



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-25-00736396-00CL

DATE: June 17 2026

NO. ON LIST: 3

TITLE OF PROCEEDING: ONTARIO SECURITIES COMMISSION v. CACOELI ASSET  
MANAGEMENT INC. et al

BEFORE: JUSTICE CAVANAGH

**PARTICIPANT INFORMATION**

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

Name of Person Appearing	Name of Party	Contact Info
Erin Hoult	Ontario Securities Commission	ehoult@osc.ca
Ian Aversa Miranda Spence Matilda Lici	Counsel to the Receiver	iaversa@airdberlis.com mspence@airdberlis.com mlici@airdberlis.com
Jonathan Krieger Jason Kanji	Receiver – Grant Thornton Ltd.	jonathan.krieger@ca.gt.com jason.kanji@doane.gt.ca

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

Name of Person Appearing	Name of Party	Contact Info
Derek Ketelaars Akshay Sandhir	Clifton Blake Financial Corp.	derek@sclawpartners.ca Akshay@sclawpartners.com
Caroline Harrell	Respondents	charrell@agblp.com

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Julian Binavince	Vault Capital Inc.	jbinavince@levyzavet.com
Oren Chaimovitch	Cosman Mortgage Holding Corp.	Oren.chaimovitch@devrylaw.ca
Thomas Gertner	CMLS Financial Ltd.	Thomas.gertner@gowlingwlg.com
Sam Robinson	MCAP Financial Corp.	samr@stockwoods.ca

---

## **ENDORSEMENT OF JUSTICE CAVANAGH:**

[1] On the application of the Ontario Securities Commission under section 129 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, and pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated February 14, 2025, Grant Thornton Limited ("GT") was appointed as monitor (in such capacity, the "Monitor") of the Respondents in these proceedings (the "Proceedings")."

[2] On May 23, 2025, the Honourable Justice Steele issued an endorsement appointing GT as receiver and manager (in such capacity, the "Receiver") of all of the assets, undertakings and properties (collectively, the "Property") of the Respondents. On June 5, 2025 (the "Appointment Date"), the Court issued an Order (the "Receivership Order") formalizing the appointment of the Receiver pursuant to the Receivership Decision. The Respondents' appeal from the Receivership Decision was dismissed by the Court of Appeal for Ontario on September 23, 2025.<sup>2</sup>

[3] Following its appointment, the Receiver took possession and control of the following real properties of the Respondents, which are the primary physical assets that comprise the Property under receivership (collectively, the "Real Properties"):

- a. 829-841 Moore Street, Cambridge, Ontario, N3H 3B9; and
- b. 356 Lowther Street S, Cambridge, Ontario, N3H 1Y8 (both properties together referred to as "Linnwood-Lowther");
- c. 150 Heiman Street, Kitchener, Ontario, N2M 3L9; and
- d. 158 Heiman Street, Kitchener, Ontario, N2M 3L9 (both properties together referred to as "Heiman");
- e. 60 Centreville Street, Kitchener, Ontario, N2A 1R9 ("Centreville"); and (f) 4577 Steeles Avenue East, Toronto, Ontario, M1V 4S4 (the "Steeles Property").

[4] Following the Court's approval of the Sale Processes, the Receiver, with the assistance of Avison Young and Colliers, canvassed the market for prospective purchasers for the Real Properties, reviewed bids, negotiated agreements of purchase and sale, and selected the successful bids described below. The Receiver now seeks four approval and vesting orders (collectively, the "AVOs") approving the following sale transactions:

