

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CAISSE DESJARDINS ONTARIO CREDIT UNION INC.

Applicant
and

ARANAI IMMOBILIER INC./ARANAI REAL ESTATE INC., CHYN CHYN
NING, SHUYE CHIN NING and JIA CHERN NING

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)

September 10, 2025

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TO: THE SERVICE LIST

THE SERVICE LIST
(as at September 10, 2025)

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<p>Shuye Chin Ning 960 Schubert Brossard, QC J4X 1X1</p> <p>Email: philipcherng@gmail.com</p> <p>Respondent / Guarantor</p>	<p>Jia Chern Ning 3422 Stanley St Montreal, QC H3A 1R8</p> <p>Email: jcning@ymail.com</p> <p>Respondent / Guarantor</p>
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GOVERNMENT	
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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 Aranai Immobilier Inc./Aranai Real Estate Inc. (“**Aranai**” or the “**Borrower**” or the “**Debtor**”) acquired for or used in relation to all of the Debtor’s right, title and interest in and to the property described in Schedule “A” to the Appointment Order including all proceeds (the “**Property**”). The scope of the receivership is limited to the Property.

2. As of May 14, 2025, the aggregate indebtedness due and owing by the Debtor to the Caisse was \$771,579.10 in addition to ongoing accrual of interest as set out in the Loan Agreement excluding professional fees, disbursements and HST.³

3. The following is the list of real property covered by the proposed receivership order:

- (a) 103-105 Prince Arthur Street, Cornwall, Ontario;
- (b) 18-18 ½ McDonald Avenue, Cornwall, Ontario;
- (c) 69-73 Leonia Street, Cornwall, Ontario; and

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 Julie Chenard affirmed September 9, 2025, Tab B to the Application Record (“**Chenard Affidavit**”), para 33

(d) 69-73 Leonia Street, Cornwall, Ontario.

PART II - FACTS

I. THE PARTIES

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

5. Aranai is a company incorporated pursuant to the laws of Canada, with a registered office in the City of Montréal, Quebec.⁵

6. Chyn Chyn Ning (“**Chyn**”) is an officer and director of Aranai, holding the positions of President, Secretary and Treasurer. Chyn provided a limited personal guarantee of certain loans, described below (a “**Guarantor**”), issued by the Caisse to Aranai.

7. Shuye Chin Ning (“**Shuye**”) is an officer and director of Aranai holding the positions of President, Secretary and Treasurer. Shuye provided a limited personal guarantee of certain loans, described below (a “**Guarantor**”), issued by the Caisse to Aranai.

8. Jia Chern Ning (“**Jia**”) is an officer and director of Aranai holding the positions of President, Secretary and Treasurer. Jia provided a limited personal guarantee of certain loans, described below (a “**Guarantor**”), issued by the Caisse to Aranai.⁶

9. Chyn, Shuye and Jia are named in the Application to facilitate co-operation with the Receiver, once appointed.⁷

⁴ **Chenard Affidavit**, para 3

⁵ **Chenard Affidavit**, para 4; **Corporate Profile Report**, Exhibit 1 to the Chenard Affidavit

⁶ **Chenard Affidavit**, para 5-7; **Corporate Profile Report**, Exhibit 1 to the Chenard Affidavit

⁷ **Chenard Affidavit**, para 8;

II. LOAN NO. 714502-PR-1 re 103-105 Prince Arthur Street, Cornwall, ON, K6H 4N6

10. The Caisse (as lender), Aranai (as borrower), Chyn, Shuye and Jia (as guarantors) entered into a Loan Agreement on February 25, 2021 (the “**105 Prince Arthur Loan Agreement**”). Pursuant to the 105 Prince Arthur Loan Agreement, the Caisse advanced a loan in the total principal amount of \$192,000.00, for a term of thirty-six (36) months, from the date of disbursement together with interest at a rate of 2.090% per annum and calculated monthly and not in advance. The loan was disbursed on August 9, 2021.⁸

