

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

BETWEEN:

**TREZ CAPITAL LIMITED PARTNERSHIP and TCC MORTGAGE HOLDINGS INC.**

Applicants

- and -

**ELDERWOOD HOLDINGS INC., ELDERWOOD TOWNHOMES INC., ELDERWOOD  
TOWNHOMES II INC. and 2633501 ONTARIO INC.**

Respondents

**IN THE MATTER OF AN 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 APPLICANTS**

February 18, 2025

**BENNETT JONES LLP**

One First Canadian Place, Suite 3400  
P.O. Box 130  
Toronto, ON M5X 1A4

**Sean Zweig** (LSO# 57307I)

Tel: (416) 777-6254

Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com)

**Aiden Nelms** (LSO#: 74170S)

Tel: (416) 777-4642

Email: [nelmsa@bennettjones.com](mailto:nelmsa@bennettjones.com)

**Jamie Ernst** (LSO# 88724A)

Tel: (416) 777-7869

Email: [ernstj@bennettjones.com](mailto:ernstj@bennettjones.com)

Lawyers for the Applicants

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## PART I: OVERVIEW

1. The Applicants (as defined below) seek a receivership order (the “**Receivership Order**”) over the Real Property and Personal Property (each as defined below) pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43 (the “**CJA**”).<sup>1</sup>

2. Despite the Applicants and the Respondents agreeing to a schedule for the delivery of materials, the Respondents have failed to delivery *any* materials in response to this application. They have also elected not to cross-examine the Applicants’ affiant. Accordingly, there appears to be no opposition to the granting of the Receivership Order.

3. Principally, the proposed Receivership Order, which closely tracks the Model Order (as defined below):

- (a) appoints KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacity, the “**Receiver**”), without security, of the real property legally described in Schedule “A” to the proposed Receivership Order (collectively, the “**Real Property**”) and the Personal Property (collectively, the “**Property**”);
- (b) grants a first-ranking super-priority charge (the “**Receiver’s Charge**”) over the Property in favour of the Receiver and the Receiver’s counsel to secure their fees and disbursements in respect of these proceedings (the “**Receivership Proceedings**”);

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<sup>1</sup> Capitalized terms not defined herein have the meaning ascribed to them in the Affidavit of Aaron Previte sworn January 27, 2025 [Previte Affidavit], the Applicants’ Application Record dated January 27, 2025 at Tab 2 [Application Record].

- (c) grants a second-ranking super-priority charge (the “**Receiver’s Borrowings Charge**”) over the Property for the purpose of funding these Receivership Proceedings; and
- (d) seals the Appraisal Report (as defined below) until the earlier of: (i) the closing of one or more transactions for all of the Real Property in these Receivership Proceedings; and/or (ii) further order of the Court.

4. Elderwood Holdings Inc. (“**EHI**”), Elderwood Townhomes Inc. (“**ETI**”), Elderwood Townhomes II Inc. (“**ETI II**”) and 2633501 Ontario Inc (“**2633 Ontario**” and together with EHI, ETI and ETI II, the “**Debtors**” and each a “**Debtor**”) are privately held real estate companies incorporated under the *Business Corporations Act*, R.S.O. 1990, c. B. 16, as amended (the “**OBCA**”), with registered head offices located in Toronto, Ontario. EHI holds the Real Property and all income derived therefrom in trust for ETI, ETI II and 2633 Ontario (collectively, the “**Beneficial Owners**”).

5. Trez Capital Limited Partnership (the “**Lender**”) is a diversified real estate investment firm and preeminent provider of private commercial real estate debt and equity financing, headquartered in Vancouver, British Columbia and extra-provincially registered in Ontario. TCC Mortgage Holdings Inc. (“**TCC**”, and together with the Lender, the “**Applicants**”) acts as an agent, nominee and/or bare trustee for the Lender (the entity acting in such capacity, the “**Nominee**”) and has recently been assigned various general and continuing security for the payment and performance of the Debtors’ indebtedness to the Lender. TCC is related to the Lender through common control.

6. The Debtors’ most recent business plan is to construct a six-storey residential building with 62 strata residential units and 13 rental apartments (the “**Project**”). In connection with the development of the Real Property, the Lender extended a loan of \$9,300,000 to EHI (the “**Loan**”).

The Lender understands that as of January 27, 2025, certain rezoning approvals required for the Project to achieve the desired density of six-storeys remained outstanding (the “**Rezoning Approvals**”). Without the Rezoning Approvals, the Applicants are concerned that the Debtors cannot proceed with pre-selling the units and will not satisfy certain conditions precedent required to procure sufficient refinancing to repay the Indebtedness (as defined below).

7. Several events of default have arisen and are continuing under the various Loan and Security Documents (as defined below) including: (i) the non-payment of the scheduled interest payments due on July 1, 2024, August 1, 2024 and September 1, 2024; (ii) the failure to pay certain property taxes and utilities as required under the Loan and Security Documents; and (iii) the failure to repay the Loan by the maturity date of June 1, 2024 (collectively, along with any other events of default having occurred and continuing under the Loan and the Security Documents, the “**Listed Events of Default**”). The Listed Events of Default prompted the issuance of demand letters (the “**Demand Letters**”), demanding repayment of all amounts owing under the Loan and the delivery of notices of intention to enforce security in accordance with section 244 of the BIA (the “**NITES**”). As of January 7, 2025, there was in aggregate \$10,313,562.90 outstanding under the Loan, with interest, fees and costs continuing to accrue (the “**Indebtedness**”).

8. The prescribed ten-day period under the BIA (the “**Prescribed Period**”) afforded to the Debtors to repay the Indebtedness prior to any enforcement action being taken has long-since elapsed. Notwithstanding the foregoing, the entirety of the Indebtedness remains outstanding and no viable prospect for immediate repayment has materialized to date. In these circumstances, the Applicants have lost all confidence in the Debtors’ management to continue to satisfy the Debtors’ significant obligations, source refinancing, and obtain the Rezoning Approvals for the Project in a timely manner or at all.

9. Pursuant to the terms of the Security Documents, TCC, as Nominee, has a contractual right to appoint a receiver upon the occurrence of a default or event of default. In furtherance of their

contractual rights, the Applicants have commenced these Receivership Proceedings to protect their investment and preserve and maximize the value of the Property.

10. The relief is being sought given, among other things, the Listed Events of Default, the Debtors' inability to commercially cooperate with the Lender (notwithstanding the various concessions, allowances and extensions that have been provided to the Debtors by the Applicants), and the ongoing financial drain the Lender is experiencing as a result of the Loan.