- a. the transaction (the "Heiman Transaction") contemplated by the Agreement of Purchase and Sale (the "Heiman APS") dated March 5, 2026 between the Receiver, as vendor, and Teperium Capital Limited (the "MRP Purchaser"), as purchaser, in respect of Heiman;
- b. the transaction (the "Linnwood-Lowther Transaction") contemplated by the Agreement of Purchase and Sale (the "Linnwood-Lowther APS") dated March 5, 2026 between the Receiver, as vendor, and the MRP Purchaser, as purchaser, in respect of Linnwood-Lowther;
- c. the transaction (the "Centreville Transaction", and together with the Heiman Transaction and the Linnwood-Lowther Transaction, the "MRP Transactions") contemplated by the Agreement of Purchase and Sale (the "Centreville APS") dated March 5, 2026 between the Receiver, as vendor, and the MRP Purchaser, as purchaser, in respect of Centreville; and

- d. the transaction (the "Steeles Transaction", and together with the MRP Transactions, the "Transactions") contemplated by the Agreement of Purchase and Sale (the "Steeles APS", and together with the Heiman APS, the Linnwood- Lowther APS and the Centreville APS, the "APSs") dated May 6, 2026 between the Receiver, as vendor, and CB 4577 Steeles Ltd. (the "Steeles Purchaser"), as purchaser, in respect of the Steeles Property.

[5] The Receiver also seeks an ancillary relief order (the "Ancillary Relief Order"), among other things:

- a. approving each of the First Supplement to the Second Report dated November 27, 2025, the Second Supplement to the Second Report dated December 1, 2025 (collectively, the "Supplements"), and the Third Report of the Receiver dated May 27, 2026 (the "Third Report"), as well as the actions, conduct and activities of the Receiver as described respectively therein;
- b. authorizing and directing the Receiver to make distributions to each of CMLS Financial Ltd. ("CMLS") and MCAP Financial Corporation ("MCAP") up to the amount owing by the Respondents to each of CMLS and MCAP for principal, costs and interest arrears calculated as of the applicable closing date, from the balance of funds available to the Receiver, subject to adjustments arising from purchase price true-ups and future operating cash flows (the "Proposed Distributions");
- c. approving the Receiver's proposed methodology for allocating general professional fees incurred in these Proceedings among the Respondents holding Real Property based on their proportionate share of base rental income, as defined by the occupied units and the applicable underlying lease agreements (the "Cost Allocation Methodology");
- d. approving the fees and disbursements of GT, in its capacity as Receiver, as set out in the Fee Affidavit of Jonathan Krieger sworn May 27, 2026 (the "GT Fee Affidavit");
- e. approving the fees and disbursements of GT's independent legal counsel, Aird & Berlis LLP ("A&B"), as set out in the Fee Affidavit of Ian Aversa sworn April 20, 2026 (the "A&B Fee Affidavit"); and
- f. sealing the Confidential Appendices to the Third Report (the "Confidential Appendices") until the closing of the relevant Transaction or further Order of this Court.

***Should the Sale Transactions be approved?***

[6] The Receivership Order empowers the Receiver to, among other things, market any or all of the Real Properties, including advertising and soliciting offers in respect of the Real Properties or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate. The APSs are conditional on the granting of the AVOs.

[7] In *Royal Bank of Canada v. Soundair Corp.* (1991), 1991 CanLII 2727 (ON CA), the Court of Appeal held that the following factors must be considered when considering the approval of a proposed sale: (i) whether the Receiver has made a sufficient effort to get the best price and has not acted improvidently; (ii) the efficacy and integrity of the process by which offers are obtained; (iii) whether there has been unfairness in the working out of the process; and (iv) the interests of all parties.

[8] I am satisfied that the *Soundair* factors are satisfied for the following reasons:

- a. The Real Properties were marketed through the Court-approved MRP Sale Process and Steeles Sale Process by experienced real estate brokers. Avison Young marketed the Multi-Residential Properties over a five-week period and generated 65 executed non-disclosure agreements, 13

property tours, 15 initial submissions, and 24 revised submissions following a second round of bidding. Colliers marketed the Steeles Property over a four-month period and generated 56 executed non-disclosure agreements and multiple bids. In the Receiver's view, the Sale Processes were commercially reasonable and canvassed the market thoroughly.

