

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

**KEB HANA BANK as trustee of IGIS GLOBAL PRIVATE PLACEMENT REAL
ESTATE FUND NO. 301 and as trustee of IGIS GLOBAL PRIVATE PLACEMENT
REAL ESTATE FUND NO. 434**

Applicant

- and -

**MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP (THE
ONE) INC., and MIZRAHI COMMERCIAL (THE ONE) GP INC.**

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243 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**

**FACTUM
(ORDER APPOINTING RECEIVER)**

October 17, 2023

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TO: THE SERVICE LIST

PART I - OVERVIEW

1. This factum is filed in support of an application by KEB Hana Bank, in its capacity as trustee of (i) IGIS Global Private Placement Real Estate Fund No. 301 (the “**Term Lender**”) and (ii) IGIS Global Private Placement Real Estate Fund No. 434 (the “**Standby Lender**”) (together the “**Senior Secured Lenders**”) to appoint a receiver over a significant development project marketed as “The One” (the “**Project**”) involving over \$1.2 billion in matured debt. The proposed Appointment Order seeks to appoint Alvarez & Marsal Canada Inc. (in such capacity, the “**Receiver**”) over the assets, undertakings and properties of the Borrower and GP Inc. (each as defined below) acquired for or used in relation to a business carried on by the Borrower or GP Inc., including, without limitation, in connection with the Project and the Project itself, including all proceeds thereof (collectively, the “**Property**”).

2. The Senior Secured Lenders also seek certain related relief, including: (a) the grant of a Receiver’s Charge; (b) the approval of the Receivership Funding Credit Agreement and the grant of a related Receiver’s Borrowings Charge; (c) the grant of a stay of proceedings; and (d) the extension of certain limited protections to Mizrahi Inc., the developer and general contractor of the Project (in such capacity, the “**Developer**”).

3. The proposed Appointment Order is authorized by s. 243 of the *Bankruptcy and Insolvency Act* (“**BIA**”)¹ and s. 101 of the *Courts of Justice Act* (Ontario) (“**CJA**”).² The appointment of the Receiver is just and convenient. Pursuant to a credit agreement (the “**Credit Agreement**”), the Borrower has incurred indebtedness totalling over \$1.23 billion (inclusive of interest and fees) on a senior secured basis to the Senior Secured Lenders in connection with the

¹ *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended [BIA], s. 243.

² *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended [CJA], s. 101(1).

Project. The indebtedness has now matured, is due and payable in full and has not been repaid. Nor has the Borrower indicated any intention or ability to repay, despite multiple demands, including the delivery of a notice of intention to enforce security under s. 244 of the BIA.

4. The Borrower has committed numerous other defaults under the Credit Agreement, all of which are continuing. Additionally, the Project, which is far from completion, has been plagued by delays and cost overruns, not to mention continual infighting between the principal investors in the Project, both in and out of court.

5. All of these problems are jeopardizing the Project, which is already delayed by at least two years beyond its original estimated completion date and still requires hundreds of millions of dollars of additional financing to complete. Although the Senior Secured Lenders have gone to great lengths to accommodate the Borrower and assist in the development of the Project, the Senior Secured Lenders have now lost confidence in the Borrower. They are not prepared to advance further construction financing outside a court process. If the Appointment Order is granted and the Receivership Funding Credit Agreement is approved, the Receivership Lender will make available to the Receiver a non-revolving term credit facility in the maximum principal amount of \$315 million on a priority secured basis to satisfy Project Costs, as well as Receivership Costs.

6. The appointment of the Receiver, together with the related relief sought in the Appointment Order, will bring much-needed stability, as well as oversight, to the Project with a view to maximizing value for all stakeholders.

PART II - FACTS

7. The facts in support of this Application are set out in the Affidavit of Joo Sung Yoon.³ Capitalized terms not otherwise defined have the same meaning as in the Yoon Affidavit.

A. The Project

8. The Project, which is partially constructed, is contemplated to be an 85-storey mixed-use residential tower.⁴ It features underground parking, concourse and ground floor retail, a restaurant on the third level, and a hotel (the “**Commercial Component**”). It also features luxury residential suites occupying the upper floors of the building (the “**Residential Component**”).⁵

9. The Project is being constructed on the lands and premises on the southwest corner of Bloor Street West and Yonge Street in Toronto (“**One Bloor**”).⁶ The Developer is responsible for overseeing the development, construction and day-to-day management of the Project.⁷ Pre-construction of the Project began in mid-2016. Construction began in mid-2017.

10. The Credit Agreement was executed in 2019. At the time, it was expected that the Project would be completed by December 31, 2022, at a projected cost of approximately \$1.4 billion.⁸ The Borrower now projects that the Project will not be completed until March 2025. Additionally, in the most recent budgets, which are based on the Borrower’s latest construction schedule and commitments and cost data to May 31, 2023, anticipated gross Project expenditures

³ Affidavit of Joo Sung Yoon sworn October 17, 2023 [Yoon Affidavit].

⁴ This does not include any additional storeys resulting from the Borrower’s recent zoning bylaw amendment application seeking approval of nine additional floors (the construction of which is not contemplated in the Credit Agreement, and which has not been approved by the Senior Secured Lenders).

⁵ Yoon Affidavit, para. 30.

⁶ Yoon Affidavit, para. 28.

⁷ Yoon Affidavit, para. 25.

