Court File No. CV-25-00744295-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

RIOCAN REAL ESTATE INVESTMENT TRUST, RIOCAN HOLDINGS INC., RIOCAN HOLDINGS (OAKVILLE PLACE) INC., RIOCAN PROPERTY SERVICES TRUST, RC HOLDINGS II LP, RC NA GP 2 TRUST and RIOCAN FINANCIAL SERVICES LIMITED

Applicants

- and -

2455034 ONTARIO LIMITED PARTNERSHIP, 2455034 ONTARIO INC., 2491815 ONTARIO LIMITED PARTNERSHIP, 2491815 ONTARIO INC., 2491816 ONTARIO LIMITED PARTNERSHIP, 2491816 ONTARIO INC., 2681842 ONTARIO LIMITED PARTNERSHIP, 2681845 ONTARIO INC. and 2681842 ONTARIO 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

COSTS SUBMISSIONS OF THE RECEIVER

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Lawyers for FTI Canada Consulting Inc., in its capacity as court-appointed receiver and manager of the Respondents

TO: **THE SERVICE LIST**

COSTS SUBMISSIONS OF THE RECEIVER

i) No Costs Should be Ordered

1. As this Court recently noted in the "Ruby Liu" matter, costs are not typically awarded in CCAA proceedings because restructurings are often not a "classic adversarial civil proceeding", and the CCAA is intended to provide a "forum for stakeholder views to be brought forward, considered, and taken into account."[1]

2. The same can frequently be said of matters receiverships and other matters under the BIA, including this proceeding. The Receiver was appointed in order to maximize recoveries of assets for the benefit of the debtors' creditors. The proceeding is not a classic adversarial civil proceeding but rather is a forum to allow a court officer to take steps to minimize the losses suffered by creditors of the insolvent debtors.

3. The Receiver did just that. This is a unique and challenging case, as the debtors hold what appear to be highly valuable assets – assets worth fighting over – but which are difficult to monetize. The Receiver proposed the Fairweather sublease in an attempt to accomplish this goal. The Court acknowledged that the Receiver had "gone to great and creative lengths to try to preserve and maximize any value that may exist in the leasehold interests," consistent with its mandate.

4. While the Court declined to approve the proposed transaction, a costs award is not warranted. Imposing a costs award in this situation would act as a deterrent for future court officers to take similarly creative approaches to managing difficult mandates and solving challenging problems. That sort of disincentive should be avoided. Indeed, it is unusual for costs to be awarded where a court declines to approve a transaction proposed by a court-appointed officer.

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[1] *In Re Hudson's Bay Company*, 2026 ONSC 1331, at para 10

ii) In the Alternative, Costs Should be $250,000

5. In the event costs are awarded, Oxford's request for $707,229.66 is disproportionate, given the nature of the pre-hearing steps and the length of the hearing itself. In addition, there is no basis for an award of substantial indemnity costs.

a) Substantial Indemnity Costs Not Warranted

6. Oxford's offer to settle does not trigger substantial indemnity costs under Rule 49 and should not lead the Court to exercise its discretion to award higher costs.

7. Oxford's offer was not Rule 49 compliant in two respects:

(a) It was incapable of being accepted by the Receiver alone. The offer was explicit that it had to be accepted by *both* the Receiver and RioCan in order to have effect. It would be absurd if a party can suffer adverse cost consequences for failing to accept an offer that it has no independent ability to accept.[2]

(b) It contained terms beyond the scope of the motion. Specifically, Oxford's offer required both RioCan and the Receiver to grant Oxford a full and final mutual release of uncertain scope *and* required them to surrender and terminate all leases and related agreements in respect of Yorkdale Mall, which would have the impact of precluding the Receiver from exploring any other transactions. It also required the deletion of instruments from title to the property. None of this was in issue or available in the motion. An offer which incorporates demands beyond the scope of the proceeding does not comply with Rule 49.[3]

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[2] Note that this is dissimilar to a scenario where a plaintiff makes a global offer to all defendants which would allow any single defendant to accept the offer and pay the full amount demanded thereunder. In that case, any individual defendant can accept the offer.

