

Court File No. CV-25-00089766-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CAISSE DESJARDINS ONTARIO CREDIT UNION INC.

and
Applicant

2416946 ONTARIO LTD. and ALF K. STORCK

Respondents

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*, R.S.O. 1990, C.C.43, AS AMENDED

APPLICANT'S FACTUM
(Appointment of Receiver)

April 10, 2025

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TO: THE SERVICE LIST

THE SERVICE LIST
(as at April 9, 2025)

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Proposed Receiver

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Respondent / Guarantor

SECURED CREDITORS

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TABLE OF CONTENTS

	Page No.
PART I - OVERVIEW	1
PART II - FACTS	1
PART III - ISSUES	10
PART IV - THE LAW AND ANALYSIS	10
PART V - RELIEF SOUGHT	15

PART I - OVERVIEW

1. The Applicant, Caisse Desjardins Ontario Credit Union Inc. (the “**Caisse**”) seeks an order (the “**Appointment Order**”) appointing Albert Gelman Inc. (“**AGI**”) as receiver and manager (in such capacity, the “**Receiver**”) pursuant to section 243 of the *Bankruptcy and Insolvency Act*¹ (the “**BIA**”) and section 101 of the *Courts of Justice Act*² (the “**CJA**”) without security, over all property, assets and undertakings of 2416946 Ontario Ltd. (“**241**” or the “**Debtor**”), acquired for, or used in relation to, the Debtor’s right, title and interest in and to all of the property including leases described in **Schedule “A” of the Appointment Order** (the “**Property**”). The scope of the receivership is limited to the **Property**.

2. As of March 6, 2025, the aggregate indebtedness due and owing by the Debtor to the Caisse was \$419,287.95 in addition to ongoing accrual of interest as set out in the Loan Agreement or Amendment excluding professional fees, disbursements and HST.³

PART II - FACTS

I. THE PARTIES

3. The Caisse is credit union established under the *Credit Unions and Caisses Populaires Act*, 1994, S.O. 1994, c. 11.⁴

4. 241 is a company that holds a mixed residential-commercial property and rents it out. 241 was incorporated pursuant to the laws of Ontario, with a registered office in the

¹ [Bankruptcy and Insolvency Act](#), RSC 1985, c B-3, [“**BIA**”] [Section 243](#)

² [Courts of Justice Act](#), RSO 1990, c C43, [“**CJA**”], [Section 101](#)

³ Affidavit of Yoan Bouchard affirmed April 10, 2025 (“**Bouchard Affidavit**”), para 27

⁴ **Bouchard Affidavit**, para 3

Township of Tiny, Ontario.⁵

5. Alf K. Storck (“**Storck**”) is an officer and director of 241 holding the positions of president, secretary and treasurer. Storck provided a limited personal guarantee of certain loans, described below (a “**Guarantor**”), issued by the Caisse to 241.⁶

6. Storck is named in the Application to facilitate co-operation with the Receiver, once appointed.⁷

II. LOAN NO. 723961-PR-1 re 268 King Street, Midland, Ontario

7. The Caisse (as lender), 241 (as borrower), and Storck (as guarantor) entered into a Loan Agreement on July 6, 2021 (the “**Loan Agreement**”).⁸

8. Pursuant to the Loan Agreement, the Caisse advanced a loan in the total principal amount of \$435,000.00, for a term of twelve (12) months, from the date of disbursement together with variable interest at prime rate increased by 1.150% per annum and calculated monthly and not in advance. The loan was disbursed on July 12, 2021.⁹

Security

9. The Caisse holds security against 241 as follows:

(a) a Charge/Mortgage registered on July 12, 2021 as Instrument No. SC1803149 over lands municipally known as 268 King Street, Midland,

⁵ **Bouchard Affidavit**, para 4; **Corporate Profile of 241**, Exhibit 1 to the Bouchard Affidavit

⁶ **Bouchard Affidavit**, para 5; **Corporate Profile of 241**, Exhibit 1 to the Bouchard Affidavit

⁷ **Bouchard Affidavit**, para 6

⁸ **Bouchard Affidavit**, para 7; **Loan Agreement**, Exhibit 2 to the Bouchard Affidavit

⁹ **Bouchard Affidavit**, para 8; **Loan Agreement**, Exhibit 2 to the Bouchard Affidavit

