

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

TWO SHORES CAPITAL CORP.

Applicant

-and-

**PRODUCTIVITY MEDIA INC., PRODUCTIVITY MEDIA INCOME FUND I LP
and PRODUCTIVITY MEDIA LENDING CORP. I**

Respondents

**APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985,
c. B-3, and section 101 of the *Courts of Justice Act*, R.S.O 1990, c. C.43**

FACTUM OF THE RECEIVER

(Motion Returnable April 16, 2025)

Date: April 14, 2025

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**Lawyers for KSV Restructuring Inc. in its
capacity as Receiver**

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FACTUM

PART I – OVERVIEW

1. This Factum is filed by KSV Restructuring Inc. (“**KSV**”), in its capacity as court-appointed receiver and manager (the “**Receiver**”) of the property, assets and undertakings of Productivity Media Inc. (“**PMI**”), Productivity Media Fund I LP (“**PMIF**”) and Productivity Media Lending Corp. (“**PMLC**” and together with PMI and PMIF, the “**Debtors**”) in support of the Receiver’s motion for an order appointing KSV as receiver and manager over the current and future property, assets and undertakings of 8397830 Canada Inc. (“**839 Canada**”) as an additional Debtor in these proceedings, and increasing the Receiver’s borrowing authority and the Receiver’s Borrowings Charge from \$750,000 to \$2,500,000.
2. Sonja Santor, the widow, and executrix of the estate of William Santor (“**Santor**”) has consented to the relief sought by the Receiver herein.

Consent of Sonja Santor dated April 4, 2025, filed.

PART II - FACTS

1. The Debtors were in the business of providing senior secured debt financing for independent film and television productions in Canada, the United States, the United Kingdom, the Cayman Islands and other locations around the world. PMI is the parent corporation of PMLC and the general partner of PMIF, a limited partnership.

Affidavit of Andrew Chang-Sang, affirmed November 20, 2024 (“**ACS Affidavit**”), paragraphs 2 to 9, Motion Record tab 4, page 225 *et seq.*

2. PMIF’s business model principally consisted of: (i) film and television production financing (the “**Production Loans**”); and (ii) loans to global sales agents and distribution companies to enable them to provide minimum guarantees to production companies for future distribution income generated by media productions being distributed by the sales agent (“**MG Loans**”). The Debtors raised approximately CAD \$223 million from investors to fund Production Loans and MG Loans as of July 2024.

ACS Affidavit paragraphs 21-22, Motion Record tab 4, page 229

3. In August of 2024, the Debtors received an email from one of their largest investor representatives, Westfield Partners Ltd. (“**Westfield**”), that included information in an email from an anonymous whistleblower that alleged that:

- (a) PMIF’s portfolio may include over USD\$100 million in loans in respect of fraudulent movie productions;
- (b) the legitimate productions in PMIF’s portfolio are significantly overvalued;
- (c) Santor, the Chief Executive Officer and 50% shareholder of PMI, had been diverting the limited receipts from productions by instructing distributors to send funds to an account that he controlled; and
- (d) that PMIF had only been able to pass a recent audit by using email addresses with similar names to real production and distribution companies, creating close to but not exact email addresses and using forged signatures on audit confirmations,

(collectively, the “**Whistleblower Letter**”).

ACS Affidavit paragraph 69, Motion Record tab 4, page 239

4. The Whistleblower Letter and the Debtors’ internal investigation conducted with the support of PricewaterhouseCoopers LLP, resulted in an application by Two Shores Capital Corp. (“**Two Shores**”), a secured lender to the Debtors, and unopposed by the Debtors, for the appointment of a receiver over the Debtors. On November 19, 2024, this Honourable Court made the Receivership Order appointing KSV as Receiver of the Debtors pursuant to section 243(1) of the BIA and section 101 of the CJA.

Second Report of the Receiver dated April 4, 2025 (“**Second Report**”), section 1.0.1, Motion Record, tab 3, page 25, and Appendix “A” thereto, page 33

5. On December 2, 2024, on application of the Receiver in Court File No. CV-24-00731806-00CL (the “**Mareva Proceedings**”), this Honourable Court granted the Mareva injunction and Norwich orders sought by the Receiver in respect of several parties, including, but not limited to, Santor and 839 Canada on an interim basis to December 12, 2024 (the “**Mareva Order**”). The Mareva Order had been continued on four occasions since December 12, 2024 and on March 24, 2025 was continued until further order of the Court. The Mareva Order prevents the dissipation of assets of 839 Canada but it does not provide the Receiver with the ability to deal with or realize on the assets of 839 Canada for the benefit of the stakeholders of the Debtors or 839 Canada.