11. The appointment of the Receiver pursuant to the proposed Receivership Order is just and convenient in the circumstances. These Receivership Proceedings will provide for an orderly, efficient and transparent marketing and sale of the Property, with a view to maximizing recoveries for, and distributing funds to, the Debtors' economic stakeholders. The clear path forward presented by the Applicants is the most appropriate and efficient one in the circumstances.

## **PART II: FACTS**

12. The facts underlying this application are more fully set out in the affidavit of Aaron Previte sworn January 27, 2025 (the "**Previte Affidavit**").<sup>2</sup> All monetary amounts referred to herein are in Canadian currency unless otherwise stated.

### **A. The Parties**

#### **(a) The Applicants**

13. The Lender is a limited partnership headquartered in Vancouver, British Columbia and extra-provincially registered in Ontario with its principal place of business in Ontario being 181 Bay Street, Suite 3840, Toronto, Ontario.<sup>3</sup> The Lender, along with its affiliates, is a diversified real

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<sup>2</sup> Previte Affidavit, *supra* note 1, Application Record at Tab 2.

<sup>3</sup> Previte Affidavit, *ibid* at para 15, Application Record at Tab 2.

estate investment firm and preeminent provider of private commercial real estate debt and equity financing solutions across North America.<sup>4</sup>

14. In December 2024, Computershare Trust Company of Canada (“**Computershare**”), in its capacity as the initial Nominee, and TCC entered into an Assignment and Assumption Agreement wherein, among other things, Computershare agreed to assign, and TCC agreed to assume, all of Computershare’s rights and interests as Nominee under the Security Documents to TCC.<sup>5</sup> TCC, as Nominee, has since executed and filed the necessary documents to reflect the assignment with, among other things, the Ontario personal property registry system and the Land Registry Office (as defined below).<sup>6</sup> TCC is related to the Lender through common control.<sup>7</sup>

15. The Nominee is the Debtors’ senior and only secured lender.<sup>8</sup>

**(b) The Debtors**

16. EHI is a privately held real estate development company incorporated under the OBCA with a registered head office located at 1-90 Wingold Avenue, Toronto, Ontario.<sup>9</sup> EHI is the registered owner of the Real Property and holds, among other things, all income derived therefrom for the benefit of the Beneficial Owners.<sup>10</sup>

17. The Beneficial Owners are privately held companies incorporated under the OBCA with registered head offices in Toronto, Ontario.<sup>11</sup>

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<sup>4</sup> Previte Affidavit, *ibid* at para 15, Application Record at Tab 2.

<sup>5</sup> Previte Affidavit, *ibid* at para 17, Application Record at Tab 2.

<sup>6</sup> Previte Affidavit, *ibid* at para 17, Application Record at Tab 2.

<sup>7</sup> Previte Affidavit, *ibid* at para 16, Application Record at Tab 2.

<sup>8</sup> Previte Affidavit, *ibid* at para 37, Application Record at Tab 2.

<sup>9</sup> Previte Affidavit, *ibid* at para 19, Application Record at Tab 2.

<sup>10</sup> Previte Affidavit, *ibid* at para 18, Application Record at Tab 2.

<sup>11</sup> Previte Affidavit, *ibid* at paras 21, 23, Application Record at Tab 2.



**B. Indebtedness Owing to the Lender and Related Security**

18. The Lender and ETI, ETI II and Elderwood Townhomes LP, as borrowers (the “**Original Borrowers**”), entered into a Commitment Letter dated August 9, 2021 (the “**Original Commitment Letter**”), as has been or may be amended, supplemented and/or renewed from time to time, including by the Amendment to Commitment Letter dated October 19, 2021 (the “**Amendment**”) and the Renewal Letter dated April 26, 2023 (the “**Renewal**” and together with the Original Commitment Letter and the Amendment, the “**Commitment Letter**”). Pursuant to the terms of the Amendment, EHI replaced the Original Borrowers as the sole borrower under the Commitment Letter.<sup>12</sup>

19. In accordance with the terms of the Commitment Letter, the Lender extended the Loan to EHI in the amount of \$9,300,000, which was set to mature 19-months from the Interest Adjustment Date (as defined in the Commitment Letter) (the “**Term**”). The Term was subsequently extended an additional 13-months to June 1, 2024 under the Renewal (the “**Renewal Term**”).<sup>13</sup>

20. The payment and performance of all the obligations under the Loan have been guaranteed by 2633 Ontario, Allen Toma and Emil Toma (collectively, the “**Guarantors**”) pursuant to a Guarantee Agreement dated November 4, 2021 (the “**Guarantee**”).<sup>14</sup>

21. As general and continuing security for the payment and performance of the Indebtedness, the Nominee was granted various security including, among other things:

- (a) a first ranking mortgage/charge over the Real Property Registered on November 4, 2021 in the amount of \$9,300,000 (as amended from time to time, the “**Mortgage**”);

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<sup>12</sup> Previte Affidavit, *ibid* at para 25, Application Record at Tab 2.

<sup>13</sup> Previte Affidavit, *ibid* at para 27, Application Record at Tab 2.

<sup>14</sup> Previte Affidavit, *ibid* at para 30, Application Record at Tab 2.

- (b) a General Security Agreement dated November 4, 2021, granted by EHI (the “**GSA**”);
- (c) a General Assignment of Rents granted by EHI on November 4, 2021 (the “**GAR**”);
- (d) an Assignment of Insurance Proceeds dated November 4, 2021, granted by the Debtors;
- (e) an Assignment and Pledge of Interest Reserve Account dated November 4, 2021, granted by EHI;
- (f) the Beneficial Owners’ Agreement dated November 4, 2021, in favour of the Nominee, whereby the Beneficial Owners, among other things:
  - (i) granted, mortgaged, charged and assigned unto the Nominee and granted a security interest, including their beneficial right, title and interest, in and to the Property (including, without limitation, any proceeds realized from the sale or other disposition of the Property or any part thereof); and
  - (ii) agreed to postpone or subordinate all of their right, title and interest in and to the Property in favour of the Nominee’s security, and to all the indebtedness of EHI and the Beneficial Owners owing to the Nominee; and
- (g) an Environmental Representation, Warranty and Indemnity dated November 4, 2021, granted by EHI and the Guarantors (collectively, the “**Security Documents**” and together, with the Commitment Letter and Guarantees, the “**Loan and Security Documents**”).<sup>15</sup>

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<sup>15</sup> Previte Affidavit, *ibid* at para 31, Application Record at Tab 2.

