

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

**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***

**B E T W E E N:**

**ICICI BANK CANADA**

Applicant

- and -

**2338486 ONTARIO LIMITED**

Respondent

**FACTUM OF THE APPLICANT**

April 16, 2025

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## PART I - NATURE OF THE APPLICATION

1. The Applicant, ICICI Bank Canada (the “**Bank**”) seeks an Order under Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the “**CJA**”), as amended, and Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”), appointing Albert Gelman Inc. (“**AGI**”) as the receiver (in such capacity, the “**Receiver**”), without security, of all of the property, assets, and undertakings of 2338486 Ontario Limited (the “**Debtor**”), including but not limited to the real property municipally described as 392 Erb Street West, Waterloo, Ontario and 398 Erb Street West, Waterloo, Ontario (together, the “**Erb Properties**”) (collectively, the “**Property**”).
2. The Bank is the senior secured creditor of the Debtor and is owed approximately \$3 million. The Bank has a security interest over all present and future acquired property of the Debtor granted pursuant to a GSA. The Bank also has a charge in the principal amount of \$2.8 million in respect of the Erb Properties.
3. The Debtor has committed numerous defaults under the Commitment Letter<sup>1</sup> including the failure to: (a) make principal and interest payments when due, (b) pay property taxes on the Erb Properties, (c) maintain adequate property insurance for the Erb Properties, (d) comply with the Debtor’s reporting requirements to the Bank and (e) comply with its obligations under the *Construction Act* by allowing a lien to be registered on title to the Erb Properties. In addition, the Debtor has further encumbered the Property without the written consent of the Bank.

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<sup>1</sup> Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Affidavit of Lionel Meunier affirmed April 14, 2025 (the “**Meunier Affidavit**”).

4. These defaults first started in September 2024. The Bank has been lenient and attempted to work with the Debtor and its financial advisor, CORFinancial Corp. (“**CORFinancial**”) over the past eight months. However, the Debtor failed to provide a signed copy of a forbearance agreement (despite acknowledging it in the Second Default Letter), has not provided the Bank with a repayment plan, and continues to be in default of its monthly payments.
5. Furthermore, the principal of the Debtor has stopped communicating with the Bank. Instead, has dealt with the Bank over the past several months. Recently, CORFinancial registered a security interest under the PPSA and a charge against the Erb Properties without the written consent of the Bank, a further covenant default under the Commitment Letter. CORFinancial also sent a Notice of Sale under the *Mortgages Act* and commenced a power of sale proceeding, also without the written consent of the Bank.
6. Due to these recent events and the continuing events of default, the Bank’s leniency has come to an end. The Bank has lost all confidence in the Debtor, including its willingness or financial capacity to preserve the value of the Bank’s collateral or to pursue a sale or other realization strategy to repay the Indebtedness.
7. The Bank has demanded repayment in full all amounts due and outstanding under the Commitment Letter and issued the applicable section 244 Notice of Intention to Enforce Security (“**NITES**”) to the Debtor. The applicable 10-day notice period lapsed on March 30, 2025.

8. The GSA and the Mortgage provide the Bank with the contractual right to seek the appointment of a receiver upon default of the Debtor. The Bank requires the appointment of the receiver for the following reasons:
- (a) the Bank requires the stay of proceedings to suspend the power of sale proceeding commenced by CORFinancial, to allow the Bank as the senior secured creditor to control the enforcement process;
  - (b) the Erb Properties are currently tenanted. Notwithstanding that the Bank has a general assignment of rents, neither the Debtor nor CORFinancial have provided the Bank with the monthly rent (approximately \$10,000) despite the Bank requesting all rent be deposited with the Bank. A receiver will be able to collect rent and hold it to ensure it is not improperly distributed;
  - (c) the Debtor is in arrears in respect of its insurance premiums on the Erb Properties. Accordingly, the Bank requires a receiver to take possession and control to ensure the Property is properly preserved and safeguarded;
  - (d) the receiver is experienced in the sale of real property, and will draw upon its experience to ensure that the market is fully canvassed, and the best price is obtained for the Erb Properties, thereby maximizing value for all stakeholders; and
  - (e) the receiver, with the assistance of independent legal counsel, will review the loan and security documents of the Bank and CORFinancial to determine the validity and priority of such security to ensure that the distribution of sale proceeds is made to the correct creditors in accordance with priorities at law.

