CITATION: Deutsche Bank Trust Company Americas v. GSC Solar Fund I LP, 2026 ONSC 4838
COURT FILE NO.: CV-25-00752340-00CL
DATE: 20260824

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: DEUTSCHE BANK TRUST COMPANY AMERICAS, DEUTSCHE BANK AG, CANADA BRANCH, and THE BANK OF NOVA SCOTIA

Applicants

AND:

GSC SOLAR FUND I LP, GSC SOLAR FUND I GP INC., GSC SOLAR FUND II LP, GSC SOLAR FUND II GP INC., GSC SOLAR LEASING LP, GSC SOLAR LEASING GP INC., GSC SOLAR LEASING II LP and GSC SOLAR LEASING II GP INC.

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED

BEFORE: Koehnen J.

COUNSEL: *Bradley Wiffen, Josh Sloan* Lawyers for the Receiver

David Bish, Mike Noel for Deutsche Bank Trust Company Americas, as Agent, and Deutsche Bank AG, Canada Branch, and The Bank of Nova Scotia

Sean Collins for the purchaser, Skyline Power

Sam Babe, for HIAH Corp

HEARD: August 18, 2026

ENDORSEMENT

[1] Two matters arise at this hearing. The first is a motion by Deutsche Bank Trust Company Americas, as Agent, and Deutsche Bank AG, Canada Branch, and The Bank of Nova Scotia to bring certain non debtor obligors within the scope of the receivership order. The second is a motion by the Receiver, Alvaraz & Marsal, for an Approval and Vesting Order ("AVO"), and approval of a Reverse Vesting Order.

The Receivership Extension Order

[2] The object of the receivership extension order is to bring certain non-debtor obligors into the scope of the receivership to facilitate the sales transactions that arise out of the receivership. The non-debtor obligors are affiliates of the primary debtors. They were excluded from the initial receivership for reasons of practicality. It had always been envisaged that those non-debtor obligors would be brought into the ambit of the receivership once a sales transaction emerged. That intention was also included in the endorsement of Justice Cavanaugh dated February 27, 2026, at paragraphs 10-11.

[3] There is no doubt that the court has jurisdiction to appoint a receiver over the non-debtor obligors under section 101 of the *Courts of Justice Act* and section 243 of the *Bankruptcy and Insolvency Act* ("BIA"). The non-debtor obligors are indebted to the applicants in the amount of approximately $159 million. Each of the non-debtor obligors has pledged their assets as security for such indebtedness. Notices of default have been served. The non-debtor obligors do not have the means of satisfying the indebtedness, the required demand

letters and notices of intention to enforce security under section 244 of the BIA have been served, and the applicable statutory notice periods have expired. In those circumstances, it is just and convenient that the receivership be expanded to include the non-debtor obligors, especially because the extension will facilitate the completion of the only viable transaction arising out of the receivership.

[4] There is no opposition to the extension motion. As a result of the foregoing, I have signed the order requested.

The Approval and Vesting Order and the Reverse Vesting Order

[5] There are two aspects to the business in receivership: the Commercial and Industrial portfolio (the "C & I Portfolio") and the Residential Portfolio. The receiver seeks approval of a going concern sale of both portfolios (collectively, "Grasshopper").

[6] The C & I Portfolio consists of 132 projects in which Grasshopper leases property from commercial landlords on which Grasshopper has built solar projects from which it sells power to Ontario's Independent Electricity System Operator ("IESO").

[7] The Residential Portfolio consists of approximately 3,200 projects in which Grasshopper leases property from residential landlords on which Grasshopper has built solar projects from which it sells power to IESO.

[8] Grasshopper consists of 57 corporations. Sixteen of those corporations have third-party co-owners that have equity interests. Some of those equity interests are majority interests, some are minority interests. Those equity interests are likely to be eliminated as a result

of the proposed transaction. Some of the third-party co-owners are First Nations. Power generated by entities that are co-owned by First Nations can be sold to IESO at a higher price then would otherwise be the case.

[9] Mr. Babe appeared as counsel for Hiah, the business arm of the Mchigeeng First Nation, to determine whether he could find out the proposed purchaser's intentions with respect to Hiah's co-ownership agreement. Purchaser's counsel had no information from his client about its intentions with respect to the Mchigeeng First Nation.

[10] It appears that the purchaser may wish to terminate some of its First Nation arrangements and replace them with more favorable financial arrangements with the same or another First Nation. The financial arrangements differ widely. No one was in a position to tell me how much Hiah or other First Nation entities had invested for their equity interests. That question appears to be more complicated than one would think because the arrangements were entered into with a predecessor of Grasshopper and because the books of the predecessor and of Grasshopper appear to be in a state of some disarray.

[11] As unfortunate as the situation is in which Hiah finds itself, there is ultimately no other option. As set out in more detail below, I am satisfied that the transactions should be approved. Even approval will leave the secured lenders with a shortfall in the tens of millions of dollars.

[12] Hiah did not request any form of relief at the hearing nor did it object to approval of the transactions.

