

**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. C.43, AS AMENDED**

SUPPLEMENTAL APPLICATION RECORD OF EQUITABLE BANK

July 25, 2024

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**ONTARIO
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TAB 1

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

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AFFIDAVIT OF JACKSON CHAU
(sworn July 25, 2024)

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

1. I am an Associate Director, Special Loans at Equitable Bank (the “**Bank**”). I have had no personal dealings with Equityline SPV Limited Partnership (“**Equityline**” or the “**Debtor**”) and I was not the account manager in charge of the Debtor’s account prior to its default. I assumed responsibility for the Bank’s loan to this customer after default as the account was transferred to the special loans group of the Bank. Therefore my information and knowledge of the matters herein deposed is based upon information relayed to the Bank from Computershare Trust Company of

Canada (“**Computershare**”) as well as from the books and records of the Bank relating to the Debtor and/or from my review of the documentation attached as exhibits, and I have indicated the source of that information in my Affidavit. All of this information, and the facts hereinafter deposed to, I verily believe to be true and correct.

2. I swear this affidavit in support of the Bank’s application to, among other things, 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 the Debtor and in response to the Affidavit of Sergiy Shchavyelyev sworn July 16, 2024 (the “**Shchavyelyev Affidavit**”).

3. I have reviewed the Affidavit of Brendan Smith sworn May 31, 2024 (the “**Smith Affidavit**”) and filed in the within proceedings. Brendan Smith was the account manager for this matter. I have now taken carriage of this matter on behalf of the Bank. I adopt the contents of the Smith Affidavit as if they were my own and supplement those contents with the additional matters set forth hereafter.

4. I have also reviewed the Affidavit of Stephen Murphy sworn July 25, 2024 (the “**Murphy Affidavit**”).

Status of the Receivership Application

5. The background to the receivership application is described in the Smith Affidavit. Defined terms not otherwise defined herein are as defined in the Smith Affidavit.

6. On June 13, 2024, the Honourable Justice Conway scheduled the hearing of the receivership application to take place on July 29, 2024. In the interim, Equityline has consented to

an interim order staying, among other things, any proceedings brought against or in the name of Computershare in respect of the Equityline mortgages, among other interim relief. A copy of the interim consent order is attached hereto as Exhibit A.

Urgency to Receivership Application

7. The Shchavyelyev Affidavit attributes a high default rate on Equityline's mortgage loans to multiple increases in Bank of Canada interest rates.¹ Although increasing interest rates may result in defaults in any portfolio of loans made to mortgage investment companies ("MICs") like Equityline, it is not common for nearly an entire loan portfolio to be in default, as is the case here. This default rate is both unusual and unacceptable to the Bank as a secured creditor of Equityline.

8. Prior to the initial return of this application, the Debtor had been making payment of the interest on the Facility, which the Bank had accepted without prejudice to its position that the entire loan was due. However, since May 15, 2024, Equityline has failed to make any further payments to Equitable either of principal or interest. The loan balance has therefore been accumulating arrears while the Debtor delays.

9. Further, the appointment of a Receiver is urgently required, given that Computershare has advised Equityline that it no longer wishes to remain custodian of these mortgages. As described in the Smith Affidavit, Computershare provided the Bank with 30 days' notice of its intention to remove itself as custodian, for which the notice period expired on May 23, 2024.² Computershare has agreed to extend this notice period for a short time period, pending the hearing of this application.

¹ Shchavyelyev Affidavit at paras 9-11.

² Smith Affidavit at para 25.

10. Ultimately, Computershare no longer wishes to remain custodian of the Equityline mortgages, which further imperils the Bank's security.

11. I have reviewed the Murphy Affidavit. The Murphy Affidavit states that Computershare either did not consent or was not aware of various steps taken in connection with Equityline's mortgages. In light of this, Equitable Bank believes it is no longer appropriate for Equityline to continue enforcement without the oversight of a court-appointed receiver. A receiver is needed to review and assess the true status of the mortgages pledged as collateral as well as the appropriateness of the enforcement steps taken to date, before further enforcement steps are taken.

12. Considering the facts described in the Smith Affidavit, the Murphy Affidavit, and herein, the Bank has no confidence in Equityline to administer the mortgage portfolio. A receiver is therefore urgently needed to take control of the Equityline mortgage portfolio.

Misallocation of Funds

13. The Shchavyelyev Affidavit at paragraphs 24 and 25 freely admits that three mortgages were discharged without Equitable having been paid the proceeds. The Shchavyelyev Affidavit acknowledges that the total amount due to Equitable Bank in relation to these mortgages is \$725,280, but alleges that the sale proceeds were misallocated due to an error in the accounting department.³

14. The Shchavyelyev Affidavit admits that the funds were paid to Equityline MIC, an entity of which Mr. Shchavyelyev is also the president and CEO, rather than to the Bank.⁴ Despite the

³ Shchavyelyev Affidavit at paras 24-25.