22. Several of the Security Documents, including, without limitation, the GSA and the Mortgage, confer upon TCC, as Nominee, an explicit contractual right to: (a) appoint a receiver or receiver manager over the Property; and/or (b) provide an acknowledgement to observe and be bound by all remedies conferred to TCC under other Security Documents, including, for greater certainty, the contractual right to appoint a receiver or receiver manager over the Property.<sup>16</sup>

23. Notices of the Mortgage and the GAR were registered with the Land Registry Office for the Land Titles Division of Toronto (No. 66) (the “**Land Registry Office**”).<sup>17</sup> TCC’s security interest in and to all of EHI’s present and after acquired personal property related to the Lands and all proceeds and renewals thereof, accretions thereto and substitutions thereof, granted pursuant to the GSA (the “**Personal Property**”), was registered in favor of the Nominee under the *Personal Property Security Act*, R.S.O. 1990, c. P.10, as amended (the “**PPSA**”).<sup>18</sup>

### **C. The Events of Default, Demands and NITES**

24. Several events of default under the Loan and Security Documents have occurred and are continuing, including:

- (a) the non-payment of the scheduled interest payments due on July 1, 2024, August 1, 2024, September 1, 2024, and all months since;
- (b) the failure to pay certain property taxes and utilities as required under the Loan and Security Documents; and
- (c) the failure to repay the Loan by the maturity date of June 1, 2024.<sup>19</sup>

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<sup>16</sup> Previte Affidavit, *ibid* at para 12, Application Record at Tab 2.

<sup>17</sup> Previte Affidavit, *ibid* at para 33, Application Record at Tab 2.

<sup>18</sup> Previte Affidavit, *ibid* at para 34, Application Record at Tab 2.

<sup>19</sup> Previte Affidavit, *ibid* at para 39, Application Record at Tab 2.

25. Given the occurrence of the Listed Events of Default, on September 4, 2024, the Demand Letters were delivered to the Debtors and the Guarantors contemporaneously with the NITES in accordance with section 244 of the BIA.<sup>20</sup> The Prescribed Period afforded to the Debtors and the Guarantors to repay the Indebtedness prior to any enforcement action being taken has long-since expired.<sup>21</sup>

26. The Lender has made extensive efforts to accommodate and support the Debtors, including by, among other things, executing the Amendment and the Renewal. More recently, the Lender, in the interest of avoiding enforcement proceedings, worked with its counsel to prepare a draft forbearance agreement (the “**Draft Forbearance Agreement**”). Pursuant to the terms of the Draft Forbearance Agreement, the Lender offered to, among other things: (i) further extend the Renewal Term, while also providing two additional extension opportunities that were conditional on certain refinancing milestones; and (ii) retroactively reduce previously accrued interest to a former contractual rate.<sup>22</sup>

27. On November 15, 2024 – approximately one month after the expiration of the Prescribed Period – the Lender’s counsel circulated the Draft Forbearance Agreement to the Debtors’ counsel. The Debtors did not engage with the Lender or its counsel in a constructive manner with respect to the Draft Forbearance Agreement or otherwise.<sup>23</sup>

28. On December 3, 2024, Bennett Jones LLP, on behalf of the Lender, engaged Colliers International Realty Advisors Inc. to commission an appraisal of the Real Property (the “**Appraisal Report**”).<sup>24</sup>

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<sup>20</sup> Previte Affidavit, *ibid* at para 43, Application Record at Tab 2.

<sup>21</sup> Previte Affidavit, *ibid* at para 38, Application Record at Tab 2.

<sup>22</sup> Previte Affidavit, *ibid* at para 41, Application Record at Tab 2.

<sup>23</sup> Previte Affidavit, *ibid* at para 43, Application Record at Tab 2.

<sup>24</sup> Previte Affidavit, *ibid* at para 35, Application Record at Tab 2.

29. Notwithstanding the maturity of the Loan, the issuance of the Demand Letters and NITES and the expiration of the Prescribed Period, the entirety of the Indebtedness remains outstanding and the Debtors have failed to offer any viable solution.<sup>25</sup>

**D. The Debtors' Conduct Following the Endorsement**

30. The Debtors did not deliver a responding record by 4:00 p.m. on February 7, 2025, in accordance with the mutually agreed upon timetable between the parties' counsel (the "**Timetable**"). The Timetable was referenced in Justice Black's endorsement dated January 29, 2025 and sent to the service list that same day.<sup>26</sup>

31. As of the date of this factum, the Debtors have failed to deliver any responding materials. Notwithstanding the Applicants' counsel multiple requests for confirmation as to whether the Debtors plan to oppose the receivership application, as contemplated in paragraph 5 of the Endorsement, such confirmation has not yet been received.<sup>27</sup>

**E. Other Enforcement Efforts**

32. In addition to initiating the within Receivership Proceedings, the Applicants have undertaken other efforts to enforce on their security, in accordance with the Loan and Security Documents, by commencing proceedings against EHI and the Guarantors pursuant to an application under Rules 14.05(3)(d) and (h) of the *Rules of Civil Procedure of Ontario*, R.R.O. 1990, Reg. 194 (the "**Ancillary Proceedings**"). The Ancillary Proceedings were commenced at the Ontario Superior Court of Justice in Toronto on December 16, 2024.<sup>28</sup>

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<sup>25</sup> Previte Affidavit, *ibid* at para 43, Application Record at Tab 2.

<sup>26</sup> *Trez Capital Limited Partnership et al v Elderwood Holdings Inc. et al*, (January 29, 2025), Toronto CV-25-00734688-00CL (Endorsement) (ONSC) at para 4 [January 29, 2025 Endorsement].

<sup>27</sup> January 29, 2025 Endorsement, *ibid* at para 5.

<sup>28</sup> Previte Affidavit, *ibid* at para 44, Application Record at Tab 2.

33. Pursuant to the proposed Receivership Order, the Ancillary Proceedings are not subject to the stay provided for in paragraphs 10 and 11, such that the Ancillary Proceedings may continue in the ordinary course notwithstanding these Receivership Proceedings.<sup>29</sup>

### **PART III: ISSUES**

34. The issues to be considered on this application are whether:

- (a) this Court has jurisdiction to appoint the proposed Receiver;
- (b) it is just or convenient to appoint the proposed Receiver; and
- (c) the terms of the proposed Receivership Order, including sealing the Appraisal Report, are appropriate in the circumstances.

