

Court File No. CV-24-00721560-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

EQUITABLE BANK

Applicant

and

EQUITYLINE SPV LIMITED PARTNERSHIP

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, C.43, AS AMENDED**

RESPONDING PARTY'S COMPENDIUM

FRIEDMANS LLP

Barristers and Solicitors
150 Ferrand Drive, Suite 800
Toronto, ON M3C 3E5

Judy Hamilton (LSO No. 39475S)

Tel: (416) 649-4462
Fax: (416) 497-3809
Email: jh@friedmans.ca

Lawyers for the Respondent

TO: **AIRD & BERLIS LLP**
Brookfield Place
181 Bay Street, Suite 1800
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Lawyers for the Applicant

Court File No. CV-24-00721560-00CL

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SERVICE LIST

(current as of July 23, 2024)

TO:	<p>AIRD & BERLIS LLP Brookfield Place 181 Bay Street, Suite 1800 Toronto, ON M5J 2T9</p> <p>Robb English Tel: (416) 865-4748 Email: renghish@airdberlis.com</p> <p>Miranda Spence Tel: (416) 865-3414 Email: mspence@airdberlis.com</p> <p><i>Lawyers for the Applicant, Equitable Bank</i></p>
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TO:	FRIEDMANS LLP 150 Ferrand Drive, Suite 800 Toronto, ON M3C 3E5 Judy Hamilton (LSO No. 39475S) Tel: (416) 649-4462 Fax: (416) 497-3809 Email: jh@friedmans.ca <i>Lawyers for the Respondent</i>
AND TO:	DLA PIPER (CANADA) LLP 6000-100 King Street West Toronto, ON M5X 1E2 Bruce Darlington Tel: (416) 365-3529 Email: bruce.darlington@dlapiper.com Tudor Carsten Tel: (416) 365-3505 Email: tudor.carsten@dlapiper.com <i>Lawyers for Computershare Trust Company of Canada</i>
AND TO:	KSV RESTRUCTURING INC. 220 Bay Street, 13th Floor Toronto, ON M5J 2W4 Mitch Vininsky Tel: (416) 932-6013 Email: mvininsky@ksvadvisory.com Noah Goldstein Tel: (416) 932-6207 Email: ngoldstein@ksvadvisory.com <i>Proposed Receiver</i>

AND TO:	THORNTON GROUT FINNIGAN LLP Toronto-Dominion Centre 100 Wellington Street West, Suite 3200 Toronto, ON M5K 1K7 Rebecca Kennedy Tel: (416) 304-0603 Email: rkennedy@tgf.ca <i>Lawyer for KSV Restructuring Inc.</i>
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EMAIL SERVICE LIST

renlish@airdberlis.com; mspence@airdberlis.com; jh@friedmans.ca;

bruce.darlington@dlapiper.com; tudor.carsten@dlapiper.com;

mvininsky@ksvadvisory.com; ngoldstein@ksvadvisory.com; rkennedy@tgf.ca;

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2.	Sergiy Affidavit, Exhibit A - Email between Brendan Smith and Sergiy Shchavyelyev re: Equityline balance, dated June 5-6, 2024
3.	Sergiy Affidavit, Exhibit I - Email chain re: 19 Fahey Drive, dated May 28-June 13, 2024
4.	Sergiy Affidavit, Exhibit H and J - Notice of Sale under charge
5.	Affidavit of Brendan Smith, sworn May 31, 2024
6.	<i>Romspen Investment Corporation v. Tung Kee Investment Canada Ltd. et al.</i> 2023 ONSC 5911

TAB 1

Court File No. CV-24-00721560-00CL

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B E T W E E N:

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AFFIDAVIT OF SERGIY SHCHAVYELYEV

I, Sergiy Shchavyelyev, of the City of Richmond Hill, in the Regional Municipality of York, AFFIRM:

1. I am President and CEO of the Respondent, Equityline SPV Limited Partnership ("**Equityline SPV**"). I am also president and CEO of Equityline Mortgage Investment Corporation ("**Equityline MIC**").
2. I make this affidavit in response to the Applicant's application to appoint KSV Advisory as Receiver over Equityline SPV (the "**Application**").

3. I have read the affidavit of Brendan Smith sworn May 31, 2024 and respond as follows.

4. I note that as of the date of Mr. Smith's affidavit sworn May 31, 2024, he was well aware that the total amount owed to Equitable was significantly less than \$13,617,097.50. Attached as **Exhibit "A"** to this affidavit is an email from Brendan Smith dated June 6, 2024 confirming that the amounts owing for Principal and Interest under the credit line was \$10,310,037.26 as of that date.

5. The principal and interest amount owing to Equitable under the credit facility had been significantly reduced by Equityline SPV from 2022 when \$25,000,000 was owing on the credit line. At the time, the credit line had been extended to \$55,000,000.

6. Equityline SPV reduced the balance owed on the credit line from \$25,000,000 to \$10,000,000 from the proceeds received when mortgages matured and were repaid and by exercising its enforcement rights under mortgages which had defaulted. I am confident given our enforcement progress to date that if Equityline SPV is permitted to continue its enforcement efforts it will be able to repay the remaining \$10,000,000 within the next 120 days (assuming the consent interim standstill order is lifted for this purpose).

7. Each of the mortgages in the Equityline SPV mortgage portfolio passed the underwriting criterion approved by Equitable and is title insured.

8. Equityline SPV is a bridge lender, lending interest only loans to individual residential homeowners on a short-term basis. The loan term is a maximum of 12 months and interest is at a variable rate. Pursuant to Equityline SPV's credit arrangement with

Equitable, Equityline SPV pays interest of prime plus 1.5% on monies borrowed from the credit facility. Equityline SPV loans to individual homeowners carry interest at prime plus 4%.

9. Between March 2022 and July 2023, because the Bank of Canada increased interest rates ten times, the monthly burden on the Equityline SPV borrowers increased significantly (along with Equityline SPV's interest burden under the credit facility with Equitable).

10. As such the default rates on the mortgages in the Equityline SPV portfolio rose dramatically, which Equityline SPV did not fully anticipate.

11. In the regular course of Equityline SPV's business, a modest number of defaulting mortgages is to be expected. When the default rate rose sharply because of skyrocketing interest rates, Equityline SPV did not have sufficient capital to redeem all of the mortgages in default. Equityline SPV borrowed sufficient funds from a third party lender to cover the monthly interest payments due to Equitable. To date, loans extended by the third party lender to Equityline SPV total approximately \$2,800,000.

12. By maintaining the payments due under the credit line, and by working directly with homeowners and bringing enforcement proceedings, approximately \$15,000,000 of the credit facility was paid down by Equityline SPV since the beginning of 2023.

13. As Computershare was the legal title holder pursuant to the custodial arrangement, these proceedings were initiated in the name of Computershare although the beneficial

owner of the mortgages is Equityline SPV. Enforcement counsel for Equityline SPV were Terry Walman (“**Walman**”) and Glen Cohen (“**Cohen**”).

14. On March 6, 2024, Computershare contacted Equityline about an enforcement proceeding Walman had commenced pursuant to a mortgage loan secured against a property municipally known as 22 Lord Roberts Drive in Toronto. Computershare was advised that there was an ongoing police investigation into the previous registrations against title including Notices of Security Interest (“**NOSIs**”) that had been registered on title prior to Equityline SPV’s loan.

15. Equityline SPV was not aware of the NOSIs when it advanced funds under its mortgage to the owners of 22 Lord Roberts Drive. The Equityline SPV loan is an equity loan advanced based on loan to value. Review of previously registered interests on title is not part of our underwriting process. Again, each mortgage is title insured.

