

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

**EQUITABLE BANK**

Applicant

- and -

**EQUITYLINE SPV LIMITED PARTNERSHIP**

Respondent

**IN THE MATTER OF AN APPLICATION UNDER 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***

**FACTUM OF THE RECEIVER**

October 14, 2024

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## PART I - NATURE OF THE MOTION

1. Following an application brought by Equitable Bank (“EQB”) on July 30, 2024, and pursuant to an order of the Court (the “**Receivership Order**”) dated August 8, 2024 (the “**Date of Appointment**”), KSV Restructuring Inc. (“KSV”) was appointed as receiver (in such capacities, the “**Receiver**”) of all of the present and future assets, undertakings and real and personal property of EquityLine SPV Limited Partnership (“SPV”) (the “**SPV Property**”), including its beneficial ownership interests in mortgage loans (the “**EquityLine Mortgages**”), pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended (the “**CJA**”), and section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). EQB is owed over \$10 million plus interest and costs, which continue to accrue.
2. Prior to the Receivership Order, EQB discovered through its own independent investigation that at least eight of the mortgages granted by SPV in favour of EQB had been discharged (the “**Discharged Mortgages**”), assigned, or postponed without the proceeds being paid to EQB and without the authorization and knowledge of EQB. Certain proceeds of the Discharged Mortgages were paid to EquityLine Mortgage Investment Corporation (the “**MIC**”), an affiliate of SPV.
3. These discharges, assignments, and postponements were also done without notice to or knowledge of Computershare Trust Company of Canada (“**CTCC**”), which acts as custodian for the EquityLine Mortgages.
4. Since the Date of Appointment, the Receiver has uncovered material deficiencies in SPV’s mortgage portfolio (which overlaps with the MIC as co-investor in the mortgages),

including accelerated interest payments (the “**Debits**”) made to EquityLine Services Corporation (“**Services Co.**”), another affiliate of SPV, unexplained subordinations and postponements, unauthorized diversions of mortgage repayments from SPV to the MIC, defaults in the entire portfolio, lack of management oversight with respect to the portfolio and allegations that several of the mortgages were procured through fraud.

5. To date, the Receiver has yet to receive satisfactory (or, in some instances, any) explanations for these significant concerns. SPV and its affiliated entities, the MIC and Services Co. (collectively, the “**Debtors**”), have not been fully cooperative with the Receiver as required by the Receivership Order.
6. The Receiver’s appointment pursuant to the Receivership Order was limited in scope with respect to SPV. The Receiver was only appointed over the SPV Property.
7. Given the lack of cooperation and the evidence of unauthorized discharges, unexplained subordinations and postponements, unexplained Debits collected by Services Co., and potentially fraudulent activity, the Receiver is requesting an amended and restated Receivership Order (the “**A&R Receivership Order**”) that:
  - (a) expands the scope of the receivership to include all of the property of the MIC and Services Co., the related entities implicated in these irregularities;
  - (b) provides the Receiver with enhanced investigative powers to allow the Receiver to determine the causes of the irregularities and whether there are any sources of recovery available to the Receiver and the stakeholders of each entity; and
  - (c) provides the Receiver with the power to assign the Debtors into bankruptcy.

8. The expansion of the receivership would be just and convenient in the circumstances. The evidence uncovered by the Receiver and irregularities identified, for which no or unsatisfactory explanations have been provided to the Receiver, suggests there has been, and will continue to be, material prejudice to the Debtors' stakeholders, including EQB as secured creditor, as well as unsecured creditors and investors if the A&R Receivership Order is not granted.

## **PART II - THE FACTS**

9. The facts relevant to the relief sought by the Receiver are set out in greater detail in the First Report of the Receiver dated October 2, 2024 (the "**First Report**") and the Supplement to the First Report dated October 11, 2024 (the "**Supplement**") and are summarized below. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the First Report.

### ***The Parties***

10. SPV is a limited partnership formed pursuant to the laws of the Province of Ontario, with its stated registered office in Richmond Hill, Ontario. Its general partner is EquityLine SPV GP Inc. SPV is part of a group of companies known as the "**EquityLine Group**", which operates in the mortgage services sector.<sup>1</sup>

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<sup>1</sup> First Report of the Receiver dated October 2, 2024 ("**First Report**") at section 2.2, Tab 2 of the Motion Record dated October 2, 2024 (the "**Motion Record**").

