

CITATION: 1000688136 Ontario Inc. v. 20 Caldari Development Inc.,
2026 ONSC 2182
COURT FILE NO.: CV-25-00001199-0000
DATE: 2026-04-13

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:)
)
1000688136 ONTARIO INC.) Charles W. Skipper, for the Applicant
)
Applicant)
)
- and -)
)
)
20 CALDARI DEVELOPMENT INC.) Dillon Gohil, for the Respondent
)
)
Respondent)
)
) **HEARD:** April 8, 2026

ENDORSEMENT

LEMAY J

Overview

[1] This is an ongoing receivership application involving a large piece of property in Vaughan, Ontario. It is an industrial, commercial and warehouse property. The property has been the subject of previous receivership proceedings in this Court, which culminated in an order of Agarwal J. on May 31st, 2024. That order transferred the interest in a mortgage originally held by the Canadian Western Bank to the Applicant in this case.

[2] There were subsequent defaults that took place, culminating in the consent Order of Wilkinson J. on June 3rd, 2025. Under that consent order, a repayment schedule was put in place and the Respondent was expected to make significant payments.

[3] One of the payments was missed by a day and a receiver was appointed. The receiver provided a brief report (“the first report”) dated July 10th, 2025, which outlined the very limited steps that had been taken to that point. On July 11th, 2025, the parties appeared before Derstine J., who ordered that relief should be granted against forfeiture.

[4] The parties then appeared before Stewart J. on September 9th, 2025. At that time, there was a refinancing that the Respondent had hoped would close on or before September 18th, 2025. Regrettably, it did not close, and the receivership order remained in place. The receiver has performed considerable work since that time, and has now filed a report with the Court, outlining the work that it has done to December 31st, 2025.

[5] The Receiver’s report reveals that considerable efforts have been made by the Respondent to obtain new financing for the property and to address the defaults under the Order of Wilkinson J. However, the Respondent remains in default. The efforts, and the remaining defaults, are set out in the receiver’s second

[6] As a result of those defaults, the Receiver has come to the conclusion that the best way to maximize the value of the Respondent’s assets is to sell the real property that the Respondent owns. As a result, the Receiver has put together a sale process that is the subject of the motion before me.

[7] As part of the sale process, there is a “stalking horse bid” for the property that is in place. This bid has been put together by a group that includes a 50

percent shareholder of the Respondent, who is also the principal of the company that holds the second mortgage.

[8] The parties are *ad idem* on most of the terms of the sale process. Having read the report of the receiver including the confidential appendices, I agree with the terms of the order as the proposed sale process appears to be appropriate to me. The two outstanding issues are as follows:

- a) The question of whether the mortgagor retains the right of redemption up to a week before the bidding process is complete.
- b) The question of whether the \$400,000.00 break fee proposed as part of the Stalking Horse Bid is reasonable and should be included as part of the price.

[9] I will deal with each issue in turn.

Issue #1- The Right of Redemption

[10] At the outset of the hearing, the parties took ten minutes to discuss the issues. They were able to resolve the issue of the right of redemption. They have agreed on language that is to appear in my endorsement, but not in the order. That language is set out in the next paragraph.

[11] The SISP order granted to the Receiver today is without prejudice to the parties' respective positions on possible redemption of the mortgages by the Debtor, 20 Caldari Development Inc. (the Respondent), and payment of all creditors, and any redemption would include payment of the break fee, and does not fetter the discretion of the Receiver.

[12] When we discussed this previous paragraph, counsel for the Respondent raised the issue of the redemption fee. For clarity, the redemption fee that I believe

is covered by this paragraph is the fee that is ordered pursuant to this decision. With that agreement in mind, I now turn to the issue of the redemption fee.

Issue #2- The Break Fee

[13] As part of the stalking horse deal, the Applicant seeks a break fee of \$400,000. This fee would be payable in the event that the receiver accepted another bid, and would be payable in addition to the monies that the Applicant is owed in respect of the mortgage.

