

**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  
INSTITUTIONAL MORTGAGE CAPITAL CANADA INC.**

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Inc., in its capacity as General Partner of IMC  
Limited Partnership

TO: **SERVICE LIST**

## **PART I - OVERVIEW**

1. Institutional Mortgage Capital Canada Inc. (“**IMC**”), a secured lender to the Applicant, Ashcroft Homes – La Promenade Inc. (“**La Promenade**”), supports the appointment of KSV Restructuring Inc. (“**KSV**”) as a global interim receiver. IMC opposes the continuation of the CCAA proceedings, which were commenced without notice to IMC.<sup>1</sup>

2. La Promenade is a single purpose real estate corporation which is the owner of real property known as La Promenade Senior Suites, 130 and 150 Rossignol Drive in Ottawa “**Promenade Seniors Suites.**”<sup>2</sup>

3. La Promenade’s indebtedness to IMC is \$37,164,521.60 (the “**IMC Loan**”).

4. IMC also holds a second mortgage in respect of 22665132 Ontario Inc. (“**Ravines Senior Suites**”) and 2067166 Ontario Inc. (“**Park Place Senior Suites**”) in the aggregate amount of \$11,500,000. ACM Advisors Ltd. (“**ACM**”) is the first secured lender on these properties.

5. The circumstances strongly favour KSV’s appointment as interim receiver rather than a continuation of the CCAA proceedings:

- (a) The IMC Loan is an individualized standalone mortgage loan that has been in default since February 1, 2024;

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<sup>1</sup> Affidavit of Curtis Jackson, sworn December 11, 2024 (“**Jackson Affidavit**”) at para. 6, Motion Record of the Lawyers for Institutional Mortgage Capital Canada Inc., in its capacity as General Partner of IMC Limited Partnership (“**MR**”) Tab 2, p. 8.

<sup>2</sup> Jackson Affidavit at para. 17, MR, Tab 2, p. [11](#).

- (b) The IMC Loan documentation expressly entitles IMC to appoint a receiver in the event of default by the debtor, subject to the Court's discretion;<sup>3</sup>
- (c) The IMC Loan documentation expressly prohibits the creating of any unregistered or beneficial interest in the property other than IMC;<sup>4</sup>
- (d) La Promenade has repeatedly breached the IMC Loan agreement by consenting to subordinate debt and the amalgamation of La Promenade all without notice to, or the consent of, IMC;
- (e) In that regard, La Promenade has not been honest and forthright in its dealings with IMC;
- (f) La Promenade and the Ashcroft parent group have mismanaged the La Promenade property and the suite of Ashcroft properties, resulting in negative publicity for the brand and resulting poor occupancy in the La Promenade property;
- (g) IMC has lost faith and trust in La Promenade as counterparty to a loan and La Promenade's ability to properly manage the business;
- (h) The purported sources of funding proposed by the CCAA Applicants are speculative;

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<sup>3</sup> Jackson Affidavit at paras. 108-110, MR, Tab 2, p. [31](#); General Security Agreement dated October 8, 2020, Exhibit "E" to the Jackson Affidavit, MR, Tab 2E, p. [86](#); Acknowledgement and Direction dated October 8, 2020, Exhibit "D" to the Jackson Affidavit, MR, Tab 2D, p. [55](#).

<sup>4</sup> Jackson Affidavit at para. 22 (b), MR, Tab 2, p. [12](#).

- (i) KSV is an experienced receiver and manager with extensive experience in real property insolvencies and current experience in a senior residence insolvency. KSV will work with an experienced property manager of retirement properties, Brightwater Senior Living Group, LLC;<sup>5</sup>
- (j) KSV has a preliminary plan to stabilize and oversee the operations of the retirement properties while at the same time managing the cash flow for each of the properties so that they are treated as if they were separate proceedings;<sup>6</sup> and
- (k) The CCAA Applicants have no concrete prospect of a plan.

6. IMC adopts the articulation of the legal principles and arguments in favour of a global interim receiver as set out in ACM and Equitable Bank's factums. This factum focuses on the specific factual context relating to IMC.

