Court File No. CV-25-00747532-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

LAURENTIAN BANK OF CANADA

Applicant

- and -

9089802 CANADA CORP., SEPITMAN CANADA CORP., 8637989 CANADA CORP., 2404685 ONTARIO INC., LULOO HOMES INC., TEKSUN INC., 2717852 ONTARIO CORP. and 2717740 ONTARIO LTD.

Respondent

APPLICATION UNDER SUBSECTION 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

FACTUM OF THE APPLICANT

(Appointment of a Receiver – Application Returnable August 27, 2025)

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FACTUM OF THE APPLICANT

PART I - OVERVIEW

1. This factum is filed by Laurentian Bank of Canada (the "**Bank**") in support of its application for an order appointing KSV Restructuring Inc. ("**KSV**") as receiver and manager (in such capacities, the "**Receiver**") over all the assets, undertakings and properties of the Respondents. At this time, the Bank seeks the appointment of the Receiver over the contemplated development of 49 townhomes (the "**Development Project**") on the real property known municipally as 40A, 40B and 60 Harris Avenue, Richmond Hill, Ontario (the "**Real Property**") and assets related thereto, in accordance with the draft order submitted to the Court, and an adjournment of the potential appointment of the Receiver over the Respondents' other assets to a

date to be fixed by the Court at a case conference to be scheduled on not less than 7 days notice by the Applicant to the Respondents.

2. A court-appointed receivership is just and convenient and appropriate in this case given that:

(a) the LBC Mortgage[1] matured in August 2024;

(b) the Respondents owe in excess of $16 million to the Bank, plus interest and costs that continue to accrue;

(c) the Bank has demanded repayment from the Respondents;

(d) the loan, security and forbearance documents signed by the Respondents provide for the appointment of a receiver upon default;

(e) to date, all of the Respondents' representations regarding sale or refinancing transactions to repay the Bank have failed to materialize, and the Respondents have repeatedly failed to establish with satisfactory evidence that any such transactions will be completed within a reasonable time frame or at all;

(f) the receivership proceeding will provide a level and transparent mechanism to maximize the value of the Real Property for the benefit of all of the Respondents' stakeholders; and

(g) KSV has consented to act as Receiver.

[1] Capitalized terms not defined in this paragraph have the meanings subsequently defined in this Factum.

PART II – FACTS

The Respondents and the Real Property

3. 9089802 Canada Corp. ("**908**") is a corporation governed by the *Canada Business Corporations Act* and having its registered office in Markham, Ontario. Sahar Ameri, Ahmad Reza Rouhani, Hadi Makaremi, Parisima Fotouhi, Abbas Aameri and Bahar Aameri are the directors of 908.[2]

4. The Real Property is a 2.55-arce site with approximately 290 feet of frontage on Harris Avenue and approximately 380 feet deep in Richmond Hill, Ontario, contemplated to be improved through the Development Project.[3]

5. 908 holds title to the Real Property as bare trustee and nominee for the benefit of the other Respondents.[4] Although the Real Property was acquired by the Respondents in 2014 and 2015, no construction activity has ever taken place there.[5]

The Credit Facilities

6. Pursuant to a commitment letter dated March 10, 2021 (the "**Bank Commitment Letter**"), as amended from time to time, the Bank extended to the Respondents: (i) a term facility (the "**Term Facility**") in the maximum amount of $13,863,000; and (ii) a letter of credit/letters of guarantee facility (the "**Letter Facility**", and together with the Term Facility, the "**Credit Facilities**") in the maximum amount of $3,900,000.[6]

7. As security for the Credit Facilities, the Bank was granted, among other things, the following (collectively, the "**Security**"):

(a) a charge/mortgage in the principal amount of $25,400,000 granted by the Respondents and registered on title to the Real Property on April 28, 2021 (the "**LBC Mortgage**");

(b) an Assignment of Rents granted by the Respondents and registered on title to the Real Property on April 28, 2021;

(c) a General Security Agreement dated April 28, 2021 granted by 863, Sepitman, 240 and Luloo (the "**GSA**"); and

(d) a Specific Security Agreement dated April 28, 2021 granted by the Respondents.[7]

8. The standard charge terms associated with the LBC Mortgage and the GSA provide that failure by the Respondents to pay any principal, interest or other amount when due constitutes an event of default whereby the Bank is entitled to, among other things, the appointment of a receiver over the Real Property.[8]

9. The Respondents' obligations under the Loan Facilities were also guaranteed by certain of the Respondents' principals (collectively, the "**Guarantors**") pursuant to a Guarantee and Postponement of Claim.[9]