⁸ Yoon Affidavit, paras. 10 and 33.

will reach over \$2 billion – over \$600 million in excess of the projected costs when the Credit Agreement was signed.⁹

B. The Obligations

(a) The Borrower

11. The Borrower under the Credit Agreement consists of Mizrahi Commercial (The One) LP (the “**Beneficial Owner**”) and Mizrahi Development Group (The One) Inc. (the “**Nominee**”) (together, the “**Borrower**”). The Beneficial Owner is an Ontario-based limited partnership formed to undertake the development of the Project.¹⁰

12. Jenny Coco (“**Coco**”) (and/or her family and other related persons or entities) and Sam Mizrahi (“**Mizrahi**”) each have a 50% ultimate indirect voting interest in the Beneficial Owner through their respective indirect ownership of the Beneficial Owner’s two limited partners, namely: 12823543 Canada Ltd. (“**Coco LP Ltd.**”) and Sam M. Inc. (“**Mizrahi LP Inc.**”).¹¹

13. The Beneficial Owner’s sole general partner is Mizrahi Commercial (The One) GP Inc. (“**GP Inc.**”), a corporation incorporated under the laws of Ontario. Coco LP Ltd. and Mizrahi LP Inc. each hold 50% of the common shares of GP Inc.¹² The Nominee is a corporation incorporated in Ontario, the shares of which are wholly owned by GP Inc. The Nominee is the registered owner of One Bloor as bare trustee on behalf of the Beneficial Owner.¹³

⁹ Yoon Affidavit, para. 34.

¹⁰ Yoon Affidavit, paras. 16 and 17.

¹¹ Yoon Affidavit, para. 17.

¹² Yoon Affidavit, para. 18, Exhibit A.

¹³ Yoon Affidavit, paras. 19 and 29, Exhibits C and E.

(b) The Senior Secured Lenders

14. KEB Hana Bank is a commercial bank headquartered in South Korea. It acts as bare trustee of IGIS Global Private Placement Real Estate Fund No. 301 (i.e. the Term Lender) and of IGIS Global Private Placement Real Estate Fund No. 434 (i.e. the Standby Lender).¹⁴

15. KEB Hana Bank Canada is a Schedule II bank under the *Bank Act* (Canada), with its head office in Ontario. KEB Hana Bank Canada was the administrative agent (the “**Administrative Agent**”) under the Credit Agreement until it resigned from that role in August 2022. As no replacement Administrative Agent has been appointed, KEB Hana Bank Canada continues to hold security and to act as *de facto* collateral agent for the Senior Secured Lenders.¹⁵

(c) The Credit Agreement

16. The Credit Agreement was executed on or about August 30, 2019 among the Term Lender, the Borrower, the Developer, GP Inc., Coco, Mizrahi and KEB Hana Bank Canada.¹⁶ The Credit Agreement made available to the Borrower two facilities: a term credit facility (the “**Term Facility**”), as well as a standby credit facility at the election of the Senior Secured Lenders, subject to certain conditions precedent (the “**Standby Facility**”, together with the Term Facility, the “**Credit Facilities**”).¹⁷ The total amount borrowed under the Credit Facilities, as of September 29, 2023, exceeds \$1.23 billion (inclusive of interest and fees).¹⁸

¹⁴ Yoon Affidavit, paras. 21 and 22.

¹⁵ Yoon Affidavit, para. 23. The other parties to the Credit Agreement are more fully described at paras. 24 to 27.

¹⁶ The Credit Agreement was subsequently amended by agreements dated April 30, 2020, October 30, 2020, February 4, 2021, September 9, 2021 and August 30, 2022: Yoon Affidavit, para. 5.

¹⁷ Yoon Affidavit, para. 36; Exhibit F.

¹⁸ Yoon Affidavit, para. 5.

17. The Senior Secured Lenders advance funds into a blocked account with KEB Hana Bank Canada in the name of GP Inc. maintained for the deposit of construction advances (the “**Construction Account**”). GP Inc. periodically requests approval from the Senior Secured Lenders for the release of funds from the Construction Account to pay Project Costs.¹⁹

18. Schedule O to the Credit Agreement establishes certain Milestones which must be met by the Borrower. Several of these Milestones were subsequently extended.²⁰ Additionally, under the Credit Agreement, the Borrower has various reporting obligations.²¹

(i) Term Facility

19. The initial maximum principal amount of the Term Facility was \$565 million (“**Tranche A**”). Tranche A has been fully advanced. The base interest rate on the funds advanced under Tranche A funds is 9% per annum and the current aggregate rate is 21.5% per annum. The maturity date for the Term Facility was extended from August 30, 2022 to August 30, 2023.²²

20. The Credit Agreement was amended on February 4, 2021 to increase the maximum principal amount of the Term Facility by \$67 million (“**Tranche B**”).²³ All of the funds under Tranche B have been advanced. The base interest rate on the funds advanced under Tranche B is 12.5% per annum and the current aggregate rate is 25% per annum.²⁴

¹⁹ Yoon Affidavit, para. 44.

²⁰ Yoon Affidavit, para. 42, Exhibit G.

²¹ Yoon Affidavit, para. 43.

²² Yoon Affidavit, paras. 7, 36 to 41, and 56; Exhibit F; Exhibit J.

²³ Yoon Affidavit, paras. 45 to 46; Exhibit H.

²⁴ Yoon Affidavit, paras. 47 to 48.

21. As of September 29, 2023, the total outstanding under the Term Facility was \$906,122,776.25, including principal, interest and certain other fees, costs and expenses.²⁵

(ii) Standby Facility

22. The Credit Agreement was amended on September 9, 2021 to make available the Standby Facility in the maximum principal amount of \$325 million. All of the funds under the Standby Facility have been advanced. Interest on outstanding amounts under the Standby Facility accrues at 9% per annum. The Standby Facility matured on September 29, 2023.²⁶

23. As of September 29, 2023, the total outstanding under the Standby Facility was \$329,165,620.51, including principal, interest and certain other fees, costs and expenses (together with the amount outstanding under the Term Facility, the “**Obligations**”). None of the Obligations have been repaid.²⁷

(d) Security for Obligations under the Credit Facilities

24. As security for the Obligations under the Credit Agreement, the Borrower executed, among other things, a general security agreement dated August 30, 2019 (the “**GSA**”). The GSA grants a security interest over all of the Borrower’s current and after-acquired property located at, used primarily in connection with, or arising from One Bloor.²⁸

25. Additionally, on August 30, 2019, pursuant to a direction from the Beneficial Owner, the Nominee executed a demand debenture (the “**Demand Debenture**”) and a general assignment of

²⁵ Yoon Affidavit, para. 6.

