



**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**COUNSEL SLIP / ENDORSEMENT**

**COURT FILE NO.:** CV-25-00741138-00CL      **DATE:** March 20, 2026

**REGISTRAR:** Mark Sharples

**NO. ON LIST:** 2

**TITLE OF PROCEEDING: MARPER HOLDINGS LIMITED v.  
FOXPARK DEVELOPMENT CORPORATION**

**BEFORE: JUSTICE FL MYERS**

**PARTICIPANT INFORMATION**

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

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

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Contact Info</b>
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**For Other, Self-Represented:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Contact Info</b>
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**ENDORSEMENT OF JUSTICE FL MYERS:**

**The Motion and the Parties**

1. The Receiver moves for approval of the sale of the debtor's property after the successful implementation of the sale process ordered previously by Kimmel J. The Receiver also seeks ancillary relief consequent on the sale approval.
2. Mr. Strand is the owner of the debtor. He is also a guarantor of the debtor's debt to the Applicant.
3. Mr. Strand opposes the proposed sale. He wants to see the initial project completed by the debtor in the interests of all creditors. Mr. Strand submits that he is advancing the positions of people who placed deposits on units in the development, unsecured creditors, and equity holders, all of whom could receive funds if the project is financed to completion and the units then sold.
4. The Receiver's proposed sale is supported by the Applicant. It is the first-ranking mortgagee. It appears likely that the Applicant will suffer a shortfall on its secured debt if the sale is approved.
5. The second and third mortgagees did not attend to oppose the sale. However, the proposed purchaser advised the Receiver that it is affiliated with these subordinate mortgagees. The purchaser is prepared to invest in the completion of the building to restructure its debts. But it proposes to do so free and clear of all existing claims against the debtor.

6. Mr. Fairley attended on behalf of one or more people who put down deposits on units in the debtor's proposed development. The Receiver advises (and Mr. Strand confirmed) that the deposits were consumed by the debtor prior to the receivership. If there were trust obligations in respect of the deposits owing by the debtor developer (on which I make no inquiry or finding at this stage), it is apparent that there are no funds being held in segregated trusts available from the Receiver.
7. Whether unit depositors have claims against the debtor and the priority attaching to any such claims is not before me yet.
8. The proposed sale will vest out unit depositors' rights to their units. They will retain their rights to claim back their deposits against the proceeds of sale. As the first secured mortgagee is likely to suffer a shortfall, the unit depositors are unlikely to realize anything on their claims unless they can establish a basis in law to hold priority ahead of the secured creditors.
9. Mr. Fairley took no position on the motion. It is significant that no unit depositor, for whom Mr. Strand purports to speak, appeared to support his position opposing the Receiver's sale.
10. I am told that some unit depositors have advanced claims against Mr. Strand personally in relation to their investments and lost deposits. I do not know if Mr. Fairley's clients were among those unit depositors. Mr. Strand's apparent altruism on behalf of people from whom he took deposits happens to coincide then with his economic self-interest.

#### **Mr. Strand's Standing and his Adjournment Request**

11. Mr. Strand purports to speak for the debtor. He has been allowed to do so by various judges on a hearing-by-hearing basis. He has standing as a personal guarantor of the Applicant's debt. As the scope of his personal liability turns on the extent of the debtor's liability, their positions are the same at least vis-à-vis the Applicant.
12. Moreover, Mr. Strand now claims that he is the victim of elder abuse. It is appropriate for the court and the parties to hear Mr. Strand's submissions, concerns, and views. He is gravely affected by the losses suffered by the failure of

the debtor's project and the liabilities asserted against him. Mr. Strand spoke for approximately 30 minutes during the hearing. No one is in doubt that he is profoundly impacted by the debtor's failure and the issues in these proceedings.

13. Mr. Strand sought to adjourn the motion for numerous reasons including his upcoming motion in the Court of Appeal that seeks to stay a decision made by Dietrich J. approving the Receiver's first two reports and its interim fees and disbursements.
14. For reasons dictated orally in court, I denied Mr. Strand's request for an adjournment.

