Court File No. CV-24-00098058-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF ASHCROFT URBAN DEVELOPMENTS INC., 2067166 ONTARIO INC., 2139770 ONTARIO INC., 2265132 ONTARIO INC., ASHCROFT HOMES – LA PROMENADE INC., 2195186 ONTARIO INC., ASHCROFT HOMES – CAPITAL HALL INC. AND 1019883 ONTARIO INC.

Applicants

FACTUM OF EQUITABLE BANK AND CMLS FINANCIAL LTD. (COMEBACK APPLICATION HEARING)

December 11, 2024

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

D. Robb English – LSO No. 19862F
Tel: (416) 865-4748
Email: renglish@airdberlis.com

Sanjeev P.R. Mitra – LSO No. 37934U
Tel: (416) 865-3085
Email: smitra@airdberlis.com

Calvin Horsten – LSO No. 90418I
Tel: (416) 865-3077
Email: chorsten@airdberlis.com

Lawyers for Equitable Bank and CMLS Financial Ltd.

PART I – OVERVIEW

1. Equitable Bank ("**EQ Bank**") and CMLS Financial Ltd. ("**CMLS**") are secured lenders to two distinct, single-purpose real estate corporations involved in this *Companies' Creditors Arrangement Act* ("**CCAA**") proceeding, being Ashcroft Urban Developments Inc. and Ashcroft Homes - Capital Hall Inc.. Each property is independently operated and managed.

2. EQ Bank and CMLS oppose the continuation of this CCAA proceeding and seek instead a receivership in connection with the two properties.[1]

3. Real-property centric entities are often less suitable for CCAA proceedings due to the nature of their security structures and operations. Rather, those entities and their stakeholders commonly benefit more from simpler receivership proceedings where creditors have direct recourse to their security and where priorities are clear. Notwithstanding these common structural challenges, the Applicants embarked on their own CCAA application and obtained a stay of proceedings without any advance notice to EQ Bank, CMLS or other major lenders.

4. There was no obvious urgency that could justify such a serious lack of prior discussion and notice. The obvious inference is that this step was taken to avoid a contested initial order and thereby achieve status quo momentum. The CCAA does not, however, permits such strategies. In the absence of notice, this comeback hearing is required to be conducted on a *de novo* basis.

[1] KSV Restructuring Inc. ("**KSV**") has consented to act as receiver for each of the two properties. EQ Bank and CMLS understand that creditors of the Applicants seek similar relief and that KSV has consented to act as receiver of some or all of those properties as well.

5. Against that *de novo* standard, EQ Bank and CMLS, as applicable, have numerous concerns that necessitate a receivership proceeding and the termination of this misguided CCAA proceeding:

(a) CCAA proceeding will serve no practical purpose. The Applicants have tried for months to resolve their liquidity issues in private with no success. They propose no plan capable of convincing their major lenders to come to the table, let alone the germ of a plan that could, at some point during the proposed stay extension period, turn their lender's heads away from the remedies to which they contracted;

(b) Without segregation of receipts and disbursements, the Applicants can divert cash flows generated from the EQ Bank and CMLS properties for the benefit of the activities of entities bearing the Ashcroft Homes Group ("**Ashcroft**") banner either within the proceeding or outside same. Meanwhile, EQ Bank and CMLS' mortgages are going unpaid while they assume the role of a *de facto* debtor-in-possession ("**DIP**") lender and pay for CCAA-related costs;

(c) The Applicants and the other Ashcroft entities are distinct in form and function, each with its own lending bases. EQ Bank and CMLS should not have to support other entities to which EQ Bank and CMLS did not consider when evaluating the terms of their loans; and

(d) EQ Bank and CMLS have lost confidence in the Applicants, whose mismanagement is not only recorded in regulatory compliance orders and the media, but is also reflected in its failure to keep various taxing authorities current.

Despite ample opportunity, the Applicants failed to take any steps to consult with EQ Bank or CMLS prior to the filing.