²⁶ Yoon Affidavit, paras. 51 to 54; Exhibit I.

²⁷ Yoon Affidavit, paras. 6 and 116.

²⁸ Yoon Affidavit, para. 58, Exhibit K.

rents and leases (the “**GAR**”, together with all the other security, the “**Security**”).²⁹

26. The Demand Debenture was originally in the principal amount of \$565 million and was subsequently increased to a total of \$957 million. The Demand Debenture secures, among other things, the Obligations and grants a security interest in the Nominee’s real and personal property.³⁰ The Administrative Agent, on behalf of the Senior Secured Lenders, registered a charge in respect of the Demand Debenture on title to One Bloor on August 30, 2019.³¹

27. The GAR grants security in the leases and rents from the Nominee’s real property, including One Bloor. A notice in respect of the GAR was registered against title to One Bloor on August 30, 2019.³²

28. In addition to the above Security, GP Inc. delivered two pledge agreements dated August 30, 2019. The first granted a first priority security interest in certain of GP Inc.’s bank accounts, including the Construction Account. The second granted a first priority security interest in GP Inc.’s investment assets, including its common shares in the Nominee.³³

29. On August 20, 2019, the Administrative Agent, for and on behalf of the Senior Secured Lenders, registered financing statements under the *Personal Property Security Act* (Ontario) against the Nominee, the Beneficial Owner and GP Inc. The registrations were initially for a

²⁹ Yoon Affidavit para. 59, Exhibit L.

³⁰ Yoon Affidavit, para. 60. The Demand Debenture was subsequently amended on February 4, 2021 and September 9, 2021 to increase the principal amount to \$957 million.

³¹ The charge was subsequently amended on February 16, 2021 and October 5, 2021. Yoon Affidavit, para. 61, Exhibits M, N and O.

³² Yoon Affidavit, para. 62, Exhibit P.

³³ Yoon Affidavit, para. 63, Exhibits Q and R.

period of five years and cover all classes of personal property. The registrations were subsequently renewed on April 14, 2023.³⁴

(e) Other Protections

30. Both Coco and Mizrahi, in their personal capacities, as well as GP Inc., are guarantors pursuant to two guarantees dated August 30, 2019 (the “**Guarantees**”). These include: (a) a guarantee of all the Obligations under the Credit Agreement, as principal debtor and on a joint and several basis, and (b) a guarantee in respect of cost overruns and to complete the Project, as principal debtor and on a joint and several basis.³⁵

31. Additionally, the Secured Lender obtained a number of further protections on August 30, 2019, including (among other things) assignments of material contracts; assignments of the Borrower’s, Mizrahi’s and the Developer’s interests in payment and performance bonds related to the Project; an environmental indemnity; blocked account agreements; and agreements with each of Mizrahi LP Inc., Coco LP Ltd. and the Beneficial Owner in which each of them pledged their equity interests in the Nominee, GP Inc. and the Beneficial Owner.³⁶

C. Other Secured Indebtedness

32. The below table sets out the approximate total secured indebtedness of the Borrower, based on the best information available to the Senior Secured Lenders.³⁷ Other than for the Senior Secured Lenders and Aviva, this is limited to the principal amounts of the Borrower’s indebtedness to those parties (which amounts may have accrued additional interest and/or fees):

³⁴ Yoon Affidavit, para. 64, Exhibits S, T and U. The PPSA registration against the Beneficial Owner and GP inc. was amended to add the Senior Secured Lenders on May 26, 2023.

³⁵ Yoon Affidavit, para. 65.

³⁶ Yoon Affidavit, para. 66.

³⁷ Yoon Affidavit, para. 35.

Creditor	Approximate secured indebtedness
Senior Secured Lenders	\$1.235 billion
Aviva	\$130 million
Hana Lender	\$55 million
Coco Lender	\$60 million
CERIECO Canada	\$182 million
Total:	\$1.662 billion

33. As a result of the Aviva Priority Agreements, the Coco Priority Agreements, the CERIECO Priority Agreements and the Hana Priority Agreements (all as described in the Yoon Affidavit), and the timeliness and good standing of the Administrative Agent's security registrations, the Senior Secured Lenders have first priority over One Bloor and all other Property, other than the Condo Deposits in the Condo Deposit Account, over which it has second priority to Aviva.³⁸

D. Events of Default

34. Over the life of the Credit Agreement, the Borrower has committed numerous defaults and Events of Default.

35. The Term Facility and Standby Facility matured on August 30, 2023, and September 29, 2023, respectively, and all the Obligations thereunder are now due and payable. On the same day that each of the Credit Facilities matured, the Senior Secured Lenders sent a notice to the Borrower demanding repayment of the Obligations. The Term Lender subsequently reiterated its demand on the date that the Standby Facility matured.³⁹

³⁸ Yoon Affidavit, para. 81.

³⁹ Yoon Affidavit, paras. 7 to 8 and 109 to 114, Exhibits UU and VV.

36. To date, the Borrower has failed to repay the Obligations under the Credit Facilities. The failure to repay each of the Credit Facilities on the maturity date represents a separate and independent Event of Default (the “**Repayment Events of Default**”).⁴⁰

37. On October 4, 2023, the Senior Secured Lenders delivered a formal demand letter to the Borrower, demanding immediate payment of all Obligations under both Credit Facilities. The demand letter also included a notice of intention to enforce on security pursuant to s. 244 of the BIA (the “**Demand and 244 Notice**”). The Demand and 244 Notice has not been satisfied and interest continues to accrue.⁴¹

PART III - ISSUES AND THE LAW

A. Issues

38. The issues on this Application are:

- (a) whether the appointment of the Receiver is “just and convenient”;
- (b) whether the Receiver’s Funding Credit Agreement should be approved and the Receiver’s Borrowings Charge granted; and
- (c) whether certain requested relief should be extended to the Developer.

