

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

**FIRST SOURCE FINANCIAL MANAGEMENT INC.
and KINGSETT MORTGAGE CORPORATION**

Applicants

- and -

**IDEAL (BC) DEVELOPMENTS INC., IDEAL (BC2) DEVELOPMENTS INC., IDEAL
DEVELOPMENTS INC., 2490564 ONTARIO INC., 2490568 ONTARIO INC. and
SHAJIRAJ NADARAJALINGAM**

Respondents

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

FACTUM OF THE RESPONDENTS

July 17, 2019

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Court File No.: CV-19-00622054-00CL

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FACTUM OF THE RESPONDENTS

PART I – OVERVIEW

1. First Source Financial Management Inc. (“First Source”) and Kingsett Mortgage Corporation (“Kingsett”) (collectively, the “**Lender**”) bring this application for an Order, inter alia, appointing KSV as receiver and manager (the “Receiver”) pursuant to s. 243 of the Bankruptcy and Insolvency Act, R.S.C. 1985, C. B-3, as amended (the “BIA”) and section 101 of the Courts of Justice Act, R.S.O. 1990, c. C. 43, as amended (the “CJA”) without security, of all of the assets, undertakings and properties of the Respondents.

2. It is not just or convenient to appoint a receiver at this time. A court-appointed receiver is not necessary to protect the interests of the Lender. Ideal Developments Inc. has almost completed the development process to site plan approval and has a commitment for replacement financing. A brief reprieve to allow the financing to close will not prejudice the Lender.
3. Pursuant to Rule 13.1.01(3), this is an originating process relating to a mortgage, and must be commenced in the county of Central East, where the property is located.

PART II – FACTS

4. Ideal Group has been developing properties in the Greater Toronto Area for the last nine years. The property in issue is located in Richmond Hill, and is a land assembly of just under 4 acres, on which Ideal intends to redevelop by building 71 townhouse units (the “Property”). The initial proposed development project was expanded when the City of Richmond Hill (the “City”) suggested that Ideal Group purchase additional lands. The amended proposed land use is consistent with the adopted guidelines of the infill study update. The development has moved on at a reasonable pace, with some delays due to infill studies required by the City.¹
5. The site plan application received conditional site plan approval, subject to entering into a site planning agreement with the City and with anticipated draft plan of subdivision for the winter/fall of 2019.²

¹ Affidavit of Shaji Nadarajalingam, sworn July 3, 2019, paras. 3, 5, 6, 7, and 8, Responding Application Record (“Responding Record”), Tab 1

² Affidavit of Shaji Nadarajalingam, sworn July 3, 2019, paras. 10- 14 and Exhibit “C”, Responding Record, Tab 1-C

6. Cushman & Wakefield valued the Property at \$26,400,000.³ No other appraisals by certified appraisers have been filed on this application. A conservative estimate by the representative of the Lender, Daniel Pollack (“Pollack”) who is not an accredited appraiser,⁴ is that the “as is” value of the Property is \$19,000,000,⁵ although he admits he has no document which supports this value, and has refused to produce the appraisal in the Lender’s underwriting file used originally as the basis for the loan. No one on behalf of the Lender has visited the Property to appraise it or view it.⁶

7. The site is vacant land, and the present value would include the approved development and the pre-construction soft costs. A Receiver will not capitalize on the soft costs.⁷

8. If the land is sold by a Receiver, the business undertaking of the Respondents (“**Ideal**”) relating to the land and proposed development will be at an end because the land will no longer be available for Ideal.

9. The Lender has earned fees of \$200,000 in the last seven months, which are over and above the obligations under the Mortgage. In total, fees of \$405,000 have been paid on account of the loan.⁸ Ideal has paid \$2,614,144.92 in interest payments from February 15, 2017 to May 30, 2019.⁹

³ Affidavit of Shaji Nadarajalingam, sworn July 3, 2019, para. 4, Exhibit “A”, Responding Record, Tab 1-A

⁴ Transcript of the Cross Examination of Daniel Pollack on his affidavits sworn June 21, 2019 and July 9, 2019 (“**Cross Examination of Daniel Pollack**”), taken on July 10, 2019, p. 5, Q. 15

