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COURT	COURT OF KING'S BENCH OF ALBERTA	JUDICIAL CENTRE OF EDMONTON FILED DIGITALLY 2603 15449 Jul 17, 2026 9:29 AM CLERK OF THE COURT
JUDICIAL CENTRE	EDMONTON	
APPLICANT	MCAP FINANCIAL CORPORATION as agent for and on behalf of COMPUTERSHARE TRUST COMPANY OF CANADA	
RESPONDENTS	LUXOR LAND LTD., MESA WEST CAPITAL CORP., PACIFIC PLAZA LIMITED PARTNERSHIP, GPCO LTD. and GEORGE SCHLUESSEL	
DOCUMENT	**BENCH BRIEF OF MCAP FINANCIAL CORPORATION**	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Cassels Brock & Blackwell LLP Suite 3700, Bankers Hall West 888 3rd Street SW Calgary, Alberta, T2P 5C5 Telephone: 403-351-2920/403 351 2638 Email: joliver@cassels.com / djorgenson@cassels.com File No. 29633-416 **Attention: Jeffrey Oliver / Danica Jorgenson**	

I. INTRODUCTION

1. This bench brief is submitted on behalf of MCAP Financial Corporation ("**MCAP**") in support of its application (the "**Application**") for:

   (a) an order (the "**Receivership Order**") appointing AlixPartners Restructuring, Inc. ("**AlixPartners")** , as receiver and manager (in such capacity, the "**Receiver**") over certain property (collectively, the "**WSP Properties**") Luxor Land Ltd. ("**Luxor**") and Mesa West Capital Corp. ("**Mesa West**" and together with Luxor, the "**Borrowers**"), pursuant to the Bankruptcy and Insolvency Act, RSC 1985, c B-3 (the "**BIA**") and section 13 of the *Judicature Act*, RSA 2000, c J-2 (as amended); and

   (b) an order (the "**Sealing Order**") sealing the Confidential Exhibits 1 and 2 (collectively, the "**Confidential Exhibits**") to the Affidavit of Ifti Rashid sworn July 13, 2026 (the "**Rashid Affidavit**"), until the Unsealing Date (as defined below).

   (c) such further and other relief, advice and directions as counsel may advise and this Honourable Court may deem just and appropriate.

2. Capitalized terms not otherwise defined herein shall have the meaning given to such terms in the Rashid Affidavit.[1]

II. FACTS

3. Further factual background supporting the relief sought may be found in the Rashid Affidavit.

A Parties

4. MCAP Financial Corporation ("**MCAP**") is an independent mortgage finance company that originates, trades, securitizes and services residential, construction and commercial assets on behalf of institutional investors and in this proceeding, MCAP acts in its capacity as master servicer and special servicer of a mortgage loan held by Computershare Trust Company of Canada ("**Computershare**") as custodian on behalf of Real Estate Asset Liquidity Trust (the "**Trust**" and together with MCAP and Computershare, the "**Lender**").[2]

[1] Affidavit of Ifti Rashid, sworn October 27, 2025 ["**Affidavit**"].
[2] Affidavit at para 1.

5. The Borrowers are part of a larger group of companies (the "**Procura Group**") owned and controlled directly or indirectly by the respondent, George Schluessel ("**George**").[3]

6. George is an individual who resides in the City of Edmonton. George is in the business of sales, leasing, development and property management of multi-residential, industrial, office and retail properties in Alberta, British Columbia and Saskatchewan. The Procura Group is a real estate development and management enterprise founded by George in 1979.[4]

7. The respondent, Luxor, is a corporation formed pursuant to the laws of Alberta with a registered office located in Edmonton, Alberta. The current directors of Luxor are George and Sherry Schluessel ("**Sherry**"). George is the sole voting shareholder of Luxor.[5]

8. The respondent, Mesa West, is a corporation formed pursuant to the laws of Alberta with a registered office located in Edmonton, Alberta. The current directors of Mesa West are George and Sherry. The common shareholders of Mesa West are GSRI Ltd. ("**GSRI**") (60%) and George (40%).[6]

