SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

COUNSEL SLIP / ENDORSEMENT

COURT FILE NO.: CV-22-00685133-00CL **DATE:** February 20, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: CHRISCWE HOLDINGS v. OASIS GLOBAL INC.

BEFORE JUSTICE: Osborne

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE OSBORNE:

1. The Receiver (who was previously appointed by this Court over the assets, undertaking and property of the Defendants / Respondents Oasis Global Inc. ("Oasis"), Mark Rivers ("Rivers") and 2833713 Ontario Inc. ("283")), seeks approval of an asset purchase agreement ("APA") and related relief. In particular, and pursuant to its Notice of Motion dated November 6, 2023, the Receiver seeks an order:

    a. approving the sale by the Receiver of all right, title and interest in certain assets and property of Oasis pursuant to an APA (defined below) made between the Receiver and Chriscwe Holdings Inc. ("Chriscwe" or the "Purchaser"), together with the corresponding order vesting in the Purchaser all title to the Purchased Assets as defined in the APA, free and clear of all claims and encumbrances other than permitted encumbrances;

    b. granting leave to the Receiver to disclaim or terminate various contracts and leases as specifically set out in the Notice of Motion, but including:

        i. a letter of intent, distribution contract, addendum and MOU between Segway Technology Co. Ltd. ("Segway") and 283;

        ii. a lease agreement between Rivers as landlord and Mill Valley Private Reserve LP as tenant, dated December 15, 2014;

        iii. a lease agreement between Mill Valley Estates of 101 Rolph Road, Baltimore, Ontario as sub-landlord and Oasis as sub-tenant, dated May 1, 2018; and

        iv. a Wholesale Program Agreement entered into between DeLage Landen Financial Services Canada Inc. ("DLL") and Oasis dated March 30, 2022, as amended September 7, 2023;

    c. pursuant to paragraph 2(c) of the Receivership Order, granting leave to the Receiver to enter into a lease, on terms and conditions to be approved by this Court with the Purchaser in respect of that portion of the lands and premises of the Baltimore Property other than those lands and premises that constitute the residence of Rivers, and any lands and improvements appurtenant thereto;

    d. granting leave to the Receiver to enter into a residential lease on terms and conditions to be approved by this Court with the debtor, Rivers, and his spouse, Linda Rivers, in respect of those lands and premises that constitute their residence together with any lands and improvements appurtenant thereto; and

    e. sealing and designating as "confidential" those redacted portions of the APA as described above (i.e., the quantum of the Deposit and the Purchase Price), together with Confidential Appendix "D" to the Second Report which summarizes the value of the assets of Oasis and 283, pending completion of the transaction.

2. Defined terms in this Endorsement have the meaning given to them in the motion materials and/or in earlier Endorsements made by me in this receivership proceeding.

3. I have not set out in this Endorsement the full background of, and context for, this motion. Much of the relevant chronology is set out in my Endorsement made in this proceeding dated August 29, 2023, on which date I appointed the Receiver, among other things. I set out in the August 29, 2023 Endorsement the parties, their relationship with one another, and that debt owing to Chriscwe by the Defendants.

4. Oasis and 283 are related entities controlled by Rivers and his wife, Linda Rivers. They are in the business of distributing off-road power sports vehicles, including Segway vehicles.

5. The Receiver first sought the relief now sought on this motion, at least informally, at a case conference before me on November 2, 2023. The Receiver had, just prior to the case conference, filed a supplementary aide memoire, and advised very shortly before that case conference that it had received a draft purchase agreement from the Applicant with respect to a proposed purchase of assets. Counsel for the Receiver advised that it was expected that the draft agreement could be finalized and executed in relatively short order, and sought what was in effect a pre-approval. The position of the Receiver, strongly supported by Chriscwe, was that it was important to move swiftly to preserve asset value and maximize recovery for creditors, and that no party would be prejudiced.