Affidavit of Sophie Hession affirmed April 3, 2025 (“**Hession April 3 Affidavit**”), paragraph 3 and Exhibit B, Motion Record tab 5, pages 261 and 278 *et seq.*

6. On or about December 28, 2024, Santor died in the Cayman Islands.

Second Report, section 1.0.4, Motion Record tab 3, page 26

7. 839 Canada became one of the principal companies utilized by Santor to undertake certain fraudulent activities comprised in the Whistleblower Letter. After August 2016, and at all relevant times, Santor was the sole director and officer of 839 Canada.

Affidavit of Krista Mooney affirmed November 20, 2024 (“**Mooney Affidavit**”), paragraph 17, Motion Record tab 4, page 94

8. In or about 2016 Santor represented to PMIF that a certain film distribution company already known to PMIF, Joker Films Production Inc. (“**Joker**”), was seeking an MG Loan funding facility to allow Joker to provide minimum guarantees to film production companies for future distribution deals. The MG Loan advances were supposed to be deposited into an account controlled by PMIF and available to Joker on request.

Mooney Affidavit paragraphs 48 *et seq.*, Motion Record tab 4, page 99

9. However, 839 Canada doing business under a name very similar to “Joker Films”, namely Joker Media (839 Canada in such capacity, the “**Imposter**”) received MG Loans which were then used by Santor or 839 Canada for Santor’s benefit. Some of the funds were used by 839 Canada to acquire interests in other businesses, including in the film production industry, some of which continue to have active business operations. Many of these businesses have co-investors with Santor and 839 Canada.

Second Report sections 3.0.4 and 3.1.3, Motion Record tab 3, pages 25, 26

10. On or about March 24, 2016, PMIF and 839 Canada entered into a secured demand grid promissory note (the “**Grid P Note**”) in respect of the funds advanced to 839 Canada by PMIF. 839 Canada also granted to PMIF a security interest in all its present and after-acquired personal property by general security agreement dated on or about March 24, 2016 (the “**GSA**”). 839 Canada is currently indebted to PMIF in the principal amounts of USD\$5,640,000 and CAD\$2,259,452 plus interest and costs continuing to accrue (the “**Indebtedness**”).

Second Report, sections 3.0.6-3.0.8 and Appendices C and D, Motion Record tab 3, page 29

11. On March 24, 2025, the Receiver’s counsel sent a demand letter and notice of intention to enforce security in accordance with section 244 of the BIA (the “**BIA Notice**”) to Sonja Santor’s counsel on behalf of 839 Canada in respect of the Indebtedness owing under the Grid P Note for the MG Loans (the “**Demand**”) to counsel to Sonja Santor on behalf of 839 Canada. Since issuing the Demand and BIA Notice, 839 Canada has been unable or

unwilling to pay the Indebtedness, which is due and owing pursuant to the Grid P Note and the MG Loans.

Affidavit of Sophie Hession affirmed April 14, 2025, and Exhibit A thereto, filed.

12. In the context of the Mareva Proceedings, the Receiver also became aware that 839 Canada has interests in several media businesses (the “**Investees**”), certain of which are operating businesses and certain of which have co-investors. The Receiver has been in contact with representatives of most of the Investees which have co-investors to understand their businesses and to consider next steps concerning these investments.

Second Report, section 3.1.1, Motion Record tab 3, page 30

Funding of the Receivership Proceedings

13. The Receivership Order provides the Receiver with the ability to borrow under the Receiver’s Borrowing Charge in the amount of \$750,000. In early December, 2024 Westfield advanced CDN\$750,000 to the Receiver under the Receiver’s Borrowing Charge to fund outstanding professional fees and cost. On or about March 27, 2025, Westfield funded an additional USD\$350,000 to the Receiver in respect of the ongoing costs of the receivership (the “**March Advance**”), including to pay the insurance premium for a valuable property in the Cayman Islands, which was required on an urgent basis.

Second Report, section 4.01-4.0.4, Motion Record tab 3, page 31

14. Westfield funded the March Advance on the basis that the Receiver would seek approval, as soon as possible thereafter, that March Advance would be covered by an increase in the Receiver’s Borrowings Charge. The amounts advanced under the March Advance were requested by the Receiver on an urgent basis to fund the continued cost of administration of these Receivership proceedings and are properly considered receivership borrowings, and in the opinion of the Receiver, should be subject to the Receiver’s Borrowing Charge from the date that such funds were advanced.

Second Report, section 4.01-4.0.4, Motion Record tab 3, page 31

PART III - ISSUES

15. The two issues before the Court are: (i) whether the Court should add 839 Canada as an additional Debtor in these receivership proceedings; and (ii) whether the Court should increase the Receiver's borrowing authority and Receiver's Borrowing's Charge amounts under the Receivership Order from \$750,000 to \$2,500,000.