6. Extending the stay of proceedings in a debtor-led insolvency process will engender significant risk and prejudice to EQ Bank and CMLS. On the other hand, a receivership is cost-effective and will permit EQ Bank and CMLS, and the other lenders, to determine, among other things, the timing and process for monetizing the properties to maximize recoveries and ensure that proceeds of each property are paid to the correct stakeholders without fewer opportunities for dispute between the secured creditors of the various Applicants. The Applicants' mismanagement necessitates the appointment of a qualified receiver. EQ Bank and CMLS request that this Court dismiss the within CCAA proceedings and allow an opportunity for EQ Bank and CMLS to bring their own receivership applications.

PART II – SUMMARY OF FACTS

Overview

7. Ashcroft Urban Developments Inc. owns a property at 101 Queen Street, Ottawa, Ontario and 110 Sparks Street, Ottawa, Ontario, which is referred to in the application materials as the "**REStays Property**".[2] The REStays Property is subject to a first mortgage in favour of CMLS, and EQ Bank is a major participant in the mortgage.[3] General Bank is also a beneficial participant in the mortgage.[4]

[2] Affidavit of Robert Gartner sworn December 10, 2024 ("**Gartner Affidavit**") at para 2.
[3] Gartner Affidavit at para 3.
[4] Gartner Affidavit at para 11.

8. Ashcroft Homes - Capital Hall Inc. owns a property at 105 Champagne Avenue, Ottawa, Ontario, which is referred to in the application materials as the "**ENVIE II Property**". EQ Bank is the first mortgage holder on that property.[5]

9. The mortgages given in respect of both the REStays Property and the ENVIE II Property are in default and have been in default for a significant period of time.[6]

Commencement of CCAA Proceedings Without Notice to Secured Creditors

10. The Applicants gave no prior notice to EQ Bank or CMLS of any intention to commence an application under the CCAA. Although the lenders under the two facilities in which EQ Bank is involved have had significant and ongoing discussions over a long period of time with the Applicants regarding their continuing default and unsuccessful efforts to refinance, there was never any consultation with these secured lenders with respect to any proposed filing. Indeed, neither EQ Bank nor CMLS had been served with the application materials or given any formal notice of these proceedings from the Applicants prior to the first return of their application, nor were they served with the initial order, although the Applicants are well aware that EQ Bank and CMLS are the first-secured lenders in respect of the REStays Property and the ENVIE II Property, as applicable. EQ Bank and CMLS were finally served on December 9, 2024.[7]

11. EQ Bank, CMLS and other participants in the mortgages only learned of the CCAA filing after the initial order was obtained, and learned of such by word of mouth from other creditors of the Applicants. Until December 6, 2024, there was nothing on the website of Grant Thornton Limited to indicate that the initial order had been granted. Further, until December 9, 2024, no

[5] Gartner Affidavit at para 4.
[6] Gartner Affidavit at para 12.
[7] Gartner Affidavit at para 7.

formal notice had been given to EQ Bank or CMLS, or their counsel, of the comeback date for the CCAA application of December 12, 2024.[8]

12. The within application covers the owners of eight separate real properties. Each of the eight real properties is owned by a separate and distinct legal entity. Each of the eight real properties is financed by different lenders, which may have different participations in each loan facility. The lenders each hold distinct collateral. There is no synergy between the assets or the liabilities of the Applicants.[9]

13. The application materials do not disclose any significant unsecured debt, and thus the application appears to be made primarily for the purpose of effecting a stay on secured lenders. There is no suggestion in the materials that any proposal for compromise is expected to be made to secured lenders, nor would such a compromise be entertained by the lenders on a global basis, as all hold separate and distinct loans and security. In the case of EQ Bank, no proposed compromise would be acceptable, as it would expect to have full recourse to its security.[10]

REStays Property – Default, Demand, Forbearance and Consent to Receiver

14. The original amount of the REStays Property loan was $65 million, and had been reduced to approximately $59 million as of November 2023, but presently stands at approximately $52 million due to a $10 million repayment recovered from the sale of an unrelated property during forbearance negotiations (as described below).[11]

[8] Gartner Affidavit at para 8.
[9] Gartner Affidavit at para 9.
[10] Gartner Affidavit at para 10.
[11] Gartner Affidavit at para 11.

