

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

CMLS FINANCIAL LTD.

Applicant

and

BRONTE LAKESIDE LTD. and BRONTE LIMITED PARTNERSHIP

Respondents

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

FACTUM OF CMLS FINANCIAL LTD.

Dated: November 10th, 2025

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Proceeding commenced at **TORONTO**

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FACTUM OF CMLS FINANCIAL LTD.

PART I – OVERVIEW

1. The Respondent, Bronte Lakeside Ltd. (the “**Debtor**”), is indebted in an amount exceeding \$18,515,023.50 to the Applicant, CMLS Financial Ltd. (“**CMLS**”), pursuant to a loan in the original principal amount of \$19,100,000 made to the Debtor pursuant to a Commitment Letter dated November 26, 2024 (the “**Loan**”). The Loan was provided to refinance a 1.46-acre parcel of land municipally known as 2432-2452 Lakeshore Road West and 77, 87, and 93 Bronte Road, Oakville, Ontario (the “**Bronte Property**”).

2. The Loan is secured by a comprehensive suite of security, including a first-ranking collateral mortgage registered against the Bronte Property, a general security agreement, a general assignment of rents and leases, an assignment of insurance, an assignment of material agreements, and an assignment of purchase agreements.

3. There have been myriad defaults under the Loan:

- (a) Failing to discharge or vacate construction liens registered against the Bronte Property;
- (b) Failing to pay municipal property taxes, which as of October 2, 2025, were in arrears in the amount of \$114,239.55; and,
- (c) Failing to pay the indebtedness following demand.

4. Despite demand and the passage of time, the Debtor has not remedied the defaults or repaid the indebtedness, and there is no reasonable prospect that it can do so. The ongoing accrual of interest and fees, the existence of multiple construction liens, and the Debtor's inability to satisfy its obligations have caused CMSL to lose confidence in the Debtor's management and ability to protect the security and complete the Project.

5. Accordingly, CMSL seeks an order appointing Albert Gelman Inc. (the "**Receiver**") as receiver and manager over all of the property, assets, and undertakings of the Debtor, including the Bronte Property. CMSL also seeks to appoint the Receiver over the right, title and interest in the Bronte Property of the beneficial owner of the Bronte Property, being the Respondent Bronte Limited Partnership ("**Beneficial Owner**").

PART II – FACTS

Background

6. The Applicant, CMLS is, among other things, a mortgage service company.
7. The Debtor is incorporated pursuant to the laws of Ontario, with its head office in Ottawa, Ontario.¹
8. The Beneficial Owner, Bronte Limited Partnership, is an Ontario limited partnership with Bronte GP Inc. as its general partner.²
9. CMLS made the Loan to the Debtor in the principal amount of \$19,100,000 pursuant to the terms of a commitment letter dated November 26, 2024 (the “**Commitment Letter**”).³
10. The term of the Loan was for twelve months, with a maturity date of January 1, 2026. The Loan provided for payment of interest only on a monthly basis, with interest calculated at 285 basis points above the Royal Bank of Canada Prime Rate, with a floor rate of 830 basis point.⁴
11. The purpose of the Loan was to provide first mortgage land financing for the Bronte Property with the entire Loan being advanced on December 28, 2024. Approximately \$1,680,000 of the Loan was held back in respect of an interest reserve for monthly interest payments (the “**Interest Reserve**”).⁵
12. As security for the Loan, among other things, the Debtor granted CMLS Capital a first mortgage over the Bronte Property in the amount of \$19,100,000 (the “**Mortgage**”) registered on

¹ Application Record of CMLS, dated October 30, 2025 (“**Record**”), affidavit of Jeffrey Burt sworn October 9, 2025 (“**Burt Affidavit**”), at para 4, Exhibit “A”, corporate profile report of the Debtor.

² Record, Burt Affidavit, para 6, Exhibits “D” and “E”, Ontario partnership reports for the Beneficial Owner Bronte LP and Bronte GP Inc.

³ Record, Burt Affidavit, para 9, Exhibit “F”, Commitment Letter.

⁴ Record, Burt Affidavit, para 10.

⁵ Record, Burt Affidavit, paras 11 and 12.

title on December 18, 2024, a General Assignment of Rents and Leases over the Bronte Property (the “**GAR**”), a General Security Agreement (the “**GSA**”), and an assignment of the Project’s purchase agreements.⁶

13. Section 59 of the Mortgage and subsection 5.1(a) of the GSA both provide for the appointment of a receiver and manager over the Debtor’s assets, including the Bronte Property, upon default by the Debtor.⁷

14. The Debtor holds title to the Bronte Property, in trust, as a bare trustee and nominee for the Beneficial Owner, who is the sole beneficial owner of the Bronte Property. On or about December 18, 2024, CMLS entered into an authorization, direction, and consent with the Beneficial Owner and the Debtor, pursuant to which, among things, the Beneficial Owner agreed to be bound to the terms of the Commitment Letter and the Security (the “**ADC**”).⁸

Default and Demand for Payment Under the Loan

15. Pursuant to term 40 of the Mortgage, the Debtor covenanted and agreed that if a construction lien is registered against title to the Bronte Property that the Debtor will have the lien vacated or discharged within ten days after receipt of notice of the lien.

