Court File No. CV-26-00001551-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

HILLMOUNT CAPITAL MORTGAGE HOLDINGS INC.

Applicant

– and –

2715573 ONTARIO INC., 2661793 ONTARIO INC., NATASHA PINTO-CIMICATA, and GUERINO MATTHEW CIMICATA

Respondents

IN THE MATTER OF AN 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 THE APPLICANT

September 8, 2026

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TO: THE SERVICE LIST

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PART I – OVERVIEW

1. Hillmount Capital Mortgage Holdings Inc. (the "**Applicant**" or "**Lender**") seeks an order (the "**Receivership Order**") appointing Goldhar & Associates Ltd. ("**Goldhar**") as receiver and manager (in such capacity, the "**Receiver**") over the Property (as defined below) pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43 (the "**CJA**").

2. Principally, the proposed Receivership Order, which substantially follows the Toronto Commercial List Model Order (as defined herein), among other things:

(a) appoints Goldhar as Receiver, without security, over all of the assets, undertakings and properties of 2715573 Ontario Inc. ("**271 Ontario**" or the "**Debtor**") and 2661793 Ontario Inc. ("**266 Ontario**"), including the real property municipally known as 25 James Street, Georgetown, Ontario (the "**James Property**" and collectively with the assets, undertakings and properties of 271 Ontario and 266 Ontario, the **"Property**");

(b) grants a first-ranking super priority charge (the "**Receiver's Charge**") in the maximum amount of $150,000 over the Property in favour of the Receiver and the Receiver's legal counsel to secure their fees and disbursements in respect of these proceedings; and

(c) grants a second-ranking super priority charge (the "**Receiver's Borrowing Charge**") in the maximum amount of $400,000 over the Property for the purpose of funding these proceedings.

3. The Lender advanced a $950,000 mortgage loan (the "**Loan**") to the Debtor in connection with the development of six townhomes comprising the James Property (the "**Project**"). The Loan is secured by, among other things, a first-ranking mortgage over the James Property, guarantees and related security granted by the Guarantors (as defined herein). As of August 26, 2026, $1,077,118.91 was outstanding under the Loan, together with accruing interest, fees and costs.

4. The Loan has matured and remains unpaid. No monthly payment has been made since December 1, 2025, and defaults have also arisen from, among other things, unpaid realty taxes and the failure to maintain required property insurance. Formal demands for repayment and notices of intention to enforce security under section 244 of the BIA have been delivered, the applicable statutory period has long expired, and the Indebtedness demanded remain unpaid.

5. Despite the Lender affording the Debtor additional time and trying to facilitate a consensual strategy to complete the development, the Project remains incomplete. The James Property has not been severed, and the common-elements condominium has not been registered, preventing unit sales from closing and the anticipated sale proceeds from being applied to the Indebtedness. A subsequent independent review of the James Property also identified material construction deficiencies and safety concerns.

6. In these circumstances, the appointment of the Receiver is just and convenient. The proposed Receivership Order will provide a court-supervised and orderly process to stabilize and preserve the Property, address the outstanding issues affecting the Project and facilitate the realization of the Property for the benefit of the Debtor's stakeholders.

7. The Lender is not aware of any opposition to the appointment of the Receiver.

PART II – FACTS

8. The facts underlying this application are more fully set out in the affidavit of Itzhak (Yitz) Levinson affirmed September 1, 2026 (the "**Levinson Affidavit**").[1] All monetary amounts referred to herein are in Canadian currency unless otherwise stated.

A. The Parties

(i) The Applicant

9. The Lender is a corporation incorporated under the laws of Ontario and is the current holder of the Loan and the related security. The Lender's head office is located at 89 Tycos Drive, Suite 208, Toronto, Ontario.[2]

(ii) The Debtor and the Guarantors

10. 271 Ontario is a corporation incorporated under the laws of Ontario on September 9, 2019. Christopher Cimicata is its sole director, President and Secretary. 271 Ontario is the borrower under the Loan and the registered owner of the James Property, which it acquired on November 25, 2019.[3]

[1] Applicant's Application Record, Tab 2, Affidavit of Itzhak (Yitz) Levinson, affirmed September 1, 2026 ["*Levinson Affidavit*"]"
[2] *Levinson Affidavit* at para 20.
[3] *Levinson Affidavit* at paras 5,21 and Exhibit "A".