9. GSRI, is a corporation formed pursuant to the laws of Alberta with a registered office in Calgary and is wholly owned by George.[7]

10. Pacific Plaza Limited Partnership ("**Pacific LP**" and together with GSRI and George, the "**Guarantors**", and together with the Borrowers, the "**Obligors**"), is an Alberta limited partnership. The general partner of Pacific LP is GS GPCO Ltd. ("**GPCO**"). GPCO is a wholly owned subsidiary of GSRI.[8]

B WSP Properties

11. Luxor and Mesa West are the registered owners of an office building located at 10909 Jasper Ave, Edmonton, AB T5K 0K9 known as "**WSP Place**", and lands legally described as:[9]

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[3] Affidavit at para 3.
[4] Affidavit at para 4.
[5] Affidavit at para 6.
[6] Affidavit at para 7.
[7] Affidavit at para 8.
[8] Affidavit at para 9.
[9] Affidavit at para 11.

PLAN (B)
BLOCK NINE (9)
LOT FORTY FOUR (44) AND THE NORTHERLY ONE HUNDRED AND TEN (110)
FEET
IN WIDTH THROUGHOUT OF LOTS FORTY FIVE (45) AND FORTY SIX (46)
EXCEPTING THEREOUT :
ALL THAT PORTION OF LOT FORTY SIX (46) DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTH EAST CORNER OF SAID LOT FORTY SIX (46)
THENCE WESTERLY ALONG THE NORTHERLY BOUNDARY THEREOF A
DISTANCE OF
THIRTY (30) FEET TO A POINT THENCE SOUTH EASTERLY IN A STRAIGHT LINE
TO A POINT ON THE EASTERLY BOUNDARY OF SAID LOT, DISTANT THIRTY (30)
FEET SOUTHERLY FROM THE SAID NORTH EAST CORNER THENCE NORTHERLY
ALONG
SAID EASTERLY BOUNDARY TO THE POINT OF COMMENCEMENT.
EXCEPTING THEREOUT ALL MINES AND MINERALS; and

PLAN (B)
BLOCK NINE (9)
LOTS FORTY FIVE (45) AND FORTY SIX (46)
EXCEPTING THEREOUT
THE MOST NORTHERLY ONE HUNDRED AND TEN (110) FEET THROUGHOUT
OF SAID LOTS
EXCEPTING THEREOUT ALL MINES AND MINERALS

(collectively, the “**Lands**”).

12. WSP Place is a twelve-story office tower located at the southwest corner of Jasper Avenue and 109th Street in downtown Edmonton. WSP Place is comprised of 191,435 square feet of total leasable space and 173 parking stalls (166 underground, 7 surface).[10]

13. WSP Place and the Lands (collectively, the "Premises") together with all of the present and after acquired personal property of the Borrowers located in or upon, arising out of or used in connection with the Premises are referred to herein as the "**WSP Properties**".

C Servicing Agreements

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[10] Affidavit at paras 12-13.

14. Pursuant to a pooling and servicing agreement dated June 1, 2019 (the "**Master Service Agreement**"), between, inter alios, MCAP, as Master Servicer and General Servicer (in such capacity, the "**Servicer**"), Montreal Trust Company of Canada, as trustee of the Trust and Computershare, as custodian (in such capacity the "**Custodian**"), MCAP acts as the Servicer with respect to certain Mortgage Loans (as defined in the Master Service Agreement) including without limitation, the Loan (as defined below).[11]

15. Among other things, pursuant to the Master Service Agreement:[12]

    (a) Computershare, in its capacity as Custodian holds all of the Lender's legal right, title and interests in and to the loan and security documents for the Mortgage Loans; and

    (b) MCAP, in its capacity as Servicer is empowered to commence, prosecute and complete enforcement proceedings on behalf of Computershare and the Lender.