6. The Respondents, Oasis and its principal, Rivers, requested an adjournment in order that they could consider their position and file responding materials if they wished to do so. In the circumstances, and given the short timing, (as well as my view that substantive relief such as approval of the sale of assets in a receivership and the granting of an approval and vesting order was properly sought on a formal motion rather than at a case conference), I granted another adjournment. I directed the Receiver to file motion materials as soon as possible so that the parties could evaluate their positions, and I urged all of the parties to continue a dialogue in this sometimes acrimonious receivership proceeding.

7. The matter returned before me five days later on November 7, 2023. The Receiver had filed its motion record, and sought approval of the APA and related relief as set out above. The Respondents sought yet a further adjournment on the basis that the motion record had been served only the day before, and that they needed a reasonable opportunity to respond. The Respondents were also represented on November 7, 2023 by a new co-counsel, alongside their existing (and continuing) counsel, and requested an adjournment also on the basis that new co-counsel required an opportunity to get up to speed.

8. The Receiver, supported by the Applicants and by Segway, opposed the adjournment.

9. DeLage Landen Financial Services Canada Inc. ("DLL") took no position on the approval of the APA, but counsel appeared to essentially advise the Court that it wished to exit its financing relationship with the Respondents. Since termination of that agreement required consent of the Receiver, DLL advised that it required a very short period of time to finalize terms with the Receiver relating to the proposed termination of its existing financing facility, with the result that it would either agree to terms with the receiver, or return to Court to seek an order terminating its agreement with the Respondents.

10. As reflected in my Endorsement of November 7, 2023, I exercised my discretion to give the Respondents one last adjournment of the motion for approval of the APA and other relief, given the short service of motion materials. I set a timetable for the delivery of responding materials and the hearing date for this motion, peremptory on the Respondents. The Respondents advised that they would deliver their responding materials as soon as possible but in any event by the deadline fixed.

11. As a result of the above chronology, the matter then came before me on the merits for a third time as scheduled.

Background

12. The Receiver relies on its motion record as well as the Second Report of the Receiver dated November 1, 2023.

13. This matter has already had a lengthy history. A more fulsome chronology is set out at Schedule "C" to the Receiver's materials filed November 20, 2023. It begins with the bankruptcy proposal of Rivers on

August 23, 2002, which was completed in August, 2007. (As noted above, much of the relevant chronology is also set out in my August 29, 2023 Endorsement.)

14. Mr. Chris Kauffman, the principal of Chriscwe, first met Rivers in or around 2015. The parties signed a security agreement and Rivers granted a guarantee in February, 2019.

15. Ultimately, and as reflected in my Endorsement appointing the Receiver in this proceeding, the parties conducted a two-day binding arbitration proceeding, the award in respect of which was issued on July 18, 2022. Chriscwe was successful in that arbitration.

16. Pursuant to that arbitral award, Oasis and Rivers are indebted to Chriscwe in the amount of $9,300,267.40 (i.e., $10 million less amounts received to date), together with interest accruing at a rate of 5% per annum and costs of the arbitration in legal proceedings which include the costs award of Steele, J. in favour of Chriscwe dated August 9, 2023 in the amount of $185,000.

17. Further demand letters were issued. Oasis and Rivers still made no payments to Chriscwe, with the result that Chriscwe commenced this action to enforce the arbitral award and to enforce its security. Oasis and Rivers then commenced an application seeking leave to appeal and/or review the arbitral award, on a number of grounds, including their assertion that the arbitrator had exceeded his jurisdiction and denied them procedural fairness.

18. In September 2022, Chriscwe brought a motion in this proceeding to enforce the arbitral award and to appoint an interim receiver. The interim receiver was ultimately appointed by order dated December 1, 2022 (on consent).

19. In December 2022, the Defendants, Oasis and Rivers, served a defence and counterclaim in the action. By way of the counterclaim, they sought, among other things, judgment in the amount of $30 million against Chriscwe for intentional interference with economic relations, inducing breach of contract and breach of confidence. They also sought $500,000 in punitive damages. The basis for the allegations in the counterclaim is set out in the pleading, but in summary it includes allegations that Chriscwe interfered with the banking relationships and financing efforts of the Defendants.