9. The Bank is prepared to finance the costs of the proposed receivership. At this juncture, it is not clear that the Bank will be repaid in full. Accordingly, the Bank submits that it is the fulcrum creditor and must protect its interests. In such circumstances, it is just and convenient to appoint a receiver over the Debtor.

## **PART II - THE FACTS**

### ***The Debtor and Guarantor***

10. The Debtor is a corporation incorporated under Ontario law and is the registered owner of the Erb Properties.<sup>2</sup> The sole director and officer of the Debtor is Kamal Patel. Mr. Patel has provided the Bank with a personal unlimited guarantee of the Indebtedness.<sup>3</sup>
11. The Debtor's primary business activity is the development of the Erb Properties into a six-storey residential building with 73 total residential units and underground parking.<sup>4</sup> However, the Debtor has not materially advanced the development of the Erb Properties and has not obtained site plan approval from the City of Waterloo for the proposed redevelopment of the Erb Properties.<sup>5</sup> The Debtor cannot develop the Erb Properties without such approval.

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<sup>2</sup> Meunier Affidavit, para 12, Tab 2 of the Application Record.

<sup>3</sup> Meunier Affidavit, para 13, Tab 2 of the Application Record.

<sup>4</sup> Meunier Affidavit, para 14, Tab 2 of the Application Record.

<sup>5</sup> Meunier Affidavit, para 20, Tab 2 of the Application Record.

*The Loan Documents, Security and Forbearance*

12. Pursuant to the Commitment Letter, the Bank provided a term loan to the Borrower in the principal amount of \$2.8 million.<sup>6</sup> The Term Loan matures on July 1, 2025. The purpose of the Term Loan was to refinance the Debtor's existing debt with another lender and for general corporate purposes.<sup>7</sup>
13. The Debtor provided the Bank with several forms of security for its obligations under the Commitment Letter. Among other things, the Debtor granted the Bank a first-ranking mortgage over the Erb Properties in the principal amount of \$2.8 million (the "**Mortgage**"). The Mortgage was registered on August 4, 2023, in the Land Registry Office for the Land Titles Division of Waterloo.<sup>8</sup>
14. In addition, the Debtor executed a General Security Agreement granting the Bank a first-ranking security interest in all of the Debtor's present and after acquired personal property of the Debtor (the "**GSA**"). The Debtor also provided the Bank with a general assignment of rents and leases in respect of the Erb Properties, which was registered on title to the Erb Properties.<sup>9</sup>
15. The Debtor initially defaulted under the Commitment Letter by failing to make the September and October principal and interest payments. Following these defaults, the Bank delivered the First Default Letter notifying the Debtor of the defaults. In addition, the Bank

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<sup>6</sup> Meunier Affidavit, para 4, Tab 2 of the Application Record.

<sup>7</sup> Meunier Affidavit, para 6, Tab 2 of the Application Record.

<sup>8</sup> Meunier Affidavit, para 27, Tab 2 of the Application Record.

<sup>9</sup> Meunier Affidavit, para 27, Tab 2 of the Application Record.

prepared a forbearance agreement and delivered it to the Debtor on November 25, 2025.

The Debtor did not sign the forbearance agreement.

16. By January 2025, the Debtor remained in default of its obligations under the Commitment Letter and the Bank delivered the Second Default Letter on January 14, 2025. The Second Default Letter set out the payment and other defaults under the Commitment Letter as well as defaults under the proposed forbearance agreement. Although the Debtor did not sign the forbearance agreement, the Debtor provided a signed acknowledgment of the Second Default Letter, including acknowledging the defaults under the forbearance agreement.<sup>10</sup> The Bank's position is that the Debtor confirmed acceptance of the forbearance agreement by acknowledging the defaults under the forbearance agreement.
17. As of April 1, 2025, the Bank is owed \$2,999,758.26 plus accruing interest, and other fees and expenses (collectively, the "**Indebtedness**").<sup>11</sup>

***CORFinancial and Masri O Inc.***

18. CORFinancial has represented itself as the Debtor's financial advisor. Since the defaults, the Bank engaged in discussions with CORFinancial regarding the Debtor's continued default and a variety of potential discussions. Through these discussions, CORFinancial expressed an interest in acquiring the Erb Properties, possibly in collaboration with the principal of the Debtor.