Ontario (the “**Collateral Mortgage**”);¹⁰

(b) an Assignment of Rents in respect of 268 King Street, Midland, Ontario dated July 6, 2021 (the “**Assignment of Rents**”). The Assignment of Rents was registered as Instrument No. SC1803150 on July 12, 2021.¹¹

10. The personal property security of the Caisse was registered on July 12, 2021 against 241 as related to the applicable personal property of 241 in the provincial registry maintained under the *Personal Property Security Act (Ontario)*, R.S.O. 1990, c P.10 (the “**PPSA**”) under File No. 774338391 and Registration No. 20210712 1655 1590 7252 with respect to the Assignment of Rents.¹²

The Guarantee

11. Storck provided a personal guarantee dated July 6, 2021 in favour of the Caisse for \$435,000.00 together with all fees and interest in respect of all indebtedness, liabilities and obligations of 241 (the “**Guarantee**”).¹³

Loan Amendments / Renewals

12. In July 2022, the loan was renewed for an additional twelve (12) month term. The terms of the loan remained the same with the exception that interest would be at the prime rate increased by 1.300% per annum and calculated monthly and not in advance. Storck

¹⁰ **Bouchard Affidavit**, para 9(a); **Collateral Mortgage**, Exhibit 3 to the Bouchard Affidavit

¹¹ **Bouchard Affidavit**, para 9(b); **Assignment of Rents**, Exhibit 4 to the Bouchard Affidavit; **Notice of Assignment of Rents**, Exhibit 5 to the Bouchard Affidavit; **Parcel Register**, Exhibit 6 to the Bouchard Affidavit

¹² **Bouchard Affidavit**, para 11; **PPSA**, Exhibit 7 to the Bouchard Affidavit

¹³ **Bouchard Affidavit**, para 12; **Guarantee**, Exhibit 8 to the Bouchard Affidavit

signed a Term Loan or Fraction of a Split Term Loan Amendment or Renewal Agreement on July 12, 2022.¹⁴

13. In July 2023, the loan was again renewed for an additional twelve (12) month term. The terms of the loan remained the same with the exception that interest would be at a fixed rate of 7.700% per annum and calculated monthly and not in advance. Storck signed a Term Loan of Fraction or a Split Term Loan Amendment or Renewal Agreement on July 25, 2023.¹⁵

14. The loan was further renewed effective July 8, 2024 for an additional three (3) year term. The terms of the loan remained the same with the exception that interest rate would be 6.550% per annum and calculated monthly and not in advance.¹⁶

III. DEFAULTS, DEMANDS, AND NOTICES OF INTENTION TO ENFORCE

15. Numerous events of default under the Collateral Mortgage have occurred.¹⁷

16. 241's defaults are existing and continuing, including, but not limited to the defaults described below:

(a) 241 has failed to make prompt payment of the amounts due under the Collateral Mortgage. A letter dated January 31, 2025 from Caisse to 241 indicates that the loan was 84 days overdue and in arrears of \$12,643.64;¹⁸

¹⁴ **Bouchard Affidavit**, para 13; **July 12, 2022 Renewal**, Exhibit 9 to the Bouchard Affidavit

¹⁵ **Bouchard Affidavit**, para 14; **July 25, 2023 Renewal**, Exhibit 10 to the Bouchard Affidavit

¹⁶ **Bouchard Affidavit**, para 15; **July 8, 2024 Renewal**, Exhibit 11 to the Bouchard Affidavit

¹⁷ **Bouchard Affidavit**, para 16

¹⁸ **Bouchard Affidavit**, para 17(a); **January 31, 2025 Letter**, Exhibit 12 to the Bouchard Affidavit

- (b) 241 has failed to make prompt payment of property taxes. A Tax Certificate dated March 27, 2025 from the Town of Midland which indicates that property taxes are in arrears of \$22,811.54;¹⁹
- (c) 241 obtained secondary financing on 268 King Street, Midland, Ontario without the consent of the Caisse and this is contrary to paragraph 6 of the Loan Agreement. The second priority Charge/Mortgage was registered on December 30, 2022 as Instrument No. SC1955169 in favour of Sagewise Capital Corporation (“**Sagewise**”) for the principal sum of \$60,000.00.²⁰ A related Notice of Assignment of Rents was registered on December 30, 2022 as Instrument No. SC1955170 in favour of Sagewise.²¹ A Notice appending a Mortgage Amending Agreement was registered on July 5, 2023 as Instrument No. SC1991516 in which the terms of the Sagewise mortgage were amended including an increase of the principal amount from \$60,000.00 to \$120,000.00;²²
- (d) 241 is the subject of power of sale proceedings against it by Sagewise as second mortgagee and this is an event default under paragraph 12(iii) of the Loan Agreement.²³