20. On January 30, 2023, Steele J. heard together the application commenced by Oasis and the motion of Chriscwe in this action to enforce the arbitral award and appoint a receiver. The existing interim receivership was extended, again on consent, until the release of the decision.

21. By order dated February 24, 2023, Steele J. enforced the arbitral award, granted judgment in favour of Chriscwe against Oasis and Rivers in the amount of $9,300,267.40, and ordered Oasis to produce the documents previously requested by Chriscwe, both in its capacity as a shareholder and as a creditor pursuant to the terms of its security agreement. Steele J. also dismissed the application of Oasis and Rivers to appeal/review the arbitral award.

22. Finally, Steele J. deferred the appointment of a receiver with possession, as stated in her reasons, "in order to give Oasis the opportunity to put forward a reasonable plan regarding repayment of the debt owing to Chriscwe and/or obtain financing", but without prejudice to the right of Chriscwe to return to court to seek the appointment of a full receiver.

23. Steele J. also stated in her reasons, as I observed in my August 29, 2023 Endorsement appointing the full receiver as had been deferred previously, that there was concern on the part of Chriscwe that Oasis and Rivers were dissipating or divesting assets of Oasis, in part due to the structuring of a then recent opportunity with Segway. Steele J. observed that Oasis had recently become the new exclusive distributor of Segway branded power sports vehicles in Canada, but the Court also stated in the reasons that [Rivers]

had structured the Segway opportunity so that 283 was to be the signing party for the distribution agreement for Segway vehicles. Oasis was granted a non-exclusive license to represent the Segway Power sports brand and to sell and service Segway vehicles in Canada. Oasis and Rivers then objected to the issuance of a monetary judgment with pre-and post-judgment interest. Ultimately, and with the necessity of numerous Court appearances, the orders of Steele J. were finally settled in April 2023. Steele J. then discharged the interim receiver and appointed Crowe Soberman Inc. as non-possessory receiver on May 31, 2023.

24. Chriscwe continued to have serious concerns about the activities and viability of Oasis and 283, with the result that, as contemplated before Steele J., it moved to broaden the mandate of the investigative receiver and have it appointed as a full possessory receiver in July 2023.

25. That hearing ultimately came on before me, and I granted the order appointing Crowe Soberman Inc. as receiver (the "Receiver") with full possessory receivership powers, in August 2023. My reasons for doing so were set out in the Endorsement to which I have referred above.

26. Relevant for the purposes of the motion before me today is the fact that the receivership covered all of the business, assets and undertakings of 283 as well as Oasis. I addressed the basis for this extensively in my Endorsement. In particular, I addressed the failure of the Defendants to first disclose the existence of 283 at all, their continued failure to provide the Receiver with books and records relevant to the intermingling of the business of Oasis and 283, and their continued failure to comply with the orders for production already made. I described how the existence of 283 was not initially disclosed by the Defendants at all, and that Chriscwe learned of the existence of this corporation only when it was provided with a copy of a TD Bank presentation which listed 283 as a guarantor. Chriscwe, not surprisingly, promptly added 283 as a defendant to this action.

27. The draft dealership agreement with Segway was in turn disclosed by Rivers to Chriscwe only in an affidavit of Rivers filed in response to the motion by Chriscwe to enforce the arbitral award. I observed in my Endorsement that it was, therefore, ironic that the Defendants argued that the fact that 283 was not a party to the arbitration and had only recently been added to this action as a defendant, was a basis to oppose a full receivership over both entities.

28. The Defendant/Respondents did not appeal that order appointing a full possessory Receiver over the assets and property of both Oasis and 283.

29. Finally, as described in my Endorsement from August 2023 setting out my reasons for appointing the full possessory Receiver, I dismissed the motion of the Defendants for a stay. They sought an order staying the payment obligation in the enforcement of the arbitral award, pending a determination of their counterclaim. They submitted that it would be premature and unfair to enforce the February 24, 2023 Order of Steele J. until their counterclaim was determined on the merits.