PART IV – LAW AND ARGUMENT

Adding 839 Canada as an Additional Debtor

16. The law is well established in terms of the factors which have been historically taken into account by the Court when assessing whether or not it is appropriate to appoint a receiver over a debtor company's property, which factors were recently set out by the Honourable Justice Osborne in *Kingsett Mortgage Corp. v. Maplevue Developments Ltd., et al.*¹:
- a. whether irreparable harm might be caused if no order is made, although 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;

¹ *Kingsett Mortgage Corp. v. Maplevue Developments Ltd., et al.*, 2024 ONSC 1983, Book of Authorities tab 1

- 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.
17. The GSA provides for the appointment of a receiver upon default by 839 Canada in its obligations to PMIF. 839 Canada is indebted to PMIF in the principal amount of USD\$5,640,000 and CAD\$2,259,452.
18. PMI raised funds for the Production Loans and the MG Loans (including the fraudulent advances to 839 Canada) through its many investors. Given the fraudulent nature of the Imposter MG Loans and PMIF's transactions with 839 Canada generally, it is just and equitable that the property and assets of 839 Canada should be made available for realization by the Receiver for the benefit of the PMIF investors and other legitimate creditors of the Debtors. The Receiver will be able to deal with 839 Canada's co-investors in a manner to preserve and protect the value of those investments and to realize upon 839 Canada's interest in them.
19. Although the Mareva Order prevents the dissipation of the assets and property of 839 Canada, it does not empower the Receiver to take any positive steps to deal with 839 Canada's assets or to realize on them.

20. The Receiver is of the view that commencing receivership proceedings in respect of 839 Canada will provide the most expedient avenue to realize on 839 Canada's investments (versus tracing monies from PMIF to 839 Canada to assets owned by 839 Canada) and will provide a "person" with whom the Investees can discuss their businesses and how 839 Canada's investments can be monetized in due course.
21. It is just and convenient to appoint a receiver over 839 Canada's property, assets and undertaking in light of 839 Canada's involvement in the Imposter MG Loans and other fraudulent transactions, and Santor knowingly granting the GSA to PMIF over 839 Canada's assets as Imposter.
22. The appointment of a receiver is in the best interests of the Debtors' investors who require the Imposter MG Loans and GSA to be enforced in furtherance of recovery on their PMIF investments.
23. No party is opposed to the appointment of the Receiver over 839. More than ten days have passed since the Demand and BIA Notice were served on Sonja Santor.

Increase in the Receiver's Borrowing Authority and Borrowings Charge

24. The Receiver is seeking an increase in its borrowing authority and the Receiver's Borrowing Charge to \$2,500,000 to fund advances to date and ongoing fees and costs of these proceedings. Approving this increase will reduce the need for future motions solely for the purpose of incremental increases in the amount of the Receiver's borrowing authority and Receiver's Borrowings Charge. The Receiver believes this is prudent given the limited assets and uncertain receipts timetables in these proceedings.
25. Subsection 243(1)(c) of the BIA allows a court to appoint a receiver to, among other things, "take any other action that the court considers advisable."² This provision has been interpreted by courts to give "judges the broadest possible mandate in insolvency

² 243 (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:

....

(c) take any other action that the court considers advisable.

proceedings to enable them to react to any circumstances that may arise in relation to court ordered receivership,” including by authorizing borrowing by receivers³.

26. Paragraph 21 of the Appointment Order provides that the Receivers borrowing authority limit may be increased if so authorized by further Court order.
27. Courts routinely increase receivers’ authorized borrowing limit where the receiver must fund work for the benefit of the Debtors’ estate⁴.

PART V - CONCLUSION

28. For the reasons set forth herein, the Receiver respectfully requests that this Court grant the Receiver’s motion for an order adding 839 Canada as an additional Debtor in these receivership proceedings, and increasing the Receiver’s borrowing authority and Receiver’s Borrowing’s Charge amounts under the Receivership Order from \$750,000 to \$2,500,000.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of April 2025.



DLA Piper (Canada) LLP
Lawyers for the Receiver

³ *KEB Hana Bank as Trustee et al. v. Mizrahi Commercial (The One) LP et al.*, 2023 ONSC 5881 at paras. 51-55., Book of Authorities tab 2

⁴ *Royal Bank of Canada v. 2668144 Ontario Inc. et al.*, 2024 ONSC 1680 at paras. 5-7, Book of Authorities Tab 3

List of Authorities

1. *Kingsett Mortgage Corp. v. Mapleview Developments Ltd., et al.*, 2024 ONSC 1983
2. *KEB Hana Bank as Trustee et al. v. Mizrahi Commercial (The One) LP et al.*, 2023 ONSC 5881
3. *Royal Bank of Canada v. 2668144 Ontario Inc. et al.*, 2024 ONSC 1680

Court File No.: CV-24-00730869-00CL

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PROCEEDINGS COMMENCED AT TORONTO

**Factum of the Receiver
(Motion returnable April 16, 2025)**

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