### **The Proposed Sale**

15. I agree with Mr. Manis that from an institutional perspective, this was an unremarkable sale process. It was designed to expose the property to a broad marketplace of potential buyers. Substantial interest was expressed. Bidders submitted three offers to purchase the site and the Receiver chose the one that in its judgment was the best.
16. The Receiver listed the property for sale on MLS and elsewhere. It prepared the usual types of marketing materials including a teaser email, a flyer, a confidential information memorandum, and a virtual data room for qualified prospects who were prepared to execute confidentiality agreements.
17. The Receiver reports that it distributed the CIM and draft confidentiality agreement by email to 1,843 targeted prospects. Some 43% of recipients opened the email and 29% clicked to review the CIM and draft confidentiality agreement.
18. Eight prospective buyers executed confidentiality agreements to obtain access to the online data room. The Receiver organized site visits. Three bidders submitted offers by the deadline.

19. The Receiver reports that it accepted the proposed agreement of purchase and sale for the following reasons:

66. The Receiver determined that the Accepted Offer was superior to the other bids (and ultimately the only viable offer) for the following reasons:

a) The purchase price exceeded the suggested list price of \$2,450,000.00;

b) The price fell within the range outlined in the three Letters of Opinion;

c) The purchase price accords with the Opinions of Value received by the Receiver, all of which were prepared on the basis that the 56 units were zoned and ready to be built.

d) The Accepted Offer required limited further due diligence, as the Purchaser had already conducted significant due diligence, resulting in minimal closing risk;

e) The Accepted Offer presented the quickest path to closing and project completion;

f) The Purchaser, as holder of the second and third mortgages, has a vested interest in protecting its equity and maximizing recovery;

g) The New Sale Process allowed for the possibility of redemption of the existing encumbrances with refinancing or equity investment backing;

h) The Debtor was afforded the opportunity to redeem all encumbrances during the process, but failed to do so;

i) The Accepted Offer takes into consideration all of the mortgages registered on title to the Property;

- j) The Offer is sufficient to pay out any valid perfected construction lien claims;
- k) The Accepted Offer satisfies the requirements of fairness, transparency, integrity, and commercial efficacy in light of the circumstances facing the Receiver.

20. The Receiver also reports on the working of the sale process as a whole as follows:

60. The Receiver confirms that:

- a. the Property was marketed broadly and publicly;
- b. all interested parties were given an opportunity to participate;
- c. confidentiality agreements were required before access to the data room;
- d. the bid deadline was adhered to; and
- e. the Receiver evaluated all bids in accordance with the criteria set out in the New Sale Process Order.

21. In asking the court to approve the sale as proposed, the Receiver relies on the legal tests set by the Court of Appeal in *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA). Its counsel accurately summarizes the relevant factors in its factum as follows:

57. In reviewing a proposed sale of assets in the context of a receivership, a court must consider the factors set out by the Court of Appeal in *Royal Bank of Canada v. Soundair Corp.*:

- i. whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- ii. whether the interests of all parties have been considered;
- iii. the efficacy and integrity of the process by which offers were obtained; and

iv. whether there has been unfairness in the working out of the process.

58. In making this assessment, the court must uphold the business judgment of the receiver and only reject its recommendations in the most exceptional circumstances. [Notes omitted.]

22. The breadth of the marketing process is intended to provide an assurance that the price obtained by the Receiver is an approximation of the fair market value of the property. With enough willing bidders competing in a transparent, fair process that is run with integrity, the court will find that the best offer recommended by a receiver is value-maximizing and properly represents the price a willing vendor and willing buyer will agree upon in the circumstances. There are always appraisals and opinions of value from industry participants. But nothing evidences fair market value better than competition among people who are willing to invest their own funds in a binding transaction.
23. I am satisfied that the Receiver marketed the property broadly and deeply to relevant potential buyers and the public in general. The marketing attracted much interest in the property. The competitive bids delivered by prospective buyers established the fair market value of the “as is where is” unfinished development site.
24. Mr. Strand’s Objections
  - (a) A Typo
25. Mr. Strand makes two principal submissions to the contrary. First, he gloms onto an error in the initial listing detail published by the real estate agent retained by the Receiver. The listing provided that the site consisted of 16 units that were fully zoned and another 40 units that are “pending rezoning.”
26. In fact, all 56 proposed units are zoned for multi-residential construction as required.