### **PART IV: LAW AND ANALYSIS**

#### **A. This Court has the Jurisdiction to Appoint the Proposed Receiver**

35. Subsection 243(1) of the BIA and section 101 of the CJA vest courts with the jurisdiction to appoint a receiver where it is “just or convenient to do so”.<sup>30</sup> In the case of the BIA, subsections 243(1) - (1.1) provide in part:

#### **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:

...

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<sup>29</sup> Previte Affidavit, *ibid* at para 45, Application Record at Tab 2.

<sup>30</sup> [Bankruptcy and Insolvency Act, RSC 1985, c. B-3 s 243\(1\)](#) [BIA]; [Courts of Justice Act, RSO 1990, c. C. 43 s 101](#) [CJA]; [Meridian v Okje Cho & Family Enterprise Ltd, 2021 ONSC 3755](#) at para 19 [Meridian]; [Elleway Acquisitions Ltd v Cruise Professionals Ltd, 2013 ONSC 6866](#) at paras 24-25 [Elleway]; [Bank of Montreal v Sherco Properties Inc, 2013 ONSC 7023](#) at paras 38-40 [Sherco]; [Bank of Montreal v Carnival National Leasing Ltd, 2011 ONSC 1007](#) at para 23 [Carnival]; [Foremost Financial Corporation et al v Alai Developments Inc et al \(July 23, 2023\), Toronto, CV-23-00702528-00CL \(Endorsement\)](#) (ONSC) at para 27 [Foremost].

### **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

... (Emphasis Added)

36. The Nominee is the Debtors' senior and only secured creditor, having aggregate claims in excess of \$10,313,562.90.<sup>31</sup> In addition, the Nominee holds perfected security interests pursuant to its real property registrations and registrations under the PPSA.<sup>32</sup> As such, the Applicants, by virtue of the Nominee's security interest, are permitted to bring the within application under subsection 243(1) of the BIA. Such appointment is not precluded by subsection 243(1.1) of the BIA, as the Applicants have delivered the NITES in accordance with section 244 of the BIA and the ten-day notice periods prescribed thereunder have long-since expired.<sup>33</sup>

37. As set out immediately below, each of the remaining technical requirements enumerated under the BIA for the appointment of the proposed Receiver are satisfied.

### **1. The Locality of the Debtor is Ontario**

38. Where an application is brought for the appointment of a receiver under subsection 243(1) of the BIA, subsection 243(5) requires that it be filed in "a court having jurisdiction in the judicial district in the locality of the debtor".<sup>34</sup>

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<sup>31</sup> Previte Affidavit, *supra* note 1 at para 8, Application Record at Tab 2.

<sup>32</sup> Previte Affidavit, *ibid* at paras 33 and 34, Application Record at Tab 2.

<sup>33</sup> BIA, *supra* note 30 s 244; Previte Affidavit, *supra* note 1 at para 38, Application Record at Tab 2.

<sup>34</sup> Ibid s 243(5). The "locality of the debtor" is defined in section 2 of the BIA as the principal place: "(a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event, (b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or (c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated."

39. The Real Property and the registered head offices of the Debtors are located in Toronto, Ontario.<sup>35</sup> Thus, the locality of the Debtors is Ontario and this application is properly before the Ontario Superior Court of Justice (Commercial List).<sup>36</sup>

## **2. The Receiver is a Trustee under the BIA<sup>37</sup>**

40. KSV is a trustee under the BIA, has provided its consent to act as the Receiver, if so appointed, and is qualified to act in such capacity.<sup>38</sup>

### **B. The Proposed Receiver's Appointment is Just and Convenient**

41. In determining whether it is just or convenient to appoint a receiver, courts 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”.<sup>39</sup> This necessarily requires that the Court consider the rights of the secured creditors seeking the receiver's appointment.<sup>40</sup> It does not, however, require that the court be satisfied that such secured creditors will suffer irreparable harm if a receiver is not appointed, that the receiver's appointment is urgently required, or that other available remedies are defective.<sup>41</sup> Although, in this case, the Applicants submit that these factors are also present.

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<sup>35</sup> Previte Affidavit, *supra* note 1 at paras 5 and 18-24, Application Record at Tab 2.

<sup>36</sup> See *Foremost*, *supra* note 30 at paras 15-22 where Kimmel J. observed that the Ontario Superior Court of Justice is the sole Court within the Province of Ontario with jurisdiction under subsection 183(1)(a) of the BIA and that there is no jurisdictional issue precluding a judge of the Ontario Superior Court of Justice (Commercial List) sitting in Toronto from hearing an application under subsection 243(1) of the BIA where the locality of the debtor is Ontario.

<sup>37</sup> *BIA*, *supra* note 30 s 243(4).

<sup>38</sup> Previte Affidavit, *supra* note 1 at para 51, Application Record at Tab 2.

<sup>39</sup> *Bank of Nova Scotia v Freure Village on Clair Creek*, [1996] OJ No. 5088 at para 10 [Freure]; *Carnival*, *supra* note 30 at para 24; *Elleway*, *supra* note 30 at para 26; *Meridian*, *supra* note 32 at para 20; *Sherco*, *supra* note 30 at para 41; *Royal Bank of Canada v 1731861 Ontario Inc*, 2023 ONSC 3292 at para 30 [1731861]; *Canadian Western Bank v 2563773 Ontario Inc*, 2023 ONSC 4766 at para 6 [Western Bank]; *Macquarie Equipment Finance Limited v Validus Power Corp et al*, 2023 ONSC 4772, at para 5 [Validus].

<sup>40</sup> *1731861*, *ibid* at para 30; *Western Bank*, *ibid* at para 6; *Validus*, *ibid* at para 5.

<sup>41</sup> *Carnival*, *supra* note 30 at paras 24, 28; *Freure*, *supra* note 39 at para 10; *Foremost*, *supra* note 30 at paras 28, 30-31; *Validus*, *ibid* at para 10; *Western Bank*, *supra* note 39 at para 11.