Soundair Principles

[13] In *Royal Bank v. Soundair Corp.*,[1] the Ontario Court of Appeal held that the Court should take into account the following factors when considering whether to approve a sale in a receivership:

(a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;

(b) the interests of all parties;

(c) the efficacy and integrity of the process by which offers are obtained; and

(d) whether there has been any unfairness in the working out of the process.[2]

I am satisfied that a consideration of those factors leads to the approval of both transactions.

[14] The Receiver has made a sufficient effort to obtain the best price. The Grasshopper business was marketed by a sale advisor with significant expertise in renewable asset transactions. Over 220 prospective purchasers were contacted, 58 parties executed non-disclosure agreements and received access to the virtual data room. The Receiver received 21 LOIs in connection with Phase 1 of the sales process, and two parties delivered final bids before the bid deadline.

[15] The interests of all stakeholders were considered. As is almost always the case, however, not all interests can be satisfied in the sale of a distressed business. Given the economics, even the first ranking secured creditor will be left with eight-digit losses. There was no

[1] *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA).
[2] *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA) at para. 16.

transaction available that addressed the interests of the third party co-owners. The proposed transactions leave those interests to be addressed in commercial negotiations between the third parties and the purchaser. That was simply the best option available.

[16] The sales process was efficacious and fair. The generation of 58 nondisclosure agreements suggest that the sale process was commercially reasonable. The Receiver, in consultation with the sale advisor and lenders, selected six bidders to advance to Phase 2 of the sale process, and submit a final bid.

[17] No one has suggested that there has been any unfairness in the working out of the process.

[18] I am satisfied that the Receiver's selection of the bid reflected in the proposed transactions is the appropriate selection. The other bid was a bid in name only and could not be implemented in the form in which it was received. It was more of an expression of interest than a bid. It was conditional on further due diligence, contained no timeline to completion, was subject to third party advisors completing final reports, and was subject to internal approvals within the bidding group. That contrasted markedly with the firm nature of the proposed transactions.

The Reverse Vesting Order

[19] The transaction for the Residential Portfolio is being effected by way of a reverse vesting order ("RVO").

[20] In *Harte Gold Corp.*,[3] Penny J. set out the following factors to consider when determining whether a reverse vesting transaction is appropriate:

(a) why is the reverse vesting order necessary in this case;

(b) does the reverse vesting structure produce an economic result at least as favourable as any other viable alternative;

(c) is any stakeholder worse off under the reverse vesting structure than they would have been under any other viable alternative; and

(d) does the consideration being paid for the debtor's business reflect the importance and value of the assets being preserved under the reverse vesting structure.[4]

[21] The element of necessity does not require the Receiver to demonstrate that a transaction other than an RVO is impossible; but that the reverse vesting structure result in a "net benefit to the estate."[5] In accordance with that approach, courts have granted RVOs where the structure maximizes stakeholder benefit, including in situations where the delay, costs, uncertainty, and risk associated with transferring assets through an asset sale would impair a purchaser's ability to operate the business following closing, or would otherwise affect the purchaser's willingness to complete the transaction or pay the purchase price.[6]

[22] I am satisfied that an RVO is necessary for the sale of the residential portfolio. As noted earlier, the residential portfolio consists of 3,200 different projects. Revenue from those projects is received in 226 separate bank accounts. An asset sale and assignment of leases

---

[3] *Harte Gold Corp. (Re)*, 2022 ONSC 653.
[4] *Harte Gold Corp. (Re)*, 2022 ONSC 653 at para. 38.
[5] *Bank of Montreal v Haro-Thurlow Street Project Limited Partnership*, 2024 BCSC 1722 at para. 33 [*Haro-Thurlow*].
[6] See e.g., *Harte Gold* at para. 71; *Nuance Pharma* at para. 13; *Haro-Thurlow* at para. 33.

would require significant logistical effort to transfer 3,200 separate projects. Retaining the existing corporate structure and allowing an equity transaction permits all existing commercial arrangements to remain in place without change. In addition to avoiding the logistical challenges that arise on a large number of lease assignments, the RVO also avoids the inevitable loss that would occur when residential landlords failed to address the lease assignment in a timely manner. The logistical difficulties and loss of some projects would inevitably result in a lower purchase price from the buyer. In those circumstances, a reverse vesting order is the most commercially reasonable way of completing the transaction.

[23] The reverse vesting structure produces an economic result here that is at least as favourable as any other viable alternative because there are no other alternatives available. As noted above, another structure would likely result in a lower purchase price to take into account the cost and risk of assigning 3,200 leases.

[24] No stakeholder is worse off under the Residential RVO than under any other viable alternative. As noted, the lenders are already suffering significant losses. There simply is no transaction available that would pay off the secured creditors and leave a surplus for unsecured creditors or equity holders. As a result, the RVO structure here does not prejudice the rights of any stakeholders.