17. On March 7, 2025, Gowling WLG (Canada) LLP (“**Gowlings**”) acting on behalf of

¹⁹ **Bouchard Affidavit**, para 17(b); **Tax Certificate**, Exhibit 13 to the Bouchard Affidavit

²⁰ **Bouchard Affidavit**, para 17(c); **Sagewise Mortgage**, Exhibit 14 to the Bouchard Affidavit

²¹ **Bouchard Affidavit**, para 17(c), **Sagewise Notice of Assignment of Rents**, Exhibit 15 to the Bouchard Affidavit

²² **Bouchard Affidavit**, para 17(c); **Notice re Sagewise Amended Mortgage**, Exhibit 16 to the Bouchard Affidavit

²³ **Bouchard Affidavit**, para 17(d); **Sagewise’s Notice of Sale**, Exhibit 17 to the Bouchard Affidavit

the Caisse issued the following to 241 and Storck as the Guarantor:

- (a) a demand for payment (the “**Demand Letter**”) of the total indebtedness owing as of March 6, 2025 plus interest and legal costs to the Caisse as set out in Schedule “B” to the Demand Letter by the deadline of March 17, 2025; and
- (b) a Notice of Intention to Enforce Security on the property of 241 pursuant to section 244(1) of the BIA (the “**BIA 244 Notice**”).²⁴

IV. CORRESPONDENCE WITH STORCK

18. On March 17, 2025, Storck emailed Kayla Drouin (legal assistant at Gowlings) acknowledging receipt of the March 7, 2025 email attaching the Demand Letter and BIA 244 Notice.²⁵

19. Storck indicated that the building is listed for sale and there is a party that wants to purchase the building, and he requested an extension of the deadline for court proceedings for another three weeks.²⁶

20. Bart Sarsh (the Caisse’s legal counsel at Gowlings) requested a copy of the listing agreement, any offer to purchase and information regarding the commercial and residential tenants.²⁷

²⁴ **Bouchard Affidavit**, para 18; **Demand Letter and BIA 244 Notice**, Exhibit 18 to the Bouchard Affidavit

²⁵ **Bouchard Affidavit**, para 19; **Email dated March 17, 2025 at 8:44 am**, Exhibit 19 to the Bouchard Affidavit

²⁶ **Bouchard Affidavit**, para 20; **Email dated March 17, 2025 at 8:44 am**, Exhibit 19 to the Bouchard Affidavit

²⁷ **Bouchard Affidavit**, para 21; **Email dated March 17, 2025 at 10:44 am**, Exhibit 19 to the Bouchard Affidavit

21. Storck provided a copy of the listing agreement and advised that the building is fully rented. He also advised that the interested buyer had required some more detailed information which was provided, and the interested buyer had viewed the building and was doing its due diligence.²⁸

22. Storck provided copies of the leases 241 has with its tenants on March 17, 2024 at 2:04 p.m.²⁹ Storck emailed again at 2:08 p.m. to advise that he did not have a written purchase agreement as of yet.³⁰

23. On April 4, 2025, Mr. Sarsh wrote to Storck to request an update on the status of the due diligence by the potential buyer and to obtain a copy of the 2025 interim property tax statement.³¹ On April 7, 2025 Storck responded that, “[T]he interested party is slow, they say they are ok with the building and are working on something on their side. Due to this delay we decreased the asking price on the listing by \$50,000 to generate more interest.”³²

V. SAGEWISE SUPPORTS THE RECEIVER’S APPOINTMENT

24. On March 25, 2025, Mr. Sarsh wrote to counsel for Sagewise to confirm that the Caisse agrees to AGI as the proposed court-appointed receiver to accommodate Sagewise’s concerns about maximizing recovery and keeping professional fees to