16. When Computershare was advised by the mortgagor’s lawyer of the enforcement proceedings, Computershare contacted Equityline SPV and requested that it discontinue or stay the proceedings, which it did. Attached as **Exhibit “B”** is the notice of discontinuance.

17. Following the discontinuance, the mortgage registered against 22 Lord Roberts Drive was transferred by Computershare back to Equityline SPV, on the consent and with the authority of Computershare. Attached as **Exhibit “C”** are the email exchanges between Equityline SPV’s real estate lawyer, Igor Demitchev (“**Demitchev**”) and Computershare’s counsel regarding the allegations raised in proceeding as well as the

executed authorization to transfer the mortgage back to the beneficial owner, Equityline SPV.

18. Thereafter, Computershare resigned as custodian with respect to both portfolios.

19. Following Computershare's resignation, Equityline's intention and understanding was that, like 22 Roberts Drive, Computershare would transfer all of the registered mortgages in both Equityline portfolios back to Equityline in order to allow it to continue enforcement and pay down its debt to Equitable as soon as possible.

20. In order to complete the transfers back to Equityline SPV and Equityline MIC, Demitchev would forward the acknowledgement and direction to Computershare for review and signature. Attached as **Exhibit "D"** is a copy of an email from Demitchev dated May 10, 2024, providing the requisite acknowledgement and direction to transfer the legal title from Computershare to Equityline MIC on 4 loans, together with the executed acknowledgement and direction provided by Computershare.

21. The transfer process was initially relatively seamless and allowed refinancing or enforcement to continue.

23. In or about the end of April 2024, KSV Advisory on behalf of Equitable contacted Equityline SPV seeking information regarding the mortgages in the Equityline SPV portfolio. Equityline SPV immediately provided all of the information that was requested and agreed to a stand-still arrangement whereby no further proceedings would continue or mortgages discharged without the prior consent of Computershare and of Equitable with respect to the Equityline SPV mortgages. I confirm that all these proceedings remain at a standstill and are stayed, including any counterclaims against Computershare, by way of consent order.

24. I acknowledge that there was an accounting error when three mortgages in the Equityline SPV were discharged without Equitable having been paid their interest in that mortgage. The total amount due to Equitable arising from the discharge of those mortgages is \$725,280.

25. The misallocation of sale proceeds was due to an error in our accounting department whereby mortgage funds were paid to Equityline MIC instead of Equityline SPV. I acknowledge that this amount is due and owing and that Equitable has priority over the entire portfolio of Equityline SPV until the entire credit facility is paid. Equityline SPV would like to pursue the most efficient, least expensive and expeditious process designed to get Equitable paid out as soon as possible.

26. Computershare would generally have alerted us that the mortgage being paid out was in the Equityline MIC or the Equityline SPV when signing the transfer. Attached as **Exhibit "E"** is an email dated June 7, 2024 from Computershare which alerted us that a

closing of a mortgage under the MIC was actually an SPV mortgage requiring Equitable's consent.

27. As of June 7, 2024, Equitable would no longer consent to the transfer of the mortgage from Computershare to Equityline SPV so that the mortgages could be realized upon.

28. In order to halt all proceedings, Computershare served notices of change in all Equityline SPV enforcement matters in Computershare's name appointing their current counsel Tudor Carsten ("**Carsten**") as counsel of record in place of Equityline's enforcement counsel Terry Walman ("**Walman**") and Glenn Cohen ("**Cohen**").

29. Thereafter as I am advised by Walman and believe, Carsten refused all requests from enforcement counsel to transfer legal title to Equityline SPV so the enforcement could continue. He advised Walman and Cohen that he would be discontinuing, terminating and setting aside the existing proceedings. This position led to a lot of confusion because many of the matters had already proceeded to judgment and Equityline SPV had obtained writs of possession.

30. Carsten has refused to advise Equityline SPV or Walman and Cohen what the status of the enforcement proceedings currently are, or whether Computershare has communicated with the defaulting borrowers.

31. In typical enforcement proceedings, there is a lot of communication between the defaulting borrowers and enforcement counsel in case of refinancing and redemption of the mortgage during the sale and enforcement process. At the moment, Equityline SPV

does not know what is happening with the any of the Equityline SPV enforcement proceedings, which is prejudicial to Equityline SPV and its stakeholders.

32. For example, Computershare halted the enforcement proceedings with respect to 1096 William Street, London, Ontario, (the "**William Street Property**") which is an eight bedroom, five bathroom residence of over 5,000 square feet. The mortgagors had two mortgages with Equityline SPV, being a first mortgage for \$1,000,000 and a second in the amount of \$280,000. The property had been appraised on March 17, 2022 for \$1,600,000. Attached as **Exhibit "F"** is a copy of the appraisal of the William Street Property.

33. Cohen, on behalf of Equityline SPV, had obtained a judgment on the first mortgage on consent of the mortgagors and a writ of possession. The mortgagors still felt they could redeem, but if they didn't they also consented to a writ of possession so we could have vacant possession to sell the property. See attached as **Exhibit "G"** the Minutes of Settlement, Judgment and Writ of Possession in relation to the William Street Property.

34. The amount due from the mortgagors exceeds \$1,300,000 on the first and second mortgages.

35. I am advised by Cohen and believe that he offered complete transparency to Computershare of the enforcement process for the William Street Property. Carsten refused to consider moving forward cooperatively, stating reputational prejudice to Computershare despite the fact that allowing the writ to be enforced and the property sold would be to the mutual benefit of all of the parties, and in particular the applicant

Equitable, who would have first priority to the net proceeds. At the same time, Computershare on behalf of Equitable refused to transfer the mortgage to Equityline SPV.

36. As a result of Computershare's refusal to allow the enforcement process to continue, the mortgagors still retain possession of the William Street Property and have made no further payments under the mortgages or the Judgment.

37. As part of the disclosure requests, a number of enforcement proceedings were sent to Computershare demonstrating that enforcement had already proceeded through to Judgment. Despite this, Computershare refused to allow enforcement to continue.

38. For example, in respect of the property municipally known as 216 Bay Street in Ottawa, Ontario, the statement of claim was issued against the debtors on December 16, 2022, the notice of sale issued on January 19, 2023, default judgment issued on March 13, 2023, and the writ of seizure and sale filed on March 13, 2023. These proceedings are now at a standstill. Attached as **Exhibit "H"** are copies of the enforcement proceedings with respect to 216 Bay Street in Ottawa.

39. Again, Cohen asked Carsten to agree to assign the mortgages to Equityline SPV so that it could continue said enforcement proceedings. Computershare refused to do so. Instead, I am advised and believe that after Computershare's counsel issued a notice of change of solicitor in each proceeding, he advised Cohen and Walman that his intention was to discontinue, terminate and even set aside judgments.

40. The refusal of Computershare to advise of the status of the enforcement proceedings or take any steps to assist in the continuation of them has also prejudiced

mortgagors who are seeking to refinance. With respect to a property at 411-310 Mill Street South, Brampton, Walman had obtained a default judgment against the mortgagor and had filed a writ. The mortgagor wished to refinance his personal residence at 19 Fahey Drive, which was not the mortgaged property, but could not do so because of the writ. Walman wrote to Carsten to ask for assistance in allowing the refinancing to proceed, which would benefit Equitable, Equityline SPV and the debtor, but again Computershare refused to assist. Attached as **Exhibit "I"** is a copy of an email from Carsten to Walman dated June 12, 2024 with respect to 19 Fahey Drive requesting that Computershare cooperate with the orderly assignment of the judgment and the writ so recovery could be made expeditiously.