30. In dismissing that motion, I observe that the counterclaim had been asserted late in the day in terms of the relevant chronology (it was brought on December 12, 2022), on the basis, essentially, that Chriscwe had interfered with the financing efforts of Oasis, principally with RBC and TD. I found that there was no evidence that otherwise available financing for Oasis had been thwarted or compromised by the actions of Chriscwe and indeed that there was no evidence that there was in fact any financing available at all, let alone in any quantum sufficient so as to satisfy the judgment owing.

31. The Defendant/Respondents did not appeal the order dismissing the stay motion either.

32. The Receiver continued to fulfil its (expanded) mandate.

33. As reflected in the Second Report, although the Receiver had, at the outset of its appointment, sought to maintain the continued operations of the companies as a going concern, Oasis experienced significant cash flow challenges in mid-September, 2023.

34. The primary source of the cash flow for the companies (Oasis and its related entity, 283) was financing provided by DLL. However, as observed above, DLL advised the Receiver on or about September 27, 2023 that it did not intend to continue its relationship with the Debtors and wished to terminate its financing contract.

35. As described in my earlier Endorsements, the licensor of the principal recreational products distributed by Oasis, Segway, has expressed to the Receiver (and subsequently to the Court) its concerns with Oasis and Rivers, its complete lack of confidence in their ability to distribute Segway products, and its strong desire to have nothing further to do with them. As further described below, however, Oasis is prepared to work with Kauffman and Chriscwe and indeed desires to do so.

36. Rivers advised the Receiver of his intention to resign as President and a director of Oasis.

37. Adding to all of these challenges was a general industry slowdown in sales of power sports vehicles and particularly recreational power sports vehicles, and a lack of financing for working capital available to Oasis.

38. Moreover, the property from which the business of Oasis is conducted, located in Baltimore, Ontario (the "Baltimore Property") is encumbered by mortgages that are in default. I pause to observe that the situation with respect to the Baltimore Property is also complicated by the fact that there is a residential component. Rivers maintains that he, his wife and two children continued to reside there. That is disputed by the Receiver.

39. As at the hearing of this motion, therefore, Oasis and Rivers remain indebted to Chriscwe for the approximate amount of $9.5 million referred to above together with interest that continues to accrue. Chriscwe holds security for that debt. The Baltimore Property mortgages remain in default, and Oasis and Rivers are also in default of a number of other obligations, including very significant indebtedness owing to each of Segway and the Canada Revenue Agency.

40. At the same time, Oasis and Rivers are in default of obligations imposed upon them through various orders of this Court, including the obligation to disclose records to the Applicants and/or the Receiver, failing to pay the assessed fees of the previous interim receiver, and failing to comply with numerous document requests from the current full possessory Receiver.

41. It is the position of the Applicants that the Respondents are doing nothing more, at every step of the way including on this motion, than attempting to put up roadblocks in an attempt to avoid or at least delay the enforcement of the arbitral award and ultimately, the payment of the debt owing to Chriscwe pursuant to the judgment already granted.

42. I pause to observe that in my endorsement of August 29, 2023, in which I gave brief reasons for the appointment of the full possessory Receiver and dismissed the stay motion of the Respondents, I noted that Oasis and Rivers were seeking to re-litigate issues that had already been determined by Steele J. such that, among other things, the stay motion could not succeed on the basis that the issues were *res judicata*.

43. Accordingly, and for all of these reasons, it was the plan of the Receiver to seek the sale or liquidation of the assets of Oasis and 283, and to seek directions as to a sales process for the Baltimore Property.

44. At the same time, each of the shareholders of the respective Plaintiff and Defendant companies, Rivers and Kauffman, expressed to the Receiver their respective intentions to deliver a "go forward" plan or offer to buy the assets of Oasis, 283 and the Baltimore Property (if required).

45. As noted at the outset of this Endorsement, the Receiver then received from or on behalf of Kauffman and Chriscwe a draft APA pursuant to which the assets of the companies would be purchased by Chriscwe.