B. Appointment of the Receiver is “Just and Convenient”

(a) Statutory Authority

39. Under s. 101(1) of the CJA, this Court has the power to appoint a receiver “where it appears to a judge of the court to be just or convenient to do so.” Section 101(2) provides that an order under subsection (1) may include “such terms as are considered just.”⁴²

⁴⁰ Yoon Affidavit, para. 8.

⁴¹ Yoon Affidavit, paras. 9 and 122 to 123, Exhibit XX.

⁴² CJA, s. 101(1).

40. The test for appointing a receiver under s. 243 of the BIA is similar. As the opening language of section 243(1) states, the receiver may be appointed on application by a secured creditor, where it is “just or convenient” to do so. The order may authorize the receiver to:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.⁴³

41. Where a notice of intention to enforce security has been issued under s. 244(1) of the BIA, s. 243(1.1) prohibits the court from making a receivership order until the expiry of ten days following the date that the secured creditor sends the s. 244(1) notice, unless the insolvent person consents to an earlier enforcement or the court considers it appropriate to appoint a receiver before then.⁴⁴ The Demand and 244 Notice was delivered on October 4, 2023. Therefore, the ten-day standstill period required by s. 244(2) has now expired.

(b) The Appointment is Both “Just” and “Convenient”

42. In determining whether it is “just” or “convenient” to appoint a receiver, the Court should have regard for all the circumstances of the case, including: (i) the nature of the property over which the receiver is to be appointed; (ii) the rights and interests of all parties in relation to the property over which the receiver is to be appointed; and (iii) whether the secured creditor has the right under the security agreement to appoint a receiver privately.⁴⁵ Although the framing of

⁴³ BIA, s. 243(1).

⁴⁴ BIA, s. 243(1.1)

⁴⁵ See for example, *Bank of Nova Scotia v. Freure Village of Clair Creek*, 1996 CanLII 8258 at para. 10, 1996 CarswellOnt 2328 (Ct. J. (G.D.)) [*Freure Village*], cited in *Canadian Western Bank v. 2563773 Ontario Inc.*, 2023 ONSC 4766 at para. 6 [*Canadian Western Bank*].

relevant factors may differ in particular cases, the key considerations are substantially similar.⁴⁶

43. Further, the Court must consider and balance the competing interests of the various economic stakeholders. The relevant factors are very “circumstance-oriented.”⁴⁷

44. Although bad faith, dishonest conduct or other impropriety by the debtor may militate in favour of the appointment of a receiver,⁴⁸ evidence of such conduct is not required in order to seek the appointment of a receiver. Nor is it required that the applicant establish it will suffer irreparable harm if a receiver is not appointed.⁴⁹

(i) The Senior Secured Lenders Have the Contractual Right

45. Where a lender has the contractual right to the appointment of a receiver in the event of default, such appointment is no longer regarded as an extraordinary remedy and the Court’s consideration of “just” or “convenient” becomes a determination of whether it is in the interests of all concerned to have a receiver appointed.⁵⁰ Among other things, a court-appointed receiver – in contrast to a private receiver – lends transparency to the process, given that the court-appointed receiver acts in a fiduciary capacity as an officer of the court.⁵¹

⁴⁶ Certain cases cite a lengthier list of factors: see, for example, [Canadian Western Bank](#) at para. 9; [BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.](#), 2020 ONSC 1953 at para. 45 [[Clover on Yonge](#)]; [PricewaterhouseCoopers Inc. v. Northern Citadel](#), 2023 ONSC 37 at para. 91; Frank Bennett, *Bennett on Receiverships*, 4th ed. (Toronto: Thomson Reuters Canada, 2021) [Bennett] at 187-196.

⁴⁷ [Romspen Investment Corporation v. 6711162 Canada Inc.](#), 2014 ONSC 2781 at para. 61 [[Romspen](#)].

⁴⁸ [Clover on Yonge](#) at para. 49; [Affinity Credit Union 2013 v. Vortex Drilling Ltd.](#), 2017 SKQB 228 at paras. 33-37, subpara. h. [[Affinity](#)]; [Romspen](#) at para. 77; [Callidus v. Carcap](#), 2012 ONSC 163 at para. 52 [[Callidus](#)]; [GE Commercial Distribution Finance Canada v. Sandy Cove Marine Company Limited](#), 2011 ONSC 3851 at para. 22.

⁴⁹ [Callidus](#) at para. 42; [Freure Village](#) at para. 10.

⁵⁰ [Freure Village](#) at para. 12; [Canadian Western Bank](#) at para. 7; [Callidus](#) at para. 44.

⁵¹ [7451190 Manitoba Ltd. v. CWB Maxium Financial Inc. et al.](#), 2019 MBCA 95 at para. 27 (Chambers).

46. The Credit Agreement expressly provides that the Senior Secured Lenders are entitled to “exercise any right or recourse and proceed by any action, suit, remedy or proceeding against [the Borrower] authorized or permitted by law for the recovery of all the Obligations.”⁵² This broad language necessarily encompasses the appointment of the Receiver and the related relief sought in the Appointment Order.

47. The GSA expressly authorizes the commencement of proceedings to appoint a receiver over all or any part of the Borrower’s property upon the occurrence of an Event of Default that is continuing.⁵³ There can be no dispute that these conditions are satisfied.