41. Attached as **Exhibit "J"** are a few more examples of mortgages where default judgment has already been granted but which Computershare has refused to advance towards collection or assign them to Equityline SPV.

42. I do acknowledge that two or three of the mortgagors have brought counterclaims against Computershare as the named plaintiff alleging fraudulent mortgage practices and/or unconscionability. However, as all of the mortgages carried title insurance, any claim that a mortgage instrument is invalid would be defended by the title insurer. Before Computershare resigned as custodian, the title insurer had begun investigating and defending the counterclaims which alleged that the mortgage instruments were invalid. However, we have no further updates on these matters now that Computershare has taken carriage.

43. If the current enforcement actions are discontinued it would be disastrous for Equityline SPV as the enforcement procedures will need to start *de novo* and the enforcement fees and expenses incurred to date will be simply thrown away. This is not necessary as enforcement counsel were already well on the way to sufficient recovery of amounts owed to Equitable, and it is very easy to protect Equitable's priority.

44. In the circumstances, appointing a Receiver to repeat the enforcement process that had already been commenced by Equityline SPV's counsel will be duplicative and not practical. These are simple residential mortgages and the enforcement fees of counsel are low.

45. On the other hand, Equitable's legal fees as of June 6, 2024 were already well over \$200,000. The legal fees that will be incurred by Equitable, the Receiver and its counsel, and other costs such as third party agents and property managers, will likely extinguish the possibility of any other stakeholder receiving recovery, and perhaps even reduce Equitable's recovery. A court approval process for each residential mortgage is going to be unwieldy and it is unnecessary.

46. There are simple protections that could be put in place to hold all funds in escrow to the benefit of Equitable without additional and unnecessary expenses for what is a comparably modest amount owing under the credit facility. Equitable could have likely already been paid out by now had it consented to allow Computershare to transfer the mortgages to Equityline SPV (or another mutually agreed upon custodian) to continue enforcement.

47. I have no issue with addressing the enforcement of defaulted mortgages in the Equityline SPV portfolio by way of a joint retainer of an experienced enforcement counsel who has Equityline’s irrevocable direction to pay Equitable first from the proceeds of each mortgage enforcement until the revolving credit line is completely paid. This would be the least expensive and most expeditious resolution of the issues between Equitable and Equityline.

AFFIRMED by Sergiy Shchavyelyev of the City of Richmond Hill, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on July 16, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



DocuSigned by:
Judy Hamilton
9CBB5AFFBEBE4EE...

Commissioner for Taking Affidavits
(or as may be)

JUDY HAMILTON

DocuSigned by:
Sergiy Shchavyelyev
398D1B86A5AE4ED...

SERGIY SHCHAVYELYEV

RCP-E 4D (February 1, 2021)

EQUITABLE BANK
Applicant

-and-

EQUITYLINE SPV LIMITED PARTNERSHIP
Respondent
Court File No. CV-24-00721560-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT OF SERGIY SHCHAVYELYEV
AFFIRMED JULY 16, 2024**

FRIEDMANS LLP
Barristers and Solicitors
150 Ferrand Drive, Suite 800
Toronto, ON M3C 3E5

Judy Hamilton (LSO No. 39475S)
Tel: (416) 649-4462
Fax: (416) 497-3809
Email: jh@friedmans.ca

Lawyers for the Respondent

RCP-F 4C (September 1, 2020)

TAB 2

From: Brendan Smith <bsmith@eqbank.ca>
Date: June 6, 2024 at 4:14:47 PM EDT
To: Sergiy Shchavyelyev <sergiy@equitylinemic.com>
Cc: Mary Moncada <mary@equitylinemic.com>, Timothy Rahardjo <trahardjo@eqbank.ca>, Mary Peplinski <mpeplinski@eqbank.ca>
Subject: RE: [EXTERNAL] Equityline balance

Hi Serge,

See below:

1. Total P&I owed as of Monday, June 10th = \$10,310,037.26
2. Total per diem interest owed to date = \$2,394.52
3. Total per diem standby fee owed to date = \$81.77
4. Total back-up servicing fees owed to date = \$19,328.36
5. Total legal costs incurred by EQB to date = \$200,000

Please let me know if you have any questions. Are you intending to pay us out by tomorrow/Monday?

Regards,

Brendan Smith | Specialized Finance
Equitable Bank
M: 647-505-9524

From: Sergiy Shchavyelyev <sergiy@equitylinemic.com>
Sent: Wednesday, June 5, 2024 11:05 PM
To: Brendan Smith <bsmith@eqbank.ca>
Cc: Mary Moncada <mary@equitylinemic.com>; Timothy Rahardjo <trahardjo@eqbank.ca>; Mary Peplinski <mpeplinski@eqbank.ca>
Subject: Re: [EXTERNAL] Equityline balance

Thank you

I have received the court documentation for monday.

I need to know the balance, if you can maybe put a daily accrual on the current balance so i know what it will be if not friday than for monday...

Thank you in advance.

Thank You,
Sergiy Shchavyelyev, CEO
EquityLine Mortgage Investment Corporation.

[550 HWY 7](#) East, Suite 338
Richmond Hill, ON, L4B 3Z4
FSCO Mortgage Broker Licence Number: 12570FSCO Mortgage Admin Licence Number:
13068Direct: 416-939-6376Office: 416-999-3993Fax: 416-999-3336Toll Free: 1-888-269-
1988www.EquityLineMic.com

On Jun 5, 2024, at 10:05 PM, Brendan Smith <bsmith@eqbank.ca> wrote:

Hi Serge,

I will get you the outstanding balance and accrued interest to date l tomorrow morning.

Brendan

Get [Outlook for iOS](#)

From: Sergiy Shchavyelyev <sergiy@equitylinemic.com>
Sent: Wednesday, June 5, 2024 8:41 PM
To: Brendan Smith <bsmith@eqbank.ca>
Cc: Mary Moncada <mary@equitylinemic.com>
Subject: [EXTERNAL] Equityline balance

Good evening Brendan

Can i please get a full outstanding balance including interest for this friday please.

Thank You,
Sergiy Shchavyelyev, CEO
EquityLine Mortgage Investment Corporation.
[550 HWY 7](#) East, Suite 338
Richmond Hill, ON, L4B 3Z4
FSCO Mortgage Broker Licence Number: 12570FSCO Mortgage Admin Licence Number:
13068Direct: 416-939-6376Office: 416-999-3993Fax: 416-999-3336Toll Free: 1-888-269-
1988www.EquityLineMic.com

TAB 3

I would like to send you a friendly reminder that the pleadings were provided to you on April 5, 2024. Kindly see attached email.

Thank you,
Katarina

From: Terry Walman <terry@terrywalman.com>
Sent: Thursday, June 13, 2024 10:35 AM
To: Katarina Piruze Angelovska <Katarina@terrywalman.com>
Subject: Fwd: [EXTERNAL] Computershare/Equityline-Sodhi- 19 Fahey Drive

Sent from my iPhone

Begin forwarded message:

From: "Carsten, Tudor" <tudor.carsten@dlapiper.com>
Date: June 13, 2024 at 10:23:59 AM EDT
To: Terry Walman <terry@terrywalman.com>
Subject: RE: [EXTERNAL] Computershare/Equityline-Sodhi- 19 Fahey Drive

Mr. Walman,

Can you please provide me with the pleadings of the action related to this property?