42. Where, as is the case here, the moving secured creditor has a contractual right to the appointment of a receiver, the extraordinary nature of such remedy “is significantly reduced”.<sup>42</sup> In such circumstances, the burden on the moving secured creditor is relaxed as the applicant is simply seeking to enforce a term of an agreement assented to by the parties.<sup>43</sup> Furthermore, the “appointment of a receiver becomes even less extraordinary when dealing with a default under a mortgage”.<sup>44</sup>

43. When evaluating whether, in all the circumstances, the appointment of a receiver is just or convenient, courts have considered numerous factors, including:

- (a) the nature of the property;
- (b) the likelihood of preserving and maximizing the return on the subject property;
- (c) the relationship between the debtors and their creditors;
- (d) the risk of the lenders’ security deteriorating;
- (e) the loss of confidence in the debtors’ management;
- (f) whether the lenders have a contractual right to the receiver’s appointment;
- (g) the potential costs of the receiver; and
- (h) the best way of facilitating the work and duties of the receiver.<sup>45</sup>

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<sup>42</sup> [BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc, 2020 ONSC 1953](#) at para [43](#) [[BCIMC](#)]; [Freure](#), *supra* note 39 at para [12](#); [Meridian](#), *supra* note 30 at para [21](#); [Elleway](#), *supra* note 30 at para [27](#); [Carnival](#) *supra* note 30, at paras [24-25](#); [Sherco](#), *supra* note 30 at para [42](#); [Foremost](#), *supra* note 30 at para 29; [1731861](#), *supra* note 39 at para [31](#); [Western Bank](#), *supra* note 39 at para [7](#); [Validus](#), *supra* note 39 at paras [6-7](#).

<sup>43</sup> [Sherco](#), *supra* note 30 at para [42](#); [Elleway](#), *supra* note 30 at para [27](#); [1731861](#), *supra* note 39 at para [31](#); [Western Bank](#), *supra* note 39 at para [7](#); [Validus](#), *supra* note 39 at paras [6-7](#).

<sup>44</sup> [BCIMC](#), *supra* note 42 at para [44](#); [Western Bank](#), *supra* note 39 at para [8](#); [Validus](#), *supra* note 39 at para [7](#).

<sup>45</sup> [Elleway](#), *supra* note 30 at para [28](#); [BCIMC](#), *supra* note 42 at para [45](#); [Western Bank](#), *supra* note 39 at para [9](#); [Validus](#), *supra* note 39 at para [8](#).

44. Having regard to the foregoing considerations, it is just and convenient for the proposed Receiver to be appointed in the circumstances:

- (a) the Property is comprised of, among other things, a multi-family residential development site with three (3) residential apartment buildings currently located on the Lands. The Property is well-suited to (and arguably presumptively appropriate for) receivership proceedings;
- (b) these Receivership Proceedings will provide for an orderly, efficient and transparent marketing and sale of the Property, with a view to maximizing recoveries for, and distributing funds to, the Debtors' economic stakeholders. The Receiver, who has significant experience in the real estate industry, is well-positioned to maximize value;
- (c) the Nominee is the senior and only secured lender in respect of each of the Debtors;
- (d) numerous serious events of default have occurred and are continuing under the Loan and Security Documents, including maturity and failure to pay interest. The risk of further events of default such as, among other things, the continued non-payment of interest payments, puts the Applicants' investment at further risk;
- (e) the Applicants have lost all confidence in the Debtors' management to continue to satisfy the Debtors' significant obligations, source refinancing or obtain the Rezoning Approvals for the Project in a timely manner or at all;
- (f) the Loan and Security Documents provide the Applicants, by virtue of the Nominee, with a contractual right to the appointment of a receiver over the Property upon an event of default. There is no reason to deprive the Applicants of the contractual right for which they bargained to protect their investments;

- (g) the costs of a receivership in these circumstances would be reasonable and appropriate; and
- (h) the proposed Receiver's appointment is urgently sought at this time in light of, among other things, the Listed Events of Default, the Debtors' inability to commercially cooperate with the Lender (notwithstanding the various concessions, allowances and extensions that have been provided to the Debtors by the Applicants), including the Debtors' refusal to commercially engage on the Draft Forbearance Agreement, and the ongoing financial drain the Lender is experiencing as a result of the Loan.<sup>46</sup>

### C. The Terms of the Proposed Receivership Order are Appropriate

45. The proposed Receivership Order is substantially similar to the model receivership order of the Ontario Superior Court of Justice (Commercial List) (the "**Model Order**"),<sup>47</sup> consistent with prior orders of this Court,<sup>48</sup> and appropriate in the circumstances.<sup>49</sup> Select terms of the proposed Receivership Order are discussed further immediately below.

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<sup>46</sup> See: [Genesis Mortgage Investment Corp v 1776411 Ontario Ltd and 1333 Weber Street Kitchener LP](#) (October 12, 2023), Toronto, CV-23-00706813-00CL (Endorsement) (ONSC); [KingSett Mortgage Corporation and Dorr Capital Corporation v Vandyk Uptowns Limited et al](#) (October 18, 2023), Toronto, CV-23-00709180-00CL (Order Appointing Receiver), (ONSC) [Vandyk]; [KingSett Mortgage Corporation and Dorr Capital Corporation v Stateview Homes \(Minu Towns\) Inc., et al \(Order Appointing Receiver](#), (June 5, 2023), Toronto, CV-23-00698576-00CL (Order Appointing Receiver) (ONSC) [Stateview]; [Mizrahi Commercial \(The One\) LP, Mizrahi Development Group \(The One\) Inc., and Mizrahi Commercial \(The One\) GP Inc](#) (October 18, 2023), Toronto, CV-23-00707839-00CL (Order Appointing Receiver) (ONSC); Previte Affidavit, *supra* note 1 at paras 12, 18-24, 37, 38-43, Application Record at Tab 2.

<sup>47</sup> Blackline to CLUC Model Receivership Order, Application Record at Tab 4.

<sup>48</sup> [Vandyk](#), *supra* note 46; [KingSett Mortgage Corporation v 30 Roe Investments Corp](#) (May 9, 2022), Toronto, CV-22-00674810-00CL (Order Appointing Receiver) (ONSC); [Stateview](#), *supra* note 46; [PS Holdings 1 LLC, PS Holdings 2 LLC and PS Holdings 3 LLC v 2738283 Ontario Inc et al](#) (November 9, 2021), Toronto, CV-21-00670723-00CL (Order Appointing Receiver) (ONSC); [BCIMC Construction Fund Corporation and BCIMC Specialty Fund Corporation v The Clover on Youngie Inc et al](#) (March 27, 2020), Toronto, CV-20-00637301-00CL (Order Appointing Receiver) (ONSC); [Genesis Mortgage Investment Corp v 1776411 Ontario Ltd and 1333 Weber Street Kitchener LP](#) (October 12, 2023), Toronto, CV-23-00706813-00CL (Order Appointing Receiver) (ONSC).