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<sup>10</sup> Meunier Affidavit, paras 36-38, Tab 2 of the Application Record.

<sup>11</sup> Meunier Affidavit, para 4, Tab 2 of the Application Record.

19. In response to this memorandum, the Bank prepared an assignment of debt and security agreement, and provided a draft of the agreement to CORFinancial on February 26, 2025. The Bank did not receive a response to the draft agreement, and there were no further negotiations on the topic.<sup>12</sup>
20. CORFinancial registered a security interest under the PPSA against the Debtor on January 28, 2025. Additionally, CORFinancial registered a \$500,000 charge on the Erb Properties on March 3, 2025. The Debtor and CORFinancial failed to advise the Bank of the registration of these security interests, and the Bank has not reviewed any loan or security documentation between the Debtor and CORFinancial.
21. On April 4, 2025, the Bank received a Notice of Sale dated March 19, 2025 (the “**Notice**”). The Notice alleges that there was a payment default under a mortgage/charge in the principal amount of \$500,000 dated March 5, 2025 (i.e. a charge purportedly granted 14 days before the Notice was delivered), between the Debtor and CORFinancial, and that CORFinancial intended to commence a power of sale proceeding to market and sell the Erb Properties.<sup>13</sup>
22. The Bank did not provide its prior written consent to either the Debtor or CORFinancial. Pursuant to the Commitment Letter, the Bank must consent to any further encumbrances, and may withhold its consent in the Bank’s sole discretion. The circumstances leading to

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<sup>12</sup> Meunier Affidavit, para 42, Tab 2 of the Application Record.

<sup>13</sup> Meunier Affidavit, paras 44, 45 and 47, Tab 2 of the Application Record.



CORFinancial's registration of a security interest under the PPSA, the alleged mortgage, and the Notice are of great concern to the Bank and must be further investigated.

23. In response to the Notice, the Bank delivered a letter to CORFinancial on April 7, 2025. The letter required CORFinancial to cease the marketing of the Erb Properties, withdraw the Notice, and provide the Bank with the relevant loan and security documentation.<sup>14</sup> CORFinancial acknowledged receipt of the letter and indicated that the Erb Properties have already been listed for sale through CBRE, although no listing has been confirmed.<sup>15</sup>
24. Even if CORFinancial's security interest is determined to be valid, it is subordinate to the Bank's and it appears that CORFinancial may be out of the money. Accordingly, the Bank objects to any enforcement action by CORFinancial, necessitating the appointment of the receiver before the expiry of the notice period on April 25, 2025,<sup>16</sup> so that the receiver can provide stability to the process in an effort to maximize value.
25. On March 17, 2025, Masri O Inc. ("**Masri**") registered a construction lien in the amount of \$103,640 on title to the Erb Properties. Masri claims that the Debtor owes amounts related to the architectural design and consulting services provided in connection with the Erb Properties.<sup>17</sup>

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<sup>14</sup> Meunier Affidavit, para 49, Tab 2 of the Application Record.

<sup>15</sup> Meunier Affidavit, para 50, Tab 2 of the Application Record.

<sup>16</sup> Meunier Affidavit, para 51, Tab 2 of the Application Record.

<sup>17</sup> Meunier Affidavit, para 39, Tab 2 of the Application Record.

***The Defaults***

26. In summary, the Debtor has committed the following defaults under the Commitment Letter and the Forbearance Agreement:

**Commitment Letter**

- (a) failure to make six monthly payments between November 2024 and April 2025;
- (b) failure to pay the property tax owing on the Erb Properties;
- (c) failure to adequately maintain and keep current premium payments under the Commercial Policy and Home Policy;
- (d) failure to comply with reporting requirements to the Bank, including failure to deliver financial statements, confirm that realty taxes are current, or provide updates on the status of site plan approval for the Erb Properties;
- (e) granting CORFinancial a security interest in the Property, and allowing CORFinancial to register its security against the Debtor, each without providing notice to the Bank and without receiving consent of the Bank (which may be withheld at the sole discretion of the Bank);
- (f) permitting the Lien to be registered against the Erb Properties;

**Forbearance Agreement (acknowledged by the Debtor)**

- (g) failure to submit a repayment plan;
- (h) failure to pay the forbearance fee installments;
- (i) failure to repay the outstanding principal and interest amounts owing; and
- (j) allowing CORFinancial to purport to exercise any rights against the Property

