order in my view the respect should be provided. The order is necessary to prevent serious risk to the commercial interest of maintaining integrity in the sales process + achieving value for all interested stakeholders + the salutary effects outweigh any deleterious effects. The report clearly contains sensitive commercial information + I am persuaded that it should be sealed pending further order by me. I have signed the order amended by me.



Court File No.: CV-08-7714-00CL

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

THE HONOURABLE MADAM

)

THURSDAY, THE 10TH DAY

JUSTICE PEPALL

)

OF MARCH, 2009

)

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

APPLICATION UNDER s.47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, s. 101 of the *Courts of Justice Act*, R.S.O. c. C-43 and Rules 14.05(2) and (3) (d), (g) and (h) of the *Rules of Civil Procedure*.


ORDER

THIS MOTION, made by Ira Smith Trustee & Receiver Inc., in its capacity as court-appointed interim receiver and receiver and manager (the "Receiver") of all the assets, undertaking and property of 1539304 Ontario Inc. (the "Debtor"), for an order: (a) approving the Supplement to the First Report of the Receiver dated March 4, 2009 (the "Supplementary Report") and the actions and activities of the Receiver as detailed therein, and (b) approving the engagement of Pelican Woodcliff Inc. ("PWI") as consultant pursuant to the engagement letter dated November 17, 2008 contained in the First Report of the Receiver dated February 20, 2009, (the "First Report"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Supplementary Report of the Receiver and the exhibits thereto and the First Report and the exhibits thereto, filed, and upon hearing the submissions of counsel for

the Receiver, ICICI Bank Canada and the City of Hamilton and Mr. Ganatra on behalf of the Debtor, and no one appearing for the other parties served with the Receiver's Supplementary Motion Record, although duly served as appears from the affidavit of service of Aaron Rousseau sworn March 5, 2009:

1. **THIS COURT ORDERS** that the Supplementary Report and the actions and activities of the Receiver as reported therein be and are hereby approved.
2. **THIS COURT ORDERS** that the engagement of PWI as consultant by the Receiver pursuant to the engagement letter dated November 17, 2008, as contained in the Supplementary Report and the First Report be and is hereby approved.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAR 10 2009

PER / PAR: *JN* Joanne Nicoara
Registrar, Superior Court of Justice

BETWEEN:

ICI BANK CANADA

Applicant

- AND -

1539304 ONTARIO INC.

Respondent

Court File No. CV-08-7714-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial Court)
Proceeding commenced at Toronto

ORDER

LANG MICHENER LLP
P.O. Box 747, Suite 2500
Brookfield Place, 181 Bay Street
Toronto, ON M5J 2T7

Leslie A. Wittlin
Law Society Registration #14629M
Tel: (416) 307-4087

Alex Ilchenko
Law Society Registration #33944Q
Tel: (416) 307-4116

Aaron Rousseau
Law Society Registration #53833E
Tel: (416) 307-4081
Fax: (416) 365-1719

Lawyers for Ira Smith Trustee &
Receiver Inc. in its capacity as
Interim Receiver and Receiver and
Manager of 1539304 Ontario Inc.

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Icic Bank Canada
Plaintiff(s)

AND

1539304 Ontario Inc
Defendant(s)

Case Management Yes No by Judge: Repall, J.

Counsel	Telephone No.:	Facsimile No.:

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: _____
- Time Table approved (as follows): _____

On Feb 26, 09, the Receiver sought approval of the PWI contract. In its report of Feb 20, 09, the Receiver noted that it had requested PWI to attend the initial site visit on Nov 13, 08 but the justification advanced for hiring PWI was limited to it being known to the Receiver + the Bank + the Bank's advice that it did not want the Receiver to incur the time to obtain other quotes. The City of Hamilton + Mr Ganatra speaking for the debtor took issue with the approval in part based on a secured claim allegedly belonging to the City. The Receiver was unaware of any of these concerns until immediately prior to the commencement of court. In all of these circumstances, I considered it appropriate to adjourn