## **PART II - FACTS & ARGUMENT**

### **The CCAA Proceeding**

7. IMC has been working with Ashcroft for several months to support La Promenade in refinancing the IMC Loan.<sup>7</sup> Throughout the fall of 2024, IMC was trying to keep apprised of enforcement activities within the Ashcroft group of properties.<sup>8</sup>

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<sup>5</sup> KSV pre-filing report, paras. (2.0) 2-3, Caselines [D507](#)

<sup>6</sup> KSV pre-filing report, paras. (2.0) 2-8, Caselines [D507](#)

<sup>7</sup> Jackson Affidavit at paras. 32 and 38, MR, Tab 2, p. [15](#) and [16](#).

<sup>8</sup> Jackson Affidavit at paras. 40 and 45, MR, Tab 2, p. [17](#) and [18](#).

8. On October 18, 2024, IMC made demand on the IMC Loan and delivered a Notice of Intention to Enforce Security under s. 244(1) of the BIA.<sup>9</sup>

9. On November 18, 2024 IMC's litigation insolvency counsel wrote to counsel for the Applicants to advise that IMC planned to commence an application to appoint a receiver.<sup>10</sup> On November 19, 2024, IMC advised Ashcroft directly that litigation counsel has been retained to pursue enforcement.<sup>11</sup>

10. Ashcroft brought the CCAA Application with no notice to IMC or its counsel.<sup>12</sup>

### **Promenade Senior Suites**

11. Since its default, despite apparent significant efforts, La Promenade has remained unable to obtain additional financing to fund its debt obligations to IMC. La Promenade's inability to obtain financing persists to this day.<sup>13</sup> IMC has no confidence in Ashcroft management or its advisors to obtain financing.

12. Promenade Senior Suites is a relatively new senior suite facility having been built in 2020. Its 152 units have a 65% occupancy rate.<sup>14</sup> The appraisal relied upon by Ashcroft assumes a "stabilized" 90% occupancy rate.<sup>15</sup>

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<sup>9</sup> Jackson Affidavit at para. 49, MR, Tab 2, p. [19](#).

<sup>10</sup> November 18, 2024 email from Jonathan Chen to Neil Schwartz, Exhibit "B" to the Jackson Affidavit, MR, Tab 2B, p. [39](#).

<sup>11</sup> November 19, 2024 email from Curtis Jackson to Manny DiFilippo, Exhibit "A" to the Jackson Affidavit, MR, Tab 2A, p. [36](#).

<sup>12</sup> Jackson Affidavit, para. 6, MR, Tab 2, p. [8](#).

<sup>13</sup> Jackson Affidavit at para. 9, MR, Tab 2, p. [9](#).

<sup>14</sup> Jackson Affidavit at para. 15, MR, Tab 2, p. [10](#).

<sup>15</sup> Jackson Affidavit at para. 96, MR, Tab 2, p. [29](#).

13. There is no doubt that La Promenade has value, but Ashcroft has mismanaged this asset. IMC has no confidence in Ashcroft maximizing the value or achieving a stabilized occupancy rate.

14. The 65% occupancy rate is very likely due in part to the poor management by Ashcroft and the related negative publicity arising out of the poor reputation of Promenade Senior Suites and other Ashcroft seniors' properties reflected in media reports and regulatory orders:

- (a) An October 23, 2024 Promenade Senior Suites Inspection Report raised concerns about menu options, food safety procedures, poor attendance to the required individual diets of certain residents and failures to complete plans of care for residents.<sup>16</sup>
- (b) A July 3, 2024 Compliance Order about a neighbouring Ashcroft property found that a resident was required to pay for care services that were not provided by the home, that the home failed to ensure that there were updated plans of care, and that there was a lack of protocols with external providers.<sup>17</sup>
- (c) A July 9, 2024 Ottawa Citizen Article which reports on the July 3, 2024 Compliance Order notes complaints by residents about fee increases and the receivership of Ashcroft condominium properties.<sup>18</sup>
- (d) A June 20, 2024 CBC media report about the Ashcroft "Alavida" retirement portfolio reports that residents had been forced to leave their units after

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<sup>16</sup> Jackson Affidavit at paras. 78-79, MR, Tab 2, p. [25](#).

