JUDICIAL CENTRE OF EDMONTON
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| COURT FILE NUMBER | 2103-04643 |
| COURT | COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY |
| MATTER | **IN THE MATTER OF THE RECEIVERSHIP OF 1465770 ALBERTA LTD.** |
| JUDICIAL CENTRE | EDMONTON |
| PLAINTIFF | ROYAL BANK OF CANADA |
| DEFENDANT | 1465770 ALBERTA LTD. |
| APPLICANT | ERNST & YOUNG INC., in its capacity as Receiver of 1465770 Alberta Ltd. |
| DOCUMENT | **BRIEF OF ERNST & YOUNG INC., COURT-APPOINTED RECEIVER OF 1465770 ALBERTA LTD.** |
| ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT | **DLA Piper (Canada) LLP**<br>2700, 10220-103 Ave NW<br>Edmonton, AB  T5J 0K4<br>**Attention:  Jerritt R. Pawlyk**<br>Phone: 780.426.5330<br>File No. 038689-00016 |

**Commercial Chambers Application scheduled for the 8th day of December, 2021 at 2:00 pm.**

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## INTRODUCTION

1. Ernst & Young Inc. submits this brief in support of its application for an Order Confirming Sale and Vesting Title (the "**Application**"), which seeks court approval of the sale (the "**Sale**") of a 2019 Ford F-150 pickup truck with the serial number 1FTEW1EP2KFB66858 (the "**Truck**") at an auction held August 30, 2021 (the "**Auction**").

## STATEMENT OF FACTS

2. This section provides an overview of the events and considerations giving rise to the Sale. Details of the precipitating events are more fulsomely described in the Receiver's First Report, dated November 23, 2021.

3. On March 18, 2021, following its private appointment as receiver and manager of 1465770 Alberta Ltd., which formerly operated as Westlake Husky ("**Westlake**"), Ernst & Young Inc. (the "**Receiver**") took possession of all assets of Westlake, including the Truck. The Receiver then made arrangements to store the Truck at the residence of Westlake's former principal, Mr. Shahid Mughal, until the best means of selling the Truck could be ascertained.[1]

4. In the intervening period, the Receiver continued maintaining proper insurance on the Truck.[2]

5. On March 24, 2021, pursuant to the Receivership Order of Justice Mah, this Honourable Court formally appointed the Receiver to manage the current and future assets, undertakings, and properties of Westlake.[3]

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[1] Receiver's First Report, dated November 23, 2021, at para 7 [the "**First Report**"].
[2] *Ibid.*
[3] Receivership Order of Justice Mah, dated March 24, 2021 [the "**Receivership Order**"].

6. The Receiver then carefully considered its options regarding the Truck. Ultimately, it determined sale of the Truck by auction would most likely yield the highest return for the Estate's benefit, as an auction would provide the greatest market exposure.[4]

7. In or around April 2021, the Receiver retained Mirterra Industrial Appraisers & Auctioneers ("**Mirterra"**), with whom it had previously worked, to sell the Truck.[5]

8. On August 30, 2021, the Truck was sold at the Auction for $42,000.00 (the "**Sale Price"**), less the 4% commission payable to Mirterra of $1,680.00, resulting in net sale proceeds of $40,320.00 (the "**Net Proceeds**").[6]

9. Following the Sale, the Receiver instructed its counsel to request discharge of a security interest (the "**Registration**") registered against the Truck by Ford Credit Canada Company ("**Ford Credit"**) at the Personal Property Registry, in an effort to provide the Purchaser with clear title to the Truck and minimize costs to the Estate. However, the Receiver's counsel received no response to its attempts to reach Ford Credit.[7]

10. The Receiver now seeks court approval of the Sale and discharge of the Registration, for the following reasons:

    a) the Sale Price represented the highest and best price offered for the Truck;

    b) the Receiver was acting in good faith and with due diligence with respect to the Sale;

    c) the Receiver believes the Sale was conducted at arm's length, in good faith, and in a commercially reasonable manner;

[4] First Report at paras 9 and 11.
[5] First Report at para 9.
[6] First Report at para 11.
[7]

d) the Receiver believes the Sale resulted from a fair process on the open market; and

e) the requested Order will not result in prejudice to existing or anticipated claimants for indebtedness owing by Westlake.

## ISSUE

11. Is it appropriate and reasonable, in the circumstances, for this Honourable Court to approve and ratify the Sale?

## LAW & ARGUMENT

12. The legal test for approval of a sale was established in *Royal Bank v. Soundair Corp.,* 1991 CanLII 2727 (ONCA) ("***Soundair"***). When assessing whether a sale should be confirmed, the Court should consider:

a) whether the receiver made 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 were obtained; and

d) whether there has been any unfairness in the working out of the process[8]

(the "***Soundair* Test"**).