16. On June 1, 2019, MCAP and Canada ICI Capital Corporation ("**Canada ICI**" or the "**Subservicer**") entered into a subservice agreement (the "**Subservice Agreement**"). Pursuant to the Subservice Agreement, the Subservicer is empowered to perform certain day-to-day loan servicing activities with respect to the Mortgage Loans (as defined herein) on MCAP's behalf including, without limitation, collecting borrower payments, managing reserve accounts, monitoring insurance, conducting property inspections, financial reporting, default monitoring and workout support and borrower communications.[13]

17. The Subservice Agreement lists as one of the mortgage loan facilities to be serviced by the Subservicer, the Loan (as defined below).[14]

D Loan and Security Documents

18. On November 8, 2018, the Borrowers, George and GSRI accepted the terms of a commitment letter and first addendum (collectively, the “**Commitment Letter**”) issued by Canada ICI, as an agent for and on behalf of Computershare, pursuant to which the Lender offered the Borrowers a loan facility in the total amount of $38,000,000 (the “**Loan**”).[15]

19. On December 12, 2028, the Borrowers, George, GSRI and Pacific LP accepted the terms of a closing confirmation (collectively, the “**Closing Confirmation**” and together with the Commitment

[11] Affidavit at para 15.
[12] Affidavit at para 16.
[13] Affidavit at para 17.
[14] Affidavit at para 18.
[15] Affidavit at para 19.

Letter, each as amended from time to time, including by the Amending Agreement (as defined below), the "**Loan Agreement**").[16]

20. Pursuant to the Loan Agreement, among other things:[17]

    (a) the term of the Loan was five years;

    (b) the full amount of the Indebtedness (as defined below) is guaranteed, jointly and severally, by George, GSRI and Pacific LP;

    (c) the Borrowers dealt exclusively with Computershare or the Servicer in respect of all matters relating to the Loan and the Loan and Security Documents (as defined below) and agreed that all enforcement actions or proceedings may be brought by Computershare or the Servicer on behalf of the Lender and all other persons having an ownership interest in the Loan from time to time and waived any requirement that the Lender or such other Loan owners be a party thereto; and

    (d) the Borrowers agreed to establish a reserve (the "**General Lease Reserve**") with the Lender or the Servicer in the aggregate amount of $500,000 to be funded from the Loan on closing, to pay for any and all reasonable and customary costs including but not limited to, tenant improvements and allowances, landlord's work, leasing commissions and marketing expenses associated with the leasing of vacant space associated with tenants who leases expire during the Term ("**Leasing Costs**"), which costs would be reimbursed upon the submission of invoices as set out therein and a reserve (the "**WSP Tenancy Reserve**" and together with the General Lease Reserve, the "**Lease Reserve**") with the Lender or the Servicer in the aggregate amount of $200,000 to be funded from the Loan on closing, until all outstanding tenant improvement and construction related issues between the Borrowers (as landlord) and WSP Canada Inc. ("**WSP**") (as tenant) had been resolved to the reasonable satisfaction of the Lender.

21. At some point following the execution of the Commitment Letter the Loan was assigned to the Trust. [18]

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[16] Affidavit at para 22.
[17] Affidavit at paras 21 and 23.
[18] Affidavit at para 20.

22. The Loan is secured by the following security documents in favour of the Lender and related ancillary and supplemental documents, as amended from time to time (collectively the "**Security Documents**" and together with the Loan Agreement, the "**Loan and Security Documents**"):[19]

    (a) mortgage in the original principal amount of $38,000,000 dated December 14, 2018 as amended by a supplemental mortgage dated January 25, 2019 (collectively, the "Mortgage") and general assignments of rents and leases dated December 14, 2026 (the "GARL"), granting a charge on the Lands (the "**Land Charge**"); and

    (b) general security agreement dated December 14, 2018 as amended by an amended and restated security agreement dated December 17, 2018 (collectively, the "**GSA**", and together with the Mortgage, and GARL, the "**Security Documents**"), granting a charge on all present and after-acquired personal property (the "**Personal Property**" and together with the Lands, the "**Property**") of the Borrowers that is located in or upon, arising out of or used in connection with the Lands (the "**ALL-PAAP**", and together with the Land Charge, the "**Security**").