46. It was, and remains, the recommendation of the Receiver to this Court that an agreement with Chriscwe will result in a greater return for stakeholders than would any liquidation process which would necessarily be conducted by auctioneers, and that an asset auction is the only alternative.

47. Indeed, and as reflected in the Second Report of the Receiver, the Applicants and the Receiver are of the view that the only hope of salvaging any value in the business of Oasis and 283 is a sale of the remaining assets to Chriscwe, with Chriscwe to enter into a direct relationship to Segway which would include a term requiring Chriscwe to pay significant indebtedness owing by Oasis and Rivers to Segway as a condition thereof. That is what proposed today, strongly recommended by the Receiver, and fully supported by Chriscwe, as senior secured creditor and shareholder, as well as by Segway.

48. Notwithstanding the adjournment I granted on November 7, 2023, in part specifically to give the Respondents yet another opportunity to file responding materials on this motion as they requested the opportunity to do (twice), they elected not to do so, and no responding materials were filed by those parties on this motion. Instead, at the hearing of this motion, counsel for the Respondents advised the Court that they intended to rely on their motion record filed in support of their motion for a stay on August 1, 2023.

49. The Applicants also object to the Respondents relying on this material on the basis, in their submission, that the affidavits in that earlier motion record are "spent" and are of no further force or effect since the motion in respect of which they were filed has already been long determined. More substantively, the Applicants submit that the Respondents are simply, yet again, attempting to relitigate issues that have already been determined.

Analysis

50. As stated above, and notwithstanding successive adjournments granted at the request of the Respondents, and granted particularly at their request that they be given an opportunity to file responding materials, they did not file any responding materials on this motion. There is no affidavit evidence from or on behalf of them.

51. In the circumstances, I permitted the Respondents to rely, as they requested they be permitted to do, on their motion materials filed on August 1, 2023 in connection with the stay motion already determined. However, in my view, nothing in that material persuades me that the asset purchase agreement ought not to be approved.

52. Perhaps most fundamentally, the Respondents have not put forward any offer (as they previously advised the Receiver they intended to do), nor have they provided any viable alternative to the sale of the business to Chriscwe. Instead, they want to continue litigating, albeit without satisfying the outstanding costs award (let alone the judgment in favour of Chriscwe) and without satisfying even the document requests of the Receiver which, in my view, were entirely appropriate and reasonable.

53. Whether or not any litigation continues, however, the Respondents have not put forward any viable alternative to the APA which would represent any possibility of a going concern outcome in this receivership. Indeed, as stated above, they have not put forward any proposal whatsoever.

54. The August 1, 2023 motion record on which the Defendants sought to place reliance on this motion was filed, as above, in support of their motion for a stay of the payment obligation arising out of the February 24, 2023 order of Steele J.

55. As stated above, that motion was dismissed for the reasons set out in my earlier Endorsement which, to the extent necessary, I incorporate into this Endorsement.

56. I am satisfied that in all the circumstances, the Defendants are simply seeking to relitigate the very same issues already determined. Those issues were *res judicata* last summer, and the stay motion was dismissed in part on that basis. The Defendants are attempting to relitigate them yet again, as they did last summer, and the issues are certainly *res judicata* now. There is no more basis now than there was at the time of the stay motion to relitigate the issues.

57. Moreover, I observe again that the Receiver was given the power to explore options and potential transactions to sell any or all of the property of the entities subject to the receivership order: Oasis and 283, and the full possessory receivership order made months ago. The Respondents did not appeal that order. The fact that the Receiver is now seeking approval of something it was authorized to pursue months ago, cannot be said to come as a surprise to any party.