11. EquityLine Financial Corp. is another entity belonging to the EquityLine Group which acts as mortgage broker for the EquityLine Mortgages.<sup>2</sup>
12. Services Co. is an entity that is part of the EquityLine Group and is affiliated with SPV. Services Co. is responsible for managing and servicing the EquityLine Mortgages and overseeing day-to-day mortgage administration. Services Co. also manages mortgages for the MIC.<sup>3</sup>
13. Terry Walman (“**Walman**”) is an Ontario lawyer retained by Services Co.<sup>4</sup>
14. The MIC is an entity that is part of the EquityLine Group and is affiliated with both SPV and Services Co. The MIC, publicly listed on the Jamaican Stock Exchange, provides residential and commercial real estate loans. The MIC is the sole limited partner of SPV.<sup>5</sup>
15. Sergiy Shchavyelyev (“**Shchavyelyev**”) is the sole director of SPV, as well as the President and Director of the MIC and Services Co.<sup>6</sup>
16. CTCC was a third-party custodian of the EquityLine mortgages. CTCC holds the legal title to the EquityLine Mortgages on behalf of SPV.<sup>7</sup>

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<sup>2</sup> First Report at section 2.1, Tab 2 of the Motion Record.

<sup>3</sup> First Report at section 2.1, Tab 2 of the Motion Record.

<sup>4</sup> First Report at section 3.2.1, Tab 2 of the Motion Record.

<sup>5</sup> First Report at sections 2.1, 2.2, Tab 2 of the Motion Record.

<sup>6</sup> First Report at section 2.1, Tab 2 of the Motion Record.

<sup>7</sup> First Report at section 2.3, Tab 2 of the Motion Record.

### ***The CTCC Agreements***

17. Pursuant to two agreements dated August 5, 2021, a custodial agreement between SPV and CTCC (the “**Custodial Agreement**”) and a title custodian acknowledgement agreement between EQB and CTCC (the “**Title Custodian Acknowledgement Agreement**”), CTCC holds legal title and acts as agent, nominee and bailee for and on behalf of SPV in respect of its mortgages, while SPV retains beneficial interest of those mortgages.<sup>8</sup>

### ***The EQB Credit Agreement***

18. SPV is indebted to EQB in connection with a revolving credit facility made available by EQB to SPV 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**”). EQB funded up to 80% of first mortgages and 50% of second mortgages, with the remaining balance funded by the MIC.<sup>9</sup>
19. EQB is the sole secured creditor of SPV and is the only registrant against SPV under the Ontario *Personal Property Security Act*, R.S.O. 1990, c. P.10 (the “**PPSA**”), including its beneficial ownership interests in the EquityLine Mortgages.<sup>10</sup>
20. The obligations of SPV are secured by, among other things:

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<sup>8</sup> First Report at section 2.3, Tab 2 of the Motion Record.

<sup>9</sup> First Report at sections 2.2, 2.3, Tab 2 of the Motion Record.

<sup>10</sup> First Report at section 2.3, Tab 2 of the Motion Record; Affidavit of Brendan Smith sworn May 31, 2024 at para 12, Appendix “B” to the First Report, Tab 2 of the Motion Record.

- (a) a general security agreement dated August 5, 2021, which grants to EQB, among other things, a security interest in any and all of the property, assets and undertakings of SPV, registration in respect of which was duly made pursuant to the PPSA; and
  - (b) the Custodial Agreement and the Title Custodian Acknowledgement Agreement (collectively, the “**Security**”).<sup>11</sup>
21. SPV’s obligations to EQB pursuant to the Credit Agreement are also guaranteed by Services Co. through an unlimited guarantee agreement dated August 5, 2021.<sup>12</sup>
22. Pursuant to section 48(2) of the PPSA, EQB has made registrations to continue to perfect its security interests in the proceeds relating to the Discharged Mortgages and the Debits. As a result, the security interests granted to EQB now attaches and is perfected against funds relating to the Discharged Mortgages held by the MIC and the Debits held by Services Co.<sup>13</sup>

### ***Defaults and Mortgage Irregularities***

23. There have been numerous defaults by SPV under the Credit Agreement, including, without limitation, a default by SPV under the Custodial Agreement. SPV has been in default under its loan arrangements with EQB since the end of March 2024, or earlier. As

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<sup>11</sup> First Report at section 2.3, Tab 2 of the Motion Record.

<sup>12</sup> First Report at section 2.3, Tab 2 of the Motion Record.