--Tudor

Tudor Carsten

Partner

T 416.365.3505

M 416.561.4614

E tudor.carsten@dlapiper.com

<image005.gif>

From: Terry Walman <terry@terrywalman.com>
Sent: Wednesday, June 12, 2024 5:59 PM
To: Carsten, Tudor <tudor.carsten@ca.dlapiper.com>
Subject: [EXTERNAL] Computershare/Equityline-Sodhi- 19 Fahey Drive

DLA Piper (Canada) LLP ALERT: This is an external email. Do not click links or open attachments unless you recognize the sender's email address and know the content is safe.

Hi Tudor,

Kindly advise what, if anything you and Computershare might have done with this particular matter. The debt has not been paid, Judgment and writ obtained, and not sure whether this loan is an SPV loan account with Equitable Bank or merely belongs to Equityline, but regardless it would be nice to see the

Judgment and writ assigned/transmitted to the rightful lender, so that lender could deal with the matter, for earlier recovery rather than forcing the lender to re-commence proceedings from the beginning.

Kindly advise,

Respectfully,

Terry

Terry Walman, LLB,

1240 Bay Street, Suite 202

(Bay St., 1 block North of Bloor St.),

Toronto, Ontario, M5R 2A7

From: Farukh Bhatti [<mailto:farukh@fablaw.ca>]

Sent: May-28-24 7:17 PM

To: Terry Walman <terry@terrywalm.com>

Subject: RE: 19 Fahey Drive

Hi Terry,

Please find attached.

Please advise.

Thank you.

Best Regards,

<image006.jpg>

Farukh A. Bhatti

Managing Lawyer

Office : (289) 818-2774

Mobile : (416) 457-6454

Fax : (416) 981-7646

Email : farukh@fablaw.ca

9131 Keele Street, Unit A4

Vaughan, ON L4K 0G7

3-11 Progress Avenue

Scarborough, ON M1P 4S7

TAB 4

NOTICE OF SALE UNDER CHARGE

TO: SEE SCHEDULE "A" ATTACHED

TAKE NOTICE that default has been made in payment of moneys due under a certain mortgage made between

DAVID LIANG and HWA CHENG LIANG

as Mortgagors

and

COMPUTERSHARE TRUST COMPANY OF CANADA

as Mortgagee

WHICH CHARGE/MORTGAGE was registered on the 13TH day of May, 2022, in the Land Registry Office for the Land Titles Division of OTTAWA-CARLETON (No.: 4), as Instrument No.: OC2490154;WHICH CHARGE/MORTGAGE was transferred to EQUITYLINE SPV GP INC., by Transfer of Charge, registered on the 7th day of October, 2022, as Instrument No.: OC2543844, and subsequently transferred to COMPUTERSHARE TRUST COMPANY OF CANADA, by Transfer of Charge, registered on the 7th day of October, 2022, as Instrument No.: OC2543852, in the Land Registry Office for the Land Titles Division of OTTAWA-CARLETON (No.: 4);

on the property more particularly described as follows:

Pin: 04113-0010 (LT)

PT LT 11, PL 3922, N/S LAURIER AV, AS IN N657506; S/T & T/W N657506; OTTAWA/NEPEAN

Municipally known as: 216 BAY STREET, OTTAWA ONTARIO K1R 5Y9

AND I hereby give you notice that the amount now due on the above noted mortgage for principal money, interest, taxes, insurance premiums, administration fees, costs and charges respectively, are as follows:

Principal balance as at December 15, 2022 (As per Statement of Claim Issued on December 16, 2022)	\$609,438.40
Accrued interest to January 19, 2023 (35 days at 10.24% /\$170.98 per day)	\$ <u>5,984.30</u> \$615,422.70
Default Administration Charge s.17(1) Mortgages Act	\$ 15,754.83
Missed payment and bank charges fees	\$ 1,200.00
Demand Fee	\$ 200.00
Enforcement of Legal proceedings	\$ 5,000.00
Legal costs – demand letter	\$ 1,250.00
Legal costs – Statement of Claim	\$ 2,500.00
Legal costs – Notice of Sale	\$ <u>2,500.00</u>
Balance Outstanding as of January 19, 2023	\$643,827.53

(such amount for costs being up to and including the service of this Notice only, and thereafter such further costs and disbursements will be charged as may be proper), together with interest at the rate of 10.24%, per annum, on the principal and interest hereinbefore mentioned, from January 19, 2023 to the date of payment.

AND unless the said sums are paid on or before **February 28, 2023**, I shall sell the property covered by the said mortgage under the provisions contained in it.

This notice is given to you as you appear to have an interest in the mortgaged property and may be entitled to redeem the same.

DATED the 19th day of January, 2023**COMPUTERSHARE TRUST COMPANY OF CANADA**

By its solicitor, Terry M. Walman

Per: 

Terry M. Walman

1240 Bay Street, Suite 202, Toronto, Ontario, M5R 2A7

TEL (416) 961-0001, FAX (416) 961-5329

EMAIL: terry@terrywalman.com

File No.: 22-10033 / ka

NOTICE OF SALE UNDER CHARGE

TO: SEE SCHEDULE "A" ATTACHED

TAKE NOTICE that default has been made in payment of moneys due under a certain mortgage made between

ASHLAR HOLDINGS CORPORATION as Mortgagor

- and -

COMPUTERSHARE TRUST COMPANY OF CANADA as Mortgagee

- and -

SLAVICA STAMATOSKI as Guarantor

WHICH CHARGE/MORTGAGE was registered on the 28th day of January, 2022, in the Land Registry Office for the Land Titles Division of Dufferin County (LRO No. 7) as Instrument No. DC239387, which said mortgage was assigned to ELLE MORTGAGE CORPORATION and COMPUTERSHARE TRUST COMPANY OF CANADA by way of TRANSFER OF CHARGE registered as Instrument No. DC239563 on the 2nd day of February, 2022 on the property more particularly described as follows:

PIN No.: 34124 – 0022 (LT)

PT LT 19, CON 1 WHS, PT 1, 7R1503 ; S/T MUL14244 MULMUR

Municipally known as: 637519 PRINCE OF WALES ROAD, MULMUR, ONTARIO, L0B 1B8

AND I hereby give you notice that the amount now due on the above-noted mortgage for principal money, interest, taxes, insurance premiums, administration fees, costs and charges respectively, are as follows:

Principal balance as at November 7, 2023 (per Statement of Claim issued November 8, 2023)	\$ 999,142.78
Interest to January 8, 2024 (62 days @ 13.49% @ \$368.26 per day)	\$ 22,832.12 \$1,021,974.90
Default administration charge – per mortgage terms and as per s.17(1) Mortgages Act	\$ 34,466.10
Legal costs – Statement of Claim	\$ 2,500.00
Legal costs – Notice of Sale	\$ 2,500.00
Balance Outstanding as of January 8, 2024	\$1,061,441.00

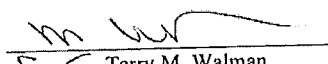
(such amount for costs being up to and including the service of this Notice only, and thereafter such further costs and disbursements will be charged as may be proper), together with interest at the rate of 13.49% per cent, per annum, on the principal and interest hereinbefore mentioned, from January 8, 2024 to the date of payment.

AND unless the said sums are paid on or before February 22, 2024, I shall sell the property covered by the said mortgage under the provisions contained in it.

THIS notice is given to you as you appear to have an interest in the mortgaged property and may be entitled to redeem the same.

DATED the 8th day of January, 2024.