58. Among other things, and at the risk of repetition:

    a. the order of Steele J. granting judgment, enforcing the arbitral award, and dismissing the appeal from that award, was not appealed by the Defendants;

    b. my order dismissing the stay motion and appointing the full possessory Receiver over 283 as well as Oasis, was not appealed by the Defendants;

    c. the Defendants have still not complied with the voluminous, substantive and important document requests from the Receiver, or the earlier orders of this Court directing them to produce documents;

    d. the Defendants have not paid any of the outstanding costs awards or a single dollar towards the outstanding judgment;

    e. the Defendants have put forward no evidence at all on this motion, including but not limited to any evidence as to any financing or sources of funds available or reason potentially available to them, or even been pursued by them, nor any proposed offer or proposal to the Receiver in any form whatsoever.

59. Simply put, the Defendants have done nothing other than continue to delay.

60. I am satisfied that there is no viable path forward other than approval of the proposed APA, if there is to be any meaningful recovery for creditors. Approval of the APA is recommended by the Court-appointed Receiver and very strongly supported by Chriscwe.

61. The materials on which the Receiver relies principally are those set out in its Motion Record dated November 6, 2023 which include the Second Report dated October 31, 2023 and the First Report dated July 18, 2023 together with the appendices thereto, in each case. The motion materials also include a copy of the APA itself, from which the Receiver has redacted the amount of the proposed Deposit and the Purchase Price.

62. As set out in the Second Report, the Receiver has, since the filing of the First Report, engaged in extensive discussions with all key stakeholders, including but not limited to the Debtors and Chriscwe, the licensor

Segway and the financing party DLL. The Receiver has attempted to carry on the business of Oasis while investigating the viability thereof, and carried on other activities consistent with its mandates.

63. In addition to the facts set out above, the Receiver points to the following facts in support of its recommendation that the APA be approved and its submission that there is no viable alternative:

a. employees of Oasis have been laid off;

b. Segway has not shipped any further product to the dealer network, and is claiming a material default in connection with its Distribution Agreement;

c. Segway has requested that the Receiver terminate the contractual arrangements described in the Notice of Motion and summarized above between Segway and 283 (and Oasis, its non-exclusive sales agent);

d. taxes and government remittances remain unpaid and continue to accrue;

e. DLL, the only source of financing and working capital available to Oasis, has requested that the Receiver agree to terminate its contract with Oasis;

f. Rivers has advised the Receiver of his intention to resign as director and officer of Oasis;

g. 283 conducts no active business; and

h. the Receiver is entitled to bring this motion for sale approval and other relief pursuant to the terms of the Receivership Order made in this proceeding and particularly paragraphs 2(c), (j) and (l) thereof.

64. In argument, the Receiver submitted that, but for the proposed APA it received from or on behalf of Chriscwe, it would have recommended to this Court that the assets and undertaking of 283 be sold and liquidated by auction since the business of Oasis and 283 is clearly not viable and not even operating today.

65. However, that anticipated recommendation was overtaken by events in that Chriscwe, the secured creditor who is owed approximately $9.5 million pursuant not only to its security agreements, but also the arbitral award and the judgment of Steele J. by which it was granted judgment in that amount, has proposed the APA now before the Court.

66. Moreover, Segway has confirmed its preparedness to enter into a contractual arrangement for the distribution of its products with Chriscwe, and Chriscwe would pay significant indebtedness of Oasis and 283 owing to Segway.

67. The Receiver submits, and I agree, that it is in the best interest of all stakeholders that the Segway business in Canada continue. The proposed relief would permit that to occur. I am equally satisfied that absent the proposed relief being granted, it will not occur. The relief, if granted, including approval of the proposed transaction, together with the proposed disclaimers and termination of existing contracts, will allow Chriscwe, as Purchaser, to carry on the Segway business albeit with a new distribution agreement and financing plan which is being finalized between Chriscwe and Segway.

68. It is the position of the Receiver, supported by Chriscwe, that Chriscwe as Purchaser will resume the business, re-hire to the greatest extent possible the employees, and resume the shipment of goods to the dealer network an audit or warranty claims for the Segway recreational products.