⁵ Cross Examination of Daniel Pollack taken on July 10, 2019, p. 25, Q. 103

⁶ Cross Examination of Daniel Pollack taken on July 10, 2019, p. 6, Q. 18 -19

⁷ Affidavit of Shaji Nadarajalingam, sworn July 3, 2019, paras. 15 and 17, Responding Record, Tab 1

⁸ Affidavit of Shaji Nadarajalingam, sworn July 3, 2019, paras. 18 – 20, Responding Record, Tab 1

⁹ Undertakings and Refusals Compendium, Tab 1, Payment History

10. Despite the fact that the Lender was contractually obligated to be reasonable in providing consent to subsequent lenders, the Lender refused to allow refinancing of a subordinate loan unless the subordinate lender agreed that it would not receive any interest payments until the end of the standstill period.

11. Ideal had to consent to Receivership in exchange for allowing the subordinate lender to receive interest payments on its loan. Due to the delay caused by the Lender in obtaining the subordinate financing, Ideal was unable to make timely payments that would have been made to the Lender.¹⁰

12. When the subordinate lender agreed to extend the standstill until August 15, 2019, the Lender still refused to adjourn this receivership application until the expiry of this standstill to allow for Ideal to complete its refinancing and repay the Lender with the proceeds thereof.¹¹

13. Romspen has provided a loan commitment to Ideal which remains open for acceptance. Ideal has paid the commitment fee. The loan, together with other proceeds that will be forthcoming at the end of July and August, will be sufficient to discharge and repay the funds due to the Lender under the loan.¹²

¹⁰ Affidavit of Shaji Nadarajalingam, sworn July 3, 2019, para. 24, Responding Record, Tab 1; Affidavit of Daniel Pollack, sworn June 21, 2019, Exhibit "N", Application Record, Tab 2-N

¹¹ Cross Examination of Daniel Pollack taken on July 10, 2019, pp. 58-59, Q. 246 - 247

¹² Affidavit of Shaji Nadarajalingam, sworn July 3, 2019, paras. 34 – 35, Responding Record, Tab 1

14. The reason that Ideal has not yet signed the commitment is that there are two other potential lenders who may lend an increased amount on better terms. If required, Ideal will sign with Rompsen to refinance the Lender's loan.¹³

15. The Lender admits that the fees in a Receivership will be higher than in a power of sale proceeding. If the land is sold "as is" there is a possibility that the subordinate mortgagees could look to Shaji Nadarajalingam for his personal guarantee of those loans depending on the sale price, the fees charged by the Receiver, the fees of the consultants of the Receiver, and the lawyers' fees for law firms retained by both the Receiver and the secured creditor.¹⁴

16. The Lender did not prepare any budgets with respect to the anticipated costs of the Receiver.¹⁵ The Lender is unaware of what steps the Receiver will take in the Receivership, or how long the Receiver will be in place.¹⁶

17. The Applicant is unaware of any personal property of Ideal.¹⁷

18. The Lender has confirmed that the Property taxes and insurance are current.¹⁸ The lands are vacant, and other than the only default under the Loan which has not been cured, which occurred May 30, 2019, there are no arrears in the payment of any of the carrying costs or liabilities in respect of the Property.¹⁹

¹³ Cross Examination of Shaji Nadarajalingam, taken on July 12, 2019, Q.169

¹⁴ Affidavit of Shaji Nadarajalingam, sworn July 3, 2019, para. 40, Responding Record, Tab 1

¹⁵ Cross Examination of Daniel Pollack taken on July 10, 2019, pp. 8-9, Q. 29 - 33

¹⁶ Cross Examination of Daniel Pollack taken on July 10, 2019, p. 51, Q. 215

¹⁷ Cross Examination of Daniel Pollack taken on July 10, 2019, pp. 9-10, 13, and 15, Q. 38, 52 and 59

¹⁸ Cross Examination of Daniel Pollack taken on July 10, 2019, p. 16, Q. 64 -66

¹⁹ Affidavit of Shaji Nadarajalingam, sworn July 3, 2019, para. 16, Responding Record, Tab 1

19. The Lender refuses to answer if they anticipate that the Receiver will bring in any assets beside the sale of vacant land.²⁰

20. Pollack swore in his affidavit that KSV consented to act as a Receiver to conduct a sale of the Property. However, on cross examination, he first suggested that there was no discussion about a sale, and then suggested that the decision had not yet been made.²¹

21. On Pollack's cross examination, there were 11 refusals, and 6 under advisements. At the time of drafting of this factum, the Lender had refused to provide any information related to its reasoning and analysis for appointing a Receiver or the anticipated expenses of a Receivership.