27. Mr. Strand submits, without any evidence, that this error, in one document, resulted in potential bidders not being interested in the property because zoning is a significant requirement and its absence would dissuade buyers from considering a purchase.
28. There are other factual errors in material submitted by the Applicant and the Receiver that ought to have been caught on careful proof-reading by a court officer and those retained to act for it. As this case demonstrates, especially in the current times of prevalent conspiracy theories, factual errors give fodder to those who would link together disparate pieces of evidence available into an overriding conspiracy theory.
29. The Receiver answers Mr. Strand's concern about the knowledge of bidders however with objective evidence to the contrary. It received confirmation that every real estate broker who appraised the property for bidders did so based on the correct zoning of all 56 units.
30. Moreover, these types of transactions are expressly subject to due diligence by prospective buyers. That is what the CIM and data room are for. Absent compelling evidence, I would not expect anyone with the sophistication to be interested in purchasing a multi-million-dollar development project like this one to rely solely on a single listing summary to satisfy itself on the key attributes of the property.

(b) A Potential Refinancing

31. Mr. Strand also submits that the Receiver did not take into account fairly the interests of unsecured creditors, unit depositors, and equity holders. He submits that based on pre-receivership appraisals of the project on an "as built" basis, if the project is financed through to completion, with priority over existing secured creditors, there will be sufficient funds to pay everyone in full.
32. While this is an admirable aspiration, it ignores the fact that the debtor has already failed in that endeavour. Mr. Strand has no legal ability to obtain financing for the project with priority ahead of existing creditors. It is possible that the Receiver could seek a court-ordered charge for borrowing to build-out the project I suppose.

But there is no evidence that this is feasible or that any of the existing creditors would support the process to subordinate their positions deeply behind risky construction financing.

33. It is also significant that the court previously confirmed for Mr. Strand that the debtor's right to redemption remains available right up until a sale by the Receiver is approved by the court. If he could obtain financing to complete the project, he had the absolute right to pay out the existing creditors and continue with the debtor's business. Or, if he felt that the project was properly valued based on pre-receivership "as built" appraisals, rather than on an "as is where is" liquidation basis, he could have bid to purchase the project himself. To support a bid he would have needed third-party financial support for his valuation optimism.
34. Mr. Strand did not come forward with any buyer willing to pay more for the project based on his view of the final "as built" value. He did not propose any refinancing options apart from the one that he had in hand at the time the Receiver was appointed. Cavanagh J. held that the financing proposal advanced by Mr. Strand was not an offer of financing that could be acted upon.
35. Mr. Strand has had nine months to redeem the debtor's debts or to find a financing proposal acceptable to all. He submits that he cannot obtain a binding commitment in circumstance with a Receiver in place in a sale process. He says it "puts the cart before the horse."
36. While I readily accept that it is difficult, if not impossible, for Mr. Strand to obtain a refinancing proposal for this project at this time, that is not a basis to stop the receivership sale and wait even longer for him to try to do so. The first mortgage is accruing interest at the rate of approximately \$20,000 per month. Interest is not being paid. All creditors' collateral value is eroding as time marches on with the first secured lender apparently now at risk of being underwater.

37. Mr. Strand does not propose to make any payments to keep creditors whole for a day let alone whatever time he might think he needs to obtain a refinancing proposal. Nor does he offer to pay any additional costs that others will inevitably incur by additional proceedings.
38. With an acceptable proposal having eluded Mr. Strand for the past nine months, and with no evidence of any lender being near ready, willing, or able to refinance, there is no basis to accept that the Receiver's proposed sale unfairly ignores or under-values the positions of subordinate creditors and equity holders.