(collectively, the “**Defaults**”).<sup>18</sup>

27. As a result of these Defaults, the Bank delivered a demand for payment to the Debtor on March 20, 2025 (the “**Demand**”). The Bank concurrently delivered the NITES to the Debtor.<sup>19</sup>
28. The ten-day statutory notice period under the BIA has expired and the Defaults have not been cured since the delivery of the Demand and NITES. Pursuant to section 25 of the Mortgage and section 5.02 of the GSA, the Bank has the right to appoint a receiver, or seek the appointment of a Receiver over the Property upon any event of default.<sup>20</sup>
29. Faced with numerous Defaults, no reasonable prospect of repayment, and the Notice Period elapsing soon, the Bank makes this application to enforce its contractual right and preserve its security.

### **PART III - ISSUES**

30. The Court must consider the following three issues:
  - (a) Is it just and convenient to appoint AGI as Receiver over the Property?
  - (b) Should the Court grant the requested injunctive relief in the Appointment Order?
  - (c) Should the Court approve the sealing of Confidential Exhibit “1” to the Meunier Affidavit?

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<sup>18</sup> Meunier Affidavit, para 39, Tab 2 of the Application Record.

<sup>19</sup> Meunier Affidavit, para 52, Tab 2 of the Application Record.

<sup>20</sup> Meunier Affidavit, para 53, Tab 2 of the Application Record.

## PART IV - LAW & ARGUMENT

### ISSUE 1:     **It is just and convenient to appoint the Receiver**

31.     On application by a secured creditor, section 243(1) of the BIA provides that the Court may appoint a receiver to take control of an insolvent person's property if it is just or convenient to do so.<sup>21</sup> This language is mirrored by Section 101 of the CJA.<sup>22</sup>
32.     Neither the BIA nor the CJA set out the factors that the Court should consider in determining whether it is just or convenient to appoint a receiver. The Court has identified the following factors it may consider in the context of a receivership application:
- (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;

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<sup>21</sup> *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3, [s. 243\(1\)](#).

<sup>22</sup> *Courts of Justice Act*, R.S.O. 1990, c C.43, [s. 101\(1\)](#).

- (g) the fact that the secured creditor has a right to appointment under the loan documentation;
- (h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
- (i) the principle that the appointment of a receiver should be granted cautiously;
- (j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
- (k) the effect of the order upon the parties;
- (l) the conduct of the parties;
- (m) the length of time that a receiver may be in place;
- (n) the cost to the parties;
- (o) the likelihood of maximizing return to the parties; and
- (p) the goal of facilitating the duties of the receiver.<sup>23</sup>

33. These factors are not a checklist. Certain considerations may arise based on the facts of one case, while others remain absent. Consequently, the factors set out above must be

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<sup>23</sup> *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186 at [para 25](#), citing *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at [para 25](#); *RBC v. 2531961 Ontario Inc. et al.*, 2024 ONSC 1272 at [para 12](#).

considered holistically on the facts of each case when determining whether it is just and convenient to appoint a receiver.<sup>24</sup>

34. In the circumstances, several factors support appointing the Receiver:

- (a) the Debtor has defaulted many times under the Commitment Letter and remains in default. The Debtor has not provided any indication to the Bank that it is able to cure these defaults or otherwise refinance the Bank. The Bank has endured these defaults for approximately eight months, including attempting to enter into a forbearance agreement with the Debtor;<sup>25</sup>
- (b) in the event of one or more defaults, the GSA and the Mortgage permits the Bank to appoint the Receiver;<sup>26</sup>
- (c) at this stage, it is unclear if the assets of the Debtor are sufficient to repay the Indebtedness owed to the Bank in full.<sup>27</sup> Accordingly, the Bank is the fulcrum secured creditor of the Debtor and its interest must be paramount to other subordinate creditors, including CORFinancial;

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<sup>24</sup> *RBC v. 2531961 Ontario Inc. et al.*, 2024 ONSC 1272 at [para 13](#), citing *Pandion Mine Finance Fund LP v. Otso Gold Corp.*, 2022 BCSC 136 at [para 54](#).