48. The Demand Debenture also expressly authorizes the Senior Secured Lenders to seek the appointment of a receiver by judicial proceedings. A receiver appointed under the Demand Debenture is further authorized to borrow money for the purpose of carrying on the business of the Borrower, or for the purpose of maintaining and preserving the collateral.⁵⁴

49. As set out below, the circumstances justify the reliance by the Senior Secured Lenders on their contractual rights to seek the appointment of the Receiver on the basis that it is in the interests of all stakeholders to provide oversight and stability to the construction of the Project.

(ii) The Repayment Events of Default Are Ongoing

50. Following the maturity of the Credit Facilities, all of the Obligations are now due and payable. They remain unpaid notwithstanding numerous demands by the Senior Secured Lenders, including the Demand and 244 Notice.⁵⁵

⁵² Yoon Affidavit, para. 119. Credit Agreement, s. 11.02(1), Exhibit F.

⁵³ Yoon Affidavit, para. 58 and 121; GSA, s. 3.2(j), Exhibit K.

⁵⁴ Yoon Affidavit, para. 60; Demand Debenture, paras. 14(f), (i) and 19(g), Exhibit M.

⁵⁵ Yoon Affidavit, paras. 7 to 9, 116 and 122 to 123 ; Demand and 244 Notice, Exhibit XX.

51. These Repayment Events of Default are continuing, cannot be disputed and are sufficient to justify the appointment of the proposed Receiver, particularly given the magnitude of the Obligations and the significant further financing required to complete the Project.

52. In any event, the Senior Secured Lenders further rely on a number of other pre-existing Events of Default that have been ongoing for some time, as well as multiple challenges with the Project. These challenges and ongoing defaults can only be mitigated by the appointment of the Receiver, together with the related relief requested. This relief will provide much-needed stability and transparency to the process of determining how best to maximize value in the Project for all stakeholders, as well as court-supervised oversight to implement that course of action.

(iii) Pre-Existing Events of Default Are Continuing

53. As early as March 2020, the Borrower failed to obtain all the remaining advances available under the CERIECO Credit Agreements, contrary to the Credit Agreement, which failure was not cured (the “**CERIECO Advance Defaults**”).⁵⁶ By agreement effective as of April 30, 2020, subsequently amended, the Term Lender agreed to waive these Events of Default, subject to certain conditions. Failure to meet those conditions would constitute an Event of Default under the Credit Agreement.⁵⁷

54. The Borrower did not satisfy the requirement to close the Bridge Loan by the required date and was notified that the CERIECO Advance Defaults were therefore continuing.⁵⁸ Subsequently, the Borrower failed to deposit an amount equal to the CERIECO Funding

⁵⁶ Yoon Affidavit, paras. 95 to 96. The Borrower only obtained approximately \$159 million, out of a required \$213 million.

⁵⁷ Yoon Affidavit, para. 97 to 98, Exhibits LL and MM.

⁵⁸ Yoon Affidavit, para. 99, Exhibit NN.

Shortfall into the Construction Account (the “**Shortfall Event of Default**”), which was notified to the Borrower on June 1, 2021.⁵⁹

55. Additionally, the Borrower failed to achieve certain Milestones. Each such failure constituted a further Event of Default (the “**Milestone Defaults**”). The Borrower was noted in default in respect of the first Milestone Default on June 1, 2021.⁶⁰ Further Milestone Defaults occurred and were notified to the Borrower on September 2, 2021 and March 1, 2022.⁶¹

56. The Borrower failed to complete construction of the Residential Component and closing of the then-existing condominium sales agreements by December 31, 2022, as required (the “**Project Completion Event of Default**”). The Borrower was noted in default with respect to the Project Completion Events of Default on January 4, 2023.⁶²

57. The CERIECO Advance Events of Default, the Shortfall Event of Default, the Milestone Events of Default and the Project Completion Event of Default are all continuing, as the Borrower acknowledged in the status certificate regarding the Project on August 22, 2023.⁶³

(iv) The Project Faces Multiple Challenges

58. Other persistent problems with the Project have accumulated over a number of months and years. Together with the existing Events of Default, the Senior Secured Lenders have ample reason for losing confidence in the Borrower.

⁵⁹ Yoon Affidavit, para. 100, Exhibit OO.

⁶⁰ Yoon Affidavit, paras. 101 to 102, Exhibit OO.

⁶¹ Yoon Affidavit, paras. 103 to 105, Exhibits PP and QQ.

⁶² Yoon Affidavit, paras. 106 to 107, Exhibits SS.

⁶³ Yoon Affidavit, para. 117, Exhibit WW.

59. Courts have frequently held that a loss of confidence in the debtor and its management arising from a pattern of defaults and/or other difficulties is a factor that supports the appointment of a receiver.⁶⁴

60. Since 2019, when the Credit Agreement was executed, the Senior Secured Lenders have gone to great lengths to accommodate the Borrower, with a view to facilitating the completion of the Project to the benefit of both the Borrower and the Senior Secured Lenders. Nonetheless, the Project has been materially delayed, is significantly over budget and has been fraught with difficulties, the most significant of which are set out below.

61. The challenges facing the Project (over and above the pattern of defaults) include:

- (a) Although the Project was projected to be complete by December 22, 2022, concrete mega columns and walls have only been poured up to the 40th floor, as of October 4, 2023.⁶⁵
- (b) The Borrower has extended the estimated completion date for the Project several times. As of August 2023, completion is now estimated for March 2025, more than two years beyond the original completion date. However, these projections may not be achievable.⁶⁶
- (c) As of May 31, 2023, the Borrower had incurred construction and other costs of approximately \$1.31 billion. This represents approximately 65% of the recent

⁶⁴ See, for example, [*KingSett Mortgage Corporation v. 30 Roe Investments Corp.*](#), 2022 ONSC 2777 at paras. 32, 35, leave to appeal ref'd [2022 ONCA 479](#); [*Affinity*](#) at para. 37, subpara. h.; [*Alexander v. 2025610 Ontario Limited*](#), 2012 ONSC 3486 at para. 49; [*Callidus*](#) at para. 51.