16. Between June 19 and July 9, 2025, three construction liens totalling \$830,431 (the “**Construction Liens**”) were registered against title to the Bronte Property pursuant to the *Construction Act*, R.S.O. 1990, c. C.30 (the “**Construction Act**”).⁹

⁶ Record, Burt Affidavit, para 14, Exhibit “G”, Mortgage, Exhibit “H”, the GSA, Exhibit “I”, the GAR, Exhibit “L” the APS assignment.

⁷ Record, Burt Affidavit, para 16.

⁸ Record, Burt Affidavit, paras 5, 17 to 19, Exhibit “C”, ADC.

⁹ Record, Burt Affidavit, para 23, Exhibit “P”, TM Platforms Lien, Exhibit “Q”, Trak Lien, Exhibit “R”, Brooklyn Lien.

17. By letter dated August 8, 2025, Blaney McMurtry LLP (“**Blaneys**”), on behalf of CMLS, gave notice to the Debtor that the registration of the Construction Liens constitute a default and demanded that the Construction Liens be discharged by August 18, 2025, failing which CMLS may make immediate demand for payment of all indebtedness owing by the Debtor, and enforce its legal rights and remedies against the Debtor, including ceasing any further draw down on the Interest Reserve.¹⁰

18. In addition, on August 11, 2025, a fourth construction company, the Delta Group, registered a claim for lien against title to the Bronte Property pursuant to the *Construction Act* seeking \$470,505.00 in unpaid construction services against the Debtor. Bringing the total amount of the Construction Lien claims against the Debtor to \$1,237,936.00.¹¹

19. The Debtor failed to discharge the Construction Liens (including the Delta Group lien) by August 18, 2025, or at all.¹²

20. Pursuant to the Mortgage, an Event of Default occurs when the Debtor fails to observe any of its obligations contained in, amongst other places, the Mortgage or the Commitment Letter and it failed to remedy such default within 15 days of the earlier of becoming aware of the default or receiving written notice of the default.¹³

21. The Debtor’s failure to discharge the Construction Liens constituted an Event of Default.

22. Pursuant to subsection 5.1 of the Mortgage, on the occurrence of an Event of Default, at the option of CMLS any or all of the Loan will become immediately due and payable.¹⁴

¹⁰ Record, Burt Affidavit, para 24, Exhibit “S”, demand letter.

¹¹ Supplementary AR, Supp Burt Affidavit, para 5 and Exhibit “F”, the Delta Group Lien.

¹² Record, Burt Affidavit, para 25.

¹³ Record, Burt Affidavit, paras 26 and 27.

¹⁴ Record, Burt Affidavit, para 28.

23. By letter dated September 11, 2025, Blaneys, on behalf of CMLS, made demand on the Debtor for payment in full of the amounts owing under the Loan, being in the approximate amount of \$18,515,023.50 as of September 10, 2025 (the “**Indebtedness**”), excluding legal and other professional fees, and gave notice of its intention to enforce its security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (the “**Demand Letter and NITES**”).¹⁵

24. The Indebtedness includes a credit in the amount of \$625,581.09 issued to the Debtor being the remaining balance in the Interest Reserve.

25. Pursuant to section 17 of the Mortgage, the Debtor is in additional default. The Debtor is required to pay all taxes charged upon the Bronte Property. The Debtor is in arrears on the municipal property taxes owing on the Bronte Property to the Town of Oakville totalling \$114,239.55 as of October 2, 2025, which amount continues to accrue interest.¹⁶

26. In addition, each of the Construction Liens have been perfected pursuant to the *Construction Act*, and two of the lien claimants, Brooklyn Contracting Inc. and Trak International Green Energy Resources Inc., have included CMLS as a defendant to their actions against the Debtor and seek priority payment over the Mortgage.¹⁷

27. The Indebtedness is accruing per diem interest of \$4,343.29 and it is estimated that at the time of the application’s return on November 19, 2025, the total amount owing will be \$18,819,053.80, exclusive of legal and other professional fees.¹⁸

¹⁵ Record, Burt Affidavit, para 29, Exhibit “T”, Demand Letter and NITES.

¹⁶ Record, Burt Affidavit, para 31, Exhibit “V” tax certificate.

¹⁷ The Supplementary Application Record of CMLS dated November 6, 2025, the Supplementary Affidavit of Jeffrey Burt sworn November 6, 2025, at para 4, and Exhibits “A” to “E”, being the Certificates and Claims.

¹⁸ Record, Burt Affidavit, Exhibit “U”, payout statement.