- b. In the Receiver's view, extending or restarting the sale processes is unlikely to generate superior offers and would, instead, result in additional professional fees without a corresponding benefit to stakeholders. With respect to the Multi-Residential Properties, neither the Receiver nor Avison Young is of the view that extending the existing MRP Sale Process or implementing a new process would identify a new purchaser or generate superior bids. With respect to the Steeles Property, the Receiver is of the view that Colliers' marketing efforts fully canvassed the market and that extending or restarting the Steeles Sale Process is unlikely to generate a superior offer.
- c. The Receiver selected the MRP Purchaser because it submitted a strong financial proposal, offered flexibility to proceed either by an *en bloc* transaction or separate transactions, conducted detailed pre-bid due diligence, and proposed a short conditional period relative to comparable bidders. The Receiver selected the Steeles Purchaser because it submitted the superior financial proposal, waived due diligence, did not include a conditional period in favour of the purchaser, its bid was conditional only on Court approval, and, as a credit bid by the first-ranking mortgagee, it eliminated material financing, diligence and closing risk.
- d. The Receiver considered the interests of stakeholders in selecting the successful bids. MCAP and CMLS, the first-ranking mortgagees of the Multi-Residential Properties, have advised the Receiver that they support the proposed MRP Transactions. Clifton Blake, the first-ranking mortgagee and fulcrum creditor in respect of the Steeles Property, supports the Steeles Transaction through the credit bid advanced by the Steeles Purchaser.

[9] I approve the Transactions.

***Should the AVOs be granted?***

[10] The terms of each APS require: (i) Court approval of the APS; and (ii) an AVO to vest in the applicable purchaser all of the Respondents' right, title and interest in and to the applicable Real Property, free and clear of encumbrances.

[11] I am satisfied that the requested AVOs should be granted.

***Should the proposed distributions be approved?***

[12] The Receiver seeks authorisation and direction to make the Proposed Distributions to CMLS and MCAP up to the amount owing by the Respondents to each of CMLS and MCAP for principal, costs and interest arrears calculated as of the applicable closing date, from the balance of funds available to the Receiver, subject to adjustments arising from purchase price true-ups and future operating cash flows.

[13] A&B provided the Receiver with written opinions that, subject to the qualifications, assumptions, limitations and discussions therein, the security granted to MCAP and CMLS, respectively, constitutes valid and enforceable security, creates a valid security interest in the applicable collateral, and has been properly perfected or otherwise evidenced by the required registrations.

[14] The Receiver is not aware of any claims or asserted interests that would reasonably be expected to rank in priority to the security interests of the first secured lenders, aside from the Receiver's charge and property taxes, which will either be satisfied on closing or paid by the applicable purchaser.

[15] I am satisfied that the Proposed Distributions should be approved.

***Should the Receiver's activities and reports be approved?***

[16] The Receiver seeks this Court's approval of its activities and conduct, as set out in the Supplements and the Third Report.

[17] I accept that the activities of the Receiver described in the Supplements and the Third Report were all necessary and undertaken in good faith pursuant to the Receiver's duties and powers, as set out in the Receivership Order, and were, in each case, in the best interests of the stakeholders of the Debtors. I am satisfied that the Receiver has acted reasonably, prudently and not arbitrarily.

[18] The Supplements, the Third Report and the activities should be approved.

***Should the Fees of the Receiver and its Counsel be approved?***

[19] I am satisfied that the fees and the Receiver and its counsel should be approved.

***Should the Receiver's proposed methodology for allocating professional fees among the Respondents holding real property be approved?***

[20] In the Receiver's Third Report dated May 27, 2026, the Receiver addresses its approach to the allocation of costs of professional fees. The Receiver reports that it and its counsel have maintained accounting records particularized by property where work performed was directly attributable to a specific property. The Receiver reports that the entirety of the Monitor's engagement, and significant portions of the Receiver's engagement, have necessarily been general in nature and relate to the collective administration of these Proceedings. In light of this reality, the Receiver advised that it would develop a principled methodology to allocate the professional fees incurred in the general administration of these proceedings and seek the Court's approval of that allocation.