²⁸ **Bouchard Affidavit**, para 22; **Email dated March 17, 2025 at 12:12 pm**, Exhibit 19 to the Bouchard Affidavit

²⁹ **Bouchard Affidavit**, para 23; **Email dated March 17, 2025 at 2:04 pm**, Exhibit 19 to the Bouchard Affidavit

³⁰ **Bouchard Affidavit**, para 23; **Email dated March 17, 2025 at 2:08 pm**, Exhibit 19 to the Bouchard Affidavit

³¹ **Bouchard Affidavit**, para 24; **Email dated April 4, 2025 at 3:04 pm**, Exhibit 20 to the Bouchard Affidavit

³² **Bouchard Affidavit**, para 24; **Email dated April 7, 2025 at 8:14 am**, Exhibit 20 to the Bouchard Affidavit

reasonable levels.³³

VI. NEED FOR A RECEIVER

25. As of March 6, 2025, the aggregate indebtedness of 241 due and owing to the Caisse was \$419,287.95 in addition to ongoing accrual of interest as set out in the Loan Agreement or Amendment excluding professional fees, disbursements and HST (the “**Indebtedness**”).³⁴

26. As indicated above, certain events of default have occurred under the Collateral Mortgage, which are ongoing and outstanding.³⁵

27. 241 is not able to pay the Indebtedness owing on its respective loan and Sagewise (as the second mortgagee) has commenced power of sale proceedings and the redemption period has expired.³⁶

28. The statutory notice period provided for under the Demand Letter and BIA 244 Notice has expired.³⁷

29. The Caisse has lost confidence in the management of 241 for all of the reasons detailed in the supporting affidavit.³⁸

30. 241 does not have the ability to fund ongoing mortgage or property tax payments and this is eroding the value of the Caisse’s security position due to the accrual of the

³³ **Bouchard Affidavit**, para 26; **Email dated March 25, 2025**, Exhibit 21 to the Bouchard Affidavit

³⁴ **Bouchard Affidavit**, para 27

³⁵ **Bouchard Affidavit**, para 28

³⁶ **Bouchard Affidavit**, para 29; **Sagewise’s Notice of Sale**, Exhibit 17 to the Bouchard Affidavit

³⁷ **Bouchard Affidavit**, para 30; **Demand Letter and BIA 244 Notice**, Exhibit 18 to the Bouchard Affidavit

³⁸ **Bouchard Affidavit**, para 31

Indebtedness without meaningful repayment of the loans.³⁹

31. The Caisse has suffered and is expected to continue to suffer substantial prejudice as a result of 241's failure to properly operate the Business. The appointment of the Receiver is necessary to preserve the value of the Property and the Caisse's collateral.⁴⁰

32. Upon appointment, the Receiver will assess the state of 241 and determine a strategy for recovery of the assets for the benefit of all stakeholders, including communicating directly with all affected parties.⁴¹

33. Paragraph 38 of the Caisse's Standard Charge Terms filed as number 201909⁴² provides for the appointment of Receiver:

38. RECEIVERSHIP OF MEMBER

Notwithstanding anything in this Charge, upon default of any of these provisions, the Financial Institution may, with or without entry into possession of the Lands, by instrument in writing appoint any person, whether an officer or an employee of the Financial Institution or not, to be a receiver of the Lands, and of the rents and profits with or without security, and may by similar writing remove any receiver and appoint another in its place and in making any such appointment or removal, the Financial Institution shall be deemed to be acting as the agent or attorney for the Member, but no such appointment shall be revocable by the Member. Upon the appointment of any such receiver the following provisions shall apply:

- (a) Every such receiver shall have unlimited access to the Lands as agent and attorney for the Member (which right of access shall not be revocable by the Member) and shall have full power and unlimited authority to:
 - (i) collect the rents and profits from tenancies or operation of the Lands whether created before or after the Charge;
 - (ii) rent or operate any portion of the Lands which may become vacant on such terms and conditions as the receiver considers advisable and enter into and execute leases, accept surrenders and terminate leases;
 - (iii) complete the construction of any building or other erections or improvements on the Lands left by the Member in an unfinished state or award the same to others to complete and purchase, repair and/or maintain any personal property including, without limitation, appliances and equipment necessary or desirable to render the premises operable or rentable, and take possession of and use or permit others to use all or any part of the Member's materials, supplies, plans, tools, appliances, equipment and property of every kind and description;
 - (iv) manage, operate, repair, alter or extend the Lands or any part thereof.