⁶⁵ Yoon Affidavit, paras. 10 and 82.

⁶⁶ Yoon Affidavit, paras. 10, 34, 82 and 85.

base case budget that relied on the Borrower's projected completion date of March 2025 and other information provided by the Borrower. That budget represents an increase of over \$300 million from the previous budget, which was issued as of August 9, 2022.⁶⁷

- (d) The Borrower cannot continue construction of the Project without further advances under the Credit Agreement or alternative financing acceptable to the Senior Secured Lenders. Assuming Project expenditures in October 2023 are consistent with average monthly expenditures, the amounts owing to various trades and other vendors may be in excess of any remaining amounts in the Construction Account. Additionally, and in any event, the Borrower cannot repay the outstanding Obligations.⁶⁸
- (e) As of August 31, 2023, 70 residential suites remain unsold.⁶⁹
- (f) The Borrower has not been able to complete a sale or mortgage of the Commercial Component.⁷⁰
- (g) The Project recently lost its anchor retail tenant. No replacement anchor retail tenant has been secured to date.⁷¹
- (h) The Project is also subject to other litigation.⁷²

⁶⁷ Yoon Affidavit, paras. 34 and 84.

⁶⁸ Yoon Affidavit, paras. 124 to 127.

⁶⁹ Yoon Affidavit, para. 86.

⁷⁰ Yoon Affidavit, para. 117.

⁷¹ Yoon Affidavit, paras. 10 and 89 to 91.

⁷² Yoon Affidavit, paras. 92 to 93.

- (i) Over the past several years, beginning in 2019, Coco's and Mizrahi's relationship has become increasingly acrimonious and dysfunctional. Coco and Mizrahi have been embroiled on several occasions in litigation or arbitration against each other in relation to matters involving the Project. These disagreements have caused instability and uncertainty, impeding the ability of the Borrower to complete the Project and impairing the relationship with the Senior Secured Lenders.⁷³

62. These ongoing issues amply justify the Senior Secured Lenders' loss of confidence. The Senior Secured Lenders are no longer prepared to advance additional funds without the oversight of the proposed Receiver over the Project and pursuant to the proposed Receivership Funding Credit Agreement.⁷⁴

(v) Appointment of the Receiver Will Bring Much-Needed Stability

63. If appointed, the Receiver will bring much-needed stability to the Project. The Receiver will engage immediately with the Developer and the trades and subtrades who are contracted on the Project. The Receiver intends to hire a project manager, as well as other advisors that it deems necessary (each on terms acceptable to the Receivership Lender) to assist with and oversee the administration and construction of the Project.⁷⁵

64. During the first six months, the Receiver will, among other things: (a) obtain a report on Project costs incurred to date, as well as the estimated cost and time to complete the Project and the estimated revenues; (b) prepare a plan for the treatment of any condominium sales

⁷³ Yoon Affidavit, paras. 10 and 128 to 134.

⁷⁴ Yoon Affidavit, paras. 134 to 136.

⁷⁵ Yoon Affidavit, para. 14.

agreements entered into to date; and (c) prepare a business plan with an execution strategy for the Project to maximize recoveries for the benefit of all stakeholders.⁷⁶

65. The Senior Secured Lenders therefore not only have the right to the appointment of a receiver under the Credit Agreement, the GSA and the Demand Debenture, but also such appointment is “just” and “convenient”. The appointment of the proposed Receiver, together with the related relief requested in the Appointment Order, is necessary to preserve the value already invested in the Project, as well as to ensure that the Project can either be completed or sold in a manner that maximizes value for all stakeholders in accordance with their interests.

66. If this Court appoints the proposed Receiver, it is proposed that a related charge also be granted (the “**Receiver’s Charge**”) to secure the Receiver’s and its counsel’s fees and disbursements, with the priority set out in the Appointment Order. Such court-ordered priority charges are typical in receiverships, as reflected in the model receivership order, and are expressly contemplated under s. 243(6) of the BIA.⁷⁷

C. Receivership Funding Credit Agreement Should be Approved

67. Given the Borrower’s limited cash resources, the Receiver (if appointed) will require substantial and ongoing funding throughout the proceeding. The anticipated costs include ongoing Project Costs, and the Receiver’s fees and expenses that are necessary to perform its powers and duties as Receiver, including the fees and disbursements of its independent counsel (such fees and expenses, “**Receivership Costs**”).⁷⁸

⁷⁶ Yoon Affidavit, para. 15.

⁷⁷ See for example, Bennett at 233-234; *Edmonton (City) v. Alvarez & Marsal Canada Inc.*, 2019 ABCA 109 at paras. 9-10, 16-20, leave to appeal ref’d [2019 CanLII 94465](#), 2019 CarswellAlta 2139 (SCC).

⁷⁸ Yoon Affidavit, paras. 12 and 143.

68. By agreement that will be made effective as of the date of the Appointment Order, KEB Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 530 (the “**Receivership Lender**”) has agreed to make available to the proposed Receiver a non-revolving term credit facility in the maximum principal amount of \$315 million (the “**Receivership Facility**”) on a super-priority basis, on the terms set out in the Receivership Funding Credit Agreement. The Receivership Lender is only prepared to advance this additional amount in the context of these receivership proceedings, and provided that a charge is granted over all of the Property as security for the performance, including repayment, of all obligations incurred under the Receivership Facility (the “**Receiver’s Borrowings Charge**”). Such charge is to have priority over all other charges and security interests other than (i) the Receiver’s Charge and (ii) Aviva’s security interest in the Condo Deposits, and subject to subsections 14.06(7), 81.4(4) and 81.6(2) of the BIA.⁷⁹

69. It is well-accepted that a receiver requires funding in order to carry out a receivership. Such funds typically come from the property of the debtor.⁸⁰

70. Where appropriate, it is also common for receivers to obtain the permission of the Court to borrow funds in support of the duties to be carried out during the receivership. Such borrowing is expressly authorized under s. 31(1) of the BIA. This provision also permits the receiver to give security on the debtor’s property in any amount, on any terms and on any

⁷⁹ Yoon Affidavit, paras. 3(c)-(d), 144 and 148. The terms of the Receivership Funding Credit Agreement are outlined in greater detail at para. 145 of the Yoon Affidavit. See also Exhibit AAA.