Security

11. The Caisse holds security against Aranai as follows:

- (a) a Charge/Mortgage registered March 5, 2021 as Instrument No. ST120945 over lands municipally known as 105 Prince Arthur Street, Cornwall Ontario, K6H 4N6 (the “**105 Prince Arthur Collateral Mortgage**”).⁹
- (b) an Assignment of Rents in respect of 105 Prince Arthur Street, Cornwall Ontario, K6H 4N6 dated March 4, 2021 (the “**105 Prince Arthur Assignment of Rents**”). The 105 Prince Arthur Assignment of Rents was registered as Instrument No. ST120946 on March 5, 2021.¹⁰

⁸ **Chenard Affidavit**, para 9 and para 10; **105 Prince Arthur Loan Agreement**, Exhibit 2 to the Chenard Affidavit

⁹ **Chenard Affidavit**, para 11(a); **Acknowledgement and Direction**, Exhibit 3 to the Chenard Affidavit; **105 Prince Arthur Collateral Mortgage**, Exhibit 4 to the Chenard Affidavit; **Parcel Register**, Exhibit 4 to the Chenard Affidavit;

¹⁰ **Chenard Affidavit**, para 11(b); **105 Prince Arthur Assignment of Rents**, Exhibit 5 to the Chenard Affidavit; **Registered Notice**, Exhibit 6 to the Chenard Affidavit

12. The personal property security of the Caisse was registered on June 4, 2025 against Aranai as related to the applicable personal property of Aranai in the provincial registry maintained under the *Personal Property Security Act (Ontario)*, R.S.O. 1990, c P.10 (the “**Ontario PPSA**”) under File No. 516974787 and Registration No. 20250604 1549 1590 3468 with respect to the 105 Prince Arthur Assignment of Rents.¹¹

Amendment to Loan Agreement

13. The 105 Prince Arthur Loan Agreement was amended on March 12, 2025 whereby the interest rate was amended to 4.660% per annum calculated monthly and not in advance, the term of the mortgage was revised to a twelve (12) month term.¹²

The Guarantee

14. Chyn, Shuye and Jia each provided a personal guarantee in favour of the Caisse dated February 25, 2021, limited to the amount of \$650,500.00 plus interest, costs and expenses in respect of all indebtedness, liabilities and obligations of Aranai (the “**General Guarantee**”).¹³

III. LOAN NO. 714502-PR 5- re 18-18 ½ McDonald Avenue, Cornwall, ON, K6J 2Y9

15. The Caisse (as lender), Aranai (as borrower), and Chyn, Shuye and Jia (as guarantors) entered into a Loan Agreement on April 23, 2021 (the “**18 McDonald Loan Agreement**”). Pursuant to the 18 McDonald Loan Agreement, the Caisse advanced a

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

¹² **Chenard Affidavit**, para 13; **105 Prince Arthur Amended Loan Agreement**, Exhibit 8 to the Chenard Affidavit

¹³ **Chenard Affidavit**, para 14; **General Guarantee**, Exhibit 9 to the Chenard Affidavit

loan in the total principal amount of \$217,600.00, for a term of forty-eight (48) months, from the date of disbursement together with interest at 3.220% per annum calculated monthly not in advance. The loan was disbursed on August 31, 2021.¹⁴

Security

16. The Caisse holds security against Aranai as follows:

- (a) a Charge/Mortgage registered on April 30, 2021 as Instrument No. ST122493 over lands municipally known as 18-18 ½ McDonald Avenue, Cornwall, ON, K6J 2Y9 (the “**18 McDonald Collateral Mortgage**”).¹⁵
- (b) an Assignment of Rents in respect of 18-18 ½ McDonald Avenue dated April 28, 2021 (the “**18 McDonald Assignment of Rents**”). The 18 McDonald Assignment of Rents was registered as Instrument No. ST122495 on April 30, 2021.¹⁶

17. The personal property security of the Caisse was registered on June 4, 2025 against Aranai as related to the applicable personal property of Aranai in the provincial registry maintained under the Ontario PPSA under File No. 516974715 and Registration No. 20250604 1547 1590 3466 (with respect to the 18 McDonald Assignment of Rents).