10. The LBC Mortgage matured on August 1, 2024.

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[2] Application Record dated July 16, 2025, Tab 2, Affidavit of Kevin Gongora sworn July 17, 2025 ("**Gongora Affidavit**"), para 3 and Exhibit "A".
[3] Gongora Affidavit, para 7.
[4] Gongora Affidavit, paras 4 to 6 and Exhibits "B" and "C".
[5] Responding Record dated August 8, 2025, Tab 2, Affidavit of Abbas Aameri sworn August 8, 2025 ("**Aameri Affidavit**"), paras 2 to 20.
[6] Gongora Affidavit, paras 8 to 9 and Exhibits "D" and "E".
[7] Gongora Affidavit, para 10 and Exhibits "F", "G", "H" and "I".
[8] Gongora Affidavit, para 28 and Exhibits "F" and "H".
[9] Gongora Affidavit, para 12 and Exhibit "K".

Default and Demand

11. The LBC Mortgage was not repaid upon maturity.

12. The Respondents have not made any payments under the Credit Facilities since May 2, 2025.[10]

13. As of July 15, 2025, the amount outstanding under the Credit Facilities was in excess of $16 million, plus interest and costs which continue to accrue.[11]

14. By letters dated June 6, 2025, the Bank demanded payment of the Credit Facilities from the Respondents and the Guarantors and sent notice of the Bank's intention to enforce its security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "***BIA***") (the "**BIA Notice**") to the Respondents.[12]

Construction Lien

15. The parcel registers for the Real Property disclose a construction lien in the amount of $498,435 registered by Great North Drain Ltd. on August 17, 2023 as Instrument No. YR3586992.[13]

The Forbearance Agreement

16. At the request of the Respondents and Guarantors, the Bank negotiated a form of forbearance agreement (the "**Forbearance Agreement**") whereby the Bank was prepared to

[10] Gongora Affidavit, para 22.
[11] Gongora Affidavit, para 16.
[12] Gongora Affidavit, paras 4 and 15 and Exhibits "L" and "M".
[13] Gongora Affidavit, para 23.

forbear from enforcing its rights to permit the Respondents to repay the Credit Facilities by refinancing or selling the Real Property.[14]

17. The Forbearance Agreement contemplated, among other things, the following:

(a) the Bank agreeing not to take any steps to enforce the Credit Facilities or its securities until the earlier of: (i) July 7, 2025; and (ii) the occurrence of an Event of Default; and

(b) the Respondents agreeing to pay a forbearance fee to the Bank in the amount of $75,000 payable concurrently with the execution of the agreement (the "**Forbearance Fee**").[15]

18. The terms of the Forbearance Agreement also provided that the Bank would be entitled to the appointment of a receiver in the event of default.

19. The Forbearance Agreement was executed by all parties except for Ahmad, both in his personal capacity as guarantor and as the president of Luloo. In addition, the Forbearance Fee was not paid.[16]

The Respondents' Representations Regarding Refinancing

20. The Respondents allege that they are close to securing financing for the Development Project (the "**KingSett Financing**") from KingSett Capital ("**KingSett**").[17]

[14] Capitalized term used in this section but not defined herein have the meanings defined in the Forbearance Agreement attached as Exhibit "N" to the Gongora Affidavit.
[15] Gongora Affidavit, para 20 and Exhibit "N".
[16] Gongora Affidavit, para 21.
[17] Aameri Affidavit, paras 21 to 23.

21. As evidence of this financing, the Respondents have provided a copy of a loan commitment letter (the "**KingSett Commitment Letter**") dated January 14, 2025.[18]

22. The KingSett Commitment Letter is subject to 42 pre-funding conditions precedent and approval of KingSett's internal credit committee.[19] It appears that little or no progress has been made in satisfying the conditions precedent, and no time frame has been established for doing so. The conditions precedent include numerous significant items subject to KingSett's sole discretion, including but not limited to satisfactory due diligence and legal reviews, inspections, cash collateral payments by the Respondents, appraisals, zoning approvals, development permits, executed fixed price contracts for the Development Project's hard costs, immediately available physical and capacity allocation of all municipal services, environmental site assessments, geotechnical reports, receipt and review of an initial report on the Development Project prepared by a project monitor to be appointed, and executed construction management and guarantee agreements with Ballantry Homes Inc.