23. Computershare's first priority security interest in the Lands created pursuant to the Mortgage and the GARL were each registered on title to the Lands. The security interest created pursuant to the GSA was registered against the Borrowers at the in the Alberta Personal Property Registry.[20]

24. The Security Documents, and in particular, section 7.08 of the Mortgage and article 5.01 of the GSA, provide for the Lender's right to appoint a receiver upon the occurrence of an "**Event of Default**" (as that term is defined therein each).[21]

25. The details of the Loan and Security Documents are more thoroughly described in the Rashid Affidavit.

E Loan Defaults and Initial Demands

26. The Procura Group began experiencing liquidity issues in or around 2022.[22]

27. Since 2022, the financial situation of the Procura Group, and in particular, as related to WSP Place continues to deteriorate. The Borrowers have failed to make any principal or interest payments with respect to the Loan since September 2023.[23]

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[19] Affidavit at para 26.
[20] Affidavit at para 31-32.
[21] Affidavit at para 27.
[22] Affidavit at para 33.
[23] Affidavit at para 34.

28. Pursuant to an amending agreement dated March 13, 2023 (the "**Amending Agreement**"), MCAP agreed to provide the Borrowers with relief in making their monthly mortgage payments by reducing the amount payable from the Borrowers from $195,202.82/month to $100,000/month with the remaining portion of the monthly payment (i.e. $95,202.82) to be taken from the Lease Reserve.[24]

29. Notwithstanding MCAP's good faith efforts to resolve the Borrowers' financial difficulties outside of court, the Lease Reserve was exhausted in or around September 2023 and since September 2023, the Borrowers failed to make monthly payments when due in accordance with the terms of the Loan Agreement.[25]

30. The Loan matured on January 1, 2024 (the "**Maturity Date**").

31. Notwithstanding that the Maturity Date has passed, prior to and after the Maturity Date, the Debtors committed various events of default under the terms of the Loan and Security Documents (the "**Loan Defaults**") including, without limitation, as a result of the Borrower's failure to pay municipal property tax amounts owing to the City of Edmonton (the "**City**") which property tax arrears totaled $1,468,700.25 as of February 2, 2024.[26]

32. On February 15, 2024, MCAP, through its counsel Cassels Brock and Blackwell LLP ("**Cassels**"), issued further demand letters to the Obligors and a notice of intention to enforce security under the *Bankruptcy and Insolvency Act* (Canada) to the Borrowers (collectively, the "**Initial Demands**").[27]

33. The 10-day period referenced in section 244(2) of the BIA expired with respect to the Initial Demands on February 26, 2024.[28]

F Protective Advances, Forbearance Negotiations and Forbearance Defaults

34. Following the issuance of the Initial Demands, MCAP engaged in forbearance negotiations with the Obligors (the "**Forbearance Negotiations**") and, in response to the unpaid property taxes noted in paragraph 28(c) above, made protective advances towards the unpaid property taxes in the amount of $1,468,700.25 on February 12, 2024 and $711,231.45 on June 28, 2024.[29]

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[24] Affidavit at paras 36-40.
[25] Affidavit at 43.
[26] Affidavit at para 38.
[27] Affidavit at para 50.
[28] Affidavit at para 51.
[29] Affidavit at paras 44-45.

35. As of the date hereof there are municipal property taxes owing with respect to the Lands in the amount of $18,154.49.[30]

36. As a result of the Forbearance Negotiations, On June 12, 2024 (the "**Forbearance Date**"), MCAP entered into a forbearance agreement (the "**Forbearance Agreement**") with the Obligors and Procura Real Estate Services Limited ("**Procura**") whereby MCAP agreed to forbear from realizing on or enforcing the Custodian's rights under the Loan and Security Documents solely on the basis that the Obligors and Procura agreed to strictly comply with the terms and conditions of the Forbearance Agreement.[31]

37. Together with the Forbearance Agreement, the Obligors delivered to MCAP, among other consent orders, a duly executed consent receivership order (the "**Consent Receivership Order**").[32]

38. Pursuant to the Forbearance Agreement, the Obligors acknowledged:[33]

(a) the Loan Defaults;

(b) the Indebtedness (as defined below) as at the Forbearance Date, which Indebtedness was $38,351,667.68 as of the Forbearance Date;

(c) their joint and several liability and obligation to pay the Indebtedness; and

(d) the validity, existence and enforceability of the Consent Receivership Order.