On the cross examination, the representative of the Lender refused the following questions:

- a. To provide the Home Trust Appraisal from 2017 (when the loan was advanced);
- b. To advise what analysis Kingsett undertook to decide to proceed with the Receivership rather than any other remedy under the security;
- c. To advise if there was any internal discussion at KingSett in terms of whether a Receiver should be appointed with respect to this default;
- d. To advise what assets they anticipate that a Receiver-manager will be able to bring in beside the sale of the vacant land;
- e. To advise what the anticipated legal costs of the Receivership are;
- f. To advise what the budgetary considerations were given to power of sale proceedings as opposed to a Receivership application;
- g. To advise if KingSett considered the costs of proceeding with a power of sale as opposed to a Receivership application;

²⁰ Cross Examination of Daniel Pollack taken on July 10, 2019, p. 18, Q. 76

²¹ Cross Examination of Daniel Pollack taken on July 10, 2019, pp. 27 and 30-31, Q. 114, 124 - 130

- h. To advise what value they believe will be realized by selling the property as vacant land;
- i. To provide a copy of the analysis conducted of the value of the land;
- j. To provide a copy of the emails exchanged with the proposed Receiver; and
- k. To provide a copy of the Home Trust underwriting file.²²

22. The default upon which the Lender relies occurred on May 30, 2019 when the loan was not paid on maturity and no new extension agreement was negotiated.²³ Prior to that, all payments were made and defaults remedied, such that when the mortgage matured, no outstanding amounts were owed other than the principal amount. Despite this, First Source and Kingsett served a notice under the BIA on the second business day after the maturity date, being June 3, 2019.²⁴

23. The Lender claims in his affidavit that there were repeated requests to make timely payments and on his cross examination, Mr. Pollack stated that 4 cheques were returned for insufficient funds.²⁵ When the Lender provided the Payment History by way of undertaking, it shows that there was only one payment reversal throughout the course of the mortgage loan.²⁶ There was only one written request for timely payment.²⁷

²² Cross Examination of Daniel Pollack taken on July 10, 2019

²³ Cross Examination of Daniel Pollack taken on July 10, 2019, p. 39, Q. 164

²⁴ Affidavit of Daniel Pollack, sworn June 21, 2019, Exhibit "R", Application Record, Tab 2-R

²⁵ Cross Examination of Daniel Pollack taken on July 10, 2019, p. 41, Q. 173

²⁶ Undertakings and Refusals Compendium, Tab 1, Payment History

²⁷ Cross Examination of Daniel Pollack taken on July 10, 2019, p. 54, Q. 228

24. The only prejudice that the Lender could point to if the Receivership was postponed for 60 days is that the loan continues to drag.²⁸
25. If the property obtained site plan approval that would significantly increase the value of the land.²⁹
26. The applicant has no evidence that there is any diminution in the value of the land or that the respondent is doing anything to reduce the value of the land or that the sale price would be less than the current amount owed pursuant to the loan.³⁰
27. Appointing a Receiver will be more expensive than a power of sale proceeding.³¹
28. The other stakeholders and investors oppose a Receivership and want the property to be developed by Ideal.³²

²⁸ Cross Examination of Daniel Pollack taken on July 10, 2019, pp. 44-45, Q. 188

²⁹ Cross Examination of Daniel Pollack taken on July 10, 2019, pp. 49-50, Q. 211

³⁰ Cross Examination of Daniel Pollack taken on July 10, 2019, pp. 50 and 53, Q. 212 and 223

³¹ Cross Examination of Daniel Pollack taken on July 10, 2019, pp. 52-53, Q. 220

³² Affidavit of Shaji Nadarajalingam, sworn July 3, 2019, para. 40, Responding Record, Tab 1

PART III – ISSUES AND THE LAW

- Issue 1: Is the application brought in the appropriate venue or should it be brought in the county where the Property is located?
- Issue 2: Should the court appoint a Receiver over the assets and property of the respondents?
- Issue 3: Should the court render judgment in favour of the Applicants on the personal Guarantee?

