



## COUNSEL SLIP

COURT FILE NO.: CV-20-00637427-00CL DATE: April 27, 2022

NO. ON LIST 3

TITLE OF PROCEEDING **LIQUID CAPITAL EXCHANGE CORP. v. 1635536 ONTARIO INC. O/A  
VERSITEC MARINE & INDUSTRIAL et al.**

**COUNSEL FOR: Liquid Capital Exchange Corp**

- PLAINTIFF(S)  
 APPLICANT(S) Stewart Thom

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**COUNSEL FOR: Court-appointed substitute receiver,  
BDO Canada Limited.**

- DEFENDANT(S)  
 RESPONDENT(S)  
 OTHER Graham Phoenix

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**JUDICIAL NOTES:**

**Conway J. Endorsement**

The Receiver brings this motion for an AVO and a discharge order. Mr. Ferri attended and requested an adjournment to retain counsel. He is the principal of Ra-Tech, the assignee of the first and second mortgages on the "Taylor Property".

I am not prepared to adjourn the AVO portion of the motion. Mr. Ferri has been represented by counsel in this proceeding. He has been urged to retain litigation counsel several times before today's hearing and has not done so. There is a live transaction pending for the Taylor Property that could be lost. I am satisfied that the transaction should be approved and meets the *Soundair* factors. Mr. Ferri has not provided me with any reason why he or Ra-Tech would have a basis to challenge the transaction – all of his arguments relate to other people and other court proceedings. I am approving the AVO. There is a sealing order for the confidential appendices to the Receiver's report pending the closing of the transaction. The sealing order meets the *Sierra Club/Sherman* test and is granted. **Counsel for the Receiver is directed to file a hard copy of the confidential appendices to the Fifth Report with the court in a sealed order with a copy of this endorsement and the AVO.**

With respect to the discharge/distribution order, there is a dispute with respect to the amount that Ra-Tech says is owing to it. I note that the Receiver has had difficulty in obtaining payout statements from Mr. Ferri and there is now approximately \$60,000 in dispute. There is no reason to hold up the distribution of funds to other creditors although I will adjourn the part related to Ra-Tech. I have directed that pending the return of this motion, the whole amount of Ra-Tech's claim is to be held back by the Receiver. This part of the motion will return to me on **May 25, 2022 at 2 p.m. for one hour (confirmed with the CL office)**. Mr. Ferri must act quickly and responsively to the Receiver to respond to its calculations as set out in its reports. Mr. Ferri will not be entitled to his costs – this adjournment should not have been necessary and is an indulgence being granted by this court. Any additional costs of the Receiver related to the Ra-Tech hearing on May 25th (to the extent approved by this court) shall be deducted from Ra-Tech's ultimate entitlement. Mr. Phoenix has revised the discharge/distribution order to incorporate these terms. It is now satisfactory to me.



I have signed the AVO and the revised distribution and discharge order. They are attached to this endorsement. The orders are effective from today's date and are enforceable without the need for entry and filing.

If Ra-Tech's claim is resolved by the parties, they may seek an earlier scheduling appointment before me through the Commercial List office.

Conway J.