69. In addition, the Receiver submits that Chriscwe should be allowed to take possession of the Baltimore Property in order to conduct the Segway business, at least for the time being. However, as noted above, Rivers submits that he and his family reside in the residential portion (which is a small portion) of the Baltimore Property. While the Receiver disputes that the family in fact resides there, it is prepared to protect the interests of the Rivers family by entering into a residential lease with them on terms and conditions that are acceptable to them, to the Receiver and to this Court.

70. The Receivership Order made in this proceeding is clear as to the powers of the Receiver. The substantive issue on this motion is whether the proposed sale should be approved.

71. This Court has the discretion to approve a proposed sale of assets by a Court-appointed Receiver. In doing so, the Court should apply the well-known *Soundair* Principles (See *Royal Bank of Canada v. Soundair Corp*., (1991), 4 O.R. (3d) 1 (Ont. C.A.) at para. 16):

    a. whether the party made a sufficient effort to obtain the best price and to not act improvidently;

    b. the interests of all parties;

    c. the efficacy and integrity of the process by which the party obtained offers; and

    d. whether the working out of the process was unfair.

72. I am satisfied, for the reasons set out in the Second Report and in the Supplementary Report (including, for greater certainty, the appendices thereto), that the sale should be approved.

73. In the circumstances of this case, there has been no formal sales process, no marketing of the assets of the debtors generally or broadly, and no auction process, for example.

74. However, the *Soundair Principles* and the jurisprudence generally are clear that the court has the discretion to approve an asset sale by a Receiver if the *Soundair Principles* are satisfied. They do not require a formal sales process in all cases.

75. I am satisfied that such a process would not be appropriate here. The proposed APA is supported by the senior secured creditor who holds a judgment for approximately $9.5 million. The business of the debtors is not operating. Employees have been laid off. The principal source of financing and working capital, DLL, is seeking a termination of its agreement and therefore its obligation to provide working capital. The business of the debtors is, in the main, the distribution of the Segway recreational products. Segway also supports the relief sought. It contemplates the repayment to Segway of significant indebtedness owed by the debtors which enures to the benefit of all stakeholders in that it will very materially reduce the obligation of that indebtedness of the debtors to the benefit of all creditors, and not just Chriscwe.

76. I am satisfied here that as submitted by the Receiver and supported by Chriscwe, there is no reasonable prospect that a sales process would yield any more favourable an outcome or higher price. Moreover, there is no funding available to conduct such a sales process, and the business of the debtors is not operating even now, much less is there funding available for it to operate in the interim period while a sales process was undertaken.

77. Indeed, the only other possible purchaser, in all likelihood, would be Oasis, and it has not, as stated above, put forward any offer notwithstanding multiple opportunities to do so, including successive adjournments to allow it to put together a possible offer as it advised the Receiver is intended to do. Yet such an offer has never materialized. Moreover, Segway has now lost whatever confidence it once had in the debtors, with the result that it is not interested in pursuing any relationship with them in any event, and a

relationship with Segway (whose outstanding receivables owing by the debtors would be addressed by the proposed purchaser under the APA) is critical to any going concern outcome and, in my view, to the maximization of recovery for stakeholders.

78. For all of these reasons, I am satisfied that in recommending approval of the APA, the Receiver is not acting improvidently and has made best efforts to achieve the best price possible, through the activities as set out in the First and Second Reports and Supplements and Appendices thereto.

79. I am equally satisfied that the interests of all parties have been taken into account. In particular, I am satisfied that the Respondents have had ample opportunity (indeed, more than ample opportunity, repeatedly) to come up with an alternative.

80. I observe again that the position of the Respondents is that the Rivers family resides on the residential portion of the Baltimore Property and that this is another reason that no sale should be approved. That position, disputed by the Receiver, cannot, however, act as a complete bar so as to prevent not only the proposed APA now before the Court, but indeed any proposed sale of the Baltimore Property, notwithstanding any evidence of the complete lack of any effort on the part of the Respondents to take any steps toward paying their very significant indebtedness now reflected in the judgment of this Court.

81. The Respondents have not appealed the Receivership order, as noted above, with respect to the issue of a possible impact on their living arrangements, or any other issue. Nor have they availed themselves of the standard "comeback clause" included in the Receivership Order permitting any affected party to return to Court for advice and directions on any issue on seven days' notice.