<sup>13</sup> First Report at section 2.3, Tab 2 of the Motion Record.



of the date of the Receivership Order, approximately \$10.1 million was outstanding to EQB.<sup>14</sup>

24. Prior to the Receivership Order, EQB discovered through its own independent investigation that at least eight of the mortgages granted by SPV in favour of EQB had been discharged, assigned, or postponed without the proceeds being paid to EQB and without the authorization and knowledge of EQB.<sup>15</sup>
25. As the mortgages were registered in the name of CTCC, any discharges, assignments, and postponements of the mortgages would require a signature on behalf of CTCC. CTCC has since confirmed that they did not authorize the signing of the discharges, assignments, and postponements.<sup>16</sup>
26. A review of the registered documents indicated that these were signed by clerks at the law office of Walman, which had never been engaged by CTCC. Further, a mortgage company of which Walman was principal was the beneficiary of some of the assignments and postponements.<sup>17</sup>

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<sup>14</sup> First Report at section 2.3, Tab 2 of the Motion Record.

<sup>15</sup> First Report at section 2.2, Tab 2 of the Motion Record.

<sup>16</sup> First Report at section 3.3.4, Tab 2 of the Motion Record.

<sup>17</sup> First Report at section 3.3.4, Tab 2 of the Motion Record.

27. SPV did not inform EQB in real-time that many of Equityline Mortgages were in default. SPV had instead been providing EQB with inaccurate information as to the position of SPV and the status of the Security.<sup>18</sup>
28. As a result of the Receiver retaining Richmond Advisory Services Inc. (“**RAS**”) to inspect various properties subject to the EquityLine Mortgages, EQB and the Receiver are now aware that several of the properties are vacant and/or occupied by squatters and in poor condition. None of this information was disclosed to EQB by SPV.<sup>19</sup> Shchavyelyev has not advised the Receiver if SPV holds a blanket mortgage insurance policy which could potentially cover the vacant and damaged properties.
29. As a result, EQB no longer knows the true value of its Security.
30. Prior to the above discoveries by EQB and CTCC, SPV and the MIC retained Walman and commenced enforcement proceedings to collect on certain defaulted mortgage loans, which proceedings were brought in the name of CTCC without its knowledge or authorization (the “**Litigated Mortgages**”).<sup>20</sup>
31. CTCC has since been named in a number of counterclaims stemming from these unauthorized lawsuits.<sup>21</sup>

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<sup>18</sup> First Report at section 3.2.1, Tab 2 of the Motion Record.

<sup>19</sup> Supplemental to First Report to Court dated October 11, 2024, at section 2.0 (“**Supplement**”).

<sup>20</sup> First Report at section 3.2.1, Tab 2 of the Motion Record.

<sup>21</sup> First Report at sections 3.2.1, 3.2.2, Tab 2 of the Motion Record.

32. As a result, CTCC has exercised its right to end its custodianship and intends to transfer legal title to the Equityline Mortgages to the Receiver, with the result that a significant aspect of EQB's security (*i.e.* the third-party custodianship of the collateral) is now in jeopardy.<sup>22</sup>

***Further Irregularities and Demands by the Receiver and EQB***

33. Immediately following the issuance of the Receivership Order, the Receiver took possession of the SPV Property for the purpose of preserving, protecting and safeguarding the SPV Property in compliance with the Receivership Order.
34. As part of taking possession, the Receiver reviewed the mortgages that comprised SPV's mortgage portfolio. This included the Discharged Mortgages without any corresponding repayment to EQB. It is the Receiver's understanding that certain of the funds from the Discharged Mortgages were paid to the MIC.<sup>23</sup>
35. On August 16, 2024, the Receiver demanded from the MIC a return of the proceeds for the Discharged Mortgages. On September 6, 2024, EQB demanded repayment from the MIC for the funds with respect to the Discharged Mortgages. As of October 10, 2024, approximately \$650,000 has been transferred to the Receiver.<sup>24</sup>

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<sup>22</sup> Receivership Order dated August 8, 2024 at para 4, Appendix "A" to the First Report, Tab 2 of the Motion Record.

<sup>23</sup> First Report at section 3.3.1, Tab 2 of the Motion Record; Affidavit of Sergiy Shchavyelyev sworn July 16, 2024 at para 25, Appendix "E" to the First Report, Tab 2 of the Motion Record.

<sup>24</sup> First Report at section 3.3.3, Tab 2 of the Motion Record.

