



**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

ENDORSEMENT

COURT FILE
NO.:

CV-24-00723986-00CL

DATE: September 17, 2024

NO. ON LIST: 7

TITLE OF
PROCEEDING:

THE TORONTO DOMINION BANK v BUCHH HOLDINGS INC et al

BEFORE
JUSTICE:

OSBORNE

PARTICIPANT INFORMATION

For the Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Dylan Chochla and Elaine Dupere-Tremblay	Counsel for Richter Inc, Receiver	dchochla@fasken.com edtremblay@fasken.com

For the Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Shaun Parsons	Counsel for TD Bank	sparsons@airdberlis.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Olivier Benchaya and Shawn Travitsky	Richter Inc, Receiver	obenchaya@richter.ca stravitsky@richter.ca

ENDORSEMENT OF JUSTICE OSBORNE:

- [1] The Court-appointed Receiver seeks an order:
- a. approving the Bucch Holding Transaction and vesting title to the Purchased Shares in the Bucch Purchaser;
 - b. approving the Rotalec Canada Transaction, as amended, and vesting title to the Purchased Assets in the Rotalec Purchaser;
 - c. an ancillary order approving the First Report of the Receiver dated September 9, 2024, authorizing the Receiver to distribute to the TD Bank \$315,000 in partial satisfaction of its secured claims against the Debtors, approving the Receiver's interim statement of receipts and disbursements, approving the fees and disbursements of the Receiver and its counsel; and
 - d. a sealing order in respect of Confidential Appendix "G" to the First Report.
- [2] Defined terms in this Endorsement have the meaning given to them in the motion materials.
- [3] The Service List has been served. The relief sought today is unopposed, and is strongly supported by both the fulcrum creditor, TD Bank, and by the next ranking creditor, BDC.
- [4] The basis for the motion and the relief sought is fully set out in the First Report. The Interim Receiver was first appointed on July 19, 2024 and the full Receiver was appointed on July 31, 2024.
- [5] The Bucch Transaction contemplates the sale of the shares owned by Bucch Holdings in UGP to the Bucch Purchaser. Mr. Bucch, who did not appear in person or represented by counsel, but supports the relief sought, controls the Bucch Purchaser and already owns the remaining 50% of the shares in UGP.
- [6] No sale process was conducted for the shares, but approval is nonetheless sought by the Court-appointed Receiver and fully supported by TD in BDC. The sale proceeds are materially insufficient to repay TD, although what remains supportive.
- [7] The Rotalec Transaction is the result of an expedited sale process undertaken by the Receiver for the assets of Rotalec Canada. 45 potentially interested parties, received a teaser, and 12 signed an NDA. Three offers were received. The offer proposed to be accepted represents, as reflected in the Confidential Appendix, the Superior offer.
- [8] Literally as the motion was being argued, the Receiver filed the Supplemental First Report confirming the resolution of a claim by another creditor/supplier, Doosan, to 7 robots proposed to be sold to the Rotalec Purchaser as part of the transaction, which resolution resulted in the sale of those robots, said to have a value of less than \$50,000, to Doosan, and an amendment to the asset purchase agreement to remove the robots and reduce the consideration by \$45,000. All affected parties have agreed.
- [9] Although these proceeds also are insufficient to repay TD, it supports the transaction.
- [10] Counsel to the Receiver has given a security opinion to the Receiver that the TD security is valid and enforceable. Current indebtedness to TD exceeds \$3,597,000, and as noted above, there will be a significant shortfall even if both transactions are approved.
- [11] Given the relatively modest sums involved as against the not insignificant professional costs, TD and BDC support the recommendation of the Receiver that the transactions should be approved.

- [12] The alternative to approval of the Bucch Transaction would be a liquidation and would yield materially less net recoveries for the sale of the shares, which represent 50% of the shares in an illiquid and privately held company; hence the support of the bank for the proposed transaction approval today. Absent that support, I might well have declined to approve the transaction but in the circumstances, accept the recommendation of the Court-appointed Receiver, supported by the fulcrum creditor, and approve the transaction.
- [13] For the same reasons, the Rotalec Transaction, as amended, is approved.
- [14] The interim distribution to TD is also appropriate, and as noted above, it will continue to suffer a material shortfall.
- [15] Finally, I am satisfied that the Confidential Appendix, which includes a summary of the three offers received in respect of the Rotalec Transaction, should be sealed pending the closing of that transaction or further order of the Court. I am satisfied that the factors set out by the Supreme Court of Canada in *Sierra Club* and refined in *Sherman Estate* have been satisfied here.
- [16] Both approval and vesting orders, and the ancillary order, are approved, as signed by me today, and are effective immediately and without the necessity of issuing and entering.

A handwritten signature in black ink that reads "Osborne, J.". The signature is written in a cursive style with a large, looped "O" at the beginning.

OSBORNE, J.

DATE: 17 SEPTEMBER, 2024