[14] The Applicant argues that the break fee is justified on the following grounds:

- a) The proposed break fee is reasonable, as it is approximately 2.5% of the value of the total transaction. Other case-law supports that this type of percentage is reasonable.
- b) The Applicant is putting additional money at risk if they are the successful bidder, as they will have to borrow approximately \$1.2 million in order to cover various expenses beyond the value of their mortgages.
- c) The Applicant's bid provides stability to the process and ensures that the property will not be disposed of in a "fire sale" as it puts a firm floor on the price.
- d) The Applicant's bid means that there will not be any broker's fees for the sale of the property.
- e) The break fee encourages Court efficiency, as we do not need to have a further hearing over what the amount of reasonable costs and expenses associated with the break fee should be.

[15] The Respondent is not opposing a break fee point blank but argues that the quantum proposed by the Applicant is disproportionate and unjustified. The Respondent rejects the Applicant's arguments, and makes the following points:

- a) The case-law does not support the Applicant's position that this is a reasonable break fee. Instead, this is a credit bid and, as a result, there should not be any premium attached to the break fee.
- b) The Applicant is not putting any new money (or at least not any significant new money) into this bid and, as a result, the break fee should be limited to the reasonable costs and expenses associated with the stalking horse bid.
- c) The issues of court efficiency and reasonableness are for the Court to adjudicate and should not be ignored.

[16] I begin with the case-law. Each party focused on one previous case on break fees as the primary case underpinning their argument. At first blush, these decisions appear to be inconsistent. As a result, I will consider each of them.

[17] The Applicant relies on the decision in *Re Danier Leather Inc.*, 2016 ONSC 1044. In that case, this Court considered the sale of the inventory of Danier. A stalking horse agreement was reached in respect of the liquidation of Danier's inventory. The goal was to provide a "floor" for the value of the inventory and to encourage possible bidders who might be willing to buy Danier as a going concern.

[18] In *Danier*, the Court approved a break fee of \$250,000 on a transaction that had a total value of somewhere between \$22 million and \$25 million. In approving the transaction, the Court stated:

[41] Break fees and expense and costs reimbursements in favour of a stalking horse bidder are frequently approved in insolvency proceedings. Break fees do not merely reflect the cost to the purchaser of putting together the stalking horse

bid. A break fee may be the price of stability, and thus some premium over simply providing for out of pocket expenses may be expected, Daniel R. Dowdall & Jane O. Dietrich, "Do Stalking Horses Have a Place in Intra-Canadian Insolvencies", 2005 ANNREVINSOLV 1 at 4.

[42] Break fees in the range of 3% and expense reimbursements in the range of 2% have recently been approved by this Court, *Re Nortel Networks Corp.*, [2009] O.J. No. 4293 at paras. 12 and 26 (S.C.J. [Commercial List]); *Re W.C. Wood Corp. Ltd.*, [2009] O.J. No. 4808 at para. 3 (S.C.J. [Commercial List]), where a 4% break fee was approved.

[43] The break fee, the expense reimbursement and the signage costs obligations in the stalking horse agreement fall within the range of reasonableness. Collectively, these charges represent approximately 2.5% of the minimum consideration payable under the stalking horse agreement. In addition, if a liquidation proposal (other than the stalking horse agreement) is the successful bid, Danier is not required to pay the signage costs obligations to the Agent. Instead, the successful bidder will be required to buy the signage and advertising material from the Agent at cost.

[19] Counsel for the Applicant relies on this passage for the proposition that it is not necessary for a party to show the reasonable costs and expenses associated with the bid to be entitled to a break fee. Counsel argues that a fee that is in the range of 2.5 percent is relatively standard and should be approved.

[20] The Respondent, on the other hand, points to the decision in *Trees Corporation et al. v. The Attorney General of Canada*, 2024 ONSC 1993. In that decision, the Court was considering a bid that it described as a "credit bid". There was a break fee that was sought of \$60,000.00 but no evidence was provided to support the break fee.

[21] While the Court in *Trees* approved the break fee, the Court also stated:

[34] The issue, as noted above, is the break fee of \$60,000. All parties, including in particular the Applicants, the DIP Lender and proposed Stalking Horse Bidder, and the Monitor agree with the concern I expressed during the hearing of this motion that the circumstances in which a break fee reflective of additional risk would be appropriate in the context of a credit bid, would be extremely rare. My point is that the consideration being proposed in support of the Stalking Horse Bid is, in the main, not new capital exposed to this situation afresh, but rather is credit, such that the proposed Stalking Horse Bidder is

already exposed for that amount and therefore ought not to be rewarded or compensated by what is, in effect, nothing new.