36. In addition to the review of the Discharged Mortgages, the Receiver uncovered irregularities with respect to the collection of mortgage payments with respect to the SPV mortgage portfolio. Prior to the appointment of the Receiver, Services Co. collected additional accelerated interest payments – the Debits – with respect to SPV’s mortgages. The Receiver has asked for the Debits to be remitted to the Receiver and for an accounting with respect to the Debits to be provided to the Receiver, neither of which has happened.<sup>25</sup>
37. On September 13, 2024, EQB demanded payment of the Debits from Services Co. Such funds have not been repaid.<sup>26</sup>
38. Notices of Intention to Enforce Security pursuant to section 244 of the BIA have been delivered by EQB to both the MIC and Services Co.<sup>27</sup>
39. In addition to the funds relating to the Discharged Mortgages and the Debits, the Receiver notes the following additional irregularities with respect to the SPV mortgages:
- (a) **Unexplained Subordinations and Postponements:** Certain SPV mortgages have been subordinated or postponed to other lenders, including Elle Mortgage Corporation, without any apparent consideration and without the consent of EQB (which was required pursuant to the Credit Agreement). Despite multiple requests

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<sup>25</sup> First Report at section 3.4, Tab 2 of the Motion Record.

<sup>26</sup> First Report at section 3.3.3, Tab 2 of the Motion Record.

<sup>27</sup> First Report at section 3.3.3, Tab 2 of the Motion Record; Letter from EQB’s counsel dated September 6, 2024, Appendix “K” to the First Report, Tab 2 of the Motion Record.

for explanations, the Receiver has not received a satisfactory explanation for the subordination or postponements.<sup>28</sup>

- (b) **Fraudulent Mortgage Allegations:** At least eight of the Litigated Mortgages involve defences, counterclaims, and/or third-party claims against CTCC and other entities alleging fraud, unconscionability, and other legal issues going to the validity of the mortgages. These claims all plead a similar narrative of predatory schemes being exacted against elderly and/or otherwise vulnerable individuals, whereby Notices of Security Interests are registered against homes in exchange for incomplete or poorly done “home improvement work.” Subsequently, the mortgagors were contacted by SPV, which allegedly settled the purported security interests in exchange for high-yield mortgage loans.<sup>29</sup>

40. As discussed above, the Receiver has retained RAS to conduct inspections of certain of the properties subject to the EquityLine Mortgages. Such inspections have revealed that certain of the properties are vacant and/or in poor condition and occupied by squatters.<sup>30</sup>
41. The principals of SPV, including Shchavyelyev, have been evasive and have not provided any response that would explain the discrepancies and irregularities already uncovered by the Receiver.<sup>31</sup>

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<sup>28</sup> First Report at sections 2.2, 3.3.1, 3.3.4, Tab 2 of the Motion Record.

<sup>29</sup> First Report at sections 3.3.2, 3.2.3, Tab 2 of the Motion Record.

<sup>30</sup> Supplement at section 2.0.

<sup>31</sup> First Report at section 3.5, Tab 2 of the Motion Record.

42. On October 10, 2024, an investor in the MIC sent an email to the Receiver outlining significant concerns with the operation of the MIC, including its use of investors' funds and Shchavyelyev's lack of disclosure.<sup>32</sup>

### **PART III - ISSUES**

43. There are four issues to be determined:
- (a) whether it is just and convenient for the Court to appoint KSV as Receiver over all the property of the Debtors;
  - (b) whether the Receiver's authority should be expanded to include all investigative and other rights and remedies that are available to a trustee in bankruptcy under the BIA;
  - (c) whether the Receiver's authority should be expanded to allow the Receiver to assign the Debtor(s) into bankruptcy if the Receiver determines that this would be beneficial to the stakeholders of SPV; and
  - (d) whether the Court should approve the activities of the Receiver.

### **PART IV - LAW & ARGUMENT**

- (a) **THE RECEIVER SHOULD BE APPOINTED OVER ALL THE DEBTORS' PROPERTY**
    - (i) *It is Just and Convenient to Appoint the Receiver Over All of the Debtors' Property*
44. Section 101 of the CJA provides for the appointment of a receiver when "it is just or convenient" to do so:

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<sup>32</sup> Supplemental Report at section 4.0; Email from MIC investor, Appendix "B" to Supplemental Report.