Issue 1: Is the application brought in the appropriate venue or should it be brought in the county where the Property is located?

28. All actions subject to Rule 13.1.01(3) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg.194, as amended, must be brought in the region in which the Property is located. The Rule states as follows:

In the case of an originating process, whether it is brought under Rule 64 (Mortgage Actions) or otherwise, that contains a claim relating to a mortgage, including a claim for payment of a mortgage debt or for possession of a mortgaged property, the proceeding shall be commenced in the country that the regional senior judge of a region in which the property is located, in whole or in part, designates within that region for such claims.

29. As it is apparent that the application, which is an originating process, contains claims relating to a mortgage, the claim is subject to the requirements of Rule 13.1.01(1) and (3). The property in question is located in Richmond Hill Ontario, which is within the Central East Region of the Ontario Superior Court. Pursuant to the Consolidated Practice Directions, Barrie or Oshawa have been designated as the locations where mortgage

proceedings may be commenced for property located anywhere in the Central East Region.³³

30. The application was improperly commenced in Toronto. Where a proceeding is commenced in a location contrary to Rule 13.1.01, Rule 13.1.02(1) authorizes the court to transfer the proceeding to the county where it should have been commenced. Rule 13.1.02(1) provides:

If subrule 13.1.01 (1) applies to a proceeding but a plaintiff or applicant commences it in another place, the court may, on its own initiative or on any party's motion, order that the proceeding be transferred to the county where it should have been commenced.

Issue 2: Should the court appoint a Receiver over the assets and property of the respondents?

31. If the court exercises its discretion not to transfer the proceeding to Central East, the issue on this application is whether KSV should be appointed as Receiver.

32. Sections 243 of the BIA and 101 of the CJA govern the appointment of a Receiver and permit the court to appoint a Receiver and manager where it is just or convenient to do so.

33. When determining whether the appointment of a Receiver is just or convenient, the Court should take all the circumstances of the case into account, including:

- a. The nature of the property over which the Receiver is to be appointed;

³³ *1806700 Ontario Inc. v. Khan*, 2018 ONSC 6364, 2018 CarswellOnt 18066, paras. 85 – 91, Respondent's Book of Authorities ("Respondent's BOA"), Tab 1

- b. The rights and interests of all parties in relation to the property over which the Receiver is to be appointed; and
- c. Whether the secured creditor has a right under its security to appoint a Receiver privately.³⁴

34. The appointment of a Receiver is particularly intrusive. It is therefore relief that should only be granted sparingly. The law is clear that in the exercise of its discretion, the court should consider the effect of such an order on the parties. As well, since it is an equitable remedy, the conduct of the parties is a relevant factor.³⁵

35. The analysis of whether the appointment of a Receiver is just or convenient requires the Court to determine whether the appointment is in the interests of all stakeholders. In making that determination, the Court should take the following factors into account:

- a. The potential costs of the Receiver;
 - b. The relationship between the debtor and the creditors;
 - c. The likelihood of preserving and maximizing the return of the subject property;
- and
- d. The best way of facilitating the work and duties of the Receiver.³⁶

³⁴ *Callidus Capital Corp. v. Carcap Inc.*, 2012 ONSC 163, 84 CBR (5th) 300, at para. 41, Respondent's BOA, Tab 2

³⁵ *Royal Bank of Canada v. Chongsim Investments Ltd.* ("*Chongsim*"), 1997 CarswellOnt 988, at para. 18, Respondent's BOA, Tab 3

³⁶ *Bank of Nova Scotia v. Freure Village on Clair Creek*, [1996] O.J. No. 5808 (Gen. Div.), at paras. 10 – 12, Respondent's BOA, Tab 4; *Canadian Tire Corp. v. Healy*, 2011 ONSC 4616, [2011] O.J. No. 3498 (S.C.J. [Commercial List]), at para. 18, Respondent's BOA, Tab 5; *Bank of Montreal v. Carnival National Leasing Limited and Carnival Automobiles Limited*, 2011 ONSC 1007 (S.C.J.) [Commercial List], [2011] O.J. No. 671, at para. 27, Respondent's BOA, Tab 6; *Anderson v. Hunking*, 2010 ONSC 4008, [2010] O.J. No. 3042 (S.C.J.) at para. 15, Respondent's BOA, Tab 7.

