



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-23-00711612-00CL

DATE: August 15, 2024

NO. ON LIST: 5

TITLE OF PROCEEDING: FIERA FP REAL ESTATE FINANCING FUND, L.P. v. VANDYK - 41  
WABASH LIMITED et al

BEFORE: JUSTICE CONWAY

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
Dave Rosenblat Marleigh Dick	Lawyers for the Receiver, KSV Restructuring Inc.	<a href="mailto:drosenblat@osler.com">drosenblat@osler.com</a> <a href="mailto:mdick@osler.com">mdick@osler.com</a>
Murtaza Tallat	Receiver, KSV Restructuring Inc.	<a href="mailto:mtallat@ksvadvisory.com">mtallat@ksvadvisory.com</a>
Eric Golden	Counsel for the Applicant, Fiera FP Real Estate Financing Fund, L.P.	<a href="mailto:egolden@blaney.com">egolden@blaney.com</a>

**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Edmond Lamek	THMR Development Inc. (Purchaser)	<a href="mailto:edmond.lamek@dlapiper.com">edmond.lamek@dlapiper.com</a>

## ENDORSEMENT OF JUSTICE CONWAY:

- [1] All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Receiver dated August 13, 2024.
- [2] The Receiver seeks two orders today, (a) an AVO which will, among other things: (i) approve the Transaction; (ii) authorize the Receiver to terminate and disclaim any agreements of purchase and sale for the purchase of any or all of the Real Property (the "Unit Sales Agreements"); and (iii) seal the unredacted APA until the closing of the Transaction; and (b) a Distribution and Termination Order which will, among other things: (i) authorize and direct the Receiver to make the one or more distributions to Fiera; (ii) terminate the receivership in respect of the Debtor and discharge KSV as Receiver upon the filing of the Termination Certificate; (iii) release the Receiver from liability except in respect of its gross negligence or wilful misconduct; (iv) approve the fees and disbursements of the Receiver and its counsel; and (v) approve the reports and activities of the Receiver.
- [3] The motion is unopposed. Fiera, which will incur a shortfall on its secured debt, supports the Transaction.
- [4] I am granting both orders. With respect to the AVO and the Transaction, the Receiver conducted the sale process in accordance with this court's order and otherwise satisfies the *Soundair* principles. The Transaction was the only offer received for the Property in the sale process. The proposed disclaimer of the Unit Sales Agreement is necessary to maximize recovery for stakeholder and is approved.
- [5] I am satisfied that the requested sealing order for the unredacted APA pending closing meets the test in *Sierra Club/Sherman Estates* and that disclosure of this information would pose a risk to the public interest in enabling stakeholders of a company in receivership to maximize the realization of assets should the property have to be remarketed. **I direct counsel for the Receiver to file a hard copy of the Confidential Appendices with the Commercial List office in a sealed envelope with a copy of the AVO and this Endorsement.**
- [6] The distribution to Fiera is approved, as is the discharge and release of the Receiver upon filing the Termination Certificate with the court. The fees and activities are approved.
- [7] I have signed both orders today. Orders to go as signed by me and attached to this Endorsement. These orders are effective from today's date and are enforceable without the need for entry and filing.