⁸⁰ Bennett at 321, 544.

property that may be authorized by the court. The advances obtained must be repaid out of the debtor's property in priority to the creditors' claims.⁸¹

71. The jurisdiction to authorize such borrowing also arises from the Court's powers under s. 243(1)(c) of the BIA to "take any other action that the court considers advisable."⁸² Section 101(2) of the CJA similarly provides the Court with the authority to appoint a receiver on "such terms as are considered just."⁸³ There are several examples in the case law where an interim financing facility has been approved, with a priority charge, in the context of a receivership.⁸⁴

72. If the Appointment Order is granted, the Receivership Lender will advance \$80 million to fund accrued and ongoing Project Costs and Receivership Costs, and the payment of a commitment fee of 1.5% to the Receivership Lender. Following the initial advance, the Receivership Lender may make monthly advances of no more than \$30 million (to a maximum of \$235 million) to fund approved Project Costs and Receivership Costs, based on actual expenditures in the preceding month. These ongoing funding commitments are conditioned on several factors.⁸⁵

73. Amounts outstanding under the Receivership Facility will accrue interest at a rate of 10% per annum, computed and compounded daily on the total amount outstanding each day, and

⁸¹ BIA, s. 31(1): "With the permission of the court, an interim receiver, a receiver within the meaning of subsection 243(2) or a trustee may make necessary or advisable advances, incur obligations, borrow money and give security on the debtor's property in any amount, on any terms and on any property that may be authorized by the court and those advances, obligations and money borrowed must be repaid out of the debtor's property in priority to the creditors' claims."

⁸² See *DGDP-BC Holdings Ltd. v. Third Eye Capital Corporation*, 2021 ABCA 226 at para. 20, citing both s. 243(1)(c) and s. 31(1) of the BIA [*Third Eye*].

⁸³ CJA, s. 101(2).

⁸⁴ See, for example, *Séquestre de 10542113 Canada Inc.*, 2023 QCCS 1942, approving an increase to a previously approved interim financing facility and receiver's borrowing charge, citing s. 31 of the BIA; *Séquestre de 9360-6325 Quebec Inc.*, 2022 QCCS 1646; *Third Eye* at para. 21.

⁸⁵ Yoon Affidavit, paras. 12 to 13 and 145.

payable at maturity. For any amounts that are not repaid when due (including after default or maturity), interest will accrue at a rate of 12% per annum, computed and compounded monthly.

74. This Court has the jurisdiction and the discretion to approve the Receivership Funding Credit Agreement and the Receiver's Borrowings Charge, which are essential to the Receiver's ability to fulfill its mandate to maximize value of the Project for the benefit of all stakeholders.

75. A&M, as proposed Receiver, has prepared a comparative analysis of the economic terms of the Receivership Funding Credit Agreement with the economic terms of credit facilities approved in other recent real estate and significant Court-supervised insolvency proceedings.⁸⁶ This analysis shows that the Receivership Funding Credit Agreement is fair and reasonable.

D. Relief In Favour of the Developer Should Be Granted

76. The Appointment Order extends certain protections to the Developer. First, any Person having an agreement with, or a statutory or regulatory mandate for the supply of goods or services to, the Developer (solely in its capacity as Developer of the Project) are restrained from discontinuing or terminating the supply of goods and/or services during the receivership provided that, with respect to post-filing supply, the Developer continues to pay for those goods and/or services in the ordinary course.⁸⁷ Additionally, the Developer is protected by a limited stay of all rights and remedies affecting the Project or the Developer's performance of its obligations in respect of the Project.⁸⁸

77. Second, where a Person has given Financial Assurances to, or for the benefit, of the debtors, including Financial Assurances provided to the Developer in connection with the Project

⁸⁶ Yoon Affidavit, para. 46; Exhibit BBB.

⁸⁷ Appointment Order, para. 17.

⁸⁸ Appointment Order, paras. 14 to 16.

or the performance of the Developer's obligations in respect of the Project, such Person must continue to honour those Financial Assurances regardless of any default arising as a result of the Appointment Order, the financial circumstances of the Debtors, or otherwise.⁸⁹

78. This Court's authority to grant the requested relief is grounded in its power under s. 243(1)(c) of the BIA to take any actions that it considers "advisable." It is further anchored in the power to appoint the Receiver on such terms as are "considered just", under s. 101(2) of the CJA. As the Supreme Court of Canada has recently held, the "very expansive wording" of s. 243(1)(c) of the BIA "has been interpreted as giving judges the 'broadest possible mandate in insolvency proceedings to enable them to react to any circumstances that may arise' in relation to court-ordered receiverships." This jurisdiction therefore permits the court "to do not only what 'justice dictates' but also what 'practicality demands.'"⁹⁰

79. The requested relief is appropriately circumscribed to facilitate the proposed Receiver's oversight of the development and continued construction of the Project. If granted, such relief will ensure that the Developer's ability to continue with the Project is not undermined by disruption in current contractual relationships, potential litigation or a failure to obtain or maintain necessary Financial Assurances. It is consistent with the overall objective of ensuring that the Receiver has a meaningful opportunity to determine how best to maximize value for the Project for the benefit of all stakeholders.