23. Among other conditions, KingSett also requires an additional capital injection of $3,032,415.56 by the Respondents towards the Development Project (the "**Additional Capital**").[20]

24. The beneficial owners of the Real Property have chosen not to infuse the Additional Capital needed to qualify for the KingSett Financing, and are instead seeking financing for those amounts from Sharno Developments Inc. ("**Sharno**").[21]

[18] Aameri Affidavit, para 10 and Exhibit "B".
[19] Aameri Affidavit, para 19 and Exhibit "D".
[20] Aameri Affidavit, paras 13 and 14.
[21] Examination of Abbas Aameri on August 18, 2025.

25. The Respondents have put forward a commitment letter from Sharno dated August 5, 2025 (the "**Sharno Commitment Letter**") for "$3,000,000 + Reserve", which also contains a number of condition precedents, including:

(a) negotiation and execution of a subordination and standstill agreement with KingSett;

(b) negotiation and execution of loan agreements with a third party builder outlining loan terms, guarantee agreements, payment of fees and deferred costs, and a financial waterfall structure;

(c) negotiation and execution of fixed price contracts with a third party builder and its subcontractors;

(d) satisfactory financial review of the Respondents, including but not limited to ongoing projects liquidity/financing structures, outstanding personal net worth statements and other matters;

(e) confirmation of sales, including confirmation of buyers' mortgage approvals and/or buyers' written intent to complete their transactions; and

(f) legal review.[22]

26. On cross-examination, Abbas was asked to produce all written communications and other evidence that the conditions precedent under the KingSett and Sharno Commitment Letters have

[22] Aameri Affidavit, para 20 and Exhibit "E".

been satisfied. The only document produced by the Respondents related to KingSett, i.e., an email from a KingSett representative dated August 8, 2025 that simply states as follows:

> *Chad – as discussed, we can extend the outside date in the commitment letter to October 15, 2025.*
>
> *Having said that, as outlined below, funding of the loan will require internal Credit Committee approval, based on in part, the new capital stack and revised budget, an updated risk analysis as well as our satisfactory review that all original pre-funding conditions have been satisfied.*

27. The Respondents have also delivered an affidavit sworn by Michael Durand (the "**Durand Affidavit**"), a mortgage broker based in Montreal, who has deposed having been retained "*to provide an expert opinion in this matter with respect to the viability of 908 Corp.'s alternative financing plan with Canada Mortgage and Housing Corporation ("**CMHC**")*".[23] The Durand Affidavit does not meet the various requirements of an expert report under Rule 53.03 of the *Rules of Civil Procedure*.[24]

28. Mr. Durand does not depose or certify that financing will be available to repay the Bank within any set time frame or at all. He simply states that "*after reviewing the information supplied by the borrower, 908 Corp., in the past weeks, we have determined that they would meet the required criteria to secure a CMHC certificate of insurance which would allow several lenders to be comfortable financing the construction of the proposed project.*"[25]

[23] Responding Record dated August 8, 2025, Tab 2, Affidavit of Michael Durand sworn August 8, 2025 ("**Durand Affidavit**"), para 4.
[24] *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, section 53.03.
[25] Durand Affidavit, para 12.

29. As to the timing to secure a CMHC certificate of insurance, Mr. Durand states as follows:[26]

> *33. Once the request is submitted to CMHC, the current wait time for CMHC to appoint an underwriter is approximately 4 to 6 weeks. Once the file is assigned to an underwriter, the underwriting process is generally no more than 10 days.*
>
> *34. It is therefore reasonable to estimate that a CMHC certificate can be secured for this project within eight to nine weeks of submitting the file to CMHC. Once a certificate of insurance is issued, the process for a lender to finalize their due diligence, prepare the legal documentation, ensure that all preconditions are met for a first draw, would add another 30 to 45 days, at most.*

PART III – ISSUE

30. The sole issue on this application is whether it is just and convenient for the Court to appoint a receiver over the Development Project, including the Real Property.