<sup>25</sup> Meunier Affidavit, paras 6-9 and 32, Tab 2 of the Application Record.

<sup>26</sup> Meunier Affidavit, para 56, Tab 2 of the Application Record; Section 5.02 of the GSA, Tab 2 of the Application Record, Exhibit “I” and Section 25 of the Mortgage, Tab 2 of the Application Record, Exhibit “H”.

<sup>27</sup> Meunier Affidavit, para 11, Tab 2 of the Application Record.

- (d) the Receiver will take steps to preserve and protect the Property, including by ensuring that appropriate insurance coverage is in place at that all insurance premiums are paid;<sup>28</sup>
- (e) the Receiver will collect monthly rent from the tenants at the Erb Properties;
- (f) the stay of proceedings will suspend the power of sale proceeding commenced by CORFinancial and bring stability to the process. This will ensure that the Bank's economic interest as the senior secured creditor is not prejudiced by the actions of CORFinancial;<sup>29</sup>
- (g) the Receiver, through its independent legal counsel, will review and opine on the validity of the security interest asserted by CORFinancial and the lien claimant prior to any distributions. This ensures that sale proceeds from the sale of the Erb Properties will only be distributed in accordance with legal priorities and likely a Court order;
- (h) the Bank is willing to fund the cost of the receivership;<sup>30</sup> and
- (i) the Bank has issued demand letters to the Debtor and the personal guarantor, and the 10-day notice period under the Notice of Intention to Enforce Security has lapsed.<sup>31</sup>

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<sup>28</sup> Meunier Affidavit, para 11, Tab 2 of the Application Record.

<sup>29</sup> Meunier Affidavit, para 49, Tab 2 of the Application Record.

<sup>30</sup> Meunier Affidavit, para 59, Tab 2 of the Application Record.

<sup>31</sup> Meunier Affidavit, para 10, Tab 2 of the Application Record.

35. Although the appointment of a receiver is typically considered an extraordinary remedy, the standard is relaxed when the secured creditor has the contractual right to appoint a receiver pursuant to the terms of its security.<sup>32</sup> The relaxed standard is justified because the secured creditor is merely seeking to enforce a term of an agreement between the parties.<sup>33</sup> The remedy is considered even less extraordinary where, as here, the remedy is provided for as a lender's remedy for default under a mortgage.<sup>34</sup>
36. Accordingly, the Bank submits that the aforementioned factors strongly support the appointment of the Receiver because it is just and convenient to do so, and the balance of convenience strongly favours the safeguarding of the Bank's position as the senior secured creditor.

## **ISSUE 2: The limited injunctive relief should be granted**

37. The test to be applied to an application for injunctive relief is well-established. As set out in *RJR Macdonald Inc. v. Canada (Attorney General)*, there are three basic elements to the test: (a) is there a serious issue to be tried, (b) will irreparable harm occur if the injunction is not granted; and (c) does the balance of convenience favour granting the injunction?<sup>35</sup>
38. The test is not meant to be rigidly followed. The object is to achieve a just and equitable result. It is not necessary that a plaintiff mechanically satisfy each element of the test.<sup>36</sup>

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<sup>32</sup> *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, 2020 ONSC 1953 [*Clover on Yonge*] at [para 43](#).

<sup>33</sup> *Elleway Acquisitions Limited v. The Cruise Professionals Limited*, 2013 ONSC 6866 at [para 27](#).

<sup>34</sup> *Clover on Yonge*, *ibid* at [para 44](#); *RBC v. 2531961 Ontario Inc. et al.*, 2024 ONSC 1272 at [para 11](#).

<sup>35</sup> *RJR-Macdonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC) [*RJR-Macdonald*].

<sup>36</sup> *Bell Canada v. Rogers Communications Inc.*, 2009 CanLII 39481, at [paras 38-39](#).



The elements are not to be treated as “watertight compartments”. The strength of one may compensate for the weakness of another.

39. As McLachlin J.A (as she then was) noted in *British Columbia (Attorney General) v. Wale*:

Having set out the usual procedure to be followed in determining whether to grant an interlocutory injunction, it is important to emphasize that the judge must not allow himself to become the prisoner of a formula. The fundamental question in each case is whether the granting of an injunction is just and equitable in all the circumstances of the case.<sup>37</sup>

40. In this case, the Bank requires reasonable safeguards to be put in place to prevent CORFinancial from unilaterally taking steps to sell the Erb Properties without the consent of the Bank. The Bank must protect its collateral. Given CORFinancial’s conduct to date and disregard for the Bank’s senior secured position, there is a real risk that CORFinancial will continue to take steps to disrupt the process before the Receiver has the ability to market and sell the Erb Properties.

