

***Ontario***

**Superior Court of Justice**

**Commercial List**

BETWEEN:

**ICICI BANK CANADA**

Applicant

- and -

**BAYSIDE MALL LIMITED**

Respondent

**NOTICE OF MOTION**

The Receiver, A. John Page & Associates Inc. will make a motion to a Judge sitting on the Commercial List on January 11, 2017 at 10:00 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order, in substantially the form attached as **Schedule "A"** hereto, including, among other things, an order:
  - a. approving the conduct and activities of the Receiver to date as detailed in the Eleventh Report of the Receiver dated November 1, 2016 (the "**Eleventh Report**");

- b. approving the Receiver's Statement of Receipts and Disbursements included in the Eleventh Report;
  - c. approving the Receiver's conclusion that no portion of the Property Tax Refund (as defined in the Eleventh Report) ought to be paid over to Bayside Mall (2015) Limited and/or any of the tenants or former tenants of 1368883 Ontario Inc., formerly Bayside Mall Limited (the "**Debtor**");
  - d. releasing the Receiver from any and all liability to tenants and former tenants of the Debtor; and
  - e. approving the fees and expenses of the Receiver and its counsel; and
2. such further and other relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

3. The Receiver was appointed by Order of the Honourable Mr. Justice Wilton-Siegel on December 5, 2012 (the "**Initial Order**") over all of the assets, undertakings and properties of the Debtor;
4. The principal asset of the Debtor was a shopping mall and office building located at 150-202 Christina St. North in Sarnia, Ontario (the "**Bayside Mall**") on land (the "**Land**") owned by the City of Sarnia (the "**City**");
5. On August 26, 2015, Mr. Justice Hainey made an order which, among other things, approved the agreement (the "**Wilsondale APS**") to sell the Bayside Mall to Wilsondale Venture Capital Inc. ("**Wilsondale**"), in trust for a company to be incorporated;
6. Wilsondale assigned the Wilsondale APS to Bayside Mall (2015) Limited;
7. The sale of the Bayside Mall closed on October 8, 2015;
8. In connection with the closing, property tax arrears totalling \$1,308,304.94 were paid to the City;

9. Previously, the Receiver had filed an appeal of the Bayside Mall MPAC property assessment for the period from January 1, 2013 to December 31, 2016, inclusive (the “**Appeal**”);
10. MPAC assessed the Bayside Mall at \$7,100,000 as at January 1, 2012, with the property taxes levied for the period that was the subject matter of the Appeal being based on that assessment;
11. In order to expedite the resolution of the Appeal, the Receiver and its counsel, along with Altus, MPAC, MTE, the City and the County attended a mediation in Sarnia on April 25, 2016 (the “**Mediation**”) that was chaired by a representative of the ARB;
12. The Receiver and the City reached a settlement (the “**Settlement**”) that saw the assessed value of the property reduced to \$2,500,000 for the years 2013-2015 and \$3,345,000 for the year 2016;
13. On May 30, 2016, council for the City approved the Settlement;
14. On June 16, 2016, Mr. Justice Hainey made an order which, among other things, approved the Settlement;
15. On August 3, 2016, the Receiver received from the City a payment in the amount of \$518,777.46 in connection with the Settlement (the “**Property Tax Refund**”);
16. About a month earlier, the Receiver received from the City a payment in the amount of \$18,336.30 in connection with vacancy rebate applications filed for 2015 (the “**Vacancy Rebates**”);
17. The Wilsondale APS obligated the Receiver to pay Bayside Mall (2015) Limited its share of the Property Tax Refund and Vacancy Rebates net of costs;
18. The Receiver has determined that there is no amount owing as the share of costs exceeds the share of the Property Tax Refund and the Vacancy Rebates, and has informed Bayside Mall (2015) Limited accordingly;
19. The Receiver has also assessed and concluded that no portion of the Property Tax Refund ought to be paid over to any of the tenants or former tenants of the Debtor;

**Statement of Receipts and Disbursements**

20. The Receiver's Interim Statement of Receipts and Disbursements for the cumulative period of December 5, 2012 to November 1, 2016 is attached to the Eleventh Report, and the Receiver requests Court approval for that Interim Statement;

**Professional Fees**

21. The Receiver's fees for June 1, 2016 and ending October 31, 2016 are \$56,825.14 plus HST, as set out in the Fee Affidavit of A. John Page sworn November 3, 2016;
22. The fees of Heath Whiteley for June 1, 2016 and ending October 31, 2016 are \$11,920.00 plus disbursements of \$209.16, plus HST, as set out in the Fee Affidavit of Heath Whiteley sworn November 14, 2016;
23. The fees of Gardiner Roberts for February 1, 2016 and ending May 31, 2016 are \$940.50 plus disbursements of \$185.86, plus HST, as set out in the Fee Affidavit of Tim Duncan sworn November 2, 2016 and
24. Such further and other grounds as the lawyers may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