39. The forbearance period under the Forbearance Agreement expired on June 12, 2026 (the "Forbearance Period"). As further detailed in the Rashid Affidaivt, the Obligors and Procura allowed the occurrence and continuance of various "Events of Default" w under the Forbearance Agreement during the Forbearance Period (the "**Forbearance Defaults**").[34]

40. During the Forbearance Period, MCAP, through its counsel, Cassels, issued four Notices of Default (as defined in the Rashid Affidavit) in connection the Forbearance Agreement. As of the date hereof, the majority of the Forbearance Defaults have not been remedied, waived or otherwise extinguished.[35]

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[30] Affidavit at para 46.
[31] Affidavit at para 53.
[32] Affidavit at para 54.
[33] Affidavit at para 54.
[34] Affidavit at paras 58-59.
[35] Affidavit at paras 60-61.

41. On June 12, 2026 (the "**Demand Date**"), MCAP issued demand letters and notices of intention to enforce security under the *Bankruptcy and Insolvency Act* (Canada) to the Obligors (the "**Forbearance Demands**").[36]

G Indebtedness

42. As of July 13, 2026, the outstanding indebtedness owing by the Borowers to the Lender under the Loan and pursuant to the Loan Agreement and Forbearance Agreement is $44,643,306.18, including all advances made by the Servicer, including for costs associated with WSP Place and any protective advances made to cure any Events of Default or pending Events of Default under the Loan and Security Documents or the Forbearance Agreement, in accordance with the Servicer's obligations under the Master Service Agreement, together with such additional adjustments, interest, costs, and fees (including legal fees on a solicitor-and-own-client, full indemnity basis) as are currently payable as of the date hereof, but excluding interest and fees (including legal fees on a solicitor-and-own-client, full indemnity basis) continuing to accrue to the date of payments at the rates prescribed in the Forbearance Agreement (the "**Indebtedness**").[37]

H Sale Offer

43. On or around May 26, 2026, MCAP became aware that the Borrowers received an unsolicited letter of intent to purchase the WSP Properties dated May 21, 2026, in an amount which MCAP understands exceeds the appraised value of the WSP Properties (the "**Sale Offer**").[38]

44. MCAP has written to the Borrowers to advise that, in MCAP's opinion, the Sale Offer represented a very strong and commercially reasonable offer and to request that the Borrowers accept the Sale Offer (the "**Support Letter**"). The Borrowers ultimately failed to accept the Sale Offer on or before the date on which such Sale Offer expired and no transaction resulted from the Sale Offer.[39]

I MCAP's Concerns Necessitating the Appointment of a Receiver

45. The Forbearance Agreement terminated on June 12, 2025.

[36] Affidavit at para 71.
[37] Affidavit at para 76.
[38] Affidavit at para 73.
[39] Affidavit at paras 74-75.

46. Notwithstanding the foregoing, the Obligors allowed or caused the occurrence of the Forbearance Defaults and the majority of the Forbearance Defaults are continuing defaults which have not been cured, waived or otherwise extinguished.

47. The Obligors have failed to comply with the Forbearance Demands and the Indebtedness remains due, owing and payable. The Obligors have also failed to provide the Lender with any assurance that they can make payments in the foreseeable future.

48. Notwithstanding the Indebtedness is a valid debt now due and owing to the Lender and notwithstanding that MCAP is entitled under the Security Documents and the Forbearance Agreements to make an application to appoint a receiver over the WSP Properties and to enter with Consent Forbearance Order without any further notice to the Borrowers, MCAP also has various concerns with the conduct of the Obligors and Procura which would necessitate the immediate appointment of a receiver including the following:

(a) The misappropriation by Procura of approximately $1,101,431.40 in insurance proceeds (the "**Insurance Proceeds**") intended to be used to repair damage (the "**Damage**") to WSP Place caused by a fire on October 23, 2023. The Insurance Proceeds were not used to repair the Damage nor were they remitted to the Servicer in accordance with the terms of the Mortgage, instead the Borrowers misappropriated the Insurance Proceeds by injecting them into the Procura Group's portfolio of underperforming assets to service debts to other lenders;[40]