<sup>17</sup> July 3, 2024 Compliance Order, Exhibit "T" to the Jackson Affidavit, page 2 of 2, MR, Tab 2T, p. [230](#).

<sup>18</sup> Affidavit of Ishbel Buchan sworn December 11, 2024 ("**Buchan Affidavit**"), Exhibit Y, Caselines [D432](#).

longstanding marketing discounts were removed from monthly rent and service fees.<sup>19</sup>

### **La Promenade's Failed Efforts to Refinance**

15. In August, 2024, roughly five months after the IMC Loan matured, IMC negotiated a potential \$20 million facility to La Promenade to aid it with, among other things, cashflows and debt service payments (the “**Alavida Facility**”).<sup>20</sup> La Promenade never paid the required deposit on the Alavida Facility and it did not proceed.<sup>21</sup>

16. In mid-September 2024, the parties continued to discuss the status of the matured IMC Loan which remained in default, and they attempted to work together to obtain funding.<sup>22</sup> However, there remained no prospect of further financing.<sup>23</sup>

17. If Ashcroft had any reasonable plan to address the IMC Loan, it should have been completed in the 10 months since the IMC Loan has been in default.

### **Ashcroft's Lack of Candour and Good Faith**

18. Since the IMC Loan matured and went into default, La Promenade has taken a series of steps which do not demonstrate the honesty and forthrightness required of a debtor to a secured lender. These actions are in breach of La Promenade's obligations under the IMC Loan and were

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<sup>19</sup> Jackson Affidavit at paras. 84-86, MR, Tab 2, p. [27](#).

<sup>20</sup> Jackson Affidavit at paras. 32 and 35, MR, Tab 2, p. [15](#).

<sup>21</sup> Jackson Affidavit at para. 37, MR, Tab 2, p. [16](#).

<sup>22</sup> Jackson Affidavit at para. 38, MR, Tab 2, p. [16](#).

<sup>23</sup> Jackson Affidavit at para. 38, MR, Tab 2, p. [16](#).

taken without IMC's consent. This conduct has caused IMC to lose faith and trust in La Promenade's ability to faithfully manage the asset.<sup>24</sup>

### **The Central 1 Forbearance and Guarantee**

19. In the fall of 2024, IMC was trying to keep apprised of enforcement activities within the Ashcroft group of properties. IMC was concerned about how these activities might negatively affect its security. IMC realized that there were funding issues on the other Ashcroft assets that could pose a threat to the liquidity of the borrowing group. Accordingly, IMC asked Ashcroft to keep it apprised about material developments on the whole portfolio of assets.<sup>25</sup>

20. In September 2024, Ashcroft advised IMC that Central 1 Credit Union ("**Central 1**") was proposing a forbearance agreement or a receiver on a \$43 million facility related to a property known as Ravines Retirement. IMC expressed concern about this turn of events.<sup>26</sup>

21. Ashcroft never told IMC that one of the conditions of the forbearance agreement proposed by Central 1 was that La Promenade was to sign as a guarantor of the outstanding \$38 million in debt owed by Ashcroft to Central 1.<sup>27</sup>

22. Ashcroft caused La Promenade to become a guarantor for \$38,281,193.64 of outstanding indebtedness under a commitment letter between 2139770 Ontario Inc. (a CCAA Applicant in this proceeding) and Central 1 Credit Union, on September 25, 2024 (the "**Central 1 Forbearance**").<sup>28</sup>

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<sup>24</sup> Jackson Affidavit at paras. 48, 57 and 67, MR, Tab 2, p. [19](#), [21](#) and [23](#).

<sup>25</sup> Jackson Affidavit at para. 40, MR, Tab 2, p. [17](#).

<sup>26</sup> Jackson Affidavit at paras. 41-43, MR, Tab 2, pp. [17-18](#).