March 10/09
Date

J. Repall, J.
Judge's Signature

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

that portion of the motion so that the Receiver could file additional material which it now has done, of course the Receiver has authority to hire consultants by virtue of the initial order. Subject to future constraints + the need to act quickly as is so often the case in receiverships, when seeking approval of contracts by the court, it may be helpful to provide some evidence of competitive pricing. There is no tender requirement + the adjournment was not granted to satisfy the court in that regard consistent with the need to act promptly, the Receiver asked PWI to attend the initial site visit to the project the day after the receivership order of Nov 12, 08. Due to PWI's prior involvement with the project, the Receiver in its professional opinion was of the view that PWI was best positioned to assess + address the urgent needs of the Receiver, to preserve + protect the property. PWI is stated by the Receiver to be a respected provider of the services required by the Receiver + support for their assessment has been provided in the materials filed. Similarly in the opinion of the Receiver, the engagement of PWI is at prevailing market rates + there is no reasonably reliable evidence to the contrary. The Receiver is unaware of any other consultant as uncreditworthy in respect of the

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

project + its needs. In my view the proposal advanced in agreement by the City that the contractual services provided by PwI to date be approved but not on a per se basis is impractical. I am satisfied from my review of the materials that this action that there are pressing time requirements.

In the circumstances + having also considered Mr Genatras's submissions, I am persuaded that the engagement of PwI as consultant pursuant to the Nov 17, 08 engagement letter should be approved + I so order.

In closing, I wish to remind all present of the commentary contained in the explanatory notes that accompany the Standard Form Template Receivership Order of the Commercial List + particularly paragraph 4 under the heading the Receiver's Powers. I am making that provision rather than reproducing it here.

Hastily, as mentioned in open court, evidence should be provided to the court by way of Receiver reports or affidavit + should be delivered to parties appearing in a timely manner.

S. J. Pappall, J.

Court File No.: CV-08-7714-00CL

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

THE HONOURABLE MADAM)	THURSDAY, THE 11 TH DAY
)	
JUSTICE PEPALL)	OF JUNE, 2009
)	



ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

APPLICATION UNDER s.47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, s. 101 of the *Courts of Justice Act*, R.S.O. c. C-43 and Rules 14.05(2) and (3) (d), (g) and (h) of the *Rules of Civil Procedure*.

ORDER

THIS MOTION, made by Ira Smith Trustee & Receiver Inc., in its capacity as court – appointed interim receiver and receiver and manager (the “Receiver”) of all the assets, undertaking and property of 1539304 Ontario Inc. (the “Debtor”), for an order, *inter alia*, approving the Second Report of the Receiver dated June 5, 2009, (the “Second Report”) and the actions and activities of the Receiver as detailed therein, and an order that the former solicitor for the Debtor return certain deposits to the proposed condominium unit purchasers under failed agreements of purchase and sale was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report of the Receiver and the exhibits thereto, filed, and upon hearing the submissions of counsel for the Receiver, and no one appearing for the other

parties served with the Receiver's Motion Record, although duly served as appears from the affidavit of service of Sabrina Simone sworn June 8, 2009:

SECOND REPORT

2. **THIS COURT ORDERS** that the Second Report and the actions of the Receiver as reported therein be and are hereby approved.

3. **THIS COURT ORDERS** that the Receiver's fees and disbursements from February 16, 2009 to May 31, 2009, and the fees and disbursements of its legal counsel, Lang Michener LLP, from February 2, 2009 to April 30, 2009, all as detailed in the Second Report, be and are hereby approved.

RETURN OF DEPOSITS

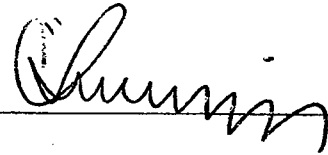
4. **THIS COURT ORDERS** that Burns Vasan Argiropoulos LLP ("Burns Vasan") return the deposits, together with the accrued interest, net of bank charges, reflected in the Burns Vasan trust ledger statement attached hereto as Appendix A, to the respective proposed condominium unit purchasers under failed agreements of purchase and sale;

FUNDING OF THE RECEIVERSHIP

5. **THIS COURT ORDERS** that the Receiver's authority to borrow monies for the purpose of funding the exercise of the powers and duties conferred upon it as interim receiver and receiver and manager of the Debtor and the Receiver's Borrowing Charge, both as set out in paragraph 20 of the Order Appointing the Receiver dated November 12, 2008, are hereby amended to increase the Receiver's authority to borrow monies and the Receiver's Borrowing Charge to \$700,000.