[25] The consideration reflects the value of the reverse vesting structure in that it is the only transaction available. To ask the current bidder to convert to an asset purchase or an equity purchase that assumes liabilities could only result in a decreased purchase price, or, depending on the size of the liabilities, no transaction at all. Finally, there is no reason for

the purchaser to assume unsecured liabilities associated with the residential business when the secured creditors are suffering significant losses.

Ancillary Transactions

[26] The AVO and RVO are associated with the several ancillary transactions.

[27] The first is an assignment of mailboxes that were established by the former service provider to receive revenue cheques from approximately 1,500 projects. The residential entities require uninterrupted access to the mailboxes in order to continue to receive revenues. The purchaser has undertaken to deliver any mail unrelated to its ongoing activities to the former service provider.

[28] The second ancillary transaction involves the transfer of certain contracts related to the Commercial & Industrial properties. To the extent that consents to those assignments are received before the return date of the motion, the receiver has removed those contracts from the list of assigned contracts in the proposed AVO. In the absence of a consent to the assignment, the contracts will be assigned by court order.

[29] Although the BIA is silent with respect to whether a receiver can seek an order assigning a debtor contract, Morawetz CJ, held in *Re Urbancorp Cumberland 1 GP Inc.*,[7] "if both a trustee and a monitor may apply for such an order, the only purposive interpretation which

[7] *Re Urbancorp Cumberland 1 GP Inc.*, 2020 ONSC 7920 at para. 23.

harmonizes the Canadian insolvency regimes and prevents the loss of value from the estate of the debtor is the application of section 84.1 of the BIA to receivers".[8]

[30] Chief Justice Morawetz concluded that the combination of paragraph 243(1)(c) of the BIA, which provides that a court may appoint a receiver to take any other action that the court considers advisable, and s. 100 of the CJA, which provides that the court may vest in any person an interest in real or personal property that the court has authority to order be disposed of, is broad enough to allow the Court to make an assignment order in a receivership proceeding.[9] If that were not the case, the ability of a receiver to discharge its functions "would be severely restricted to the point where the objectives of Canadian insolvency laws would be frustrated in the receivership context."[10]

[31] The transactions are also associated with releases in favour of the Receiver, its partners, employees, contractors, legal counsel, and other advisors. Where releases have included third parties other than court officers, courts have applied the factors set out in *Lydian International*,[11] namely:

> a) Whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;
>
> b) Whether the claims to be released were rationally connected to the purpose of the plan and necessary for it;

---

[8] *Re Urbancorp*, at para. 23.
[9] *Re Urbancorp*, at paras. 30-31.
[10] *Re Urbancorp*, at para 31.
[11] *Lydian International Limited (Re)*, 2020 ONSC 4006 at para. 54.

c) Whether the plan could succeed without the releases;

d) Whether the parties being released were contributing to the plan; and

e) Whether the release benefitted the debtors as well as the creditors generally.

[32] I am satisfied that those factors apply.

[33] The parties to be released from claims were necessary and essential to the restructuring of the debtor. The sale advisor was essential to the sale of a specialized business that a receiver would not necessarily have particular experience to sell in the most effective manner possible. The releases are rationally connected to the approval of the transactions, are limited in scope, and are appropriate in the circumstances. As a practical matter, it would be difficult to find advisors in receiverships if they could not be released at the end of the receivership. The receiver and its advisors contributed particularized expertise to the transactions that was needed to complete them.

[34] The releases are narrow in scope and are limited to the conduct of the sale process and the terms, development, negotiation and implementation of the Transactions. The releases also do not release claims for acts or omissions that constitute actual fraud or wilful misconduct or that are unrelated to the sale process or the transactions. No opposition has been raised to the releases.

[35] Finally, the Receiver seeks a sealing order with respect to: (a) Confidential Appendix "A" to the Second Report, containing the Bid Summary be sealed until further order of the court; and (b) Confidential Appendices "B" and "C", containing unredacted copies of the

C&I asset purchase agreement and the Residential equity purchase agreement, respectively, be sealed until closing of the transactions.

[36] In *Sherman Estate*, the Supreme Court of Canada set out the three prerequisites that must be established to obtain a sealing order: (a) court openness poses a serious risk to an important public interest; (b) the sealing order sought is necessary to prevent the serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the sealing order outweigh its negative effects.[12]

[37] All 3 factors are satisfied here. The documents the Receiver seeks to seal contain details of the proposed transactions. If those are publicly available, they could prejudice any subsequent sale if the proposed transactions do not close. There is an important public interest in allowing receivers to maximize value. Sealing the documents is the only way to protect that interest. The Bid Summary contains confidential information regarding the bids submitted in the sale process, including their parties and terms. The bids were submitted on a confidential and non-binding basis. Disclosure of that information could discourage participation in receivership bidding processes generally. The sealing order is proportionate. The balance of the court file is public. I am satisfied that the benefits of sealing outweigh the limited negative effects on the open courts principle.

[12] *Sherman Estate v Donovan,* 2021 SCC 25 at para. 38.

[38] As a result of the foregoing, I grant the receivership extension motion and the motion to approve the two sales transactions before me.

Date: August 24, 2026



Koehnen J.