(b) The refusal of Procura to remit to MCAP the proceeds of a settlement between a tenant dispute between Procura and WSP in the amount of $260,090.55 (the "**Dispute Resolution Proceeds**") as partial re-payment for the misappropriated Insurance Proceeds;[41] and

(c) The interference by George and Procura with a current tenant of WSP Place to induce such tenant to relocate to another property formerly owned by the Procura Group.[42]

III. ISSUE

49. The primary issues to be considered on this Application are whether:

(a) The Receivership Order should be granted; and

[40] Affidavit at paras 62-65.
[41] Affidavit at paras 66-50.
[42] Affidavit at paras 49 and 59(d).

(b) The Sealing Order should be granted.

IV. LAW & ANALYSIS

A The Receivership Order Should be Granted

50. MCAP is seeking the appointment of AlixPartners as receiver-manager pursuant to section 243 of the *BIA*.[43]

51. This Court's authority to appoint a receiver and manager is expressly codified in Section 243(1) of the BIA. Pursuant to Section 243(1) of the BIA, the Court, upon application by a secured creditor, 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.[44]

52. In *Paragon Capital Corporation Ltd v Merchants & Traders Assurance Co*[45] ("***Paragon***"), the Court considered the following non-exhaustive list of factors in determining whether it is just and convenient to appoint a receiver:

(a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;

(b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;

(c) the nature of the property;

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[43] *BIA*, s 243.
[44] *BIA*, s 243(1).
[45] *Paragon Capital Corporation Ltd v Merchants & Traders Assurance Co*, 2002 ABQB 430 ["***Paragon v Merchants***"].

(d) the apprehended or actual waste of the debtor's assets;

(e) the preservation and protection of the property pending judicial resolution;

(f) the balance of convenience to the parties;

(g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;

(h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;

(i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;

(j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its' duties more efficiently;

(k) the effect of the order upon the parties;

(l) the conduct of the parties;

(m) the length of time that a receiver may be in place;

(n) the cost to the parties;

(o) the likelihood of maximizing return to the parties; and

(p) the goal of facilitating the duties of the receiver.[46]

53. Not all factors in the above-referenced list need to be established. Rather, they need to be considered and weighed holistically and in light of all of the circumstances.[47]

54. Having consideration of the above factors outlined in *Paragon*, it is just and convenient to appoint AlixPartners as Receiver over the WSP Properties for the following reasons, among others:

(a) Contractual Right to Appoint a Receiver. While receiverships are generally considered an extraordinary remedy, its extraordinary nature is significantly reduced when the applicant

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[46] *Paragon v Merchants* at para 27; see also *Bank of Nova Scotia v Smiling Simba Learning Academy Inc*, 2025 ABKB 11 at paras 27 – 30 ["***Smiling Simba***"] and *Schendel Management Ltd*, 2019 ABQB 545 at paras 43 - 44.

[47] *Cascade Divide Enterprises, Inc. v Laliberte*, 2013 BCSC 263 at para 77; *Bank of Montreal v Haro-Thurlow Street Project Limited Partnership*, 2024 BCSC 47 at para 74 ["***Haro-Thurlow***"].

for a receiver is a secured creditor who is contractually entitled to a receivership under its security arrangements.[48] The Lender has the right to appoint a receiver upon default pursuant to the Mortgage and the GSA.[49] Furthermore, pursuant to the Forbearance Agreement the Borrowers delivered to the Lender the duly executed Consent Receivership Order and affirmed the validity, existence and enforceability of the Consent Receivership Order.[50] The Consent Receivership Order provided by the Borrowers alone accords significant weight to the appointment of the Receiver over the Property. As held by this Court in Smiling Simba, consent to receivership is a significant factor in favour of receivership.[51]

(b) Irreparable Harm. As the Lender has the right to appoint a receiver under its security, it is not required to establish irreparable harm.[52] Notwithstanding the foregoing, there exists a real risk of irreparable harm if the Receiver is not appointed. As further detailed in the Rashid Affidaivt, absent the appointment of a receiver to resolved the Borrowers insolvency the Indebtedness will continue to increase while the value of the WSP Properties erodes due to, among other things, the Borrowers failures to property maintain WSP Place and the growing vacancy rate of WSP Place.[53]