[21] The Receiver reports when assessing how best to allocate the general professional costs incurred in the administration of these Proceedings, the Receiver considered three methods for the allocation of professional costs among the Respondents holding Real Property, namely, Cacoeli Linnwood-Lowther LP, Cacoeli Heiman LP, Cacoeli Bloor Ossington LP, and Cacoeli Kennedy Steeles LP (the "Real Property LPs"). These allocation methodologies are as follows:

- a. Straight-Line Allocation: general professional fees are divided equally among the Real Property LPs;
- b. Share of Rental Revenue Allocation: general professional fees are divided among the Real Property LPs based on their proportionate share of base rental income, as defined by the occupied units and the applicable underlying lease agreements; and
- c. Sale Price Allocation: general professional fees are allocated among the Real Property LPs based on the proportionate sale price achieved in the relevant sale processes.

[22] The Receiver reports that while each methodology has its merits and may be viewed more favourably by particular stakeholders, the Receiver believes that the Share of Rental Revenue method represents the most fair and equitable allocation of the expenses of these Proceedings and should, therefore, be approved by this Court. The Receiver reports that its recommendation is based on the following:

- a. the Share of Rental Revenue methodology is practical, as each of the Real Property LPs are subject to tenancies generating rental income. While the Steeles Property may have longer-term development potential, all of the arm's-length bids submitted in the Steeles Sale Process appear to

have been submitted based on its existing income-generating use, which supports rental revenue as an appropriate metric for allocation purposes;

- b. in contrast to the Straight-Line methodology, the Share of Rental Revenue methodology most accurately reflects the effort required by the Monitor and the Receiver to oversee and/or manage the Multi-Residential Properties, as properties with a greater number of occupied units and tenants generally entail more intensive oversight and administration; and
- c. the Sale Price methodology would distort the allocation by overstating the relative value of the Steeles Property, as the purchaser's credit bid significantly exceeds the market value reflected by the results of the Steeles Sale Process and therefore does not serve as a reliable proxy for relative administrative burden or effort.

[23] The Receiver submits that its recommended allocation methodology based on rental revenues generated by each Property represents a reasonable proxy for the activities spent by professionals in respect of the Real Properties and provides a consistent and objective basis for allocation, as it reflects the relative economic activity of each Real Property during these proceedings.

[24] Vault Capital Inc. ("Vault") holds a second mortgagee on the Centreville Property securing up to \$2,000,000. Vault opposes the Receiver's proposed allocation. Vault submits that the Receiver's proposed allocation of costs favours one particular mortgagee by considering only one circumstance and that it is not fair and equitable to all mortgagees.

[25] Vault submits that activities in relation to overseeing and managing the operation of the Real Properties is only a small part of the Receiver's work and that virtually none of the work carried out by counsel for the Receiver (roughly 60 % of the total fees to be allocated) can reasonably be allocated to overseeing and managing the operations of the Properties. Vault submits that because a professional manager was appointed to provide property management services for the Real Properties other than the Steeles Property, an allocation of professional fees based on rental income would result in a disproportionate allocation to the Real Properties other than the Steeles Property.

[26] Vault submits that the professional fees should be allocated using a method that reflects the mortgage stakeholders' respective interests in the proceedings. Vault submits that allocating the professional fees of the Receiver and its legal counsel on the basis of the amount of mortgage debt each of the Properties carries is fair and equitable to all mortgagees.

[27] At the hearing of this motion, counsel for Vault confirmed that it proposes an allocation based on the amounts of the indebtedness secured by the first mortgages on each of the Properties. This would avoid the need for a claims process or vetting by the Receiver of security held by subsequent mortgagees, which would result in additional costs and delay in finalizing the allocation.