15. The mortgage loan to the REStays Property matured on September 1, 2023. The borrower was in default of repayment on maturity and would have been in default on other payments and covenant conditions under the loan in any event. Demand for payment was made by CMLS on November 15, 2023. This ultimately resulted in the execution of a forbearance agreement (the "**REStays Forbearance Agreement**").[12]

16. The REStays Forbearance Agreement provided that the borrower thereunder was to provide (and did provide) additional security by way of a $10 million mortgage over a property at 256 Rideau Street, Ottawa, and that the borrower was to refinance the REStays Property on or before May 31, 2024. The borrower also provided a consent to a receivership (the "**Receiver Consent**") in respect of the REStays Property in the event that it failed to refinance by the May 31, 2024 deadline.[13]

17. As the borrower was unable to refinance its indebtedness by the deadline, two additional extensions were granted to allow the borrower some extra time. The first extension expired on September 31, 2024.[14]

18. The extensions included some relief to the borrower in the form of a reduction of regular monthly payments from $500,000 to $300,000. This relief was granted because the lenders were promised an additional $20 million mortgage as further security, which would address the erosion of their collateral. This further mortgage was a condition precedent to the second forbearance extension, but as the mortgage was never received, the second forbearance extension did not take effect.[15] Save for the stay of proceedings under the initial order, the Receiver Consent of this property would be in effect pursuant to the REStays Forbearance Agreement.

---

[12] Gartner Affidavit at para 12.
[13] Gartner Affidavit at para 13.
[14] Gartner Affidavit at para 14.
[15] Gartner Affidavit at paras 15 and 16.

19. Some 15 months after maturity of the mortgage, the owner of the REStays Property has been unable to refinance that loan. The lenders have been patient with the debtor but no longer have confidence in management to remain in control of the business or to restructure.[16]

20. The financial statements for Ashcroft Urban Development Inc. confirm that the expenses of the REStays Property far exceed the revenues, even before payment of interest. As such, the owners are unable to sustain the property with the current debt load of approximately $52 million. Further, the borrowers have known that their first mortgage matured since September 2023 and have been unable to refinance the current debt.[17]

21. The lenders to the REStays Property have seen no evidence that the value of the collateral exceeds the secured debt and have no confidence that the borrower will be able to refinance, particularly given the lack of progress since the REStays Forbearance Agreement. The lenders are also concerned that the value of their collateral continues to erode as the borrower has been unable to lease the commercial space, which is almost entirely vacant, and which continues to accrue liabilities. Furthermore, based on financial information provided by the borrower, the business appears to generate negative cash flow, even at a reduced level of debt service and before priority payables.[18]

22. As above, CMLS holds the Receiver Consent from the owner of the REStays Property which was given as consideration for the REStays Forbearance Agreement. CMLS wishes to exercise its rights to appoint a receiver over its collateral.[19]

[16] Gartner Affidavit at para 5.
[17] Gartner Affidavit at para 17.
[18] Gartner Affidavit at para 18.
[19] Gartner Affidavit at para 35.

ENVIE II Property – Default and Demand

23. Ashcroft Homes - Capital Hall Inc. owns a property at 105 Champagne Avenue, Ottawa, Ontario which is subject to a loan from EQ Bank. The loan by EQ Bank regarding the ENVIE II Property has been in default for more than six months by reason of non-payment of real estate taxes and for non-payment of principal and interest when such payments fell due.[20]

24. EQ Bank, through its counsel, delivered formal demand for repayment, as well as a Notice of Intention to Enforce Security, in respect of the loan regarding the ENVIE II Property on October 9, 2024. At that time, the debt owing was $24,296,447. The debtor failed to make repayment pursuant to the demand and the loan is now due in full.[21]

25. Following the demand, EQ Bank had several discussions with Manny Difilippo, the Chief Financial Officer for the various Ashcroft companies. Mr. Difilippo advised EQ Bank that in November 2024, Ashcroft Homes - Capital Hall Inc. was able to pay substantial arrears of property taxes as well as HST, which were outstanding on the ENVIE II Property, using sale proceeds received on the sale of an unrelated property at 256 Rideau Street.[22]

26. Mr. Difilippo then advised EQ Bank that the ENVIE II Property was unable to sustain the regular accruing principal and interest payments from revenues from the property. The monthly payment under the loan is approximately $146,000, and Mr. Difilippo indicated that at most the debtor could pay $100,000 per month. He stated that the debtor was going to be unable to catch up on six delinquent payments totalling approximately $890,000.[23]

[20] Gartner Affidavit at para 20.
[21] Gartner Affidavit at para 21.
[22] Gartner Affidavit at para 22.
[23] Gartner Affidavit at para 23.