13. Alberta Courts have long recognized and applied the *Soundair* Test in receivership proceedings.[9]

[8] *Royal Bank v. Soundair Corp.,* 1991 CanLII 2727 (ONCA) at para 16 [*"**Soundair"***] **[TAB 1].**
[9] *PricewaterhouseCoopers Inc. v. 1905393 Alberta Ltd*., 2019 ABCA 433 at paras 10-12 [*"**PricewaterhouseCoopers"***] **[TAB 2].**

14. In *PricewaterhouseCoopers Inc. v. 1905393 Alberta Ltd.,* 2019 ABCA 433 (“***PricewaterhouseCoopers***”), the Alberta Court of Appeal further recognized a subset of four factors that may be considered under the first prong of the *Soundair* Test. This non-exhaustive list of factors may include:

   a) whether the offer accepted is so low in relation to the appraised value as to be unrealistic;

   b) whether the circumstances indicate that insufficient time was allowed for the making of bids;

   c) whether inadequate notice of sale by bid was given; or

   d) whether it can be said that the proposed sale is not in the best interest of either the creditors or the owner.[10]

15. However, a Court must place a great deal of confidence in the actions taken and in the opinion formed by the receiver.[11] It should also assume the receiver is acting properly, unless the contrary is clearly shown.[12]

***i. Sufficient Effort***

16. The Receiver submits it made sufficient effort to obtain the best price for the Truck and did not act improvidently.

17. The Receiver carefully considered its options for selling the Truck, before determining that sale by auction would provide the greatest market exposure and, as a result, likely yield the highest price.[13]

[10] *PricewaterhouseCoopers at* paras 11-12 **[TAB 2].**
[11] *Soundair* at para 12 **[TAB 1].**
[12] *Ibid* **[TAB 1].**
[13] First Report at para 11.

18. The Receiver further engaged Mirterra, a reputable industrial auction and appraisal company with which it had previously worked, to facilitate sale of the Truck at the Auction.[14]

19. After retaining Mirterra, on April 21, 2021, the Receiver immediately delivered the Truck to Mirterra for safe-keeping.[15]

20. Following consultation between the Receiver and Mirterra, Mirterra opted to include the Truck in a public auction scheduled four months later, on August 30, 2021, to obtain the greatest possible market exposure.[16]

21. As a result, the Receiver's efforts were "sufficient" to obtain the best price, as contemplated in *Soundair.*

***ii. Interests of All Parties***

22. A receiver has a duty to protect the interests of the debtor's creditors. However, the receiver's duty does not mandate that "the majority rules." Rather, the receiver must consider all creditors' interests, then act for the benefit of the general body.[17]

23. In the Receiver's professional opinion, the Sale provides a fair and reasonable recovery for the benefit of all Westlake's creditors, in line with the fair market value of the Truck.

24. Additionally, the Receiver made significant efforts, through its counsel, to contact Ford Credit and discharge the Registration by consent. In any event, Ford Credit will not be prejudiced by the Sale, as the Receiver will distribute the Net Proceeds, minus costs, to Ford Credit following ratification of the Sale by this Honourable Court.

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[14] First Report at para 9.
[15] First Report at para 10.
[16] First Report at para 11.
[17] *Alberta Treasury Branches v. Elaborate Homes Ltd.,* 2014 ABQB 350 at paras 61 and 63 [*"**Elaborate**"***] **[TAB 3]**.

25. Accordingly, the Sale is commercially reasonable and in the best interests of Westlake's stakeholders.

***iii. Efficacy and Integrity of the Process***

26. A court should assume a receiver has acted properly, unless the contrary is clearly demonstrated.[18]

27. In the present case, the Sale was conducted in a fair and transparent manner, via public auction and with over four months of notice in advance of the Auction.[19]

28. Accordingly, the Sale was conducted with both efficacy and integrity.

***iv. Unfairness in the Process***

29. The Receiver submits it acted reasonably, prudently, fairly, and not arbitrarily in arranging and facilitating the Sale. It acted in good faith, with the objective of maximizing recovery for all stakeholders of Westlake.

30. As a result, the Receiver respectfully submits the Sale amply satisfied the *Soundair* Test, and that the Receiver acted in a commercially reasonable manner in facilitating the Sale.

## RELIEF CLAIMED

31. Based on the filed materials and the foregoing submissions, the Receiver respectfully requests that this Honourable Court approve and ratify the Sale.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

DATED at the City of Edmonton, in the Province of Alberta, this 29th day of November, 2021.

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[18] *Soundair* at para 12 **[TAB 1].**
[19] First Report at para 11.

**DLA Piper (Canada) LLP**

PER:

**Jerritt R. Pawlyk**
Solicitor for the Applicant, Ernst & Young Inc.

## INDEX OF AUTHORITIES

| **TAB** | **DOCUMENT** |
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| 1. | *Royal Bank v. Soundair Corp.*, 1991 CanLII 2727 (ONCA) |
| 2. | *PricewaterhouseCoopers Inc. v. 1905393 Alberta Ltd.*, 2019 ABCA 433 |
| 3. | *Alberta Treasury Branches v. Elaborate Homes Ltd.*, 2014 ABQB 350 |