**101 (1)** in the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.<sup>33</sup>

45. The test for the appointment of a receiver is the same under section 243 of the BIA:

**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 [...]<sup>34</sup>

46. In this case, the statutory tests are easily satisfied. It is both just and convenient to appoint the Receiver over the Debtors' property in the circumstances.

47. In deciding whether to appoint a receiver under the CJA, the court must have regard to all the circumstances, but in particular the nature of the property and the rights and interests of all parties in relation thereto.<sup>35</sup>

48. If a strong *prima facie* case of fraud can be established, it will support the appointment of a receiver.<sup>36</sup>

49. Courts have considered the following factors, among others, when determining whether it is just or convenient to appoint a receiver.<sup>37</sup>

(a) whether irreparable harm might be caused if no order is made;

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<sup>33</sup> [R.S.O. 1990, c. C-43](#), as amended, [s 101\(1\)](#).

<sup>34</sup> [R.S.O. 1985, c. B-3](#), as amended, [s 243\(1\)](#).

<sup>35</sup> *Anderson v. Hunking*, [2010 ONSC 4008](#), at [para 15](#) [Anderson], citing *Bank of Nova Scotia v. Freure Village of Clair Creek* (1996), 40 C.B.R. (3d) 274, [1996 CanLII 8258 \(Ont. S.C.J.\)](#).

<sup>36</sup> *Ibid*, Anderson, citing *Loblaw Brands Ltd. v. Thornton* [2009 CanLII 12803 \(ON SC\)](#) at [para 14](#).

<sup>37</sup> *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, [2022 ONSC 6186](#) at [para 25](#).

- (b) the nature of the property;
- (c) the apprehended or actual waste of the debtor's assets;
- (d) the preservation and protection of the property pending judicial resolution;
- (e) the balance of convenience to the parties;
- (f) the principle that the appointment of a receiver should be granted cautiously;
- (g) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
- (h) the effect of the order upon the parties;
- (i) the conduct of the parties;
- (j) the length of time that a receiver may be in place;
- (k) the cost to the parties;
- (l) the likelihood of maximizing return to the parties; and
- (m) the goal of facilitating the duties of the receiver.

50. The appointment is just and convenient because:

- (a) there are serious concerns with respect to unauthorized discharges, postponements and assignments that implicate the MIC and Services Co.;
- (b) there are serious concerns with respect to potentially fraudulent conduct being committed by SPV, the MIC and Services Co.
- (c) the principal of SPV, the MIC and Services Co., Shchavyelyev, has been uncooperative and evasive with the Receiver;



- (d) the stakeholders of SPV, the MIC and Services Co. have been prejudiced and will continue to be prejudiced if the Receiver is not appointed over all of the Debtors' property;
- (e) the public faces potential irreparable harm if the Debtors' business continues in the ordinary course, especially due to potentially fraudulent activity;
- (f) the MIC has had its trading suspended on the Jamaican Stock Exchange and the MIC has publicly indicated that it intends to wind up its business and distribute assets to satisfy investor claims;<sup>38</sup>
- (g) the MIC's auditors, Grant Thornton LLP, have required that the company withdraw its audit report;<sup>39</sup>
- (h) SPV and Services Co. have provided misleading information to EQB regarding the status of the mortgage portfolio, leading EQB to understand that payments were continuing and that none of the mortgages had been classified as defaulted or were subject to enforcement proceedings; and
- (i) the appointment of the Receiver is necessary at this stage to preserve, protect, and ultimately realize on the property subject to the security of EQB.

***(ii) Evidence of Fraud Supports the Appointment of a Receiver***

51. The Supreme Court of Canada in *Hryniak v. Mauldin* set out the test for civil fraud. The test has four elements, which must be proven on a balance of probabilities:

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<sup>38</sup> First Report at section 3.3.3, Tab 2 of the Motion Record.

<sup>39</sup> First Report at section 3.3.3, Tab 2 of the Motion Record.