36. Further, Courts should also take the following factors into account in determining whether the appointment of a Receiver is just or convenient in the circumstances:

- a. Whether irreparable harm might be caused if no appointment is made;
- b. The risk to the security holder, taking into account the size of the debtor's equity in the assets and the need to protect the assets during the course of litigation;
- c. The nature of the property and the potential or actual waste of the debtor's assets;
- d. Whether the applicable security agreement grants the secured creditor the right to appoint a Receiver;
- e. The likelihood of maximizing the return to the parties if a Receiver is appointed;
- f. The balance of convenience to the parties; and
- g. Whether a court appointment is necessary to enable the Receiver to carry out its duties more efficiently.³⁷

37. In *M & K Construction Ltd. v. Kingdom Covenant International*, Justice McEwen held it was not just and convenient to appoint a Receiver in circumstances where appointing a Receiver would put an end to the Respondent's rights to continue their business, where the property was not a diminishing asset and the value of the property exceeded the outstanding indebtedness, the appointment of the Receiver would add significant expenses and there was no urgency to have the land sold, and there were no other creditors.³⁸

38. In *Canadian Imperial Bank of Commerce v. John Taylor's Truck Sales Ltd.*, Justice Ground held that where there was no urgency and the costs of a Receiver would be

³⁷ Houlden, Lloyd W., Morawetz, Geoffrey B., and Sarra, Janis P., "The 2019 Annotated Bankruptcy and Insolvency Act" (Toronto: Carswell 2019) pp. 1136-1137, Respondent's BOA, Tab 8

³⁸ *M & K Construction Ltd. v. Kingdom Covenant International*, 2015 CarswellOnt 5609, Respondent's BOA, Tab 9

expensive, where there was no function for the Receiver other than the sale of the property, which would adversely affect the debtor's entitlement to redeem the property, and where the replacement financing would clearly result in sufficient proceeds to pay off the mortgage, a Receivership was not just and convenient.³⁹

39. In *Royal Bank of Canada v. Chongsim Investments Ltd.*, where the appointment of a Receiver would have a serious and potentially permanent adverse effect on the business, where a sale would most certainly result in a lower price and where there will be substantial Receivership fees, a Receiver was not appointed.⁴⁰

40. The above-noted factors weigh in favour of Ideal, and therefore Ideal submits that the Court should not exercise its jurisdiction to appoint a Receiver for the following reasons;

- a. The sole purpose of the receivership is to sell the Property as is; there is no other function for the Receiver. No development process will be continued which would enhance value and result in higher amounts being paid for the land;
- b. The Lender has provided no evidence as to the costs of the Receiver;
- c. The Lender acted to Ideal's detriment by refusing to negotiate reasonably on the refinancing of the subordinate loan;

³⁹ *Canadian Imperial Bank of Commerce v. John Taylor's Truck Sales Ltd.*, 2003 CarswellOnt 1419, Respondent's BOA, Tab 10

⁴⁰ *Chongsim*, Respondent's BOA, Tab 3

- d. As the land is vacant land there is absolutely no personal property over which the Receiver needs to exercise control;
- e. There is no evidence that the value of the security is diminished or is being wasted in any way by Ideal;
- f. To the contrary, Ideal has invested significant capital in the development process and has completed most of the steps required for site plan approval which is imminent;
- g. A Receivership will put an end to Ideal's business;
- h. Other than the Loan, Ideal continues to meet all of its liabilities as they become due;
- i. The other stakeholders and investors are in favour of Ideal having some time to complete refinancing of the Loan and to continue with the development;
- j. The second mortgagee, Feature Corp., has agreed to standstill until at least August 15, 2019;
- k. Replacement financing is in place to pay the Loan. Ideal has a signed commitment for \$13,000,000 and sufficient other anticipated revenue to complete refinancing by the end of August;
- l. The default occurred less than two months ago;

- m. A Receiver is not necessary to protect the interests of the stakeholders because there is no ongoing construction at the Property;
- n. Ideal has now completed all of the development work;
- o. There are no pre-construction agreements of purchase and sale at this time given the status of the development process, so there is no requirement for the court to weigh in on any conflict of interest between the purchasers and Ideal and the Lender;
- p. There is no urgency because the only independent appraisal is for \$26,400,000, and even on the Lender's own estimates of \$19,000,000, the Lender is well protected;
- q. There is no urgency; and
- r. The appointment of the Receiver would add unnecessary expense. Receivership fees and costs associated with a Receivership would diminish the funds available for subsequent mortgagees after a sale, thereby exposing the guarantor to be called on his guarantee.