⁴ Shchavyelyev Affidavit at paras 1 and 25.

fact that these funds are held by a related entity, the “accounting error” has not been corrected. Mr. Shchavyelyev offers no explanation as to why these funds have not been repaid to the Bank.

Amounts Outstanding under the Equityline Facility

15. The Shchavyelyev Affidavit mischaracterizes the Smith Affidavit in describing the amount outstanding the Facility. The Shchavyelyev Affidavit states that Brendan Smith had acknowledged by email that the amount owing for Principal and Interest was \$10,310,037.26, which is significantly less than the \$13,617,097.50 figure referenced in the Smith Affidavit.⁵

16. The Shchavyelyev Affidavit has confused the source of these figures. The \$13,617,097.50 amount referenced in the Smith Affidavit is actually the amount set out in the demand and notice sent by Equitable Bank pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act*, which were both dated April 23, 2024.⁶ The Smith Affidavit goes on to clearly state that the indebtedness was \$10,073,480 (exclusive of legal and financial advisor fees, disbursements and accruing interest).⁷

17. All of which is sworn by me in good faith and in support of Equitable Bank’s receivership application, and for no improper purpose whatsoever.

⁵ Shchavyelyev Affidavit at para 4.

⁶ Smith Affidavit at para 38 and Exhibit “O”.

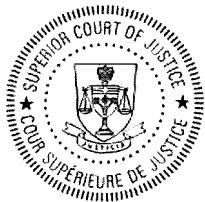
⁷ Smith Affidavit at para 40.

This is Exhibit "A" referred to in the Affidavit of Jackson Chau
Sworn by Jackson Chau located in the City of Toronto in the Province of Ontario
Before me at the City of Toronto, in the Province of Ontario
this 25th day of July, 2024 in accordance with O. Reg. 431/20
Administering Oath or Declaration Remotely



A Commissioner, etc.
Michelle Slipanchuk

**Michelle Slipanchuk, a
Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires May 22, 2027.**



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

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

THE HONOURABLE)
JUSTICE CONWAY)
MONDAY , THE 15th
DAY OF JULY, 2024

BETWEEN:

EQUITABLE BANK

Applicant

- and -

EQUITYLINE SPV LIMITED PARTNERSHIP

Respondent

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ORDER

WHEREAS the parties have agreed to the following interim terms, pending the hearing of an application brought by Equitable Bank to appoint KSV Restructuring Inc. as receiver and manager, without security, of all the assets, properties and undertakings of EquityLine SPV Limited Partnership, returnable July 29, 2024;

AND ON READING the consent of the parties, filed,

NO FURTHER DISCHARGE OR POSTPONEMENTS OF ANY MORTGAGES

1. THIS COURT ORDERS that EquityLine SPV Limited Partnership (the “**Debtor**”) shall not take any step that may impair Equitable Bank’s security over the Debtor’s Property (as defined

below), including, without limitation, by registering or entering into any agreement to discharge, subordinate, or postpone any mortgage that forms part of Equitable Bank's security without the consent of Equitable Bank or further order of the Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

2. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal against or in respect of the Debtor or brought in the name of or against Computershare Trust Company of Canada ("**Computershare**") in respect of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**") (collectively the "**Computershare Proceedings**") shall be commenced or continued except with leave of this Court and any and all Computershare Proceedings, currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO AUTHORITY ON BEHALF OF COMPUTERSHARE

3. THIS COURT ORDERS that the Debtor and any of the Debtor's officers, directors, employees or representatives i) may not sign, or instruct anyone else to sign, any document on behalf of Computershare; and ii) may not otherwise represent themselves as having any authority whatsoever on behalf of Computershare.

4. THIS COURT ORDERS that the Debtor shall forthwith provide to Equitable Bank such other information relevant to the administration of the Debtor's business, including, without limitation, any actions commenced in the name of Computershare, upon request.



EQUITABLE BANK

and

EQUITYLINE SPV LIMITED PARTNERSHIP

Applicant

Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings commenced at TORONTO**

ORDER

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ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceedings commenced at Toronto

AFFIDAVIT OF JACKSON CHAU
(sworn July 25, 2024)

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TAB 2

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SERVICE LIST
(current as of June 5, 2024)

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AND TO:	HIS MAJESTY THE KING IN RIGHT OF CANADA as represented by Ministry of Finance Legal Services Branch Revenue Collections Branch – Insolvency Unit 33 King Street West, 6 th Floor Oshawa, ON L1H 8H5 Email: insolvency.unit@ontario.ca

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