<sup>27</sup> Jackson Affidavit at para. 45, MR, Tab 2, p. [18](#).

<sup>28</sup> Jackson Affidavit at paras. 44 and 46, MR, Tab 2, p. [18](#); Central 1 Forbearance Agreement dated September 25, 2024, Exhibit "M" to the Jackson Affidavit, MR, Tab 2M, p. [131](#).



23. The Central 1 Forbearance was executed without notice to or approval of IMC in blatant breach of the IMC Loan agreement.<sup>29</sup>

24. Central 1's motion material demonstrates a further lack of candour and good faith on the part of Ashcroft and its advisor, Hawco Peters. Central 1's evidence is that when negotiating the Central 1 Forbearance, Ashcroft represented to Central 1 that the La Promenade property was unencumbered, severed and vacant land. None of that was true.<sup>30</sup>

25. In these circumstances, neither the lenders nor the Court can have any confidence in a process led by the debtors.

### **The Promenade Amalgamation**

26. Following the grant of a guarantee without consent, in October 2024, Ashcroft caused La Promenade to be amalgamated with another Ashcroft-controlled entity,<sup>31</sup> again without IMC's consent (the "**Promenade Amalgamation**").<sup>32</sup>

27. Ashcroft went ahead with the Promenade Amalgamation even after it had originally requested IMC's consent and knew that IMC's consent was contingent upon completing its due diligence.<sup>33</sup>

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<sup>29</sup> Jackson Affidavit at paras 47-48, MR, Tab 2, p. [19](#).

<sup>30</sup> Second Supplementary Affidavit of Suzanne Fisher, para. 29(c), Motion Record of Central 1, Tab 4, p. [33](#).

<sup>31</sup> Jackson Affidavit at para. 57, MR, Tab 2, p. [21](#).

<sup>32</sup> Jackson Affidavit at para. 58, MR, Tab 2, p. [21](#).

<sup>33</sup> Jackson Affidavit at paras. 51-58, MR, Tab 2, p. [20-21](#).

28. IMC told Ashcroft on October 25, 2024 that providing the consent by the “drop dead” date of October 31<sup>st</sup> was “unrealistic.”<sup>34</sup>

29. Ashcroft proceeded with the amalgamation of La Promenade on the same day, October 25, 2024, without notice to or the consent of IMC.<sup>35</sup>

30. The Promenade Amalgamation further demonstrates that Ashcroft has no regard to the rights of its secured lender and cannot be trusted.

### **The Pillar Capital Corp. Guarantee and Envie Rideau VTB**

31. It was not until the December 5, 2024 CCAA Application Record that IMC learned that La Promenade was also made the guarantor of a \$17,800,000 credit facility from Pillar Capital Corp. to 2181291 Ontario Inc. (another company controlled by Ashcroft) (the “**Pillar Capital Guarantee**”).<sup>36</sup>

32. Further, unbeknownst to IMC, Ashcroft pledged an additional La Promenade asset (i.e. the Envie Rideau VTB) to which IMC was entitled as security to the borrower under the Pillar Capital Guarantee.<sup>37</sup> The Envie Rideau VTB became an asset of La Promenade when the Promenade Amalgamation closed.<sup>38</sup>

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<sup>34</sup> Jackson Affidavit at paras. 55, MR, Tab 2, p. [20](#)

<sup>35</sup> Jackson Affidavit at paras. 56 and 58, MR, Tab 2, p. [20-21](#).

<sup>36</sup> Jackson Affidavit at para. 63, MR, Tab 2, p. [22](#).

<sup>37</sup> Jackson Affidavit at paras. 65-67, MR, Tab 2, p. [22-23](#).

<sup>38</sup> Jackson Affidavit at paras. 65-66, MR, Tab 2, p. [22-23](#).