***There are Serious Issues to be Tried***

41. The “serious issue to be tried” test on a motion for an injunction is low.<sup>38</sup> The Bank need only show that the issues raised are not “frivolous or vexatious.”<sup>39</sup>

42. As Sopinka and Cory JJ. explained in *RJR-MacDonald*:

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<sup>37</sup> *British Columbia (Attorney General) v. Wale*, 1986 CanLII 171 (BC CA) at [pages 6 and 7](#) [Wale].

<sup>38</sup> *Sandbanks Summer Village Resort Management Inc. v. Prince Edward Vacant Land Condominium Corporation No. 10*, 2021 ONSC 989 (CanLII), at [para 25](#).

<sup>39</sup> *Ibid.*

Once satisfied that the application is neither vexatious nor frivolous, the motions judge should proceed to consider the second and third tests, even if of the opinion that the plaintiff is unlikely to succeed at trial. A prolonged examination of the merits is generally neither necessary nor desirable.<sup>40</sup>

43. The first part of this test is easily satisfied. First, the circumstances and timing upon which CORFinancial, a financial advisor to the Debtor, acquired a security interest and a charge over the Erb Properties must be further investigated. Second, the redemption period under the Notice expires on April 24, 2025, meaning that CORFinancial may proceed with a sale of the Erb Properties without consultation or consent of the Bank. In such circumstances, the Bank will lose control of its collateral and have no way to ensure that the sale proceeds are paid to the Bank. Already, CORFinancial has failed to provide the monthly rent payments to the Bank despite agreeing to do so.

### **Risk of Irreparable Harm if the Injunction is not Granted**

44. There is a genuine and pressing risk that the Bank will suffer irreparable harm if restrictions are not imposed on CORFinancial's dealings with the Erb Properties. The risk is two-fold: first, the Bank may lose control over its primary—and potentially only—avenue of recovery and be unable to ensure that any sale of the Erb Properties is conducted in a manner that maximizes value; and second, the Bank, despite its contractual entitlement to appoint a receiver, may be deprived of its secured interest in the Erb Properties.
45. Irreparable harm has been characterized as harm that cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from

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<sup>40</sup> [\*RJR-Macdonald\*](#), at para 55.

the other.<sup>41</sup> The probability of irreparable harm increases as the probability of recovering damages decreases.<sup>42</sup>

46. The Erb Properties represent the Debtor's sole or primary asset. Without injunctive relief, there is a real and material risk that CORFinancial will sell the Erb Properties and take the proceeds of sale, leaving nothing or very little value for the Bank to recover or take possession of, thereby extinguishing its secured interest.
47. Apart from the risk to recovery, the second part of the *RJR-MacDonald* test can also be satisfied where the harm at issue is not susceptible to or would be difficult to compensate through an award of monetary damages. As such, Courts have long recognized that an injunction may be appropriate where the adequacy of damages is in doubt.<sup>43</sup> At this early stage, it remains unclear whether it would be more beneficial for the Receiver to obtain the Draft Plan or to engage with the City to enhance the sale prospects of the Erb Properties, an option that would not be available to CORFinancial acting unilaterally.
48. This matter involves more than a claim for money. The Bank is asserting proprietary rights in the Erb Properties, which it funded with the expectation of secured recovery. Without injunctive relief, the Bank risks losing its interest in what is potentially the sole realizable asset of the Debtor, jeopardizing its ability to recover the indebtedness.

### **Balance of Convenience Favours Granting a Reasonable Injunction**

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<sup>41</sup> *Ibid.*

<sup>42</sup> *Shi v. Chen*, 2021 ONSC 4642 at [para 37](#).

<sup>43</sup> *International Steel Services Inc. v Dynatec Madagascar S.A.*, 2016 ONSC 2810 at [para 51](#).