(c) Elder Abuse

39. Mr. Strand submits that the Applicant's initial loan to the debtor of \$2 million was predatory and amounts to elder abuse. He says that the Applicant's mortgage broker promised him another \$10 million would be available to finance the project. In addition, he says that the loan agreed with the Applicant contained none of the safeguards of a typical construction facility such as limited advances based on proof of progress milestones. He submits that allowing the debtor to draw the full \$2 million without requiring it to prove its progress was a predatory invitation to failure.
40. There is a self-serving undertone to these submissions that does not really make sense. A construction lender may insert progress hurdles in its lending documents to protect itself from a borrower misapplying borrowed funds. There are lien and trust fund implications for a construction lender if funds earmarked for payment of trades go astray. But, progress hurdles are not designed or imposed by a lender to protect the debtor from itself.
41. Mr. Strand links together numerous facts to support his theory of predation and elder abuse. He starts with the broken promise of more funds. Then the lack of safeguards imposed by the lender just waiting for the debtor to run out of money. He notes that the lender twice proposed typical market terms for forbearance.

42. Mr. Strand found the proposed admissions and consents required by the Applicant as a price of forbearance to be harsh and abusive. He had the right to refuse to sign the forbearance agreements on the terms proposed and he did so. That meant that the debtor's debts became due.
43. The Applicant issued a statement of claim on the debt the day after Mr. Strand refused the second forbearance agreement. He submits that this shows that the Applicant was ready to go and intended to enforce throughout. But he had the option to sign a forbearance agreement to defer enforcement. I do not understand why it is abusive for a lender to demand and enforce its rights efficiently rather than providing more time by delaying litigation against a debtor who will not sign a forbearance agreement.
44. Then Mr. Strand focused on the next piece of sloppiness. In its claim, the Applicant referred to the debtor as being federally incorporated. In fact, it is an Ontario corporation. The mistake was repeated throughout the debt enforcement proceeding and into this proceeding.
45. The Applicant obtained summary judgment against the debtor for the full amount of the debt plus accrued interest and costs on February 24, 2025. In her endorsement explaining her reasons for granting summary judgment, Healey J. recited the errant federal incorporation put before her.
46. In fact, all evidence submitted to the courts has included the correct provincial incorporation details of the debtor. The ongoing recital of federal incorporation by the Applicant and then the Receiver was mistaken.
47. But the error was also meaningless. Nothing of substance turns on the jurisdiction of incorporation of the debtor. There is no difference in the debt obligations of a federally incorporated company or a provincially incorporated one. Once again, an error has allowed Mr. Strand to glom onto a fact with no intrinsic relevancy to support an overarching theory of the case of predation and abusive behaviour.

48. Mr. Strand has other facts that he relies upon. For example, he uses the fact that the Receiver borrowed funds for the Applicant as an indication of a lack of independence of the Receiver. He does not have the experience to realize that the first secured creditor being at the Plimsol line is the one most incentivized to support the receivership financially. But then Mr. Strand criticizes the Receiver for having two sets of counsel arrayed against him as a vulnerable 88-year-old self-represented litigant. Again, he lacks the experience to know that a Receiver is required to obtain independent counsel when dealing with the appointing creditor – especially where an interested party raises suggestions of a lack of independence. The Receiver cannot be faulted for also retaining Mr. Manis’s firm to provide Commercial List experience and expertise. Overlap must be carefully avoided.
49. I do not make any comment on whether Mr. Strand may have causes of action against the mortgage broker whom he alleges made promises to him. But, he is not entitled to challenge the validity of the Applicant’s mortgage debt or security at this stage.
50. The judgment of this court granted by Healey J. upheld the validity of the debt and security. The court also dismissed Mr. Strand’s personal claims against the Applicant and its principal.
51. Mr. Strand tries to avoid this outcome by submitting that the decision was infused with error because Healey J. recited the erroneous jurisdiction of incorporation of the debtor in her endorsement. In addition, he submits that given all the disparate pieces of evidence that now lead him to conclude that he was the subject of predatory lending and elder abuse, Healey J. ought to have found that there was a genuine issue requiring a trial as to the validity of Applicant’s debt and security.
52. The judgment granted by Healey J. is a subsisting order of this court. It remains valid and in force unless or until it is set aside by the Court of Appeal. There is absolutely nothing that I can do to give effect to Mr. Strand’s arguments even if I was inclined to agree with them.