<sup>49</sup> Blackline to CLUC Model Receivership Order, Application Record at Tab 4.

## 1. The Super-Priority Charges are Appropriate

46. As contemplated by the Model Order, the proposed Receivership Order grants the following super-priority charges:

- (a) the first-ranking Receiver's Charge over the Property in favour of the Receiver and the Receiver's counsel to secure their fees and disbursements in respect of these Receivership Proceedings; and
- (b) the second-ranking Receiver's Borrowings Charge over the Property for the purpose of funding the exercise of the powers and duties conferred upon the Receiver pursuant to the proposed Receivership Order.

47. Priority charges sought by a receiver under the BIA provide the certainty required to ensure the integrity, fairness and predictability of receivership proceedings and achieve the objective of preserving and maximizing value for the benefit of a debtor's stakeholders.<sup>50</sup> In accordance with subsection 243(6) of the BIA, the Applicants have provided reasonable notice of the proposed Receivership Order to the parties likely to be affected by the Receiver's Charge and the Receiver's Borrowings Charge.<sup>51</sup>

48. The proposed Receiver's Charge and the Receiver's Borrowings Charge are appropriate in the circumstances and commensurate with the complexity of these Receivership Proceedings.

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<sup>50</sup> [\*CCM Master Qualified Fund Ltd v blutip Power Technologies Ltd\*, 2012 ONSC 1750](#) at paras [21-23](#); [\*Edmonton \(City\) v Alvarez & Marsal Canada Inc\*, 2019 ABCA 109](#) at paras [16-23](#).

<sup>51</sup> [\*BIA\*](#), *supra* note 30 s 243(6); Previte Affidavit, *supra* note 1 at para 46, Application Record at Tab 2; Affidavit of Service of Jamie Ernst sworn January 27, 2025 at para 2.

## 2. The Stay of Proceedings is Appropriate

49. Consistent with the Model Order, the proposed Receivership Order grants a stay of proceedings, which, with the exception of the Ancillary Proceedings:

- (a) prohibits, absent the consent of the proposed Receiver or leave of this Court, the commencement or continuation of any proceeding or enforcement process against or in respect of any of the Debtors or the Property; and
- (b) stays and suspends the exercise of all rights and remedies against the Debtors, the Receiver or affecting the Property.

50. Courts routinely grant stays of proceedings in favour of debtors and their property in the context of receiverships pursuant to section 106 of the CJA and their general and inherent jurisdiction.<sup>52</sup> As observed in *Business Development Bank of Canada v 1673747 Ontario Inc.*:

the appointment of a receiver and simultaneous imposition of a stay of proceedings is designed to establish a temporary oasis of relative financial calm; i.e., a period in which the receiver has an opportunity to consider, reorganize and deal with the affairs of the debtor, (by appropriate and orderly valuation and disposition of the debtor's assets if and as necessary), for the benefit of creditors and the debtor, without facing the pressures of addressing ongoing disputes concerning the debtor. In other words, the attention of the receiver can be focused on a static situation, without having to face new challenges or aim at a “moving target”.

Imposition of a formal stay of litigation proceedings involving the debtor facilitates this [...].<sup>53</sup> (Emphasis Added)

51. Here, the stay of proceedings contemplated under the proposed Receivership Order will facilitate these Receivership Proceedings and ensure that the proposed Receiver is not forced to divert time and resources to proceedings commenced, or continued, against the Debtors.

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<sup>52</sup> [CJA](#), *supra* note 30 s 106; [BIA](#), *supra* note 30 s 183; [Eagle River International Ltd. Re, 2001 SCC 92](#) at para 20; [Business Development Bank of Canada v 1673747 Ontario Inc., 2013 ONSC 286](#) at para 16 [1673747].

<sup>53</sup> [1673747](#), *ibid* at paras 17-18.

52. As noted above, the proposed Receivership Order creates a limited exception as it proposes to exempt the Ancillary Proceedings from the application of the stay of proceedings.

53. The exception for the Ancillary Proceedings is appropriate for the following reasons:

- (a) it is limited in nature (i.e., applies only to the Ancillary Proceedings); and
- (b) the Applicants are entitled to pursue multiple methods of recovery under the Loan and Security Documents. As such, the Ancillary Proceedings are being pursued in tandem with the receivership application to create recovery efficiencies which may ultimately benefit the Debtors' stakeholders at large by increasing recoveries within the Receivership Proceedings should the Applicants be successful, specifically as against the Guarantors.

54. In light of the foregoing, the Applicants submit that the stay of proceedings contemplated under the proposed Receivership Order is appropriate in the circumstances.

### **3. The Appraisal Report Should be Sealed**

55. The CJA provides that “a court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record”.<sup>54</sup>

56. The Applicants are requesting that the Appraisal Report be filed with the Court on a confidential basis and remain sealed for a limited time, until the earlier of: (i) the closing of one or more transactions for all of the Real Property in these Receivership Proceedings; and/or (ii) further order of the Court.

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<sup>54</sup> [CJA](#), *supra* note 30 s 137(2).

57. In *Sherman Estate v Donovan*, the Supreme Court of Canada recast the test to be used by a court in considering whether a sealing order should be granted.<sup>55</sup> The Supreme Court held that the party asking a court to exercise its discretion to grant a sealing order must establish 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 reasonable alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.<sup>56</sup>

58. All factors favour the sealing request in this case. First, the sealing of the Appraisal Report is in the public interest. The maximization of recoveries in an insolvency proceeding is an important public interest.<sup>57</sup> The Appraisal Report contains commercially sensitive information, including information on the value of the Real Property. The disclosure of this information could prejudice the proposed Receiver's ability to maximize recovery for the stakeholders on a sale of the Real Property.

59. Second, there is no reasonable alternative to granting the sealing relief requested by the Applicants. It is common practice for courts to seal documentation that discloses information regarding the price and value of the property pending the closing of a transaction with respect to that property.<sup>58</sup> Failing to seal the Appraisal Report would give potential bidders for the Real

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<sup>55</sup> [Sherman Estate v Donovan, 2021 SCC 25](#) [*Sherman Estate*].

<sup>56</sup> *Sherman Estate*, *ibid* at para 38.

<sup>57</sup> [Danier Leather Inc. \(Re\), 2016 ONSC 1044](#) at para 84.