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¹⁴ **Chenard Affidavit**, para 15 and para 16; **18 McDonald Loan Agreement**, Exhibit 10 to the Chenard Affidavit

¹⁵ **Chenard Affidavit**, para 17 (a); **Acknowledgement and Direction**, Exhibit 11 to the Chenard Affidavit; **18 McDonald Collateral Mortgage**, Exhibit 12 to the Chenard Affidavit, **Parcel Register**, Exhibit 12 to the Chenard Affidavit

¹⁶ **Chenard Affidavit**, para 17 (b); **18 McDonald Assignment of Rents**, Exhibit 13 to the Chenard Affidavit; **Registered Notice**, Exhibit 14 to the Chenard Affidavit

¹⁷ **Chenard Affidavit**, para 18; **PPSA registration**, Exhibit 15 to the Chenard Affidavit

The Guarantee

18. Chyn, Shuye and Jia each provided a personal guarantee in favour of the Caisse dated April 23, 2021, limited to the amount of \$1,088,100.00 plus interest, costs and expenses in respect of all indebtedness, liabilities and obligations of Aranai (the “**18 McDonald Guarantee**”).¹⁸

IV. LOAN NO. 714502-PR 6- re 106 Walton Street, Cornwall, ON, K6H 1S5

19. The Caisse (as lender), Aranai (as borrower), and Chyn, Shuye and Jia (as guarantors) entered into a Loan Agreement on October 6, 2021 (the “**106 Walton Loan Agreement**”). Pursuant to the 106 Walton Loan Agreement, the Caisse advanced a loan in the total principal amount of \$148,000.00, for a term of sixty (60) months, from the date of disbursement together with interest at a rate of 3.420% per annum and calculated monthly and not in advance. The loan was disbursed on January 31, 2022.¹⁹

Security

20. The Caisse holds security against Aranai as follows:

(a) a Charge/Mortgage registered on October 8, 2021 as Instrument No. ST127970 over lands municipally known as 106 Walton Street, Cornwall Ontario, K6H 1S5 (the “**106 Walton Collateral Mortgage**”).²⁰

¹⁸ **Chenard Affidavit**, para 19; **18 McDonald Guarantee**; Exhibit 16 to the Chenard Affidavit

¹⁹ **Chenard Affidavit**, para 20 and para 21; **106 Walton Loan Agreement**, Exhibit 17 to the Chenard Affidavit

²⁰ **Chenard Affidavit**, 22 (a); **Acknowledgement and Direction**, Exhibit 18 to the Chenard Affidavit; **106 Walton Collateral Mortgage**, Exhibit 19 to the Chenard Affidavit; **Parcel Register**; Exhibit 19 to the Chenard Affidavit

(b) an Assignment of Rents in respect of 106 Walton Street dated October 7, 2021 (the “**106 Walton Assignment of Rents**”). The 106 Walton Assignment of Rents was registered as Instrument No. ST127971 on October 8, 2021.²¹

21. The personal property security of the Caisse was registered on June 4, 2025 against Aranai as related to the applicable personal property of Aranai in the provincial registry maintained under the Ontario PPSA under File No. 516974841 and Registration No. 20250604 1551 1590 3470 (with respect to the 106 Walton Assignment of Rents).²²

The Guarantee

22. Chyn, Shuye and Jia each provided a personal guarantee in favour of the Caisse dated October 6, 2021 for an unlimited amount plus interest, costs and expenses in respect of all indebtedness, liabilities and obligations of Aranai (the “**Unlimited General Guarantee**”).²³

V. LOAN NO. 714502-PR 7- re 69-73 Leonia Street, Cornwall, Ontario, K6H 5L5

23. The Caisse (as lender), Aranai (as borrower), and Chyn, Shuye and Jia (as guarantors) entered into a Loan Agreement on September 15, 2022 (the “**73 Leonia Loan Agreement**”). Pursuant to the 73 Leonia Loan Agreement, the Caisse advanced a loan in the total principal amount of \$290,000.00, for a term of thirty-six (36) months, from the

²¹ **Chenard Affidavit**, para 22 (b); **106 Walton Assignment of Rents**; Exhibit 20 to the Chenard Affidavit; **Registered Notice**; Exhibit 21 to the Chenard Affidavit;

²² **Chenard Affidavit**, para 23; **PPSA registration**; Exhibit 22 to the Chenard Affidavit;

²³ **Chenard Affidavit**, para 24; **Unlimited General Guarantee**; Exhibit 23 to the Chenard Affidavit;

date of disbursement together with interest at a rate of 4.890 % per annum and calculated monthly and not in advance. The loan was disbursed on March 3, 2023.²⁴