The Member undertakes to ratify and confirm whatever any such receiver or agent may do.

- (b) The Financial Institution may in its sole discretion vest the receiver with all or any of the rights and powers of the Financial Institution.
- (c) The Financial Institution may fix the reasonable remuneration of the receiver who shall be entitled to deduct same out of the revenue or the sale proceeds of the Lands.
- (d) Every such receiver shall be deemed the agent or attorney of the Member and not, in any event, the agent of the Financial Institution. The Financial Institution shall not be responsible for the receiver's acts or omissions.
- (e) The appointment of any such receiver by the Financial Institution shall not result in or create any liability or obligation on the part of the Financial Institution to the receiver or to the Member or to any other person, and no appointment or removal of a receiver and no actions of a receiver shall constitute the Financial Institution a chargee in possession of the Lands.

³⁹ **Bouchard Affidavit**, para 32

⁴⁰ **Bouchard Affidavit**, para 33

⁴¹ **Bouchard Affidavit**, para 34

⁴² **Bouchard Affidavit**, para 35; **Standard Charge Terms (para 38)**, Exhibit 22 to the Bouchard Affidavit

(f) No such receiver shall be liable to the Member to account for monies other than monies actually received by him in respect of the Lands, or any part thereof, and out of such monies so received every such receiver shall, in the following order, pay:

- (i) the receiver's remuneration as aforesaid;
- (ii) all costs and expenses of every nature and kind incurred by the receiver in connection with the exercise of his or her remedies, rights and powers available at law and authority hereby conferred;
- (iii) interest, Principal and other money which may be or become Charged upon the Lands in priority to the Charge, including taxes;
- (iv) to the Financial Institution all interest, Principal and other amounts due under the Charge to be paid in such order as the Financial Institution in its sole discretion shall determine;

Thereafter, every such receiver shall be accountable to the Member for any surplus.

The remuneration and expenses of the receiver shall be paid by the Member on demand and shall be a charge on the Lands and shall bear interest from the date of demand at the same Rate as applies to the Principal Amount secured by this Charge.

(g) Save as to claims for accounting under sub-paragraph (f) of this paragraph, the Member hereby releases and discharges any such receiver from every claim of every nature, whether sounding in damages or not which arise or be caused to the Member or any person claiming through or under him or her by reason or as a result of anything done by such receiver unless such claim be the direct and proximate result of dishonesty or fraud.

(h) The Financial Institution may, at any time, terminate any such receivership by notice in writing to the Member and to any such receiver.

(i) The statutory declaration of an officer of the Financial Institution as to default under the provisions of the Charge and as to the due appointment of the receiver pursuant to the terms of this Charge shall be sufficient proof, as regards to such default and appointment.

(j) The rights and powers conferred in respect of the receiver are supplemental to and not in substitution of any other remedies, rights and powers available at law which the Financial Institution may have.

PART III - ISSUES

34. Is it just and convenient to appoint AGI as Receiver over 241?

PART IV - THE LAW AND ANALYSIS

A. The Court's Authority to Appoint a Receiver

35. Courts can appoint a receiver over a debtor upon application by a secured creditor pursuant to subsection 243(1) of the BIA⁴³ and/or subsection 101 of the CJA.⁴⁴ In the case of the BIA, the secured creditor must bring an application under section 243 of the BIA, and satisfy certain conditions, including:

- (a) Issuing a notice of intention to enforce security and allowing the 10 day statutory notice period to expire before obtaining an order to appoint a receiver pursuant to section 243(1.1) of the BIA;
- (b) Putting forward a qualified person to act as a receiver and providing

⁴³ [BIA, Section 243\(1\)](#)

⁴⁴ [CJA, Section 101\(1\)](#)

evidence that the qualified person has consented to act in that capacity (s. 243(4) of the BIA); and

(c) Satisfying the court that the locality of the debtor against whom the receivership order is being sought is Ontario (s. 243(5) of the BIA).

36. In the case of both the BIA and CJA, the court may grant an order appointing a receiver when it is “just and convenient” to do so.