<sup>58</sup> [GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc., 2014 ONSC 1173](#) at para 32 [*GE Canada*] the Court commented "As applied in the insolvency context that principle has led this Court to adopt a standard practice of sealing those portions of a report from a court-appointed officer – receiver, monitor or trustee – filed in support of a motion to approve a sale of assets which disclose the valuations of the assets under sale, the details of the bids received by the court-appointed officer and the purchase price contained in the offer for

Property information on the value of the Real Property they would otherwise not have and therefore could hinder the Receiver's ability to maximize the value of the Real Property.

60. Moreover, under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, applicants have been granted sealing orders with respect to affidavits that included, among other things, appraisals because the disclosure of this type of information raised a "serious commercial risk...particularly in the context of the SISP that [the Applicant] will now embark on".<sup>59</sup> The same serious commercial risk is present with respect to the Appraisal Report in these Receivership Proceedings, specifically given that the intention is for the Receiver to list the Real Property for sale.

61. Finally, the benefits of the sealing request outweigh any deleterious effects. The information will no longer be deemed sensitive or confidential after the closing of a transaction or transactions with respect to the Real Property and may form part of the public record. Moreover, the Appraisal Report can be unsealed at any time by further order of the Court – further limiting the potential for deleterious effects.

62. The Applicants are therefore of the view that the sealing request is necessary and appropriate in the circumstances.

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which court approval is sought.”; see also [Royal Bank of Canada v Walker Hall Winery Ltd.](#), 2011 ONSC 638, at paras 21-22; [HSBC Bank Canada v Mahvash Lechcier-Kimel](#), 2013 ONSC 6185 at para 10.  
<sup>59</sup> [Alderbridge Way GP Ltd. \(Re\)](#), 2022 BCSC 1436 at paras 25-27; See also [Springer Aerospace Holdings Limited](#), 2022 ONSC 6581 at para 29.



**PART V: RELIEF REQUESTED**

63. The Applicants respectfully request that this Court grant the proposed Receivership Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 18<sup>th</sup> DAY OF FEBRUARY,  
2025**

*Bennett Jones LLP*

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BENNETT JONES LLP

## SCHEDULE A – LIST OF AUTHORITIES


### *Cases Cited*

1. [\*Alderbridge Way GP Ltd. \(Re\)\*, 2022 BCSC 1436.](#)
2. [\*Bank of Montreal v Carnival National Leasing Ltd\*, 2011 ONSC 1007.](#)
3. [\*Bank of Montreal v Sherco Properties Inc\*, 2013 ONSC 7023.](#)
4. [\*Bank of Nova Scotia v Freure Village on Clair Creek\*, \[1996\] OJ No. 5088.](#)
5. [\*BCIMC Construction Fund Corporation and BCIMC Specialty Fund Corporation v The Clover on Yonge Inc et al\* \(March 27, 2020\), Toronto, CV-20-00637301-00CL \(Order Appointing Receiver\) \(ONSC\).](#)
6. [\*BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc\*, 2020 ONSC 1953.](#)
7. [\*Business Development Bank of Canada v 1673747 Ontario Inc\*, 2013 ONSC 286.](#)
8. [\*Canadian Western Bank v 2563773 Ontario Inc\*, 2023 ONSC 4766.](#)
9. [\*CCM Master Qualified Fund Ltd v blutip Power Technologies Ltd\*, 2012 ONSC 1750.](#)
10. [\*Danier Leather Inc. \(Re\)\*, 2016 ONSC 1044.](#)
11. [\*Eagle River International Ltd, Re\*, 2001 SCC 92.](#)
12. [\*Edmonton \(City\) v Alvarez & Marsal Canada Inc\*, 2019 ABCA 109.](#)
13. [\*Elleway Acquisitions Ltd v Cruise Professionals Ltd\*, 2013 ONSC 6866.](#)
14. [\*Foremost Financial Corporation et al v Alai Developments Inc et al\* \(July 23, 2023\), Toronto, CV-23-00702528-00CL \(Endorsement\) \(ONSC\).](#)
15. [\*Genesis Mortgage Investment Corp v 1776411 Ontario Ltd and 1333 Weber Street Kitchener LP\* \(October 12, 2023\), Toronto, CV-23-00706813-00CL \(Endorsement\) \(ONSC\).](#)
16. [\*Genesis Mortgage Investment Corp v 1776411 Ontario Ltd and 1333 Weber Street Kitchener LP\* \(October 12, 2023\), Toronto, CV-23-00706813-00CL \(Order Appointing Receiver\) \(ONSC\).](#)
17. [\*GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc.\*, 2014 ONSC 1173.](#)
18. [\*HSBC Bank Canada v Mahvash Lehcier-Kimel\*, 2013 ONSC 6185.](#)
19. [\*KingSett Mortgage Corporation v 30 Roe Investments Corp\* \(May 9, 2022\), Toronto, CV-22-00674810-00CL \(Order Appointing Receiver\) \(ONSC\).](#)
20. [\*KingSett Mortgage Corporation and Dorr Capital Corporation v Stateview Homes \(Minu Towns\) Inc., et al \(Order Appointing Receiver, \(June 5, 2023\), Toronto, CV-23-00698576-00CL \(Order Appointing Receiver\) \(ONSC\).\*](#)
21. [\*KingSett Mortgage Corporation and Dorr Capital Corporation v Vandyk Uptowns Limited et al\* \(October 18, 2023\), Toronto, CV-23-00709180-00CL \(Order Appointing Receiver\), \(ONSC\).](#)
22. [\*Macquarie Equipment Finance Limited v Validus Power Corp et al\*, 2023 ONSC 4772.](#)
23. [\*Meridian v Okje Cho & Family Enterprise Ltd\*, 2021 ONSC 3755.](#)
24. [\*Mizrahi Commercial \(The One\) LP, Mizrahi Development Group \(The One\) Inc., And Mizrahi Commercial \(The One\) GP Inc\* \(October 18, 2023\), Toronto, CV-23-00707839-00CL \(Order Appointing Receiver\) \(ONSC\).](#)
25. [\*PS Holdings 1 LLC, PS Holdings 2 LLC and PS Holdings 3 LLC v 2738283 Ontario Inc et al\* \(November 9, 2021\), Toronto, CV-21-00670723-00CL \(Order Appointing Receiver\) \(ONSC\).](#)
26. [\*Royal Bank of Canada v 1731861 Ontario Inc\*, 2023 ONSC 3292.](#)
27. [\*Royal Bank of Canada v Walker Hall Winery Ltd.\*, 2011 ONSC 638.](#)

28. [\*Sherman Estate v Donovan\*, 2021 SCC 25.](#)
29. [\*Springer Aerospace Holdings Limited\*, 2022 ONSC 6581](#)

I certify that I am satisfied as to the authenticity of every authority.