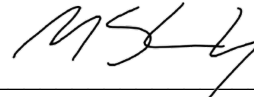
⁸⁹ Appointment Order, para. 18.

⁹⁰ *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41 at para. 148, citing *Third Eye* at para. 20, *Third Eye Capital Corporation v. Dianor Resources Inc.*, 2019 ONCA 508 at para. 57, and *Canada (Minister of Indian Affairs and Northern Development) v. Curragh Inc.*, 1994 CanLII 7468, 114 D.L.R. (4th) 176 (Ont. Ct. J. (G.D.)) at p. 185.

PART IV - NATURE OF THE ORDER SOUGHT

80. For the reasons submitted above, the Applicants request that the proposed Appointment Order be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:



Osler, Hoskin & Harcourt LLP

SCHEDULE “A”

LIST OF AUTHORITIES

Cases

1. [*7451190 Manitoba Ltd. v. CWB Maxium Financial Inc. et al.*](#), 2019 MBCA 95
2. [*Affinity Credit Union 2013 v. Vortex Drilling Ltd.*](#), 2017 SKQB 228
3. [*Alexander v. 2025610 Ontario Limited*](#), 2012 ONSC 3486
4. [*Bank of Nova Scotia v. Freure Village of Clair Creek*](#), 1996 CanLII 8258, 1996 CarswellOnt 2328 (Ct. J. (G.D.))
5. [*BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*](#), 2020 ONSC 1953
6. [*Callidus v. Carcap*](#), 2012 ONSC 163
7. [*Canada \(Minister of Indian Affairs and Northern Development\) v. Curragh Inc.*](#), 1994 CanLII 7468, 114 D.L.R. (4th) 176 (Ont. Ct. J. (G.D.))
8. [*Canadian Western Bank v. 2563773 Ontario Inc.*](#), 2023 ONSC 4766
9. [*City of Edmonton v. Alvarez & Marsal Canada Inc.*](#), 2019 CanLII 94465, 2019 CarswellAlta 2139 (SCC)
10. [*DGDP-BC Holdings Ltd. v. Third Eye Capital Corporation*](#), 2021 ABCA 226
11. [*Edmonton \(City\) v. Alvarez & Marsal Canada Inc.*](#), 2019 ABCA 109
12. [*GE Commercial Distribution Finance Canada v. Sandy Cove Marine Company Limited*](#), 2011 ONSC 3851
13. [*KingSett Mortgage Corporation v. 30 Roe Investments Corp.*](#), 2022 ONSC 2777
14. [*KingSett Mortgage Corporation v. 30 Roe Investments Corp.*](#), 2022 ONCA 479
15. [*Peace River Hydro Partners v. Petrowest Corp.*](#), 2022 SCC 41
16. [*PricewaterhouseCoopers Inc. v. Northern Citadel*](#), 2023 ONSC 37

17. [*Romspen Investment Corporation v. 6711162 Canada Inc.*](#), 2014 ONSC 2781
18. [*Séquestre de 10542113 Canada Inc.*](#), 2023 QCCS 1942
19. [*Séquestre de 9360-6325 Quebec Inc.*](#), 2022 QCCS 1646
20. [*Third Eye Capital Corporation v. Dianor Resources Inc.*](#), 2019 ONCA 508

Secondary Sources

1. Frank Bennett, *Bennett on Receiverships*, 4th ed. (Toronto: Thomson Reuters Canada, 2021)

SCHEDULE “B”

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Borrowing powers with permission of court

31 (1) With the permission of the court, an interim receiver, a receiver within the meaning of subsection 243(2) or a trustee may make necessary or advisable advances, incur obligations, borrow money and give security on the debtor's property in any amount, on any terms and on any property that may be authorized by the court and those advances, obligations and money borrowed must be repaid out of the debtor's property in priority to the creditors' claims.

Security under *Bank Act*

(2) For the purpose of giving security under section 427 of the *Bank Act*, the interim receiver, receiver or trustee, when carrying on the business of the bankrupt, is deemed to be a person engaged in the class of business previously carried on by the bankrupt.

Limit of obligations and carrying on of business

(3) The creditors or inspectors may by resolution limit the amount of the obligations that may be incurred, the advances that may be made or moneys that may be borrowed by the trustee and may limit the period of time during which the business of the bankrupt may be carried on by the trustee.

Debts deemed to be debts of estate

(4) All debts incurred and credit received in carrying on the business of a bankrupt are deemed to be debts incurred and credit received by the estate of the bankrupt.

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a)** take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b)** exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c)** take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a)** the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b)** the court considers it appropriate to appoint a receiver before then.

Definition of *receiver*

(2) Subject to subsections (3) and (4), in this Part, *receiver* means a person who

- (a)** is appointed under subsection (1); or
- (b)** is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
 - (i)** an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or
 - (ii)** a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of *receiver* — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition *receiver* in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part

of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of *disbursements*

(7) In subsection (6), *disbursements* does not include payments made in the operation of a business of the insolvent person or bankrupt.

Advance notice

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or
- (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

No advance consent

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

Exception

(3) This section does not apply, or ceases to apply, in respect of a secured creditor

- (a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or
- (b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

Idem

(4) This section does not apply where there is a receiver in respect of the insolvent person.

Courts of Justice Act, R.S.O. 1990, c. C.43

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

**KEB HANA BANK as trustee of IGIS GLOBAL
PRIVATE PLACEMENT REAL ESTATE FUND
NO. 301 and as trustee of IGIS GLOBAL PRIVATE
PLACEMENT REAL ESTATE FUND NO. 434**

Applicant

and

**MIZRAHI COMMERCIAL
(THE ONE) LP, et al.**

Court File No:

Respondents

ONTARIO
**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
PROCEEDING COMMENCED AT TORONTO

**FACTUM
(ORDER APPOINTING RECEIVER)**

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