33. Yet again, IMC was never informed of and never consented to the Pillar Capital Guarantee or the pledging of the Envie Rideau VTB.<sup>39</sup>

### **The DUCA Registration**

34. Finally, as revealed again for the first time in the CCAA Application Record, Ashcroft allowed DUCA Financial Services Credit Union (“DUCA”) to register a security interest over La Promenade.<sup>40</sup> This was apparently done to help Ashcroft refinance outstanding debt owed to DUCA – at the expense of IMC’s security.<sup>41</sup>

35. The Central 1 Guarantee, the Promenade Amalgamation, the Pillar Capital Guarantee, the Envie Rideau VTB and the DUCA Registration all demonstrate a complete lack of regard for the rights of IMC as secured creditor.

36. As a result of this repeated conduct, IMC has no faith whatsoever in the Ashcroft group and its management, in its debtor La Promenade or its advisor Hawco Peters.

### **The Financials**

#### **La Promenade’s Balance Sheet and Net Equity**

37. La Promenade sits in a poor financial position that must be remedied by new management. There is little reason to believe that permitting La Promenade and Ashcroft to remain in management throughout the CCAA process will improve La Promenade’s financial position, especially given the service and reputational concerns noted above.

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<sup>39</sup> Jackson Affidavit at paras. 64-67, MR, Tab 2, p. [22-23](#).

<sup>40</sup> Jackson Affidavit at para. 69, MR, Tab 2, p. [23](#).

<sup>41</sup> Jackson Affidavit at para. 71, MR, Tab 2, p. [24](#).

38. The financial statements disclosed in Mr. Choo's affidavit show that La Promenade's total liabilities for year ended 2023 exceed its assets by \$16,950,868.<sup>42</sup> In fact, this deficit has worsened from 2022 to 2023, and 2023 to 2024.<sup>43</sup>

39. La Promenade's stated equity position is also likely inflated and unreliable.<sup>44</sup> In the December 1, 2023 appraisal of La Promenade, Promenade Seniors Suites had a current market value of \$66,410,000.<sup>45</sup> However, this was based on a "stabilized" occupancy rate of 90%.<sup>46</sup> The market value of an assumed 90% occupancy value is drastically different (and higher) than the existing approximately 65% occupancy rate.<sup>47</sup> Despite ample time, La Promenade has not offered up an appraisal that reliably represents a realistic estimate of current value.

#### **The Speculative Sources of Funding under the CCAA**

40. As stated above, La Promenade's inability to find financing persists to this day.<sup>48</sup> La Promenade's engagement of Hawco Peters, a Calgary-based financial advisor, under the CCAA does not and will not result in a sufficiently robust plan to achieve refinancing for properties held in the Ottawa real estate market.

41. The term sheets sourced by Hawco Peters apparently worth hundreds of millions of dollars have not been finalized nor have they been produced in this litigation.<sup>49</sup> The fact that these claims of financing have arisen only after the Initial CCAA Order was granted raises questions as to their

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<sup>42</sup> Jackson Affidavit at para. 90, MR, Tab 2, p. [28](#).

<sup>43</sup> Jackson Affidavit at para. 91, MR, Tab 2, p. [28](#).

<sup>44</sup> Jackson Affidavit at para. 94, MR, Tab 2, p. [29](#).

<sup>45</sup> Jackson Affidavit at para. 95, MR, Tab 2, p. [29](#).

<sup>46</sup> Jackson Affidavit at para. 96, MR, Tab 2, p. [29](#).

<sup>47</sup> Jackson Affidavit at para. 96, MR, Tab 2, p. [29](#).

<sup>48</sup> Jackson Affidavit at para. 9, MR, Tab 2, p. [9](#).

<sup>49</sup> Jackson Affidavit at para. 103, MR, Tab 2, p. [30](#).

legitimacy and finality. There is no reason to believe that the promises and representations made now by Ashcroft should be believed anymore than the ones made to the lenders months ago.

**PART III - ORDER REQUESTED**

42. IMC respectfully requests:

- (a) An order terminating the CCAA Proceeding; and
- (b) An order substantially in the form as set out in the Notice of Application of the Moving Parties appointing KSV as interim receiver; or in the alternative, the appointment of KSV as receiver over La Promenade.

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

  
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**LENCZNER SLAGHT LLP**

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

**FACTUM OF  
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