Dated: February 18, 2025

  
\_\_\_\_\_  
Signature

## SCHEDULE B – STATUTES AND REGULATIONS RELIED ON

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

#### Section 2

*locality of a debtor* means the principal place

- (a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,
- (b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or
- (c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated.

#### Section 183

##### **Courts vested with jurisdiction**

(1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

- (a) in the Province of Ontario, the Superior Court of Justice;
- (b) [Repealed, 2001, c. 4, s. 33]
- (c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;
- (d) in the Provinces of New Brunswick and Alberta, the Court of Queen's Bench;
- (e) in the Province of Prince Edward Island, the Supreme Court of the Province;
- (f) in the Provinces of Manitoba and Saskatchewan, the Court of Queen's Bench;
- (g) in the Province of Newfoundland and Labrador, the Trial Division of the Supreme Court; and
- (h) in Yukon, the Supreme Court of Yukon, in the Northwest Territories, the Supreme Court of the Northwest Territories, and in Nunavut, the Nunavut Court of Justice.

##### **Superior Court jurisdiction in the Province of Quebec**

(1.1) In the Province of Quebec, the Superior Court is invested with the jurisdiction that will enable it to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during its term, as it is now, or may be hereafter, held, and in vacation and

in chambers.

### **Courts of appeal — common law provinces**

(2) Subject to subsection (2.1), the courts of appeal throughout Canada, within their respective jurisdictions, are invested with power and jurisdiction at law and in equity, according to their ordinary procedures, except as varied by this Act or the General Rules, to hear and determine appeals from the courts vested with original jurisdiction under this Act.

### **Court of Appeal of the Province of Quebec**

(2.1) In the Province of Quebec, the Court of Appeal, within its jurisdiction, is invested with power and jurisdiction, according to its ordinary procedures, except as varied by this Act or the General Rules, to hear and determine appeals from the Superior Court.

### **Supreme Court of Canada**

(3) The Supreme Court of Canada has jurisdiction to hear and to decide according to its ordinary procedure any appeal so permitted and to award costs.

## **Section 243**

### **Court may appoint receiver**

(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.

**Section 244**

**Advance Notice**

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

(a) the inventory,

(b) the accounts receivable, or

(c) the other property

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

**Period of notice**

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

**No advance consent**

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

**Exception**

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

(a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or

(b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

**Idem**

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

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

**Section 101**

**Injunctions and receivers**

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

**Terms**

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

**Section 106**

**Stay of proceedings**

A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just.

## **Section 137**

### **Documents public**

(1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

### **Sealing documents**

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

### **Court lists public**

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

### **Copies**

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see.

## **Rules of Civil Procedure, RRO 1990, Reg 194**

### **Rule 14.05**

#### **Applications — By Notice of Application or Application for Certificate**

(1) The originating process for the commencement of an application is, as applicable,

(a) a notice of application (Form 2.2B, 14E, 14E.1, 68A or 73A); or

(b) an application for a certificate of appointment of estate trustee (Form 74A or 74J), small estate certificate (Form 74.1A) or amended small estate certificate (Form 74.1E). O. Reg. 383/21, s. 3; O. Reg. 709/21, s. 2; O. Reg. 322/24, s. 3 (1).

#### **Information for Court Use**

(1.1) Form 14F (Information for court use) shall be filed together with a notice of application in Form 2.2B, 14E, 14E.1, 68A or 73A unless the notice of application is filed electronically through the Civil Submissions Online Portal under rule 4.05.2.

#### **Application under Statute**

(2) A proceeding may be commenced by an application to the Superior Court of Justice or to a judge of that court, if a statute so authorizes. R.R.O. 1990, Reg. 194, r. 14.05 (2); O. Reg. 292/99, s. 1 (2).

#### **Application under Rules**

(3) A proceeding may be brought by application where these rules authorize the commencement of a proceeding by application or where the relief claimed is,



- (a) the opinion, advice or direction of the court on a question affecting the rights of a person in respect of the administration of the estate of a deceased person or the execution of a trust;
- (b) an order directing executors, administrators or trustees to do or abstain from doing any particular act in respect of an estate or trust for which they are responsible;
- (c) the removal or replacement of one or more executors, administrators or trustees, or the fixing of their compensation;
- (d) the determination of rights that depend on the interpretation of a deed, will, contract or other instrument, or on the interpretation of a statute, order in council, regulation or municipal by-law or resolution;
- (e) the declaration of an interest in or charge on land, including the nature and extent of the interest or charge or the boundaries of the land, or the settling of the priority of interests or charges;
- (f) the approval of an arrangement or compromise or the approval of a purchase, sale, mortgage, lease or variation of trust;
- (g) an injunction, mandatory order or declaration or the appointment of a receiver or other consequential relief when ancillary to relief claimed in a proceeding properly commenced by a notice of application;
- (g.1) for a remedy under the Canadian Charter of Rights and Freedoms; or
- (h) in respect of any matter where it is unlikely that there will be any material facts in dispute requiring a trial.

**IN THE MATTER OF AN 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**

**TREZ CAPITAL LIMITED PARTNERSHIP  
and TCC MORTGAGE HOLDINGS INC.**

and

**ELDERWOOD HOLDINGS INC., ELDERWOOD TOWNHOMES  
INC., ELDERWOOD TOWNHOMES II INC. and 2633501 ONTARIO  
INC.**

Applicants

Respondents

Court File No.: CV-25-00734688-00CL

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

Proceedings commenced in Toronto

**FACTUM OF THE APPLICANTS**

**BENNETT JONES LLP**

3400 One First Canadian Place  
P.O. Box 130  
Toronto, Ontario M5X 1A4

**Sean Zweig** (LSO# 57307I)

Tel: (416) 777-6254

Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com)

**Aiden Nelms** (LSO# 74170S)

Tel: (416) 777-4642

Email: [nelmsa@bennettjones.com](mailto:nelmsa@bennettjones.com)

**Jamie Ernst** (LSO# 88724A)

Tel: (416) 777-7869

Email: [ernstj@bennettjones.com](mailto:ernstj@bennettjones.com)

Lawyers for the Applicants