Status of the Bronte Property

28. The Debtor planned to construct a six-storey, 203-unit luxury condominium development marketed as “The Residences at Bronte Lakeside” (the “**Project**”) on the Bronte Property.¹⁹

29. The Debtor has entered into pre-sale agreements of purchase and sale for the Project; however, they have not begun any structural building at the Property.²⁰

PART III – ISSUES

30. The sole issue to be determined on this Application is whether it is just or convenient to appoint the Receiver over the Debtor and over the Beneficial Owner’s interest in the Bronte Property.

PART IV – LAW AND ARGUMENT

Test to Appoint a Receiver

31. Pursuant to [section 243\(1\)](#) of the *BIA* and [section 101](#) of the *Courts of Justice Act, R.S.O. 1990, c. C.43* (the “**CJA**”), the Court may appoint a receiver and manager where it is “just or convenient” to do so.

32. In determining whether it is just or convenient to appoint a receiver, a court must have regard to “all of the circumstances, but in particular the nature of the property and the rights and interest of all parties in relation thereto”. The Applicant need not establish that it will suffer irreparable harm if the proposed receiver is not appointed.²¹

¹⁹ Record, Burt Affidavit, at para 7.

²⁰ Record, Burt Affidavit at para 8.

²¹ [Bank of Montreal v Carnival National Leasing Limited, 2011 ONSC 1007](#), at paras [24](#) and [28](#).

33. Where a debtor has expressly agreed to the appointment of a receiver in the event of default, the Court should not ordinarily interfere with the contract between the parties.²² The extraordinary nature of a receiver “is significantly reduced when dealing with a secured creditor who has the right to a receivership under its security arrangements.” The appointment of a receiver “becomes even less extraordinary when dealing with a default under a mortgage”.²³

34. Where, as here, a secured creditor seeks to enforce a term of an agreement assented to by the parties, the inquiry as to whether it is just or convenient to appoint a receiver requires the Court to determine whether it is in the interests of all concerned to have the receiver appointed. In making such determination, courts are informed by the following factors, among others:

- (a) The need to preserve and maximize the return on the subject property;
- (b) The relationship between the debtor and its creditors;
- (c) The risk of the lender’s security deteriorating; and
- (d) Loss of confidence in the debtor’s management.²⁴

It is Just or Convenient to Appoint a Receiver

35. Having regard to the forgoing considerations, in the case at bar it is both just and convenient to appoint the Receiver for the following non-cumulative reasons:

- (a) The Loan has been in unremedied default since August 8, 2025 (the Construction Liens Default);
- (b) Notwithstanding the demand for payment in full under the Loan made on September 11, 2025, and the issuance of the related section 244 *BIA* notices, the

²² *Potentia Renewables Inc. v. Deltro Electric Ltd.*, 2018 ONSC 3437, at paras 47-48, aff’d 2019 ONCA 779.

²³ *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc.*, 2020 ONSC 1953, at paras 43-44.

²⁴ *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc.*, 2020 ONSC 1953, at para 45.

Debtor has failed to repay the Loan even though the statutory 10-day notice period under the *BIA* has long expired;

- (c) Interest is accruing on the Indebtedness at the rate of approximately \$130,290 per month;
- (d) The Mortgage and GSA contain contractual entitlements to appoint a receiver upon default;
- (e) Pursuant to the Beneficial Charge Agreement, the Beneficial Owners agreed to be bound by the terms of the Commitment Letter and the Mortgage, including the provisions for the appointment of a receiver upon default;
- (f) The Debtor's inability to pay its trade contractors is particularly germane as it:
 - (i) Undermines the Debtor's ability and wherewithal to complete the Project, especially considering the Project is still at a relatively early stage;
 - (ii) Has caused a serious loss of confidence in the management of the Debtor; and,
 - (iii) It will potentially erode the value of CMLS' collateral as two of the Construction Lien claimants are seeking payments in priority to CMLS' Mortgage;
- (g) A Court-appointed receiver will ensure that the interest of all of the Respondents' stakeholders are considered for achieving a definitive disposition of the Bronte Property.

36. CMSL views the appointment of the proposed Receiver as the only path forward that will protect its security in the assets of the Debtors, including the Bronte Property, and lead to repayment of the Indebtedness.

PART V – ORDER REQUESTED

37. CMSL respectfully requests an Order appointing the Receiver over all of the assets, undertaking and properties of the Debtor, and over the right, title and interest in the Bronte Property of the Beneficial Owner.

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



STEPHEN GAUDREAU/TIMOTHY DUNN
Lawyers for CMSL Financial Ltd.

SCHEDULE “A” - LIST OF AUTHORITIES

1. *Bank of Montreal v Carnival National Leasing Limited*, 2011 ONSC 1007
2. *Potentia Renewables Inc. v. Deltro Electric Ltd.*, 2018 ONSC 3437
3. *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc*, 2020 ONSC 1953

SCHEDULE “B” - RELEVANT STATUTES

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

(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).

Trustee to be appointed

(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

(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

(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*

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

Courts of Justice Act, R.S.O. 1990, c. C.43

The Court may appoint a receiver - 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).

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