ELLE MORTGAGE CORPORATION
by its solicitor, Terry M. Walman

Per: 
Terry M. Walman
1240 Bay Street, Suite 202, Toronto, ON M5R 2A7
TEL:(416)961-0001 FAX:(416)961-5329
Email: terry@terrywalman.com / FILE: 23-10295/mw

NOTICE OF SALE UNDER CHARGE

140

TO: SEE SCHEDULE "A" ATTACHED

TAKE NOTICE that default has been made in payment of moneys due under a certain mortgage made between

BORIS SHVARTS as Mortgagor

- and -

COMPUTERSHARE TRUST COMPANY OF CANADA as Mortgagee

WHICH CHARGE/MORTGAGE was registered on the 22nd day of October, 2020, in the Land Registry Office for the Land Titles Division of Toronto (LRO No. 80) as Instrument No. AT5552723, on the property more particularly described as follows:

PIN NO.: 10410 - 0380 (LT)

LT 4 PL 3310 EAST YORK S/T & T/W EY186911; TORONTO (E YORK), CITY OF TORONTO

Municipally known as: **62 INWOOD AVENUE, TORONTO, ONTARIO, M4J 3Y5**

AND I hereby give you notice that the amount now due on the above-noted mortgage for principal money, interest, taxes, insurance premiums, administration fees, costs and charges respectively, are as follows:

Principal balance as at October 3, 2023 (per Discharge Statement dated September 29, 2023)	\$ 68,114.64
Interest to November 6, 2023 (34 days @ 10.99% @ \$20.51 per day)	\$ <u>697.34</u> \$ 68,811.98
Legal costs – Notice of Sale	\$ <u>2,500.00</u>
Balance Outstanding as of November 6, 2023	\$ <u>71,311.98</u>

(such amount for costs being up to and including the service of this Notice only, and thereafter such further costs and disbursements will be charged as may be proper), together with interest at the rate of 10.99% per cent, per annum, on the principal and interest hereinbefore mentioned, from November 6, 2023 to the date of payment.

AND unless the said sums are paid on or before **December 21, 2023**, I shall sell the property covered by the said mortgage under the provisions contained in it.

THIS notice is given to you as you appear to have an interest in the mortgaged property and may be entitled to redeem the same.

DATED the 6th day of November, 2023.

COMPUTERSHARE TRUST COMPANY OF CANADA
by its/their solicitor, Terry M. Walman

Per: _____
Terry M. Walman

1240 Bay Street, Suite 202, Toronto, ON M5R 2A7
TEL:(416)961-0001 FAX:(416)961-5329
Email: terry@terrywalm.com/ File #23-10156/mw

TO: SEE SCHEDULE "A" ATTACHED

TAKE NOTICE that default has been made in payment of moneys due under a certain mortgage made between

DANROY ROACH and NATASHA LEE ROACH

as Mortgagor

- and -

COMPUTERSHARE TRUST COMPANY OF CANADA

as Mortgagee

WHICH CHARGE/MORTGAGE was registered on the 19th day of May, 2022, in the Land Registry Office for the Land Titles Division of Durham Region (LRO No. 40) as Instrument No. DR2134572, which said mortgage was assigned to EQUITYLINE SPV GP INC. by way of TRANSFER OF CHARGE registered as Instrument No. DR2164788 on the 19th day of August, 2022, and which said mortgage was further assigned to COMPUTERSHARE TRUST COMPANY OF CANADA by way of TRANSFER OF CHARGE registered as Instrument No. DR2164793 on the 19th day of August, 2022 on the property more particularly described as follows:

PIN NO.: 26382 - 0482 (LT)

PCL 28-8, SEC 40M1535, PT BLK 28, PL 40M1535 (PICKERING), PTS 2, 3 & 4, 40R12175; S/T LT402723; S/T PT 3, 40R12175 IN FAVOUR OF PT 1, 40R12175 AS IN LT462248; S/T PT 4, 40R12175 IN FAVOUR OF PTS 5 & 6, 40R12175 AS IN LT462343; T/W PT BLK 28, PL 40M1535, PT 6, 40R12175 AS IN LT462343 ; PICKERING

Municipally known as: **2055 BLUE RIDGE CRESCENT, PICKERING, ONTARIO, L1X 2N5**

AND I hereby give you notice that the amount now due on the above-noted mortgage for principal money, interest, taxes, insurance premiums, administration fees, costs and charges respectively, are as follows:

Principal balance as at August 1, 2023 (per Statement of Claim issued August 16, 2023)	\$254,587.02
Interest to August 22, 2023 (21 days @ 14.50% @ \$101.14 per day) <i>Less payment received on April 1, 2023</i>	<u>\$ 2,123.94</u> \$256,710.96 (\$ 2,900.00) \$253,810.96
Default administration charge – per mortgage terms and as per s.17(1) Mortgages Act	\$ 9,200.64
Demand Letter Fee (\$500.00 x 2)	\$ 1,000.00
Notice of Intention to Enforce Security	\$ 5,650.00
Legal costs – Statement of Claim	\$ 2,500.00
Legal costs – Notice of Sale	<u>\$ 2,500.00</u>
Balance Outstanding as of August 22, 2023	<u><u>\$274,661.60</u></u>

(such amount for costs being up to and including the service of this Notice only, and thereafter such further costs and disbursements will be charged as may be proper), together with interest at the rate of 14.50% per cent, per annum, on the principal and interest hereinbefore mentioned, from **August 22, 2023** to the date of payment.

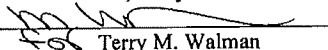
AND unless the said sums are paid on or before **October 5, 2023**, I shall sell the property covered by the said mortgage under the provisions contained in it.

THIS notice is given to you as you appear to have an interest in the mortgaged property and may be entitled to redeem the same.

DATED the 22nd day of August, 2023.

COMPUTERSHARE TRUST COMPANY OF CANADA

by its/their solicitor, Terry M. Walman

Per: 
Terry M. Walman

1240 Bay Street, Suite 202, Toronto, ON M5R 2A7

TEL:(416)961-0001 FAX:(416)961-5329

Email: terry@terrywalman.com/ File #23-10093/mw

NOTICE OF SALE UNDER CHARGE

TO: SEE SCHEDULE "A" ATTACHED

TAKE NOTICE that default has been made in payment of moneys due under a certain mortgage made between

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- and -

COMPUTERSHARE TRUST COMPANY OF CANADA as Mortgagee

- and -

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DATED the 8th day of January, 2024.

ELLE MORTGAGE CORPORATION
by its solicitor, Terry M. Walman

Per: 
Terry M. Walman

1240 Bay Street, Suite 202, Toronto, ON M5R 2A7
TEL:(416)961-0001 FAX:(416)961-5329
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- and -

COMPUTERSHARE TRUST COMPANY OF CANADA as Mortgagee

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COMPUTERSHARE TRUST COMPANY OF CANADA
by its/their solicitor, Terry M. Walman

Per: _____

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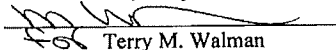
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DATED the 22nd day of August, 2023.

COMPUTERSHARE TRUST COMPANY OF CANADA

by its/their solicitor, Terry M. Walman

Per:  Terry M. Walman

1240 Bay Street, Suite 202, Toronto, ON M5R 2A7

TEL: (416)961-0001 FAX: (416)961-5329

Email: terry@terrywalman.com / File #23-10093/mw

TAB 5

Court File No.