49. In this application, the Bank seeks to impose reasonable restrictions on CORFinancial's ability to sell and market the Erb Properties during the receivership. This should be viewed as a limited extension to the stay of proceedings and injunctive relief routinely granted in the Model Receivership Order. The injunctive relief sought in the proposed order clarifies that the stay of proceedings applies to the power of sale proceeding commenced by CORFinancial and restrains it from taking any further actions in respect of same.
50. CORFinancial's conduct prior to this motion underscores that the balance of convenience favours granting the relief sought by the Plaintiffs to preserve the Erb Properties pending the appointment of a receiver, who can pursue an orderly and value-maximizing realization for the benefit of all stakeholders.
51. Rather than seeking the written consent of the Bank in respect of the CORFinancial Charge, its security interest and the Notice, CORFinancial has instead hindered the Bank's recovery efforts by unilaterally taking steps without the knowledge or consent of the Bank. Further, CORFinancial delayed the Bank's enforcement efforts by creating the impression that it intended to take an assignment of the Bank's debt and security position, even though no negotiation ever took place.<sup>44</sup> This caused the Bank to incur additional legal fees in the process.
52. The relief sought on this motion does not prejudice CORFinancial's interests. Should its security interest ultimately be found valid and enforceable, CORFinancial will be entitled

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<sup>44</sup> Meunier Affidavit at para 43, Tab 2 of the Application Record.

to share in any remaining proceeds from the sale of the Erb Properties, after satisfaction of the Bank's outstanding Indebtedness.

53. Conversely, if the relief is not granted, the Bank risks losing control over its collateral and its proprietary interest in the Erb Properties, its primary security and potential source of recovery.
54. In these circumstances, contrasting the minimal restraints sought to be imposed on CORFinancial against the irreparable harm the Bank stands to suffer, the balance of convenience favours granting the reasonable safeguards sought by the Bank.

### **ISSUE 3: The Court should seal Confidential Exhibit "1"**

55. The Court should seal Confidential Exhibit "1" to the Meunier Affidavit until the earlier of the closing of a sale of the Erb Properties or pending further order of the Court. Confidential Appendix "1" provides an appraisal of the Erb Properties based on the proposed development of the Erb Properties (i.e. the six-storey, 73 residential unit building) rather than its current use (one unoccupied building and one tenanted dwelling).<sup>45</sup>
56. This Court has the discretion to seal Confidential Appendix "1" under section 137(2) of the *Courts of Justice Act*.<sup>46</sup> Before exercising its discretion to grant a sealing order, the Court must take into consideration the following principles set out in *Sherman Estate*:

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<sup>45</sup> Meunier Affidavit at para 22, Tab 2 of the Application Record.

<sup>46</sup> *Courts of Justice Act*, R.S.O. 1990, c. C.43, [s.137\(2\)](#).

- (a) court openness poses a serious risk to an important public interest, including a commercial interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent the risk; and
- (c) the benefits of the order outweigh its negative effects.<sup>47</sup>

57. All three preconditions are met in the circumstances. First, Confidential Appendix “1” contains commercially sensitive bidding information that, if made public, would prejudice future efforts to market the Erb Properties as the appraised value can be used as an anchor in negotiations with potential purchasers. Sealing orders of this nature are necessary to preserve integrity and fairness in the sales process.<sup>48</sup>

58. Further, the benefits of granting the sealing order outweigh its negative effects. No stakeholder will be prejudiced by sealing Confidential Appendix “1”, whereas publicizing sensitive commercial information will threaten future efforts to market the Erb Properties. The proposed sealing order balances the integrity of the sales process with court openness, consistent with this Court’s longstanding approach to partial sealing orders in the insolvency context.<sup>49</sup>

59. Accordingly, this Court should seal Confidential Appendix “1”.

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<sup>47</sup> *Sherman Estate v. Donovan*, 2021 SCC 25 at [paras 38](#) and [41](#).

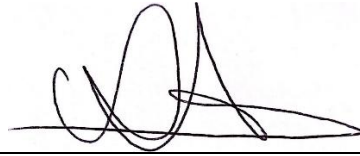
<sup>48</sup> *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.*, 2014 ONSC 1173 at [paras 32-33](#).

<sup>49</sup> *Ibid*, at [para 34](#); [Endorsement of Justice Steele dated July 5, 2024](#).