(c) Nature of the Property. WSP Place requires funds and management to support ongoing operations, and specialized expertise for sale of the property.[54] The Borrowers refusal to accept the Sale Offer in a timely manner has demonstrated either an inability or unwillingness of the Borrowers to market the WSP Properties and close a sale of the WSP Properties for the benefit of all stakeholders.[55] A Receiver, as a court-appointed officer, has the necessary expertise and would be in the best position to ensure the Property is preserved, operated, marketed and sold in an efficient and effective manner that maximizes value for all stakeholders.

(d) Balance of Convenience. The balance of convenience clearly favours the appointment of a receiver to manage and sell the Property as:

[48] *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc*, 2020 ONSC 1953 at para 43.
[49] Affidavit at para 27.
[50] Affidavit at para 54(d).
[51] *Smiling Simba* at para 47.
[52] *Paragon v Merchants* at para 27.
[53] Affidavit at para 80.
[54] *Haro-Thurlow* at paras 101-112.
[55] Affidavit at para 82.

(i) the financial risk to the Lender is substantial, with the outstanding Indebtedness being $44,643,306.18 as at July 13, 2026.[56] Furthermore, that the Indebtedness is significantly more than the fair market value of the WSP Properties.[57]

(ii) the Borrowers are in default under the Loan and Security Documents the Forbearance Agreement and such defaults have not been cured;

(iii) the term under the Loan Agreement and the Forbearance Period under the Forbearance Agreement have each expired, accordingly the Indebtedness is now due and payable in full; and

(iv) MCAP and the Lender have been patient and has demonstrated ongoing support for the Borrowers as evidenced by the Amending Agreement, the Forbearance Agreement, MCAP's continued forbearance of its rights and remedies, notwithstanding the numerous Forbearance Defaults, and MCAP's willingness to arrive at an out of court resolution provided that the Borrowers accept the Sale Offer.[58]

(e) Effect of the Order on the Parties. The Borrowers are insolvent. The Lender is the primary secured creditor with respect to the WSP Properties. The appointment of a Receiver is necessary to protect the interests of MCAP and the Lender and provide a transparent and efficient recovery process for all stakeholders.

(f) Maximizing Return. The Borrowers have refused to consider a commercially attractive Sale Offer and have proven themselves incapable of maintaining the value of WSP Place.[59] The Sale Offer is a commercially attractive offer that, if appointed, a Receiver may be able to negotiated and close for the benefit of the Borrowers' creditors.

(g) Conduct of the Parties. The conduct of the Borrowers further supports the necessity of appointing a Receiver. MCAP has made repeated efforts to work collaboratively with the Borrowers to resolve the Indebtedness without resorting to litigation.[60] Despite these efforts, the Borrowers have failed to meet their obligations under the Loan and Security

[56] Affidavit at para 76.
[57] See Confidential Exhibit 2 to the Affidavit of Ifti Rashid, sworn October 27, 2025.
[58] Affidavit at paras 78.
[59] Affidavit at paras 80.
[60] Affidavit at para 78.

Documents and the Forbearance Agreement.[61] Of particular concern, MCAP's confidence in the Borrowers' ability to repay the Indebtedness has eroded due to:[62]

(i) repeated failures of the Borrowers to perform or observe any of the terms, covenants, or obligations under the Forbearance Agreement;

(ii) the Borrowers are refusing to consider commercially attractive offers for the sale of the WSP Place and the Lands and in particular the Sale Offer;

(iii) the misappropriation of the Insurance Proceeds;

(iv) the Obligor's failure to pay the Dispute Resolution Proceeds to the Servicer;

(v) the Obligors' tampering with a current tenants of WSP Place, further jeopardizing the Lender's security; and

(vi) the Borrowers' insolvency, as evidenced by the Borrowers' failure to repay the Outstanding Indebtedness.[63]

55. Taken together, the above noted demonstrate the Borrowers' and the Obligors' inability to responsibly manage the WSP Properties. In these circumstances, the appointment of the Receiver is not only justified, but is essential to ensure the orderly and efficient realization of the WSP Properties.