B. The Technical Requirements to Appoint a Receiver Under the BIA Have Been Met

37. As of March 6, 2025, the aggregate indebtedness of 241 due and owing to the Caisse was \$419,287.95 in addition to ongoing accrual of interest as set out in the Loan Agreement or Amendment excluding additional legal fees, disbursements and HST (the “**Indebtedness**”).⁴⁵

38. Caisse has satisfied the technical requirements for the appointment of a receiver under the BIA. Caisse is a secured creditor of 241 in respect of the Property and is therefore entitled to bring the Application under s. 243 of the BIA. As required under s. 243(1.1) of the BIA, Caisse issued the BIA 244 Notice and the notice period has expired without repayment of the Indebtedness.⁴⁶

39. AGI is qualified to act as Receiver in accordance with the requirements of s. 243(4) of the BIA and has consented to serving as Receiver in these proceedings.⁴⁷

⁴⁵ **Bouchard Affidavit**, para 27

⁴⁶ **BIA**, [Section 244](#); **Bouchard Affidavit**, para 18; **BIA 244 Notice**, Exhibit 18 to the Bouchard Affidavit

⁴⁷ **BIA**, [Section 243\(4\)](#); **Bouchard Affidavit**, para 36; **AGI's Consent to Act**, Exhibit 23 to the Bouchard Affidavit

40. 241 is an Ontario corporation with a registered office in the Township of Tiny, Ontario.⁴⁸ 241 holds a mixed residential-commercial property that is the subject to the proposed receivership and is located in Midland, Ontario.⁴⁹ This Application is properly brought before the Court, as the locality of the Debtor is Ontario, as required under s. 243(5) of the BIA.⁵⁰

C. Considerations in Respect of the Appointment of a Receiver & Application to the Facts

41. In *Freure Village*, Justice Blair (as he then was) stated that, in deciding if the appointment of a receiver is just or convenient, the Court must have regard to, *inter alia*, the nature of the property and the rights and interest of all parties in relation thereto, which includes a secured creditor under its security.⁵¹

42. Among other things, the following is a list of factors which Courts have historically considered in determining whether or not it is just or convenient to appoint a receiver:

- (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, particularly where the appointment of a receiver 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;

⁴⁸ **Bouchard Affidavit**, para 4; **Corporate Profile of 241**, Exhibit 1 to the Bouchard Affidavit

⁴⁹ **Bouchard Affidavit**, para 4; **Parcel Register**, Exhibit 6 to the Bouchard Affidavit

⁵⁰ **BIA, Section 243(5)**

⁵¹ ***Metropolitan Partners Group Administration, LLC v International Credit Experts Inc.***, 2024 ONSC 4601 at [para 21](#) [“**Metropolitan Partners**”]; ***Bank of Nova Scotia v Freure Village on Clair Creek***, 1996 CanLII 8258 (Commercial List), [paras 12-13](#) [“**Freure Village**”]

- (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;
- (h) the enforcement of rights under a security instrument where the security security-holder encounters or expects to encounter difficulties with the debtors;
- (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.⁵²

43. While the appointment of a receiver is normally “an extraordinary remedy”, in a case such as this where the secured creditor is seeking the appointment of a receiver and its credit documents specifically afford it the right to appoint a receiver, the appointment of a receiver is not an “extraordinary remedy”. The rationale for this relaxed standard is that, in such circumstances, as Justice Morawetz (as he then was) remarked in *Elleway*: “the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties”.⁵³

⁵² *Canadian Equipment Finance and Leasing Inc. v The Hypoint Company Limited*, 2022 ONSC 6186 at para 25; *Maple Trade Finance Inc. v CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para 25.

⁵³ *Elleway Acquisitions Limited v The Cruise Professionals Limited*, 2013 ONSC 6866 (Commercial List), para 27 [*Elleway*]; *Metropolitan Partners*, *supra* note 49, para 22

44. Commercial certainty requires that parties should expect courts to hold them to their agreements. More recently, in *JBT Transport*, the Court held that this expectation particularly arises where a creditor has allowed the debtor the opportunity to explore other options.⁵⁴

45. The Caisse is also not required to establish that it will suffer irreparable harm or that a situation is urgent. Instead, evidence suggesting that a creditor's attempts to privately enforce its security will be delayed or otherwise fail can warrant receivership appointment.⁵⁵