Security

24. The Caisse holds security against Aranai as follows:

- (a) a Charge/Mortgage registered on April 30, 2021 as Instrument No. ST122484 over lands municipally known as 69-73 Leonia Street, Cornwall, Ontario, K6H 5L5; (the “**73 Leonia Collateral Mortgage**”).²⁵
- (b) an Assignment of Rents in respect of 69-73 Leonia Street dated April 28, 2021 (the “**73 Leonia Assignment of Rents**”). The Assignment of Rents was registered as Instrument No. ST122458 on April 30, 2021.²⁶

25. The personal property security of the Caisse was registered on June 4, 2025 against Aranai as related to the applicable personal property of Aranai in the provincial registry maintained under the Ontario PPSA under File No. 516974832 and Registration No. 20250604 1550 1590 3469 (with respect to the 73 Leonia Assignment of Rents).²⁷

²⁴ **Chenard Affidavit**, para 25 and para 26; **73 Leonia Loan Agreement**; Exhibit 24 to the Chenard Affidavit;

²⁵ **Chenard Affidavit**, para 27(a); **Acknowledgement and Direction**, Exhibit 25 to the Chenard Affidavit; **73 Leonia Collateral Mortgage**; Exhibit 26 to the Chenard Affidavit; **Parcel Register**; Exhibit 26 to the Chenard Affidavit;

²⁶ **Chenard Affidavit**, para 27(b); **73 Leonia Assignment of Rents**; Exhibit 27 to the Chenard Affidavit; **Registered Notice**, Exhibit 28 to the Chenard Affidavit;

²⁷ **Chenard Affidavit**, para 28; **PPSA Registration**; Exhibit 29 to the Chenard Affidavit;

The Guarantee

26. Chyn, Shuye and Jia each provided a personal guarantee in favour of the Caisse dated October 6, 2021 for an unlimited amount plus interest, costs and expenses in respect of all indebtedness, liabilities and obligations of Aranai (the “**Unlimited General Guarantee**”).²⁸

VI. DEFAULTS, DEMANDS, AND NOTICE OF INTENTION TO ENFORCE

27. Numerous events of default under the 105 Prince Arthur, 18 McDonald, 106 Walton and 73 Leonia Collateral Mortgages have occurred.²⁹

28. Aranai’s defaults are existing and continuing, including, but not limited to the defaults described below:

- (a) Aranai has failed to make prompt payment of the amounts due under the 105 Prince Arthur, 18 McDonald, 106 Walton and 73 Leonia Collateral Mortgages;³⁰
- (b) Aranai has failed to make prompt payment of the amount due for property taxes for 105 Prince Arthur. As of April 2, 2025 the amount of \$1,645.45 was outstanding related to the years 2024/2025;³¹

²⁸ **Chenard Affidavit**, para 29, **Unlimited General Guarantee**; Exhibit 23 to the Chenard Affidavit;

²⁹ **Chenard Affidavit**, para 30;

³⁰ **Chenard Affidavit**, para 31 (a);

³¹ **Chenard Affidavit**, para 31 (b); **City of Cornwall Tax Certificate**, Exhibit 30 to the Chenard Affidavit

- (c) Aranai has failed to make prompt payment of the amount due for property taxes for 18 McDonald. As of April 3, 2025 the amount of \$2,510.38 was outstanding related to the years 2024/2025;³²
- (d) Aranai has failed to make prompt payment of the amount due for property taxes for 106 Walton. As of April 3, 2025 the amount of \$2,805.30 was outstanding related to the years 2024/2025;³³
- (e) Aranai has failed to make prompt payment of the amount due for property taxes for 73 Leonia. As of April 3, 2025 the amount of \$4,928.36 was outstanding related to the years 2024/2025;³⁴ and
- (f) Aranai has failed to repay the loan(s) in accordance with the 105 Prince Arthur Loan Agreement, 18 McDonald Loan Agreement, 106 Walton Loan Agreement and the 73 Leonia Loan Agreement.³⁵

29. On May 29, 2025, Gowling WLG (Canada) LLP (“**Gowlings**”) acting on behalf of the Caisse issued the following to Aranai and Chyn, Shuye and Jia as the Guarantors:

- (a) a demand for payment (the “**Demand Letter**”) of the total indebtedness owing as of May 14, 2025 plus interest and legal costs to the Caisse as set out in Schedule “B” to the Demand Letter by the deadline of June 9, 2025; and

³² **Chenard Affidavit**, para 31 (c); **City of Cornwall Tax Certificate**, Exhibit 31 to the Chenard Affidavit

³³ **Chenard Affidavit**, para 31 (d); **City of Cornwall Tax Certificate**, Exhibit 32 to the Chenard Affidavit

³⁴ **Chenard Affidavit**, para 31 (e); **City of Cornwall Tax Certificate**, Exhibit 33 to the Chenard Affidavit

³⁵ **Chenard Affidavit**, para 31 (f);

(b) a Notice of Intention to Enforce Security on the property of Aranai pursuant to section 244(1) of the BIA (the “**BIA 244 Notice**”).³⁶

VII. NEED FOR A RECEIVER

30. As of May 14, 2025, the aggregate indebtedness of Aranai due and owing to the Caisse was \$169,953.92 for the 105 Prince Arthur Collateral Mortgage (Loan No. 714502-PR-1,) plus \$193,642.92 for the 18 McDonald Collateral Mortgage (Loan No. 714502-PR-5,) plus \$133,787.03 for the 106 Walton Collateral Mortgage (Loan 714502-PR-6,) plus \$274,195.23 for the 73 Leonia Collateral Mortgage (Loan 714502-PR-7,) totalling \$771,579.10 in addition to ongoing accrual of interest as set out in each Loan Agreement or Amendment excluding professional fees, disbursements and HST (the “**Indebtedness**”).³⁷

31. As indicated above, certain events of default have occurred under the 105 Prince Arthur, 18 McDonald, 106 Walton and 73 Leonia Collateral Mortgages, which are ongoing and outstanding.³⁸

32. Aranai is not able to pay the Indebtedness owing on its respective loans.³⁹

33. The statutory notice periods provided for under the Demand Letter and BIA 244 Notice have all expired.⁴⁰

34. The Caisse has lost confidence in the management of Aranai for all of the reasons

³⁶ **Chenard Affidavit**, para 32; **Demand Letter and BIA 244 Notice**, Exhibit 34 to the Chenard Affidavit

³⁷ **Chenard Affidavit**, para 33;

³⁸ **Chenard Affidavit** para 34;

³⁹ **Chenard Affidavit** para 35;

⁴⁰ **Chenard Affidavit**, para 32 and para 36; **Demand Letter and BIA 244 Notice**, Exhibit 34 to the Chenard Affidavit

detailed in the affidavit.⁴¹

35. Aranai 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 Indebtedness without meaningful repayment of the loan.⁴²

36. The Caisse has suffered and is expected to continue to suffer substantial prejudice as a result of Aranai's failure to pay its obligations. The appointment of the Receiver is necessary to preserve the value of the Property and the Caisse's collateral.⁴³

37. Upon appointment, the Receiver will assess the state of Aranai and determine a strategy for recovery of the assets for the benefit of all stakeholders, including communicating directly with all affected parties.⁴⁴

38. Each of the Loan Agreements at Article 11 or 12 states (as applicable):⁴⁵

If the Borrower is in default, the Financial Institution may, subject to its other rights and remedies, demand full and immediate repayment of the amounts loaned, interest accrued and any other amount payable by the Borrower hereunder and by virtue of any credit contract signed with the Financial Institution. Failure by the Financial Institution to avail itself of any of these rights will not be interpreted as a waiver of such rights.

39. Paragraph 38 of the Caisse's Standard Charge Terms filed as number 201909 provides for the appointment of a Receiver:⁴⁶

⁴¹ **Chenard Affidavit**, para 37

⁴² **Chenard Affidavit**, para 38

⁴³ **Chenard Affidavit**, para 39

⁴⁴ **Chenard Affidavit**, para 40

⁴⁵ **Chenard Affidavit**, para 41;

⁴⁶ **Chenard Affidavit**, para 42; **Standard Charge Terms** (paragraph 38), Exhibit 35 to the Chenard Affidavit

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 charge in possession of the Lands.
- (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

40. Is it just and convenient to appoint AGI as Receiver?

PART IV - THE LAW AND ANALYSIS

A. The Court's Authority to Appoint a Receiver

41. Courts can appoint a receiver over a debtor upon application by a secured creditor pursuant to subsection 243(1) of the BIA⁴⁷ and/or subsection 101 of the CJA.⁴⁸ 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 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).