[35] In the particular circumstances of this case, however, I accept the position urged upon me by the Applicants, the DIP Lender and the Monitor to the effect that the fee represents a reasonable reimbursement of the fees and costs incurred in negotiating and preparing the stalking horse bid and is not reflective of an element of risk for new capital. Given the quantum of the fee, in my view this is reasonable.

[22] Ultimately, there appears to be, on the surface, some conflict between these decisions. However, when I review them closely, I am of the view that there is no conflict between them. The starting point for my analysis is the fact that, in *Danier*, the Court was considering a bid from a third party. The third party was providing new capital, and was assuming a significant risk that they did not already have. In *Trees*, on the other hand, there was no new capital being put in to the transaction, as it was essentially a “credit bid”. In *Trees*, therefore, the risk was relatively unchanged.

[23] In this case, I am dealing with what is mostly a credit bid. Counsel for the Applicant points out that the Applicant has been required to pay additional monies of approximately \$1.2 million in order to cover some of the various expenses that would flow if their bid was accepted. In my view, however, that is a far cry from a bid that is entirely new money. There is much less additional risk in this case than there would be if the money being advanced was all new money.

[24] Given this conclusion, I adopt the view of Osborne J. (as he then was) that a risk premium for a credit bid would be a “rare” event. I reject the Applicant’s assertion that this type of break fee is routine in these types of circumstances. This brings me to the Applicant’s other arguments in favour of the break fee.

[25] First, there is the claim that the break fee is reasonable. I am not persuaded that it is. The break fee will have the effect of precluding any bids between the price in the stalking horse bid and \$400,000 higher. There is no justification for this

break fee other than the claim that it is reasonable. In my view, it is both appropriate and necessary for the Applicant to demonstrate the reasonableness of the break fee.

[26] This brings me to the Applicant's observation that the stalking horse bid puts a floor on the price and provides stability. I agree with that observation. However, in my view, it does not justify a risk premium in the form of a break fee. As I have set out above, there is only minimal additional risk for the stalking horse bidder here. Further, there are benefits for the proponents of the stalking horse bid in this case as, if there is a higher bid, they will receive virtually all of the money that they have put into the property.

[27] Finally, there is the concern that a second hearing will be required in this matter if a set break fee is not imposed. While I appreciate the concern about the use of Court time, transparency is also important. In my view, the break fee in this case should be set after consideration of the reasonable expenses and costs of preparing the bid. In particular, I would note that one of the participants in the stalking horse bid is also a shareholder in the Respondent and, as a result, the need for due diligence would have been lessened.

[28] For all of these reasons, I am not persuaded that the break fee proposed for this transaction is reasonable. Instead, the break fee will be reviewed by reviewing the reasonable costs and expenses associated with the preparation of the bid.

Conclusion and Next Steps

[29] For the foregoing reasons, the break fee is not approved. I have adjusted the final order proposed by the Applicant to reflect that the break

[30] I should also note that the Applicant filed some confidential appendices for the motion. I accept that those appendices should remain sealed as the criteria under *Sherman Estate* are met.

[31] After discussion with the parties, I determined that it would be appropriate to schedule an appearance before me to review and approve any bids, as this appearance needs to be confirmed in a timely way. As a result, the parties are to appear before me by ZOOM at 9:15 a.m. on June 3rd, 2026 for a forty-minute appearance. The parties are permitted, and the trial office is directed to accept, any filings up to 2:00 p.m. on June 2nd, 2026.

[32] I would anticipate that we would also, if necessary, discuss the process for establishing the quantum of the break fee at the next appearance. If that needs to be addressed sooner, the parties may advise the Trial Coordinator, and I will schedule a case conference in the interim.

[33] The parties can address the issue of any costs associated with this motion at the next appearance, unless there is a need to do so sooner. I retain jurisdiction to address those issues.

[34] Finally, in the event that there is a need for the parties to address a matter urgently, they can make an appointment to speak to me through the trial office.

A handwritten signature in cursive script, appearing to read "J. Lemay".

LEMAY, J.

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Jeff Larry, for the Respondent

ENDORSEMENT

LEMAY, J.

Released: April 13, 2026