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

BETWEEN:

EQUITABLE BANK

Applicant

- and -

EQUITYLINE SPV LIMITED PARTNERSHIP

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

AFFIDAVIT OF BRENDAN SMITH
(sworn May 31, 2024)

I, Brendan Smith, of the City of Toronto, in the Province of Ontario do make oath and say as follows:

1. I am a Director, Specialized Finance of Equitable Bank (the “**Bank**”), and as such have knowledge of the matters to which I hereinafter depose. To the extent that I do not have direct first-hand knowledge of particular facts or events, I have obtained that information from others and/or from my review of the documentation attached as exhibits, and have indicated the source of that information in my Affidavit. I verily believe the facts hereinafter deposed to are true and correct.

2. I swear this affidavit in support of Equitable Bank's application to, inter alia, appoint KSV Restructuring Inc. ("**KSV**") as receiver and manager (in such capacity, the "**Receiver**"), without security, of all the assets, properties and undertakings (collectively, the "**Property**") of EquityLine SPV Limited Partnership ("**EquityLine LP**" or the "**Debtor**").

The Parties:

3. EquityLine LP is a limited partnership formed pursuant to the laws of Ontario under the *Limited Partnerships Act*, declared on June 23, 2021, with its stated registered office at 550 Highway 7 Avenue East, No. 338, Richmond Hill, ON L4B 3Z4. It has no employees. Its general partner is EquityLine SPV GP Inc. ("**EquityLine GP**"). Attached to this affidavit and marked as **Exhibit "A"** is a true copy of the Limited Partnerships Report for EquityLine LP.

4. EquityLine GP is an Ontario corporation, originally incorporated on June 23, 2021, with its stated registered office at 550 Highway 7 Avenue East, No. 338, Richmond Hill, ON L4B 3Z4. The sole stated director is Sergiy Shchavyelyev ("**Shchavyelyev**"). Attached to this affidavit and marked as **Exhibit "B"** is a true copy of the Corporate Profile Report for EquityLine GP.

5. EquityLine Services Corp. ("**EquityLine Services**", and together with EquityLine LP and EquityLine GP, the "**Credit Parties**") is an Ontario corporation, originally incorporated on January 18, 2018, with its stated registered office at 550 Highway 7 Avenue East, No. 338, Richmond Hill, ON L4B 3Z4. EquityLine Services' sole stated director is Shchavyelyev. Attached to this affidavit and marked as **Exhibit "C"** is a true copy of the Corporate Profile Report for EquityLine Services.

Structure of the Business:

6. Pursuant to a Mortgage Sale and Servicing Agreement dated August 5, 2021, which is attached to this affidavit and marked as **Exhibit "D"**, EquityLine LP offers mortgages through EquityLine Financial Corp. acting as mortgage broker (the "**EquityLine Mortgages**"). EquityLine Services then acts as Servicer on the EquityLine Mortgages, which involves dealing with the individual mortgagors, collecting payments and reporting on the status of the mortgages.

7. The EquityLine Mortgages are used by EquityLine LP as collateral to obtain and secure the below-defined Facility from Equitable Bank.

8. Pursuant to a Custodial Agreement (as defined below), legal title to the EquityLine Mortgages is held by Computershare Trust Company of Canada. EquityLine LP retains beneficial ownership and is presently the beneficial owner of approximately 34 mortgages with a face value of approximately \$18,115,600.

9. A chart describing the structure of these arrangements is attached to this affidavit and marked as **Exhibit "E"**.

The Credit Agreement and Security:

10. The Debtor is indebted to Equitable Bank in connection with a revolving credit facility (the "**Facility**") made available by Equitable Bank to the Debtor pursuant to and under the terms of a credit agreement dated August 5, 2021 (as amended, replaced, restated or supplemented from time to time, the "**Credit Agreement**"). A copy of the Credit Agreement is attached hereto and marked as **Exhibit "F"**.

11. As security for the Debtor's obligations to Equitable Bank, including, without limitation, under the Credit Agreement, the Debtor provided, without limitation, a general security agreement dated August 5, 2021 (the "GSA"), which grants to Equitable Bank, among other things, a security interest in any and all of the property, assets and undertakings of EquityLine LP, registrations in respect of which were duly made pursuant to the *Personal Property Security Act* (Ontario) (the "PPSA", and the foregoing referred to as the "Security"). A copy of the Security is attached to this affidavit and marked as **Exhibit "G"**.

12. Equitable Bank is the sole secured creditor with registration under the PPSA over all of the property and assets of EquityLine LP, and is the provider of the capital required to conduct the business operations of EquityLine LP. Attached to this affidavit and marked as **Exhibit "H"** is a copy of the certified ON PPSA search for the Debtor, current as of May 9, 2024.

13. The GSA granted by the Debtor grants to Equitable Bank a right to appoint a receiver and manager over the Debtor's property upon the occurrence of an Event of Default, which is defined in the GSA by reference to the Credit Agreement as including "The failure by the Borrower to make payments of any principal, interest or fees due to the Lender, including without limitation any amounts due on the Demand Date." Pursuant to s. 5.1 of the GSA:

5.1 (f) Upon the occurrence of any Event of Default which is continuing, the Lender may appoint or reappoint by instrument in writing, any Person or Persons, whether an officer or officers or an employee or employees of the Lender or not, to be an interim receiver, receiver, receivers, receiver and manager, liquidator, trustee in bankruptcy or similar Person (hereinafter called a "Receiver," which term when used herein shall include a receiver and manager) of Collateral (including any interest, income or profits therefrom) and may remove any Receiver so appointed and appoint another in his/her/its stead. Any such Receiver shall, so far as concerns responsibility for his/her/its acts, be deemed the

agent of each Borrower and not of the Lender and the Lender shall not be in any way responsible for any misconduct, negligence or non-feasance on the part of any such Receiver or his/her/its servants, agents or employees. Except as may be otherwise directed by the Lender, all money or proceeds received from time to time by such Receiver in carrying out his/her/its appointment shall be received in trust for and be paid over to the Lender. Every such Receiver may be vested with all or any of the rights and powers of the Lender. The identity of the Receiver, its replacement and its remuneration shall be within the sole and unfettered discretion of the Lender. Where the “Lender” is referred to in this Section 6.1(f) [*sic*], the reference includes, where the context permits, any Receiver so appointed and the officers, employees, servants or agents, or such receiver.

14. As further security for the Debtor’s obligations to Equitable Bank, including, without limitation, under the Credit Agreement, the Debtor entered into a custodial agreement with Computershare Trust Company of Canada (“**Computershare**” or the “**Custodian**”) dated August 5, 2021 (the “**Custodial Agreement**”), and a title custodian acknowledgment agreement with Equitable Bank and Computershare dated August 5, 2021 (the “**Title Custodian Acknowledgement Agreement**”). The Custodial Agreement and Title Custodian Acknowledgement Agreement are attached to this affidavit and marked as **Exhibit "I"**.

15. By operation of the Custodial Agreement and the Title Custodian Acknowledgment Agreement, Computershare holds legal title and acts as agent, nominee and bailee for and on behalf of EquityLine LP in respect of its mortgages, and EquityLine LP retains beneficial ownership of title to its mortgages.

16. The Debtor’s obligations to Equitable Bank pursuant to the Credit Agreement are guaranteed by EquityLine Services pursuant to an unlimited guarantee agreement dated August 5, 2021, a copy of which is attached to this affidavit and marked as **Exhibit "J"**.

17. The Debtor's obligations to Equitable Bank pursuant to the Credit Agreement are also secured by the following:

- (a) A pledge agreement granted by Shchavyelyev in favour of Equitable Bank dated August 5, 2021; and
- (b) A pledge agreement granted by EquityLine Mortgage Investment Corporation in favour of Equitable Bank dated August 5, 2021 (the foregoing together referred to as the "**Pledge Agreements**", which are attached to this affidavit and marked as **Exhibit "K"**).