27. The financial statements for the ENVIE II Property confirm that the property loses money operationally, even before debt service, and therefore cannot sustain its ongoing operations.[24]

28. In the past, on both the REStays Property and the ENVIE II Property, when the debtors have been unable to meet obligations, it would also fall delinquent in payment of realty taxes and on payment of HST accruals on rental income. These items rank in priority to the mortgagees, and thus the collateral is at risk.[25]

CCAA Cash Flow Concerns

29. The Applicants' cash flow in respect of the within CCAA proceedings is presented on a group and cumulative basis covering all eight Applicants and all eight properties. This is inappropriate as the creditors, collateral and operational cash flows of each of the Applicants are markedly different.[26]

30. By combining all eight separate and distinct entities into one cash flow, it suggests that money is freely available to move from one project to another. This should not be the case. The effect would be to move collateral from one secured party to another. No lender with a first security position in default on any one of the Applicants' properties would consent to the cash flow from that property being used to sustain other properties for the benefit of other lenders.[27]

31. Since preparation of the Gartner Affidavit, it appears that a further cashflow has been delivered which breaks down the projected cash flow by project. It appears that in addition to secured creditors not being kept current, proceeds from certain projects are going to be used to

[24] Gartner Affidavit at para 24.
[25] Gartner Affidavit at para 25.
[26] Gartner Affidavit at para 28.
[27] Gartner Affidavit at para 29.

fund shortfalls in other projects. The draft amended and restated initial order does not provide for ring fencing of proceeds and disbursements on a project-by-project basis.

PART III – ISSUE

32. The issue to be determined on this application is whether the Applicants' CCAA application ought to be dismissed, so that the Applicants' creditors may seek the appointment of receivers on a per-project basis.

PART IV – LAW AND ARGUMENT

CCAA Comeback is a Hearing De Novo

33. This comeback hearing requires a hearing *de novo*. This is clear from the Endorsement of The Honourable Mr. Justice Farley in *Stelco Inc., Re*, where His Honour stated, upon issuing an initial order under the CCAA (emphasis added),

> As I have indicated in other CCAA proceedings – indeed it should be taken as a standard given without mentioning it (I do mention this in case in any other case I forget to so observe), that given the limited or no notice to interested and affected parties, this initial order is approved, but that anyone who has a concern about any of its terms should use the comeback clause on a timely basis and that the onus continues to remain with the CCAA applicants to justify the relief. In other words, no one should think that any CCAA applicant in any case is able to get a preemptive upper hand with any initial order.[28]

34. In the present case, EQ Bank and CMLS were not given any advance notice of the CCAA application until after the granting of an initial order, and as such, the comeback hearing must be heard on a *de novo* basis.

[28] 2004 CanLII 24849 (ON SC) at para 1.

CCAA Proceedings Are Not Appropriate In This Case

35. It has repeatedly been found by the courts that in cases where the security is real property, and particularly where there are multiple creditors over multiple properties, a CCAA proceeding will not be the preferred method to realize on the security. This is because "The priorities of the security against the land development are often straightforward, and there may be little incentive for the creditors having senior priority to agree to an arrangement or compromise that involves money being paid to more junior creditors before the senior creditors are paid in full."[29]

36. In *Dondeb*, counsel for the various secured creditors expressed concern that each secured creditors' collateral "should not be burdened with administrative expenses and professional fees not associated with that property," which would result from a CCAA wherein multiple properties are dealt with globally.[30] Furthermore, the Court stated that "the use of the CCAA for the purpose of liquidation must be used with caution when liquidation is the end goal, particularly when there are alternatives such as an overall less costly receivership that can accomplish the same overall goal."[31] In light of these findings, the Court was "not satisfied that a successful plan could be developed that would receive approval in any meaningful fashion from the creditors."[32]

---

[29] *Dondeb Inc. (Re)*, 2012 ONSC 6087 [*Dondeb*] at para 18 citing *Cliffs Over Maple Bay Investments, Ltd. v. Fisgard Capital Corp.* 2008 Carswell BC 1758 (BCCA).
[30] *Dondeb* at para 28.
[31] *Dondeb* at para 34.
[32] *Dondeb* at para 25.