6. This court orders that this order is (a) without prejudice to the respondent to assert that the environmental cleanup costs and any costs arising from the delay in implementing the sales process approved by my order of February 26, 2009 be borne by the applicant bank and that such

issue be addressed at the date of any request for a distribution of sale proceeds to the Bank; and
(b) without prejudice to the City ^{of} Hamilton to take issue with the proposed expenses set forth on
page 13 of the Receiver's 2nd Report if it is dissatisfied with the particulars provided and that
such issue be addressed when the Receiver seeks approval of those payments.



Christina Irwin
Registrar, Superior Court of Justice

BETWEEN:

ICICI BANK CANADA
Applicant

- AND -

1539304 ONTARIO INC.
Respondent

Court File No. CV-08-7714-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial Court)
Proceeding commenced at Toronto

ORDER

LANG MICHENER LLP
P.O. Box 747, Suite 2500
Brookfield Place, 181 Bay Street
Toronto, ON M5J 2T7

Leslie A. Wittlin
Law Society Registration #14629M
Tel: (416) 307-4087

Alex Ilchenko
Law Society Registration #33944Q
Tel: (416) 307-4116

Aaron Rousseau
Law Society Registration #53833E
Tel: (416) 307-4081
Fax: (416) 365-1719

**Lawyers for Ira Smith Trustee &
Receiver Inc. in its capacity as
Interim Receiver and Receiver and
Manager of 1539304 Ontario Inc.**

Court File Number: CV-08-7714-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Icici Bank Canada

Plaintiff(s)

AND

1539304 Ontario Inc

Defendant(s)

Case Management Yes No by Judge: Repall, J.

Counsel	Telephone No.:	Facsimile No.:
<u>H. Rousseau for Receiver</u>		<u>416-365-1719</u>
<u>H. L. Whiteley for Bank</u>		<u>416-863-3403</u>
<u>J. Longo for City of Hamilton</u>		<u>905-829-3277</u>
<u>H. Ganatra for 1539304 (with leave)</u>		<u>416-778-5462</u>
<u>M. Caplan on his own behalf</u>		<u>905-522-1467</u>

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: _____
- Time Table approved (as follows): _____

The Receiver moves for approval of the 2nd report, its fees + those of its counsel, an order that certain deposits be returned, + an increase to the Receiver's borrowing power + charges. The applicant Icici Bank supports the request of the Receiver. The City of Hamilton is opposed to the relief requested but seeks an adjournment with respect to the borrowing power + charges increase so that it may obtain additional particulars. 1539304 Ontario Inc took issue with certain expenditures being for anyone but the Bank's account. Specifically, the cost of any delay should be borne by the Bank as well as costs associated with any environmental cleanup. Mr Ganatra on behalf of the debtor company also submits that RW's fees should not include pre-receivership

June 11/09
Date

Joe Repall, J.
Judge's Signature

Additional Pages 3

Court File Number: CV -08 -7714-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

debtor. He also takes issue with the veracity of certain comments contained in the 2nd report. Lastly, he submits that if the deposits are repaid to the purchasers, the upgrade costs of approximately 154,349 should be tax.

Mr Caplan filed a later (but no evidence) his position was that it would be preferable to complete construction. He also proposed a different sales process or an extended sales process from that adopted.

Firstly, to the extent it is reasonably possible, as much notice as is possible should be given of any motions. The parties should work towards consensual resolutions of disputes with a view to minimizing costs.

Dealing with the costs associated with delay in implementing the marketing plan + the cost of environmental cleanup; these are issues between the Bank + the debtor company. They should be addressed at such time as a request for a distribution to the Bank is made. It is clear from the materials that an increase in the borrowing powers + charge are required to continue the receivership. I am therefore granting that request without prejudice to the debtor company to agree that portions of the expenditures by the Receiver should be for the account of the Bank + also without prejudice to the City to take issue with the expenses, if it is not satisfied with

Court File Number: CV - 08 - 7714-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

The particulars provided, no one took issue with the request for approval of the fees of the Receiver + its counsel as particularized in their affidavits. In my view they are fair + reasonable + should be approved. I am also satisfied that the 2nd report should be approved. Mr. Caplan's objections made in large part to issues already decided by me. The Receiver through its counsel, has contended that no costs have been incurred by the Receiver with respect to PwI's pre-recovery activities. This is supported by Mr. Smith's affidavit of June 8, 09.