- (a) a false representation by the defendant;
- (b) some level of knowledge of the falsehood of the representation on the part of the defendant (whether knowledge or recklessness);
- (c) the false representation caused the plaintiff to act; and
- (d) the plaintiff's actions resulted in a loss.<sup>40</sup>

52. The courts have also held that where there is a strong *prima facie* case of fraud, the appointment of a receiver under section 101 of the CJA will be justified.<sup>41</sup>

53. In the case of *Loblaw Brands Ltd. v. Thornton*, the court appointed an investigatory receiver, emphasizing that such an appointment is justified under section 101 of the CJA when there is a strong indication of fraud by the defendant and a significant risk to the plaintiff's right to recovery.<sup>42</sup> Specifically, the court noted that Loblaw had established a strong *prima facie* case of fraud against the defendant. The substantial discrepancy between the amount Loblaw discovered was diverted and the value of the defendant's known assets, combined with the defendant's failure to respond to the proceedings, led the court to conclude that without a receiver, Loblaw's right to recovery would be seriously at risk. Therefore, the balance of convenience strongly supported the appointment of a receiver.<sup>43</sup>

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<sup>40</sup> *Hryniak v. Mauldin*, [2014 SCC 7](#) at [para 87](#) [*Hryniak*].

<sup>41</sup> *Loblaw Brands Ltd. v. Thornton*, [2009 CanLII 12803](#) at [paras 14-17](#).

<sup>42</sup> *Ibid*, at [paras 14-17](#).

<sup>43</sup> *Ibid*, at [para 16](#).

54. In *Westernbank Puerto Rico v. Inyx Canada Inc*, the court appointed a receiver largely on the basis of allegations of fraud, citing the borrower's failure to deposit receipts into a designated account pursuant to the applicable loan agreement and the creation of invoices for loan advances that were never rendered.<sup>44</sup>
55. In *Kady Properties v. Centennial Hotels Ltd.*, a receiver was appointed under section 101 of the CJA based on concerns that had been raised regarding a serious failure on the part of the defendant to account.<sup>45</sup>
56. In *Enlightened Funding Corp. v. Velocity Asset & Credit Corp. et al.*, a limited scope receivership was expanded pursuant to section 101 of the CJA and investigative powers were granted in similar factual circumstances to this case.<sup>46</sup> The expansion was justified based on concerns raised in the receiver's first report to the Court, namely:
- (a) issues of duplicate funding;
  - (b) irregularities in lease documentation;
  - (c) transfer of property post-appointment;
  - (d) misappropriation of lease proceeds to purchase additional assets;
  - (e) non-remittance of payments to customers; and

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<sup>44</sup> [2007 CanLII 36084 \(ON SC\)](#) at [para 18](#).

<sup>45</sup> [1995 CarswellOnt 946 \(Ont. Gen. Div. \[Commercial List\]\)](#) at paras 17-19.

<sup>46</sup> *Enlightened Funding Corp. v. Velocity Asset & Credit Corp. et al.*, [Endorsement of Justice Conway dated December 8, 2023 at paras 6-7](#) [*Velocity Endorsement*].

(f) a failure to maintain proper business records.<sup>47</sup>

57. In *Velocity*, Conway J. held that the expansion was “necessary at this stage to preserve, protect, and ultimately realize on the Property subject to the security of secured creditors.”<sup>48</sup> Conway J. also cited public harm concerns relating to the non-remittance of payments to customers.<sup>49</sup>

58. The facts in this case are similar to those in the jurisprudence referred to above, particularly *Velocity*. SPV has failed to operate in accordance with its obligations under the Credit Agreement and Custodial Agreement. The numerous concerns of the Receiver include but are not limited to:

- (i) Discharged Mortgages without authorization by CTCC and without notice or payment to EQB despite its security interests;
- (ii) unexplained assignments and postponements of certain of the EquityLine Mortgages;
- (iii) unexplained Debits collected by Services Co. and not paid to EQB;
- (iv) claims regarding the Litigated Mortgages being brought in CTCC’s name without CTCC’s authorization;
- (v) several counterclaims among the Litigated Mortgages alleging fraudulent and predatory schemes exacted against members of the public;

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<sup>47</sup> *Velocity* Endorsment, *supra* note 46 at [para 3](#).

<sup>48</sup> *Ibid*, at [para 6](#).

<sup>49</sup> *Ibid*, at [para 6](#).

- (vi) refusals by the Debtors to remit payments to the Receiver and/or EQB despite demands; and
- (vii) the Debtors' lack of cooperation with the Receiver.