37. In *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, The Honourable Mr. Justice Koehnen wrote,

> after considering the various factors that all sides brought to my attention, it struck me that a receivership was clearly the preferable route to take. Secured creditors with a blocking position to any plan objected to a CCAA proceeding. They had valid grounds for doing so. They had first mortgages in land, there was no concrete proposal at hand to have them paid out. The mortgagees had made demand on February 20. Demand was prompted by findings of financial irregularity within the debtors. The debtors had agreed to give the mortgagees receivership rights in the lending agreements they signed. Approving a CCAA proceeding would force lenders to continue to be bound to debtors in whom they no longer had any confidence by reason of the debtors' absence of transparency and forthrightness in its dealings with the lender.[33]

38. Likewise, in the present case, EQ Bank and CMLS do not wish to bear the administrative expenses and professional fees associated with other creditors' collateral. EQ Bank and CMLS have lost confidence in Ashcroft and merely wish to exit the lending relationships in respect of the subject properties, as they are entitled to do. In the circumstances, EQ Bank and CMLS should not be bound to such relationships. The loans have been demanded upon and full repayment required. A liquidation will very likely be necessary to achieve the repayment to which EQ Bank and CMLS are entitled, and a receivership is the most efficient and cost-effective option. EQ Bank and CMLS will not agree to any plan or compromise wherein they are not paid in full. The Applicants are not presently able to pay out EQ Bank and CMLS in full, and have failed to do so for an extended period of time following demand.

[33] 2020 ONSC 1953 at para 4 [*The Clover*].

EQ Bank and CMLS Are Entitled to the Appointment of a Receiver

39. Both s. 243(1) of the BIA and section 101 of the *Courts of Justice Act* (Ontario) enable the Court to appoint a receiver where such appointment is "*just or convenient*."[34]

40. In determining whether it is "*just or convenient*" to appoint a receiver under either statutes, Ontario courts have applied the decision of The Honourable Mr. Justice Blair in *Freure Village*. Here, His Honour confirmed that in deciding whether the appointment of a receiver is just or convenient, the court "*must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto*," which includes the rights of the secured creditor under its security.[35]

41. As in the case at bar, when the rights of the secured creditor under its security includes a specific right to appointment of a receiver, the burden on the applicant seeking the relief is relaxed. Indeed, The Honourable Mr. Chief Justice Morawetz held in *Elleway Acquisitions* that (emphasis added):

> ... while the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties.[36]

[34] *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3) at s. 243 [BIA] and *Courts of Justice Act* (R.S.O. 1990, c C.43) at s. 101 [CJA].
[35] *Bank of Nova Scotia v. Freure Village of Clair Creek* (1996), 40 C.B.R. (3d) 274, [1996] O.J. No. 5088 at para 10 (Gen. Div. [Comm. List]) [*Freure Village*].
[36] *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd*., 2013 ONSC 6866 at para 27 [*Elleway Acquisitions*].

42. The Honourable Mr. Chief Justice Morawetz's holding in *Elleway Acquisitions* was further affirmed more recently in *iSpan Systems LP* by The Honourable Mr. Justice Osborne (emphasis added):

> Where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: while the appointment of a receiver is generally an extraordinary equitable remedy, the courts do not so regard the nature of the remedy where the relevant security permits the appointment and as a result, the applicant is merely seeking to enforce a term of an agreement already made by both parties [citations omitted].[37]

43. The appointment of a receiver becomes even less extraordinary when dealing with a default under a mortgage.[38]

44. In fact, the courts have found that it is unfair to hold a secured creditor "to remain without control of the process […] when the contracts to which the Debtors agreed give the Receivership Applicants a right to control the process through a receivership."[39]

45. Furthermore, when a debtor executes a consent to a receivership (which Ashcroft Urban Developments Inc. has done in the form of the Receiver Consent), courts have very recently held that commercial certainty expects a court to honour such negotiated agreements and consents. Indeed, as was held by The Honourable Justice M.A. Marion:

> Negotiated forbearance agreements, including the use of consent orders, are an important part of insolvency practice. Commercial certainty for all stakeholders dictates that parties should expect that courts will hold them to their bargains, absent further agreement or circumstances that would make it appropriate to nullify or remove the order.[40]

---

[37] *iSpan Systems LP*, 2023 ONSC 6212 at para 31.
[38] *The Clover* at paras 43-44.
[39] *The Clover* at para 71.
[40] *ATB Financial v. Mayfield Investments Ltd.*, 2024 ABKB 635 at para 40.

46. Accordingly, pursuant to the terms of the mortgages granted by EQ Bank and CMLS, the terms of which include the right to appoint a receiver, as well as the Receiver Consent executed in respect of the REStays Property, EQ Bank and CMLS are entitled to realize upon their respective security by way of receivership.

47. This Court ought to enforce the terms of the agreements – including, without limitation, the loan agreements, security agreements, forbearance agreement, and Receiver Consent, as applicable – between the Applicants and their secured creditors, EQ Bank and CMLS. Doing so promotes commercial certainty that courts will hold commercial parties to their bargains.

48. At this stage, EQ Bank and CMLS believe that their only reasonable and prudent path forward is to take any and all steps necessary to protect the REStays Property and the ENVIE II Property by having a receiver appointed, and it is within their respective rights under the mortgages (and, in the case of the REStays Property, the Receiver Consent) to do so.[41]

PART V – RELIEF REQUESTED

49. In light of the foregoing, it is respectfully submitted that this Court should dismiss the CCAA proceedings and allow EQ Bank and CMLS to bring their own applications to appoint receivers.

[41] Gartner Affidavit at para 13.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of December, 2024.

Per: 

AIRD & BERLIS LLP

Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

D. Robb English – LSO No. 19862F
Tel: (416) 865-4748
Email: renglish@airdberlis.com

Sanjeev P.R. Mitra – LSO No. 37934U
Tel: (416) 865-3085
Email: smitra@airdberlis.com

Calvin Horsten – LSO No. 90418I
Tel: (416) 865-3077
Email: chorsten@airdberlis.com

Lawyers for Equitable Bank and CMLS Financial Ltd.

SCHEDULE "A"

AUTHORITIES CITED

Jurisprudence

1. *ATB Financial v. Mayfield Investments Ltd.*, 2024 ABKB 635.
2. *Bank of Nova Scotia v. Freure Village of Clair Creek* (1996), 40 C.B.R. (3d) 274, [1996] O.J. No. 5088 (Gen. Div. [Comm. List]).
3. *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, 2020 ONSC 1953.
4. *Dondeb Inc. (Re),* 2012 ONSC 6087.
5. *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866.
6. *iSpan Systems LP*, 2023 ONSC 6212.
7. *Stelco Inc., Re,* 2004 CanLII 24849 (ON SC).

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY-LAWS

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

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.

***Courts of Justice Act*, R.S.O. 1990, c. C-34, as amended, s. 101**

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.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36

AND IN THE MATTER OF ASHCROFT URBAN DEVELOPMENTS INC., 2067166 ONTARIO INC., 2139770 ONTARIO INC., 2265132 ONTARIO INC., ASHCROFT HOMES – LA PROMENADE INC., 2195186 ONTARIO INC., ASHCROFT HOMES – CAPITAL HALL INC. AND 1019883 ONTARIO INC.

Court File No: CV-24-00098058-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDINGS COMMENCED AT OTTAWA

FACTUM OF EQUITABLE BANK AND CMLS FINANCIAL LTD. (COMEBACK APPLICATION HEARING)

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

D. Robb English – LSO No. 19862F
Tel: (416) 865-4748
Email: renglish@airdberlis.com

Sanjeev P.R. Mitra – LSO No. 37934U
Tel: (416) 865-3085
Email: smitra@airdberlis.com

Calvin Horsten – LSO No. 90418I
Tel: (416) 865-3077
Email: chorsten@airdberlis.com

Lawyers for Equitable Bank and CMLS Financial Ltd.