46. The appointment of the Receiver will also allow any assets of the Debtor to be preserved and placed under the stewardship of a court-appointed officer while the party's rights are being determined.⁵⁶

47. In accordance with the test and factors outlined above, it is both just and convenient to appoint AGI as Receiver because:

(a) Caisse has lost faith in 241's management regarding the Property and it is apparent that the Debtor will not be able to repay the Indebtedness owing to it and Sagewise (as the second mortgagee) has commenced power of sale proceedings. Accordingly, Caisse bears an economic interest in the Debtor's insolvency.⁵⁷

⁵⁴ *Re JBT Transport Inc.*, 2025 ONSC 1436 at para 53-54 [“*JBT Transport*”]; *ATB Financial v Mayfield Investments Ltd.*, 2024 ABKB 635 at para 40

⁵⁵ *Business Development Bank of Canada v 170 Willowdale Investments Corp.*, 2023 ONSC 3230 at para 53; *Bank of Montreal v Carnival National Leasing Ltd.*, 2011 ONSC 1007 at paras 24, 28-29.

⁵⁶ *Bouchard Affidavit*, para 34

⁵⁷ *Bouchard Affidavit*, para 29 and para 31; *Rose-Isli Corp. v Smith*, 2023 ONCA 548 at para 9.

(b) 241 has no ability to fund ongoing mortgage or property tax payments and this is eroding the value of Caisse's security position due to the accrual of the Indebtedness without meaningful repayment of the Loan.⁵⁸

(c) Caisse has suffered and is expected to continue to suffer substantial prejudice as a result of the Debtor's failure to properly operate the Business. The appointment of the Receiver is necessary to preserve the value of the businesses and the Caisse's collateral.⁵⁹

48. Upon appointment, the Receiver will assess the state of the Property and determine a strategy for recovery for the benefit of all stakeholders, including communicating directly with all affected parties.⁶⁰

PART V - RELIEF SOUGHT

49. Caisse requests that the Court grant the Appointment Order substantially in the form included at Tab C of the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of April, 2025.



Bart Sarsh

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⁵⁸ **Bouchard Affidavit**, para 32

⁵⁹ **Bouchard Affidavit**, para 33

⁶⁰ **Bouchard Affidavit**, para 34

SCHEDULE "A"

LIST OF AUTHORITIES

1. ATB Financial v Mayfield Investments Ltd., 2024 ABKB 635
2. Bank of Montreal v Carnival National Leasing Ltd., 2011 ONSC 1007
3. Bank of Nova Scotia v Freure Village on Clair Creek et al, 1996 CanLII 8258 (Commercial List)
4. Business Development Bank of Canada v 170 Willowdale Investments Corp., 2023 ONSC 3230
5. Canadian Equipment Finance and Leasing Inc. v The Hypoint Company Limited, 2022 ONSC 6186
6. Elleway Acquisitions Ltd. v The Cruise Professionals Ltd., 2013 ONSC 6866 (Commercial List)
7. Metropolitan Partners Group Administration, LLC v International Credit Experts Inc., 2024 ONSC 4601 (Commercial List)
8. Re JBT Transport Inc, 2025 ONSC 1436
9. Rose-Isli Corp. v Smith, 2023 ONCA 548

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

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date April 10, 2025



Bart Sarsh

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

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

Court may appoint receiver

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

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

Restriction on appointment of receiver

243 (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

243 (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)

243 (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).

Trustee to be appointed

243 (4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

243 (5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

243(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver’s claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of disbursements

243 (7) In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

Advance notice

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or
- (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

No advance consent

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

Exception

(3) This section does not apply, or ceases to apply, in respect of a secured creditor

- (a) whose right to realize or otherwise deal with his security is protected by subsection

69.1(5) or (6); or

(b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

Idem

(4) This section does not apply where there is a receiver in respect of the insolvent person.

Courts of Justice Act 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.

Terms

101 (2) An order under subsection (1) may include such terms as are considered just.

CAISSE DESJARDINS ONTARIO CREDIT UNION INC.

Applicant

Court File No. CV-25-00089766-0000
- and - 2416946 ONTARIO LTD. and ALF K. STORCK
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
HAMILTON

APPLICANT'S FACTUM
(Appointment of Receiver)

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