59. There is a strong *prima facie* case for fraud based on the test for civil fraud set out in *Hryniak* in this case. First, SPV knowingly concealed from EQB information regarding the EquityLine Mortgages in default. SPV provided EQB with inaccurate information as to the position of EQB and the status of the Security. EQB was never informed that certain of the properties were vacant and/or in poor condition and occupied by squatters. EQB relied upon these representations, no longer knows the true value of its security, and has suffered material harm. EQB is owed, at minimum, \$10.1 million and does not know if it will be repaid.
60. The Discharged Mortgages, assignments, and postponements were conducted without the authorization or knowledge of CTCC, despite such authorization being required. Services Co., operated by the same principal, Shchavyelyev, instead retained Walman to execute these discharges and initiate claims in the name of CTCC. CTCC, being materially prejudiced, transferred out title and terminated its custodianship over the EquityLine Mortgages. As a result, a significant aspect of EQB's security (*i.e.* the third-party custodianship of the collateral) is now in jeopardy.
61. Due to these issues, the Debtors' stakeholders are likely to suffer significant and irreparable harm if the A&R Receivership Order is not granted.

62. EQB shares the concerns of the Receiver and supports the relief sought in the A&R Receivership Order. The Receiver understands that certain investors in the MIC also support the relief being sought.

63. Accordingly, the Receiver respectfully submits that in the circumstances, it is just and convenient for this Court to expand the Receivership over all of the Debtors' property.

**(b) THE RECEIVER SHOULD BE GRANTED INVESTIGATIVE POWERS**

64. The Receiver's proposed form of A&R Receivership Order differs from the Receivership Order and the Commercial List's model order in empowering the Receiver to assign the Debtors into bankruptcy as well as authorizing the Receiver to exercise all available investigative and other rights and remedies that are available to a trustee in bankruptcy under BIA.

65. This relief is not extraordinary and has been commonly granted by this Court in other matters. In *RBC v Gustin*, the Ontario Superior Court confirmed that this Court has the authority to empower a Receiver to file an assignment in bankruptcy on behalf of a debtor company.<sup>50</sup>

66. In *Bank of Montreal v Owen Sound Golf and Country Club*, Justice Brown stated as follows:

It is well settled that a court possesses the power to authorize a receiver to file an assignment in bankruptcy or consent to a bankruptcy order.<sup>51</sup>

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<sup>50</sup> *RBC v Gustin*, [2019 ONSC 5370](#) at [para 15](#) [*Gustin*].

<sup>51</sup> *Bank of Montreal v Owen Sound Golf and Country Club*, [2012 ONSC 557](#) at [para 7](#).

67. In granting such authority to receivers, the Court should consider the specific facts of the case to understand whether bankruptcy might be a preferable condition.<sup>52</sup> The Court has granted such authority for the purpose of permitting the receiver to avail itself of the enhanced investigative powers available to a trustee where there is a lack of cooperation by the debtor.<sup>53</sup>
68. As described above, investigative powers were also granted to the receiver in *Velocity* due to concerns about misappropriation and diversion of property, potential fraud, and harm to the public.<sup>54</sup>
69. The Court has further held that it is not necessary for the receiver to exhaust its remedies under other legislation before resorting to a bankruptcy assignment as such steps could prove to be needlessly inefficient and expensive.<sup>55</sup>
70. It is appropriate for the Court to grant the Receiver with the enhanced investigative powers under the BIA because these enhanced powers are necessary where, as is the case here, the Debtors have not provided adequate cooperation to the Receiver. There are significant unexplained concerns about discharges, postponements, and assignments of the EquityLine Mortgages.

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<sup>52</sup> *Royal Bank v Sun Squeeze Juices Inc.*, [1994 CarswellOnt 266, \[1994\] O.J. No. 567 \(Gen. Div. \[Commercial List\]\)](#), aff'd 1994 CarswellOnt 310, 28 C.B.R. (3d) 201 (CA) at para 11.

<sup>53</sup> *Gustin*, *supra* note 50 at [para 8](#).

<sup>54</sup> [Velocity Endorsement](#), *supra* note 46.

<sup>55</sup> *Gustin*, *supra* note 50 at [para 17](#).

71. For example, in one case, a borrower was reportedly victimized by a door-to-door sales scam around December 2021. The borrower is alleging that it was misled into believing that certain falsified “liens” on their home would result in the property being sold unless funds were paid to join a non-existent class action lawsuit. Several visits from the alleged fraudsters allowed them to gather personal information from the borrower and complete a mortgage application without the borrower’s knowledge or consent. Following the deposit of the mortgage proceeds into the borrower’s account, the alleged fraudsters convinced the borrower that these funds were proceeds from the lawsuit, which were to be used for renovations. Ultimately, the borrower alleges that it was induced to pay the entirety of the mortgage funds to the alleged fraudsters in subsequent months.