82. Finally, with respect to the Respondents in particular, and the possibility that the Rivers family resides at the Baltimore Property, the Receiver has quite prudently sought to balance these competing interests in the manner in which the proposed relief is fashioned. Rivers and his family are not being evicted tomorrow. Rather, the relief contemplates a proposed residential tenancy in order that Rivers could continue to reside there if he wished to do so (and there is no evidence as to whether he wishes to do so or not, even if the family is indeed living there today).

83. That residential tenancy, and the terms thereof, are not the subject of any approval being sought or granted today. Rather, the terms would have to be approved by Rivers, the Receiver, and by this Court. I am satisfied that such preserves the status quo for the moment, and that nothing can occur with respect to the eviction of Rivers, for example, without further order of this Court. Accordingly, their interests are not being prejudiced by any relief being granted today.

84. For all of the same reasons, the efficacy and integrity of the process undertaken by the Receiver leading to the proposed APA was not unfair. The proposed APA represents what is, effectively, a credit bid, but it also represents a purchase price that exceeds the estimated value of the assets.

85. Simply put, there is no other, let alone better, alternative. As stated above, but for the proposed APA, the Receiver would have recommended a liquidation auction for the remaining assets which inevitably but certainly, would have yielded a less favourable result for all stakeholders.

86. The proposed APA is approved.

87. Similarly, I am satisfied that the ancillary relief as set out in the Notice of Motion and summarized at the outset of these Reasons is also appropriate and is approved. That relief is an integral part of the overarching plan to maximize recovery for stakeholders if the APA is approved, in that it contemplates the termination of the Segway relationships with the debtors, the termination of the DLL financing arrangements as

requested by DLL and sought by the Receiver as part of its relief requested on this motion, and the possible sale of the Baltimore Property (which is for another day).

88. Finally, the sealing order sought by the Receiver is appropriate in the circumstances of this case. It is limited both in scope and in time. The materials are limited to that commercially sensitive material which would affect a subsequent sale of the assets in the event the proposed APA transaction did not close. In the same way, the sealing order would have effect only until the transaction closes.

89. Subsection 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.42, provides for the Court's authority to grant a sealing order. It provides that the Court may order that any document filed in a civil proceeding be treated as confidential, sealed and not part of the public record.

90. The Supreme Court of Canada in *Sherman Estate v. Donovan,* 2021 SCC 25, at para. 38, recast the test from *Sierra Club of Canada v. Canada (Minister of Finance)* 2002 SCC 41 (CanLII):

> The test for discretionary limits on presumptive court openness has been expressed as a two-step inquiry involving the necessity and proportionality of the proposed order (*Sierra Club*, at para. 53). Upon examination, however, this test rests upon three core principles that a person seeking such a limit must show. Recasting the test around these three prerequisites, without altering its essence, helps to clarify the burden on an applicant seeking an exception to the open court principle. In order to succeed, the person asking the court to exercise discretion in a way that limits the open court presumption must establish that:
>
> a. court openness poses a serious risk to an important public interest;
>
> b. the order sought is necessary to prevent this 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 order outweigh its negative effects.
>
> Only where all of these prerequisites have been met can a discretionary limit on openness - for example, a sealing order, a publication ban, an order excluding the public from the hearing, or a redaction order - properly be ordered. This test applies to all discretionary limits on court openness, subject only to valid legislative enactments (*Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41, [2005] 2 S.C.R. 188 at paras. 7 and 22).

91. For the reasons set out above, this test is met here. The sealing order is granted.

92. Counsel for the Receiver are directed to file physical copies of the three documents with the Commercial List Office in a sealed envelope marked: "confidential and sealed by Court order; not to form part of the public record".

93. The motion of the Receiver is granted.

94. Order to go to give effect to these Reasons. Counsel to the Receiver may submit to me in writing a draft order reflecting the disposition of this Motion.

Osborne J.