53. A litigant is bound by judgments against them. The court's orders can only be challenged in a higher court hearing the same proceeding. Orders of the court cannot be challenged in different legal proceedings before a judge of the same court. That is referred to as "collateral attack" and it is not allowed. See: *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 (CanLII).
54. Accordingly, I make no ruling on whether Mr. Strand was subjected to abuse or predatory lending in agreeing to the \$2 million loan and mortgage with the Applicant. Unless or until the order of Healey J. is set aside, Mr. Strand and the debtor are not entitled to relitigate the validity and enforceability of the debt and security. They have been conclusively held to be valid.

### **Conclusion on Sale**

55. While I understand the harsh effect the failure of the debtor may have on Mr. Strand's personal finances, none of the issues that he raises undermines the comprehensiveness, rigour, and integrity of the sale process conducted by the Receiver. I find all four tests from *Soundair* recited above in para. 57 of the Receiver's factum are made out by the Receiver.
56. I find that the support of the Applicant and the lack of opposition by anyone else other than Mr. Strand is compelling. Mr. Strand's position as an equity holder in the debtor and guarantor is completely understandable. But his submissions as discussed above do not undermine the *Soundair* analysis. Moreover, the position of an equity holder is not entitled to much, if any, weight in an insolvency proceeding where, by definition, an insolvent debtor has negative equity value.
57. Accordingly, I grant the sale and vesting order sought by the Receiver.

### **Sealing order**

58. The Receiver asks to seal the confidential appendices filed to support the sale process and approval of the sale. I am satisfied that the brief sealing of the documents to allow the sale to close in a few days will cause no identifiable harm to the open courts principle.

59. In the event that the sale does not close and the Receiver needs to remarket the property, disclosure of those documents could be expected to skew the fairness of a subsequent sale process.
60. There is a public interest in protecting the integrity and fairness of asset realization transactions by court-appointed receivers in the interests of all creditors and the debtor. The harm to this public interest of disclosure outweighs any risk of harm to the open courts principle by temporary sealing. The documents will be available either in a few days or after the next marketing process is completed. This brief delay is necessary to protect the principle espoused in *Soundair*.
61. Mr. Strand complains that he was not allowed to see the unredacted sale documents despite signing a confidentiality agreement. In my view this was a prudent decision of the Receiver given Mr. Strand's desire to engage in an alternative refinancing transaction. An insider who may have an interest as a purchaser or financier is properly excluded from the details of the bidding process.
62. The Receiver also advises that it had concerns with making disclosures of sensitive information to Mr. Strand in view of his lack of cooperation with the receivership process throughout. Mr. Strand denies that he was uncooperative in the main. But he never came to court to seek disclosure prior to the hearing of the motion if he felt it was necessary to get to this issue resolved.

#### **Approval of the Receiver's Third Report and its Supplementary Report**

63. The Receiver's Third Report and its Supplementary Report are comprehensive and appropriate in all respects. The fees and disbursements sought, including those of its counsel, are reasonable. The rates are well within market norms and the hours are reasonable. I grant approval as sought.

#### **Interim Distribution**

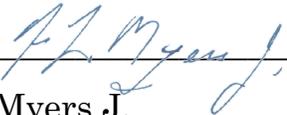
64. Once sale proceeds are received, it is appropriate for priority payables to be distributed right away. The Receiver has delivered a security opinion confirming the validity of the Applicant's security and an opinion concerning the lien claim on record. It has not dealt with possible claims by unit depositors, if any.

65. Mr. Strand submits that the security option for the Applicant's mortgage is not helpful because it assumes away his claims of abuse and predation. But, as discussed above, the court's judgment makes an opinion unnecessary in any event. The Applicant's debt and security have been found to be valid as against the debtor already by the court.
66. I am satisfied that the receiver's proposal with some holdback is reasonable and I approve it accordingly.

**Outcome**

67. The Receiver's motion is granted. I have signed the two orders as sought.

Released: March 23, 2026

  
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FL Myers J.

Justice FL Myers Digitally signed by Justice FL Myers  
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