Turning to the issue of the deposits which amount to approximately \$30,811.50, these should be returned by Burns Vasaw Argiropoulos LLP to the proposed unit purchasers. The sales did not close + the funds in issue are trust funds. The issue of upgrade expenditures is a separate issue + need not be addressed with the return of the deposit money.

Turning to Mr. Caplan's objections, many of the issues he raised have already been addressed by the court. The Receiver is experienced + has exercised its commercial judgment in addressing how to obtain enhanced recovery from the project. The sales process has already been approved + issues such as broker fees + treatment of confidential information would form part of the underlying analysis. Mr. Caplan has a number of

Page 3 of 4

Judges Initials SEP

Court File Number: CV-09-7714-COCL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

These proceedings in same time. While often parties may differ on the correct approach to be taken towards realisation, someone also has to bear the initial funding for the proposed course of conduct. In this case, the bank is providing funding for the receivership. No one else has come forward with a funding plan in all of the circumstances. I am satisfied that the proposed marketing programme could be continued as outlined in the 2nd report.

It is the interests of all stakeholders to work together in an attempt to resolve issues expeditiously + with a minimum of expense. I am confident that all will use their best efforts to do so prior to the next court attendance.

The order requested is granted subject to the qualifications set out herein in this endorsement + with the paragraph on service deleted as it is unnecessary.

St. Paul, J.

BETWEEN:

ICICI BANK CANADA
Applicant

- AND -

1539304 ONTARIO INC.
Respondent

22 SEP 2009

Court File No. CV-08-7714-00CL

*For oral reasons matter adjourned.
to Friday Sept. 25, 2009.
3 hours has been booked and the matter can be heard
By my Commission Test Judge. [Signature]*

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial Court)
Proceeding commenced at Toronto

MOTION RECORD

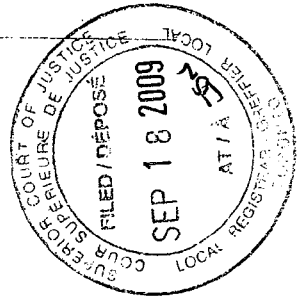
LANG MICHENER LLP
P.O. Box 747, Suite 2500
Brookfield Place, 181 Bay Street
Toronto, ON M5J 2T7

Leslie A. Wittlin
Law Society Registration #14629M
Tel: (416) 307-4087

Alex Ilchenko
Law Society Registration #33944Q
Tel: (416) 307-4116

Aaron Rousseau
Law Society Registration #53833E
Tel: (416) 307-4081
Fax: (416) 365-1719

Lawyers for Ira Smith Trustee &
Receiver Inc. in its capacity as
Interim Receiver and Receiver and
Manager of 1539304 Ontario Inc.



**DELIVERED VIA EMAIL**

Lorne Shapiro

Direct Line: 416-860-1911

Direct Fax: 416-860-1912

REPLY TO: Lorne A. Shapiro lshapiro@basmansmith.com

Direct Line: (416) 860-1911

Direct Fax: (416) 860-1912

Email: lshapiro@basmansmith.com

File No.: 09-9682

September 22, 2009

Lang Michener LLP
 Barristers & Solicitors
 181 Bay Street, Suite 2500
 Toronto, Ontario M5J 2T7

Attention: Aaron Rousseau

Dear Sir:

Re: Canlight Realty Corporation ("Canlight") purchase from Ira Smith Trustee & Receiver Inc. (the "Receiver") 80 King William Street, Hamilton pursuant to an agreement of purchase and sale dated July 27, 2009 (the "Purchase Agreement")

We are writing to confirm that notwithstanding the wording of the Purchase Agreement, Canlight and the Receiver had previously orally agreed that the Receiver's application to the Court to obtain the Vesting Order, was to be heard on September 22, 2009.

We confirm further that at the recess at the hearing today, in order to insure that Mr. Ganatra was given every opportunity to argue his case, Canlight and the Receiver agreed to amend Paragraph 7 of the Purchase Agreement, by extending the date by which the Receiver is to obtain the Vesting Order, to September 25, 2009, or such other date as the parties may further agree. Mr. Wittlin, acting for the Receiver, communicated this agreement to the Court which then granted the adjournment of the Vesting Order hearing to September 25, 2009.