25. The Eleventh Report;
26. The fee affidavits of A. John Page, Heath Whiteley and Tim Duncan; and
27. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

November 17, 2016

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Schedule "A"

Court File No. CV-12-9911-00CL

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

THE HONOURABLE	)	WEDNESDAY, THE 11 <sup>th</sup> DAY
	)	
JUSTICE ■	)	OF JANUARY, 2016

**ICICI BANK CANADA**

Applicant

- and -

**BAYSIDE MALL LIMITED**

Respondent

**ORDER**

**THIS MOTION**, made by A. John Page & Associates Inc., in its capacity as the court-appointed Receiver (the "**Receiver**") of certain of the assets, undertakings and properties of 1368883 Ontario Inc., formerly Bayside Mall Limited (the "**Debtor**"), for an Order: (a) approving the conduct and activities of the Receiver to date (as detailed in the Eleventh Report of the Receiver); (b) approving the Receiver's Statement of Receipts and Disbursements; (c) approving the Receiver's conclusion that no portion of the property tax refund arising out the minutes of settlement provided for in the Memorandum of Agreement dated May 11, 2016 (in connection with its' appeal of the assessment by Municipal Property Assessment Corporation for the period from 2013 to 2016) ought to be paid over to Bayside Mall (2015) Limited and/or any of the tenants or former tenants of the Debtor; (d) releasing the Receiver, and others, from any and all liability to tenants and former tenants of the Debtor; and (e) approving the fees and expenses of the Receiver and its counsel; and such further and other relief as to this



Honourable Court may seem just, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion, the Eleventh Report of the Receiver dated November 1, 2016 (the “**Eleventh Report**”), and the affidavits of A. John Page sworn November 3, 2016 (the “**Receiver’s Fee Affidavit**”), Heath Whiteley sworn November 14, 2016 (the “**Whiteley Fee Affidavit**”) and Tim Duncan sworn November 2, 2016 (the “**Duncan Fee Affidavit**”), and on hearing the submissions of the lawyer(s) present on the motion, all parties per the service list on the notice of motion having been served as appears from the affidavit of Heath Whiteley sworn November ■, 2016.

1. **THIS COURT ORDERS** that service of the Notice of Motion and Motion Record herein upon any interested party not served is hereby dispensed with.
2. **THIS COURT ORDERS** that the activities of the Receiver to date as set out in the Eleventh Report are hereby approved.
3. **THIS COURT ORDERS** that the receipts and disbursements of the Receiver as set forth in the Statement of Receipts and Disbursements contained in the Eleventh Report be and the same are hereby approved.
4. **THIS COURT ORDERS AND DECLARES** that no portion of the portion of the Property Tax Refund (as defined in the Eleventh Report) shall be paid over to Bayside Mall (2015) Limited and/or any of the tenants or former tenants of the Debtor, including, without limitation, those parties listed in **Schedule “A”** hereto.
5. **THIS COURT ORDERS AND DECLARES** that A. John Page & Associates Inc. is hereby released and discharged from any and all liability that A. John Page & Associates Inc. now has or may hereafter have to any and all tenants and former tenants of the Debtor (including, without limitation, those parties listed in **Schedule “A”** hereto) by reason of, or in any way arising out of, the acts or omissions of A. John Page & Associates Inc. while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver’s part. Without limiting the generality of the foregoing, A. John Page & Associates Inc. is hereby forever released

and discharged from relating to matters that were raised, or which could have been raised, in the within receivership proceedings by any and all tenants and former tenants of the Debtor (including, without limitation, those parties listed in Schedule "A" hereto), save and except for any gross negligence or wilful misconduct on the Receiver's part.

6. **THIS COURT ORDERS** that the fees of the Receiver for the period from June 1, 2016 and ending October 31, 2016 in the amount of \$56,825.14 plus applicable GST/HST as set forth in the Receiver's Fee Affidavit are hereby approved and allowed.

7. **THIS COURT ORDERS** that the fees of the Receiver's counsel for the period from June 1, 2016 and ending October 31, 2016 in the amount of \$11,920.00 plus disbursements of \$209.16 and applicable GST/HST as set forth in the Whiteley Fee Affidavit are hereby approved and allowed.

8. **THIS COURT ORDERS** that the fees of the Receiver's independent counsel for the period from February 1, 2016 and ending May 31, 2016 in the amount of \$792.00 plus disbursements of \$26.56 and applicable GST/HST as set forth in the Duncan Fee Affidavit are hereby approved and allowed.

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Court File No. CV-12-9911-00CL

**B E T W E E N:**

**ICICI BANK CANADA**  
Applicant

**- AND -**

**BAYSIDE MALL LIMITED**  
Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

(PROCEEDING COMMENCED AT TORONTO)

**NOTICE OF MOTION**  
(re Eleventh Report)

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