72. These serious public harm concerns must be addressed and the Receiver requires the statutory investigative powers to obtain the necessary information to fulfill its mandate.

(c) **THE RECEIVER SHOULD BE AUTHORIZED TO ASSIGN THE DEBTORS INTO BANKRUPTCY**

73. It is also appropriate for the Court to authorize the Receiver to assign SPV and/or the Debtors into bankruptcy. The concerns identified herein (and expanded upon in the First Report) could have significant implications on stakeholders. If the Receiver determines it would be beneficial to the stakeholders of SPV and/or the Debtors to assign either into bankruptcy, it should have the power to do so.

74. Accordingly, the Receiver respectfully submits that in the circumstances, it is appropriate for this Court to grant the Receiver the authority to assign the Debtors into bankruptcy and the enhanced investigative powers available to a trustee in bankruptcy under the BIA.



**(d) APPROVAL OF THE RECEIVER'S ACTIVITIES**

75. The First Report sets out the activities the Receiver has undertaken to date. The Receiver seeks approval of the First Report and the activities described therein.
76. This Court has held that there are good policy and practical reasons for approving a court officer's report and the activities described therein, including:
- (a) allowing the court officer to bring its activities before the Court;
  - (b) allowing an opportunity for stakeholders' concerns to be addressed;
  - (c) enabling the Court to satisfy itself that the court officer's activities have been conducted in a prudent and diligent manner;
  - (d) providing additional protection for the court officer; and
  - (e) protecting creditors from delay that may be caused by re-litigation of steps or potential indemnity claims by the court officer.<sup>56</sup>
77. The actions, conduct and activities of the Receiver, as set forth in the First Report, were necessary and undertaken in good faith pursuant to the Receiver's powers and duties under the BIA and the Receivership Order, and were in each case in the best interests of SPV's stakeholders generally.
78. Accordingly, the Receiver respectfully submits the Court should approve the First Report and the activities of the Receiver described therein.

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<sup>56</sup> *Hangfen Evergreen Inc. (Re)*, [2017 ONSC 7161](#) at [paras 15-17](#).

**PART V - RELIEF REQUESTED**

79. For all of the foregoing reasons, the Receiver requests that this Court grant an Order substantially in the form of the draft Approval of Activities Order located at Tab 5 of the Motion Record and the draft Amended and Restated Receivership Order located at Tab 3 of the Motion Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 14 day of October, 2024.



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**Thornton Grout Finnigan LLP**  
Lawyers for the Receiver

**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. *Anderson v. Hunking*, [2010 ONSC 4008](#).
2. *Bank of Nova Scotia v. Freure Village of Clair Creek* (1996), 40 C.B.R. (3d) 274, [1996 CanLII 8258 \(Ont. S.C.J.\)](#).
3. *Loblaw Brands Ltd. v. Thornton* [2009 CanLII 12803 \(Ont. S.C.J.\)](#).
4. *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, [2022 ONSC 6186](#).
5. *Hryniak v Mauldin*, [2014 SCC 7](#).
6. *Westernbank Puerto Rico v. Inyx Canada Inc* [2007 CanLII 36084 \(ON SC\)](#).
7. *Kady Properties v. Centennial Hotels Ltd.* [1995 CarswellOnt 946](#).
8. *RBC v Gustin*, [2019 ONSC 5370](#).
9. *Bank of Montreal v Owen Sound Golf and Country Club*, [2012 ONSC 557](#).
10. *Royal Bank v Sun Squeeze Juices Inc.*, [1994 CarswellOnt 266, \[1994\] O.J. No. 567 \(Gen. Div. \[Commercial List\]\)](#).
11. *Hangfen Evergreen Inc., Re*, [2017 ONSC 7161](#).
12. *Velocity Asset and Credit Corporation, Re*, [Endorsement of Justice Conway dated December 8, 2023](#).

**SCHEDULE “B”  
RELEVANT STATUTES**

*Courts of Justice Act, [R.S.O. 1990 c.C.43.](#)*

**Injunctions and receivers**

**101** (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

**Terms**

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

*Bankruptcy and Insolvency Act, [R.S.C. 1985, c. B-3.](#)*

**Court may appoint receiver**

**243** (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

**IN THE MATTER OF AN APPLICATION UNDER 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***

**EQUITABLE BANK**

and **EQUITYLINE SPV LIMITED PARTNERSHIP**

Applicant

Respondent

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

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

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**FACTUM OF THE RECEIVER**

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