Debtors' Financial Position:

18. Until recently, based on monthly written reports provided directly to Equitable Bank by EquityLine LP, the Bank understood that many of the EquityLine Mortgages were in various stages of arrears ranging from 30 days to 90 days. However, Equitable Bank understood that payments continued to be made towards such mortgages and that none of the EquityLine Mortgages were being treated as defaulted or subject to enforcement proceedings.

19. In actuality, a majority of the EquityLine Mortgages were in default (the "**Defaulted Mortgage Loans**"), and EquityLine LP and EquityLine Services had been providing Equitable Bank with inaccurate information as to the position of the Debtor and the status of the Security and Defaulted Mortgage Loans.

20. As of the beginning of May 2024, Equitable Bank understood that approximately 27 of the 34 EquityLine Mortgages were Defaulted Mortgage Loans, impacting approximately \$11,164,000 of the \$13,617,080 owing to Equitable Bank. Stated differently, approximately 80% of the EquityLine Mortgages in number and value were in default. It is unclear how long these defaults have existed and Equitable Bank no longer knows the true value of its Security.

21. Since the beginning of May 2024, as detailed below, funds were advanced to Equitable Bank to pay out four (4) of the Defaulted Mortgage Loans. It is now understood that approximately 22 of the 30 remaining EquityLine Mortgages are Defaulted Mortgage Loans, impacting approximately \$8,592,680 of the \$10,073,480 still owing to Equitable Bank. This still represents more than 70% in number and more than 80% in value of the EquityLine Mortgages.

22. Prior to the above discoveries by Equitable Bank and Computershare, EquityLine Services retained a lawyer, Terry Walman (“**Walman**”), and commenced lawsuits to collect on the Defaulted Mortgage Loans, which lawsuits were brought in the name of Computershare. However, EquityLine Services did not advise Computershare of this course of action, nor did it obtain Computershare’s consent, with the result that legal proceedings were commenced in the name of Computershare without its authorization.

23. The enforcement proceedings were in respect of mortgages that had been reported to the Bank as being current and not in default. As above, approximately 70-80% of the EquityLine Mortgages pledged as collateral to the Bank are now believed to be in default. These defaults were not reported to either the Bank or Computershare and conflict with the reporting that was made by the Debtor.

24. Since the origination of enforcement proceedings on the Defaulted Mortgage Loans, Computershare has been named in a number of counterclaims in proceedings for which it did not authorize commencement, nor did it have any knowledge. As a direct consequence of the Respondent’s actions, Computershare has been put at risk and it no longer wishes to remain as Custodian.

25. Computershare has given notice to the Bank that it shall remove itself as Custodian. Computershare provided Equitable Bank with 30 days' notice of this intention, which notice period expired on May 23, 2024. Equitable Bank asked Computershare to extend this notice period for a short time, pending the determination of this Application. A temporary custodial agreement is now in place, expiring June 10, 2024.

26. In an attempt to remain current on its financial obligations under the Credit Agreement, EquityLine Services or its affiliates have been supplementing interest payments to Equitable Bank. However, EquityLine Services and EquityLine LP have breached reporting obligations and concealed the distressed state of Equitable Bank's Security. As a result, Equitable Bank has lost confidence in the Credit Parties.

27. On April 23, 2024, pursuant to the terms of the Title Custodian Acknowledgement Agreement, Equitable Bank delivered to Computershare and EquityLine LP a notice of control (the "**Notice of Control**"). As a result, the Custodian must now follow all instructions and directions of Equitable Bank in respect of the mortgage loans over which it holds legal title, to the exclusion of all other instructions and directions from any person (including the Credit Parties). The Notice of Control is attached to this affidavit and marked as **Exhibit "L"**.

28. On or about April 30, 2024, Equitable Bank retained KSV to perform a review of the Debtor's financials and operations, and the Debtor signed for acceptance of the engagement on the same date. With cooperation from the Debtor, KSV has since familiarized itself with the Debtor's business and financial position.

29. As a result of the defaults, Equitable Bank arranged for title searches to be performed on the properties where it held registered mortgages. The results of this search indicated to Equitable

Bank that at least nine of the mortgages it believed were being held as security had in fact been discharged or postponed without the proceeds being paid to the loan and without the authorization or knowledge of either Equitable Bank or Computershare. This equates to \$3,098,880 of outstanding debt owed to Equitable Bank that is no longer secured by a property charge. This has also reduced the total collateral value by approximately \$8,229,019.

30. One example of an EquityLine Mortgage being discharged without repayment or authorization is in respect of the property at 128 Ducharme Street. Instrument number CE1138263 was registered on the title to that property on June 13, 2023, discharging Computershare's charge thereon. The related parcel register and discharge of charge are attached hereto as **Exhibit "M"**. The proceeds of the discharge were not applied to the Loan and the lender was not aware that this had occurred.

31. An example of an EquityLine Mortgage being postponed without repayment or authorization is in respect of 69 Fenwood Heights. Instrument number AT6392613 was registered on title on August 8, 2023, postponing Computershare's interest to that of Elle Mortgage Corporation ("**Elle**"). The related parcel register and postponement of interest are attached hereto as **Exhibit "N"**. Again, neither Equitable Bank nor Computershare were aware of this postponement, nor did they authorize that registration.

32. Some of the other properties believed to be affected are summarized below, without limitation:

Property	Instrument Number	Date	Nature of Instrument
2662 Meldrum Road	CE1153661	September 28, 2023	Transfer of Power of Sale from Computershare to third party
9 Mowat Crescent	SC2044056	September 28, 2023	Transfer of Power of Sale from Computershare to third parties
135 Ben Sinclair Avenue	YR3609999	October 19, 2023	Transfer of Charge from Computershare to Elle
1563 Nipissing Court	DR2299653	February 26, 2024	Transfer of Power of Sale from Computershare to third parties
22 Lord Roberts Drive	AT6533326	March 19, 2024	Transfer of Charge from Computershare to EquityLine GP

33. Again, none of the abovementioned instruments were known to or authorized by either of Computershare or Equitable Bank. Furthermore, no repayment was made in respect of any of the affected mortgages.

Defaults and Demands for Payment:

34. The Credit Agreement contains standard Events of Default, including if there is a breach or non-performance or non-observance of any term or condition of the Credit Agreement or the Security.

35. The Facility is a true demand loan, but in any event one or more Events of Default (as defined in the Credit Agreement and/or the Security, as applicable) have occurred.

36. For example, and without limitation, at the end of March, Equitable Bank received notice from Computershare that EquityLine LP had defaulted under the Custodial Agreement, which triggered an Event of Default under the Credit Agreement.

37. Equitable Bank made formal written demand on the Credit Parties for payment of the Debtor's indebtedness to Equitable Bank by letter dated April 23, 2024 (the "**Demands**"), accompanied by a notice of intention to enforce security (the "**BIA Notice**"), which was delivered to the Credit Parties pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"). A copy of the Demand and the BIA Notice are attached hereto and marked as **Exhibit "O"**.

38. As set out in the Demand and the BIA Notice, a total of \$13,617,097.50 (exclusive of legal and financial advisor fees, disbursements and accruing interest) was owing by the Debtor to Equitable Bank under the Credit Agreement as of April 23, 2024 (the "**Indebtedness**"). The Indebtedness continues to accrue interest.