41. Therefore, given there is no prejudice to the Lender in waiting for a short period of time for the refinancing to be completed and funded, the balance of convenience favours both Respondents.

Issue 3: Should the court render judgment in favour of the Applicants on the personal Guarantee?

42. The guarantor disputes the amount of the indebtedness. The application does not contain sufficient evidence to satisfy the burden of proof for the amounts claimed. The guarantor has not received the accounting that was requested despite repeated requests.

43. A trial of an issue is required to ascertain whether the amounts being claimed under the guarantee are correct. Absent an accounting and formal proof of a shortfall, the court should not grant judgment on the guarantee.

PART IV – ORDER REQUESTED

44. For all of the foregoing reasons, the Respondent requests:

- a. A transfer of the proceedings to the Central East Region;
- b. In the alternative, the Dismissal of the Applicant's application, with costs to the Respondents;
- c. In the further alternative, a delay in the appointment of a Receiver until September 1, 2019, to allow the Respondent an opportunity to complete replacement financing.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of July, 2019



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SCHEDULE “A” – AUTHORITIES TO BE CITED

| TAB | DESCRIPTION |
|------------|---|
| 1. | <i>1806700 Ontario Inc. v. Kham</i> , 2018 ONSC 6364, 2018 CarswellOnt 18066 |
| 2. | <i>Callidus Capital Corp. v. Carcap Inc.</i> , 2012 ONSC 163, 84 CBR (5 th) 300 |
| 3. | <i>Royal Bank of Canada v. Chongsim Investment Ltd.</i> , 1997 CarswellOnt 988 |
| 4. | <i>Bank of Nova Scotia v. Freure Village on Clair Creek</i> , [1996] O.J. no. 5808 (Gen. Div.) |
| 5. | <i>Canadian Tire Corp. v. Healy</i> , 2011 ONSC 4616, [2011] O.J. No. 3498 (S.C.J.) [Commercial List] |
| 6. | <i>Bank of Montreal v. Carnival National Leasing Limited and Carnival Automobiles Limited</i> , 2011 ONSC 1007 (S.C.J. [Commercial List], [2011] O.J. No. 671 |
| 7. | <i>Anderson v. Hunking</i> , 2010 ONSC 4008, [2010] O.J. No. 3042 (S.C.J.) |
| 8. | Houlden, Lloyd W., Morawetz, Geoffrey B., and Sarra, Janis P., “The 2019 Annotated Bankruptcy and Insolvency Act” (Toronto: Carswell 2019) |
| 9. | <i>M & K Construction Ltd. v. Kingdom Covenant International</i> , 2015 CarswellOnt 5609 |
| 10. | <i>Canadian Imperial Bank of Commerce v. John Taylor’s Truck Sales Ltd.</i> , 2003 CarswellOnt 1419 |

SCHEDULE "B"**RELEVANT LEGISLATIVE PROVISIONS****Courts of Justice Act, R.S.O. 1990, c. C.43**

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.

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

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.

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

13.1.01 (1) If a statute or rule requires a proceeding to be commenced, brought, tried or heard in a particular county, the proceeding shall be commenced at a court office in that county and the county shall be named in the originating process.

Choice of Place

(2) If subrule (1) does not apply, the proceeding may be commenced at any court office in any county named in the originating process.

Mortgage Claims

(3) In the case of an originating process, whether it is brought under Rule 64 (Mortgage Actions) or otherwise, that contains a claim relating to a mortgage, including a claim for payment of a mortgage debt or for possession of a mortgaged property, the proceeding shall be commenced in the county that the regional senior judge of a region in which the property is located, in whole or in part, designates within that region for such claims.

**FIRST SOURCE FINANCIAL
MANAGEMENT INC. et al.**
Applicants

- and -

**IDEAL (BC) DEVELOPMENTS INC., et
al.**
Respondents

Court File No.: CV-19-00622054-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

FACTUM OF THE RESPONDENTS

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