**PART V - RELIEF REQUESTED**

60. The Applicant respectfully requests an Order:
- (a) appointing AGI as Receiver of the Property
  - (b) prohibiting CORFinancial, on an interim and interlocutory basis, from marketing or selling the Erb Properties;
  - (c) sealing Confidential Exhibit “1” to the Meunier Affidavit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of April, 2025.



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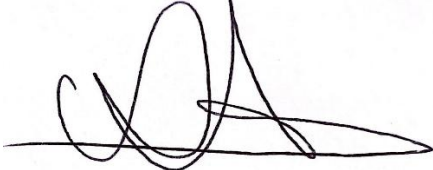
Lawyers for the Applicant,  
ICICI Bank Canada

**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. [Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited, 2022 ONSC 6186.](#)
2. [Maple Trade Finance Inc. v. CY Oriental Holdings Ltd., 2009 BCSC 1527.](#)
3. [RBC v. 2531961 Ontario Inc. et al., 2024 ONSC 1272.](#)
4. [Pandion Mine Finance Fund LP v. Otso Gold Corp., 2022 BCSC 136.](#)
5. [Elleway Acquisitions Limited v. The Cruise Professionals Limited, 2013 ONSC 6866.](#)
6. [BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc., 2020 ONSC 1953.](#)
7. [RJR-Macdonald Inc. v. Canada \(Attorney General\), 1994 CanLII 117 \(SCC\)](#)
8. [Bell Canada v. Rogers Communications Inc., 2009 CanLII 39481](#)
9. [British Columbia \(Attorney General\) v. Wale, 1986 CanLII 171 \(BC CA\)](#)
10. [Sandbanks Summer Village Resort Management Inc. v. Prince Edward Vacant Land Condominium Corporation No. 10, 2021 ONSC 989 \(CanLII\)](#)
11. [Shi v. Chen, 2021 ONSC 4642](#)
12. [International Steel Services Inc. v Dynatec Madagascar S.A., 2016 ONSC 2810](#)
13. [Sherman Estate v. Donovan, 2021 SCC 25](#)
14. [GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc., 2014 ONSC 1173](#)
15. [Endorsement of Justice Steele dated July 5, 2024.](#)

I certify that I am satisfied as to the authenticity of every authority.

Date     April 16, 2025

  
\_\_\_\_\_  
Signature



## SCHEDULE “B” RELEVANT STATUTES

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

### Interpretation

#### Definitions

2 In this Act,

**insolvent person** means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (*personne insolvable*)

**secured creditor** means a person holding a mortgage, hypothec, pledge, charge or lien on or against the property of the debtor or any part of that property as security for a debt due or accruing due to the person from the debtor, or a person whose claim is based on, or secured by, a negotiable instrument held as collateral security and on which the debtor is only indirectly or secondarily liable, and includes

- (a) a person who has a right of retention or a prior claim constituting a real right, within the meaning of the [\*Civil Code of Québec\*](#) or any other statute of the Province of Quebec, on or against the property of the debtor or any part of that property, or
- (b) any of
  - (i) the vendor of any property sold to the debtor under a conditional or instalment sale,
  - (ii) the purchaser of any property from the debtor subject to a right of redemption, or
  - (iii) the trustee of a trust constituted by the debtor to secure the performance of an obligation,

If the exercise of the person’s rights is subject to the provisions of Book Six of the [\*Civil Code of Québec\*](#) entitled *Prior Claims and Hypothecs* that deal with the exercise of hypothecary rights; (*créancier garanti*)

## Secured Creditors and Receivers

### 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.

- **Restriction on appointment of receiver**

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under [subsection 244\(1\)](#), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under [subsection 244\(2\)](#); or
- (b) the court considers it appropriate to appoint a receiver before then.

- **Definition of receiver**

(2) Subject to subsections (3) and (4), in this Part, **receiver** means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — 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 — under
  - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or
  - (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

- **Definition of receiver — [subsection 248\(2\)](#)**

(3) For the purposes of [subsection 248\(2\)](#), the definition **receiver** in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

*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).

### **Documents public**

**137** (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

### **Sealing documents**

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

### **Court lists public**

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

### **Copies**

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see. R.S.O. 1990, c. C.43, s. 137.

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

**ICICI BANK CANADA**

Applicant

- and -

**2338486 ONTARIO LIMITED**

Respondent

Court File No. CV-25-00740747-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceedings commenced at Toronto, Ontario

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