[3] *NorthStar Earth & Space Inc. v. Spire Global Subsidiary, Inc.*, 2024 ONSC 5060, at para 90

8. As Oxford notes, the Court is entitled to consider an offer to settle even if it is not compliant with Rule 49. In this case, the Court should give the offer no weight. Oxford offered $5 million if the offer was accepted in a very short window of time (10 days, as the November 25, 2025 offer expired upon commencement of cross-examinations on December 4, 2025) and $2.5 million thereafter. Compared to the amount in issue, this was a trivial offer. Indeed, in its cost submissions, Oxford relies on the fact that the dispute involved "'hundreds of millions of dollars' in value."

9. An offer of $2.5 million in this context is not a real offer intended to be accepted. It is a tactical offer made purely for costs purposes. Such an offer does not actually foster settlement and, therefore, should not be taken into account in awarding costs.

10. In addition, as the offer required the Receiver to abandon any further efforts to monetize the lease and any other rights in relation to the Tenant Department Store building, including ownership of the building, it was a coercive attempt to bring the receivership of this property to an early conclusion. An offer of this sort does not merit an award of costs on an increased scale.

b) Oxford's Costs are Excessive

11. Oxford seeks approximately $520,000 in costs on a partial indemnity basis, exclusive of disbursements. This sum comprises 932.3 hours of lawyer time, including 437.4 hours spent reviewing the records filed by the Receiver and RioCan and preparing Oxford's responding materials.

12. Oxford also spent 243.1 hours related to cross-examinations. There were only four witness examined, the longest being Ms. Corrado, whose examination lasted 2 hours and 20 minutes. In total, the four examinations lasted only 4 hours and 8 minutes. Oxford spent approximately 58 hours of lawyer time for each hour of cross-examination. This is grossly disproportionate and outside of the reasonable expectations of the parties.

13. By contrast, the Receiver's partial indemnity costs were approximately $158,000, exclusive of disbursements, comprising 261.7 hours of lawyer time for all tasks. The Receiver excluded two categories of time from its bill: (i) time spent preparing the Receiver's primary report, as this report was required whether or not Oxford opposed the motion; and (ii) time for Mr. Cobb, whose time was focused on the preparation of the proposed transaction rather than the litigation. The Receiver's

14. Even accounting for those reductions, the discrepancy between the Receiver's costs and Oxford's is dramatic. Oxford spent approximately the same amount of time on cross-examinations as the Receiver did on the entire case, save preparation of the Receiver's report. The Receiver's time includes all counsel time to review Oxford's record, prepare the Receiver's reply record, prepare for and engage in cross-examinations, draft its factum and argue the hearing.

15. There is no reason why Oxford's costs should be three times as high as those of the Receiver. The fact that the motion was important and of significant financial impact is not a license to incur excessive costs and seek to impose those costs on the opposing party.

16. The Receiver submits that an appropriate costs award is $250,000, all inclusive. This amounts to approximately $210,000 in partial indemnity costs plus the full $38,438.30 in disbursements Oxford claims. This is $40,000 more than the Receiver's partial indemnity costs and is both fair and reasonable in the circumstances.

iii) Payment of Costs

17. Oxford asks for its costs to be paid "forthwith." It is not clear what Oxford means by this. It does not suggest that the Receiver should personally pay the costs, nor would there be any basis for such a request.

18. The Receiver has been appointed over the assets of various entities which have different assets and secured and unsecured obligations. This motion specifically concerned the lease held by HBC YSS 1 Limited Partnership (now 2491815 Ontario Limited Partnership), not all entities subject to the receivership.

19. Oxford states that the Receiver "recently distributed approximately $20 million to RioCan". Those funds came from the proceeds from the sale of a 50% interest in the Oakville Place Mall and were distributed pursuant to a court order. This interest in the Oakville Place Mall was owned by a separate entity against which Oxford has no claim. The funds were never available to Oxford or Oxford's debtor and are entirely irrelevant to the costs of this motion.

20. If costs are awarded in Oxford's favour, they will constitute a liability of the estate of HBC YSS 1 Limited Partnership. If Oxford is suggesting otherwise, there is no basis for any such order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of March, 2026.

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