39. Following the issuance of the Demand, the Credit Parties agreed to pay out several of the EquityLine Mortgages. An initial tranche was agreed upon in the amount of \$4,000,000.

Ultimately, EquityLine LP paid out four of the EquityLine Mortgages on May 10, 2024 in the amount of \$3,543,600. Further tranches of repayment were promised, but as of the making of this affidavit, there have been multiple requests for extensions and no additional funds have been received.

40. The Indebtedness is now \$10,073,480 (exclusive of legal and financial advisor fees, disbursements and accruing interest).

41. The Credit Parties are in default of the terms of and their obligations under the Credit Agreement and the Security. The Credit Parties have failed or are unable to (a) repay the Indebtedness in full or (b) enter into any arrangements acceptable to Equitable Bank for the full repayment of the Indebtedness prior to the date of this affidavit.

42. Notwithstanding the issuance of the Demand, Equitable Bank has reserved the right to continue to make advances to the Debtor, at its sole discretion, to ensure the continuation of the Debtor's business operations.

Rationale for the Relief Sought in Appointment Order:

43. The provisions of the Security allow for the appointment of a Receiver over the Property of the Debtor upon default.

44. The appointment of a receiver is necessary and appropriate for the following reasons:

- (a) To review and assess the true status of the mortgages pledged as collateral, and to preserve the value of those mortgages;

- (b) To prevent the abandonment of the collateral by protecting the interests of Computershare in its role as Custodian and by insulating same from further liability in relation to the Credit Parties' improperly conducted enforcement efforts; and
- (c) for the protection of the estate of the Debtor and to realize on the collateral subject to Equitable Bank's security for the benefit of Equitable Bank and all other stakeholders.

45. KSV is qualified to act as receiver and manager, is familiar with the Debtor's business, and has consented to act as receiver if so appointed by the Court.

46. All of which is sworn by me in good faith, and for no improper purpose whatsoever.

SWORN remotely by Brendan Smith, stated as)
 being in the City of Toronto, in the Province of)
 Ontario, before me on May 31, 2024 in accordance)
 with O. Reg. 431/20, Administering Oath or)
 Declaration Remotely.)



_____)
 Commissioner (or as may be))

Calvin Peter Horsten, a
 Commissioner, etc., Province of Ontario,
 while a Student-at-Law.
 Expires June 14, 2025.

DocuSigned by:
 Brendan Smith
 3648A06CCE4F400...
 _____)
BRENDAN SMITH

EQUITABLE BANK
Applicant

- and -

EQUITYLINE SPV LIMITED PARTNERSHIP
Respondent

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

AFFIDAVIT OF BRENDAN SMITH
(sworn May 31, 2024)

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Lawyers for Equitable Bank

TAB 6

CITATION: *Romspen Investment Corporation v. Tung Kee Investment Canada Ltd. et al.*,
2023 ONSC 5911
COURT FILE NO.: CV-23-00703161-00CL
DATE: 20231019

ONTARIO - SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

IN THE MATTER OF SECTION 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

RE: Romspen Investment Corporation, Applicant

AND:

Tung Kee Investment Canada Ltd. and Tung Kee Investment Limited Partnership,
Respondents

BEFORE: Peter J. Osborne J.

COUNSEL: *Davis Preger, Lisa Corne and David Seifer*, for the Applicant

Maya Poliak, for the Respondents

Roger Jaipargas, for Amber Mortgage Inv. Corp.

Vern DaRe, for 2149602 Ontario Inc., Frank Pa and Stephen Tung

Bota McNamara and Amandeep Sidhu, for Sow Capital Ontario Limited

Justin Chan, for DX Strategies

Ian Klaiman, for 2816513 Ontario Inc.

Ken Rosenberg, for Times Group

Chad Kopach, for Proposed Receiver - EY

HEARD: October 6, 2023

ENDORSEMENT

The Receivership Application, the Two Sale Approval Motions and the Positions of the Parties

1. The Applicant, Romspen Investment Corporation (“Romspen”), seeks an order allowing the Application and appointing Ernst & Young Inc. as receiver and manager (the “Receiver”) over the assets and property of the Respondents / Debtors Tung Kee

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: *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 (“*Elleway*”) at para. 27. However, the presence or lack of such a contractual entitlement is not determinative of the issue.

32. The Courts have considered numerous factors which have been historically taken into account in the determination of whether it is appropriate to appoint a receiver and which I have considered in this case:
- a. whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;
 - b. the risk to the security holder taking into consideration the size of the debtor’s equity in the assets and the need for protection or safeguarding of assets while litigation takes place;
 - c. the nature of the property;
 - d. the apprehended or actual waste of the debtor’s assets;
 - e. the preservation and protection of the property pending judicial resolution;
 - f. the balance of convenience to the parties;
 - g. the fact that the creditor has a right to appointment under the loan documentation;
 - h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
 - i. the principle that the appointment of a receiver should be granted cautiously;
 - j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
 - k. the effect of the order upon the parties;
 - l. the conduct of the parties;
 - m. the length of time that a receiver may be in place;
 - n. the cost to the parties;
 - o. the likelihood of maximizing return to the parties; and

p. the goal of facilitating the duties of the receiver.

See: *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186, and *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para. 25, citing *Bennett on Receivership*, 2nd ed. (Toronto, Carswell, 1999).

33. How are these factors to be applied? The British Columbia Supreme Court put it, I think, correctly: “these factors are not a checklist but a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient: *Pandion Mine Finance Fund LP v. Otso Gold Corp.*, 2022 BCSC 136 at para. 54.
34. Accordingly, is it just or convenient to appoint a receiver in the present case. In my view, it is.
35. While certainly not determinative of the issue, the fact that the appointment of a receiver is not opposed by any party, and the somewhat unusual fact that the appointment of the receiver is in fact consented to and indeed supported by the Respondents / Debtors themselves, is very telling.
36. Romspen has a contractual entitlement to the appointment of a receiver in the event of a default, which has clearly occurred here, as is acknowledged by the Respondents. But even more substantively, I am satisfied that a Court-appointed receiver is appropriate here to bring order and transparency to the chaos that has been the hallmark of dealings with the Property for a considerable period of time prior to the bringing of this Application, and continue to date. This chaos is clearly evidenced by the competing motions for sale approval and the strongly held views and acrimony between and among many of the key stakeholders even today.
37. Chaos is usually antithetical to the achievement of the overarching objective of maximizing recovery for stakeholders. I am satisfied that this objective can be achieved, and indeed in the present circumstances can only be achieved, under the supervision of a Court-appointed Receiver. I recognize, naturally, that if either Transaction is approved, the role of the Receiver will necessarily be materially impacted accordingly.
38. The factors relevant to the appointment of a receiver are easily satisfied here. The Romspen loan has been in default for over a year and has not been repaid notwithstanding demands, the section 244 *BIA* notice, and the Romspen notice of sale. The loan matured according to its terms on January 1, 2023. As is evident from the summary above, the Property is highly leveraged with numerous mortgages. Romspen has lost faith in the ability of the Debtors and their management to address the situation, and none of the efforts of the Debtors to refinance the loan or sell the Property have yielded any results.
39. A Court-appointed receiver will ensure that the interests of all of the stakeholders of the Debtors are considered.
40. The proposed Receiver is an appropriate candidate to fulfil this role and is extremely qualified to do so. It has consented to the appointment.

EQUITABLE BANK
Applicant

-and-

EQUITYLINE SPV LIMITED PARTNERSHIP
Respondent

Court File No. CV-24-00721560-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

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Lawyers for the Respondent

RCP-F 4C (September 1, 2020)