42. 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

43. As of May 14, 2025, the aggregate indebtedness of Aranai due and owing to the Caisse was \$169,953.92 for the 105 Prince Arthur Collateral Mortgage (Loan No. 714502-

⁴⁷ [BIA, Section 243\(1\)](#)

⁴⁸ [CJA, Section 101\(1\)](#)

PR-1) plus \$193,642.92 for the 18 McDonald Collateral Mortgage (Loan No. 714502-PR-5) plus \$133,787.03 for the 106 Walton Collateral Mortgage (Loan 714502-PR-6) plus \$274,195.23 for the 73 Leonia Collateral Mortgage (Loan 714502-PR-7) totalling \$771,579.10 in addition to ongoing accrual of interest as set out in each Loan Agreement or Amendment excluding professional fees, disbursements and HST.⁴⁹

44. The Caisse has satisfied the technical requirements for the appointment of a receiver under the BIA. The Caisse is a secured creditor of Aranai 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, the Caisse issued the BIA 244 Notice and the notice period has expired without repayment of the Indebtedness.⁵⁰

45. 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.⁵¹

46. Aranai is a Canadian corporation.⁵² Aranai holds real property located in Cornwall, Ontario that are the subject of the proposed receivership.⁵³ 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.⁵⁴

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

⁴⁹ **Chenard Affidavit**, para 33;

⁵⁰ **BIA**, [Section 244](#); **Chenard Affidavit**, para 32 and para 36; **BIA 244 Notice**, Exhibit 34 to the Chenard Affidavit

⁵¹ **BIA**, [Section 243\(4\)](#); **Chenard Affidavit**, para 43; **AGI's Consent to Act**, Exhibit 36 to the Chenard Affidavit

⁵² **Chenard Affidavit**, para 4;

⁵³ **Chenard Affidavit**, para 11(a), para 17(a), para 22 (a) and para 27 (a); **Parcel Register**, Exhibit 4, 12, 19 and 26 to the Chenard Affidavit

⁵⁴ **BIA**, [Section 243\(5\)](#)

47. 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.⁵⁵

48. 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;
- (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

⁵⁵ *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")

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.⁵⁶

49. 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

⁵⁶ [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.

in *Elleway*: “the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties”.⁵⁷

50. 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 especially arises where a creditor has allowed the debtor the opportunity to explore other options.⁵⁸

51. 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.⁵⁹

52. 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 parties’ rights are being determined.⁶⁰

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

(a) The Caisse has lost confidence in Aranai’s management regarding the Property and it is apparent that the Debtor will not be able to repay the Indebtedness. Accordingly, the Caisse bears an economic interest in the

⁵⁷ *Elleway Acquisitions Limited v The Cruise Professionals Limited*, 2013 ONSC 6866 (Commercial List), para 27 (“*Elleway*”); *Metropolitan Partners*, *supra* note 49, para 22

⁵⁸ *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

⁵⁹ *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

⁶⁰ *Chenard Affidavit*, para 40;

Debtor's insolvency.⁶¹

(b) The Caisse has suffered and is expected to continue to suffer substantial prejudice as a result of the Debtor's failure to pay its obligations. The appointment of the Receiver is necessary to preserve the value of the Property and the Caisse's collateral.⁶²

54. 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.⁶³

PART V - RELIEF SOUGHT

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

56. A version that is tracked to the Commercial List Model Receivership Order is included at Tab D of the Application Record.

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

⁶¹ **Chenard Affidavit**, para 37 and para 38; [*Rose-Isli Corp. v Smith*](#), 2023 ONCA 548 at [para 9](#)

⁶² **Chenard Affidavit**, para 39;

⁶³ **Chenard Affidavit**, para 40;



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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 September 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.

Court File No.CV-25-00091834-0000
- and - ARANAI IMMOBILIER INC./ARANAI REAL ESTATE
INC.et al.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
HAMILTON

APPLICANT'S FACTUM
(Appointment of Receiver)

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