56. Further, unless outweighed by other factors, a secured creditor is entitled to decide the path by which its security will be enforced.[64] There is no other viable alternative than the appointment of a Receiver. An order for foreclosure on the Property would be insufficient, as it would not adequately provide for the management of the Property prior to its sale. MCAP has provided the Borrowers with ample time and opportunities to repay the Indebtedness. However, given the Borrowers' conduct and the ongoing concerns regarding management, MCAP has been left with no practical alternative. The appointment of a Receiver is now essential to safeguard MCAP's security and the interests of other parties. No other remedy would adequately protect the interests of all stakeholders.

57. Pursuant to the foregoing, it is just and convenient to appoint AlixPartners as the Receiver.

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[61] Affidavit at paras 43 and 59.
[62] Affidavit at para 80.
[63] Affidavit at para 62.
[64] *Haro-Thurlow* at para 95.

B The Sealing Order Should be Granted

58. MCAP is seeking to seal the Confidential Exhibit 1 and Confidential Exhibit 2 (the "**Confidential Exhibits**") to the Rashid Affidavit until the earlier of one year from the date of the Sealing Order, the discharge of the Receiver (if appointed), or further order of this Court.[65] The Confidential Exhibits commercially sensitive information, including information with respect to the value of the WSP Properties.

59. This Court has the authority to seal materials on the court record pursuant to rule 6.28(b) of the *Alberta Rules of Court,* Alta Reg 124/2010.[66]

60. The Supreme Court of Canada decision in *Sierra Club of Canada v Canada (Minister of Finance)* provides that sealing orders could be granted when (i) the order is necessary to prevent a serious risk to an important interest; and (ii) the salutary effects of the order outweigh its deleterious effects.[67]

61. The Supreme Court of Canada further confirmed in *Sherman Estate v Donovan* that an applicant requesting approval for a sealing order must demonstrate that:

    (a) court openness poses a serious risk to an important public interest;

    (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and

    (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.[68]

62. The Sealing Order is being sought to prevent the disclosure of commercially sensitive information. Disclosure of such information could influence any sale proceeding undertaken by the Receiver, if appointed, affecting potential recoveries to the Lender In the circumstances, there are no reasonable alternative measures which could be taken to protect the confidential information contained in the Confidential Exhibits.

63. The Sealing Order is appropriate in the circumstances and should be granted.

[65] Affidavit at para 63(e).
[66] *Alberta Rules of Court*, Alta Reg 124/2010, r 6.28(b).
[67] *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 at para 53.
[68] *Sherman Estate v Donovan*, 2021 SCC 25 at para 38.

V. CONCLUSION

64. Based on the foregoing, MCAP requests that this Honourable Court grant the Receivership Order and the Sealing Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of July, 2026.

Cassels Brock & Blackwell LLP

Per: Jeffrey Oliver

Jeffrey Oliver

Counsel for MCAP

VI. LIST OF AUTHORITIES

STATUTES

Tab	Authority
1.	*Bankruptcy and Insolvency Act*, RSC 1985, c B-3
2.	*Alberta Rules of Court*, Alta Reg 124/2010

JURISPRUDENCE

Tab	Authority
3.	*Paragon Capital Corporation Ltd v Merchants & Traders Assurance Co*, 2002 ABQB 430
4.	*Bank of Nova Scotia v Smiling Simba Learning Academy Inc*, 2025 ABKB 11
5.	*Schendel Management Ltd,* 2019 ABQB 545
6.	*Cascade Divide Enterprises, Inc. v Laliberte,* 2013 BCSC 263
7.	*Bank of Montreal v Haro-Thurlow Street Project Limited Partnership*, 2024 BCSC 47
8.	*BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc*, 2020 ONSC 1953
9.	*Sherman Estate v Donovan,* 2021 SCC 25
10.	*Sierra Club of Canada v Canada (Minister of Finance),* 2002 SCC 41