[28] In *Royal Bank of Canada v. Atlas Block Co. Limited*, 2014 ONSC 1531, D.M. Brown J. (as he then was), at para. 43, set out the general principles governing the allocation of a receiver's costs:

As to the allocation of the fees, the general principles governing the allocation of receiver's costs can be briefly stated:

- (i) The allocation of such costs must be done on a case-by-case basis and involves an exercise of discretion by a receiver or trustee;
- (ii) Costs should be allocated in a fair and equitable manner, one which does not readjust the priorities between creditors, and one which does not ignore the benefit or detriment to any creditor;

(iii) A strict accounting to allocate such costs is neither necessary nor desirable in all cases. To require a receiver to calculate and determine an absolutely fair value for its services for one group of assets vis-à-vis another likely would not be cost-effective and would drive up the overall cost of the receivership;

(iv) A creditor need not benefit “directly” before the costs of an insolvency proceeding can be allocated against that creditor’s recovery;

(v) An allocation does not require a strict cost/benefit analysis or that the costs be borne equally or on a *pro rata* basis;

(vi) Where an allocation appears *prima facie* as fair, the onus falls on an opposing creditor to satisfy the court that the proposed allocation is unfair or prejudicial.

[29] The Receiver considered three allocation methodologies in its Third Report, and it also addressed Vault’s proposed methodology in the First Supplement to the Third Report dated June 15, 2026. Having considered the alternative approaches, the Receiver maintains that its proposed approach is the most appropriate in the circumstances.

[30] I accept the Receiver’s submission that Vault’s proposed allocation based on the amounts secured by first mortgages on each of the Real Properties is arbitrary. The proposed allocation does not reflect a rational connection between the aggregate amount of unallocated fees charged by the Receiver and its counsel and an amount to be allocated based on the amounts secured by first mortgages.

[31] The fact that 60% of the fees to be allocated are legal fees does not lead to the conclusion that allocation based on rental revenues is unreasonable. As the Receiver reports, the proposed methodology most accurately reflects the effort required by the Monitor and the Receiver to oversee and/or manage the Multi-Residential Properties, as properties with a greater number of occupied units and tenants generally entail more intensive oversight and administration. The Receiver’s assessment in this respect is not limited to its own activities.

[32] The allocation of a receiver’s costs involves the exercise of discretion by the receiver. As noted by the Court of Appeal in *Regal Constellation Hotel Ltd., Re*, 2004 CanLII 206 (ON CA), at para. 23, citing *Royal Bank of Canada v. Soundair Corp.* (1991), 1991 CanLII 2727 (ON CA), “[a]lthough the courts will carefully scrutinize the procedure followed by a receiver, they rely upon the expertise of their appointed receivers, and are reluctant to second-guess the considered business decisions made by the receiver in arriving at its recommendations. The court will assume that the receiver is acting properly unless the contrary is clearly shown”.

[33] I am satisfied that the Receiver’s proposed allocation appears *prima facie* fair. Vault has failed to discharge its onus of showing that the proposed allocation is unfair or prejudicial. The Receiver’s proposed allocation of professional fees should be approved.

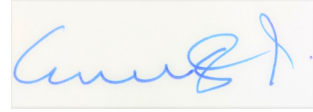
### ***Should a limited sealing order be granted?***

[34] The Receiver submits that there is commercially sensitive information contained in the Confidential Appendices that, if revealed to the public, could have a material and negative impact on any future efforts to market and sell the Real Properties in a manner that maximizes realization for stakeholders. The Confidential Appendices contain commercially sensitive, non-public information, including the unredacted APSs, bid analyses, due diligence waivers, pricing information and transaction-specific details relating to the Real Properties.

[35] I am satisfied that the requirements in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, at para 78, are satisfied and that the requested sealing order should be made.

***Disposition***

[36] Orders to issue in forms of Orders signed by me today.



---