Please acknowledge your agreement to the foregoing by signing the acknowledgment page annexed hereto and returning your acknowledgment to us by e-mail or fax.

Yours truly,
BASMAN SMITH LLP

Lorne A. Shapiro

ACKNOWLEDGMENT

The undersigned, on behalf of its client, Ira Smith Trustee & Receiver Inc., solely in its capacity as Court-appointed Interim Receiver and Receiver and Manager of 1539304 Ontario Inc., hereby acknowledges that the date set out in Paragraph 7 of the Purchase Agreement has been extended to September 25, 2009 or such other date as the parties may further agree.

Dated at Toronto this 22nd day of September 2009

Lang Michener LLP

Per: 

Aaron Rousseau

Aaron Rousseau

From: Aaron Rousseau
Sent: Friday, September 18, 2009 5:25 PM
To: Leslie Wittlin; 'Ira Smith'; 'Brandon Smith'
Subject: Trinity Landing - Another purchaser comes out of the woodwork

Gentlemen,

I received a voicemail at 4:32 this afternoon from John Lefurgey, counsel to the Basic Drywall lien claimant. Among other things, he advises that his client has a purchaser who would like to pay \$2.4 million for the property. The purchaser would like to deliver a \$240,000 deposit to the Receiver on Monday, and would like to know how you'd like the money. I assume that our response will be along the lines of:

Thank you for your expression of interest in purchasing the 80 King William Street, Hamilton, property. At this time, the Receiver has already accepted an offer from a purchaser with respect to the property. Accordingly, the Receiver cannot entertain other offers at this time.

The purchase agreement accepted by the Receiver is subject to court approval. The Receiver is bringing a motion for approval of the sale on September 22, 2009 at 10:00 a.m., in the Ontario Superior Court of Justice, Commercial List, at 330 University Avenue, 8th Floor, Toronto, Ontario. We are happy to provide a copy of the motion record of the Receiver in this matter, and to add the interested party to the Service List for the proceedings related to the Receivership. In that regard, please provide the name of the party and the contact information.

Be advised that, notwithstanding this expression of interest in the property, the Receiver will nonetheless be seeking approval of the purchase agreement included in the Receiver's motion materials.

Let me know what you'd like.

Best,

Aaron Rousseau
Lang Michener LLP
Tel: (416) 307-4081 (Direct)
Fax: (416) 365-1719
E-mail: arousseau@langmichener.ca

Aaron Rousseau

From: John Lefurgey [JLefurgey@martenslingard.ca]
Sent: Monday, September 21, 2009 4:37 PM
To: Aaron Rousseau; heath.whiteley@gowlings.com; rweston@fdhlawyers.com; dswift@harrisonpensa.com; ken@ecclestonllp.com; jquigg@ecclestonllp.com; Debbie Ross; jmgottli@sullivanmahoney.com; clarkpeddlebarrister@bellnet.ca; lawcrd@niagara.com; jp@pichellilaw.com; sullivanpj@lazierhickey.com; marvin-caplan@coldwellbanker.ca; marvin.stringer@sympatico.ca; Lshapiro@basmansmith.com
Cc: Leslie Wittlin; Ira Smith; Brandon Smith
Subject: RE: 1539304 Ontario Inc. o/a Trinity Landing, Receivership - Motion Record

Please be advised that I anticipate appearing at the Motion and presenting a new offer from a prospective buyer in the amount of \$2,400,000.00 (two million four hundred thousand dollars). I hope to circulate more details later this evening but wished to get out preliminary information while some of you were still in the office.

John Lefurgey

ICICI BANK CANADA

Applicant

- and -

1539304 ONTARIO INC.

Respondent

Court File No. CV-08-7714-00CL

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

**SUPPLEMENTARY THIRD REPORT OF
IRA SMITH TRUSTEE & RECEIVER INC.**

**IN ITS CAPACITY AS
COURT-APPOINTED INTERIM RECEIVER AND RECEIVER AND MANAGER
OF 1539304 ONTARIO INC.
DATED SEPTEMBER 24, 2009**

**IRA SMITH TRUSTEE & RECEIVER INC.
Suite 6-167 Applewood Crescent
Concord, Ontario L4K 4K7**

**Ira Smith, MBA CA•CIRP
Tel: 905.738.4167
Fax: 905.738.9848**