PART III – LAW AND ARGUMENT

Test for the Appointment of a Receiver

31. Pursuant to section 243 of the *BIA* and section 101 of the *Courts of Justice Act* (Ontario), the Court has the power to appoint a receiver where it is "just or convenient" to do so.[27]

32. In determining whether it is just and convenient under both statutes, the Court must have regard to all of the circumstances, including the nature of the property and the rights and interests of all parties in relation to the property.[28]

33. The fact that an applicant has a right under its security to appoint a receiver is an important factor to be considered in favour of the appointment. Whether or not an appointment by the Court

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[26] Durant Affidavit, paras 33-34.
[27] *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, section 243; *Courts of Justice Act*, R.S.O. 1990, c. 43, section 101.
[28] *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007 ["***Carnival***"], at para 24 citing *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996) 40 C.B.R. (3d) 274 (Ont. Gen. Div.) ["***Freure Village***"], para 10.

is necessary to enable the receiver-manager to carry out its work and duties more efficiently is also an important consideration.[29]

34. Where a Respondents has expressly agreed to the appointment of a receiver in the event of default, the court should not ordinarily interfere with the contract between the parties.[30]

35. It is not essential that the moving party establish that it will suffer irreparable harm if a receiver is not appointed.[31] It is likewise not essential that the moving party establish that the situation is urgent before a receiver will be appointed, only whether it is necessary to protect the interests of the secured creditor.[32]

36. It is also not necessary that a plaintiff demonstrate that other remedies are defective before being entitled to a court-appointed receiver.[33]

It Is Just and Convenient to Appoint a Receiver

37. The LBC Mortgage matured on August 1, 2024. The Respondents have had over a year to secure any necessary refinancing.

38. The evidence regarding the Respondents' potential sources of financing to repay the Bank is clear – no firm commitments are available, and no fixed timelines are being proposed.

39. A court-appointed receivership is just and convenient and appropriate in the circumstances of this case as:

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[29] *Carnival*, at para. 27, citing *Freure Village*, para 10.

[30] *United Savings Credit Union v. F & R Brokers Inc.*, 2003 BCSC 640 (B.C.S.C.), at para 16.

[31] *Carnival* at para. 28 citing *Swiss Bank Corp. (Canada) v. Odyssey Industries Inc.* (1995) 30 C.B.R. (3d) 49 (Ont. Gen. Div.), para 28.

[32] *Carnival* at para. 29 citing *Bank of Nova Scotia v. D. G. Jewelry Inc.*, (2002) 38 C.B.R. (4th) 7 (ON S.C.J.) ["***D.J. Jewelry"***], paras 1 and 3.

[33] *D.J. Jewelry*, para 3.

(a) the LBC Mortgage matured on August 1, 2024 and has not been repaid;[34]

(b) the Respondents owe in excess of $16 million to the Bank;[35]

(c) the Respondents have not made any payments since May 2, 2025;[36]

(d) the Bank has demanded repayment of the total indebtedness and issued a BIA Notice;[37]

(e) the terms of the Bank Commitment Letter, the Security and the Forbearance Agreement, which the Respondents expressly agreed to, provide for the appointment of a receiver upon default;[38]

(f) the Bank has provided the Respondents with more than sufficient time to obtain refinancing to repay the amounts owing to the Bank;

(g) to date, all of the Respondents' efforts regarding sale or refinancing transactions to repay the Bank have failed to materialize, and the Respondents have repeatedly failed to establish with satisfactory evidence that any such transactions will be completed within a reasonable time frame or at all;

(h) the receivership proceeding will provide a level and transparent mechanism to maximize the value of the Real Property, for the benefit of all of the Respondents' stakeholders; and

[34] Gongora Affidavit, para 13 and 21.
[35] Gongora Affidavit, para 16.
[36] Gongora Affidavit, para 22.
[37] Gongora Affidavit, paras 4 and 15 and Exhibits "L" and "M.
[38] Gongora Affidavit, para 12 and Exhibit "K".

(i) KSV has consented to act as Receiver.[39]

PART IV – ORDER REQUESTED

40. The Plaintiff respectfully requests that the Court grant the relief granted in accordance with the draft order submitted by the Bank.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of August, 2025.

CHAITONS LLP,
Lawyers for the Applicant

[39] Gongora Affidavit, para 30.

SCHEDULE "A"

AUTHORITIES

1. *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007
2. *Bank of Nova Scotia v. Freure Village of Clair Creek*, (1996) 40 CBR (3d) 274 (ON S.C.J.)
3. *United Savings Credit Union v. F & R Brokers Inc.*, 2003 BCSC 640 (B.C.S.C).
4. *Swiss Bank Corp. (Canada) v. Odyssey Industries Inc.*, (1995) 30 C.B.R. (3d) 49 (Ont. Gen. Div.).
5. *Bank of Nova Scotia v. D. G. Jewelry Inc.* (2002) 38 CBR (4th) 7 (ON S.C.J.)

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

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

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.

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.

LAURENTIAN BANK OF CANADA
Plaintiff

-and-

9089802 CANADA CORP. et al.
Defendants

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Proceeding commenced at Toronto

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