11. 266 Ontario is a corporation incorporated under the laws of Ontario on October 24, 2018. Mr. Cimicata is also its sole director, President and Secretary. 266 Ontario is a construction company that acted as the builder of the Project and is a guarantor of the Loan.[4]

12. Mr. Cimicata, Guerino Matthew Cimicata ("**Guerino**") and Natasha Pinto-Cimicata ("**Natasha**", and collectively with Mr. Cimicata, Guerino and 266 Ontario, the "**Guarantors**") each guaranteed the payment and performance of the Debtor's obligations under the Loan. Guerino and Natasha are the registered owners, as joint tenants, of the real property municipally known as 413 Samford Place in Oakville, Ontario (the "**Samford Property**"), which they acquired on November 3, 2016.[5]

B. Indebtedness Owing to the Lender and Related Security

13. On October 21, 2019, Hillmount Capital Inc. ("**HCI**") as lender, and 271 Ontario, as borrower, entered into a mortgage loan commitment letter (the "**Commitment**"). Pursuant to the Commitment, HCI advanced the Loan to 271 Ontario in the principal amount of $950,000. The Loan initially bore interest at 8.75% per annum and had a maturity date of December 1, 2020.[6]

14. The Commitment was later renewed on many occasions, pursuant to renewals dated December 2, 2020, December 1, 2021, December 5, 2022, February 10, 2023, March 14, 2024, February 18, 2025 and February 23, 2026 (collectively, the "**Renewals**"). Among other things, the Renewals amended the applicable interest rate to the greater of 9.25% per annum or the Royal Bank of Canada's prime lending rate plus 3.50% per annum. The principal balance of the Loan remained $950,000 as of December 1, 2025.[7]

15. The payment and performance of the obligations owing under the Loan were jointly and severally guaranteed by the Guarantors pursuant to a Guarantee and Postponement of Claim dated November 19, 2019 (the "**Guarantee**").[8]

16. As general and continuing security for the payment and performance of the indebtedness owing under the Loan, HCI was granted various security by 271 Ontario and the Guarantors, including, among other things:

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[4] *Levinson Affidavit* at paras 5, 22 and Exhibit "B".
[5] *Levinson Affidavit* at paras 8, 23, 26 and Exhibit "D".
[6] *Levinson Affidavit* at paras 4, 24-25 and Exhibit "C".
[7] *Levinson Affidavit* at paras 24-25 and Exhibit "C".
[8] *Levinson Affidavit* at para 26 and Exhibit "D".

(a) a first-ranking charge granted by 271 Ontario and registered against title to the James Property on November 25, 2019 in the principal amount of $950,000 (the "**James Mortgage**");

(b) a second-ranking charge granted by Guerino and Natasha and registered against title to the Samford Property on November 22, 2019 in the principal amount of $950,000 (the "**Samford Mortgage**" and together with the James Mortgage, the "**Mortgages**");

(c) an Assignment of Security and Assignment of Material Contracts and Other Rights dated November 19, 2019;

(d) a General Security Agreement granted by 271 Ontario dated November 19, 2019;

(e) a General Security Agreement granted by 266 Ontario dated November 19, 2019; and

(f) an Assignment of Insurance Policies granted by 266 Ontario and 271 Ontario dated November 19, 2019, (collectively, the "**Security Documents**" and collectively with the Commitment, the Renewals and the Guarantee, the **"Loan and Security Documents**").[9]

17. HCI registered its security interest in the present and after-acquired personal property of 271 Ontario and 266 Ontario pursuant to the *Personal Property Security Act*, R.S.O. 1990, c. P.10, as amended. On February 20, 2020, HCI assigned its interests under the Commitment and the Security Documents to the Lender pursuant to an Assignment of Commitment dated as of February 20, 2020 (the "**Assignment**").[10]

18. The James Mortgage provides at section 17 of the charge document, that upon default the chargee may, by writing, appoint a receiver of the Property and of its rents and profits. The general security agreements granted by 271 Ontario and 266 Ontario contain comparable provisions.[11]

19. The James Property is subject to additional secured claims. Transform Industries Inc. ("**Transform**") holds a second-ranking charge ranking behind the James Mortgage, including a

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[9] *Levinson Affidavit* at para 27 and Exhibits "E"-"J".
[10] *Levinson Affidavit* at paras 28-29 and Exhibits "K"-"L".
[11] *Levinson Affidavit* at para 70.

charge against the James Property and a general security interest over the property of 271 Ontario and 266 Ontario. The James Property is also subject to a charge registered in the amount of $170,000 in favour of Davor Skoko and Ivana Cosic, who the Lender understands are purchasers of one of the homes and registered their charge to protect their deposit.[12]

20. As of August 26, 2026, an aggregate amount of $1,077,118.91 was outstanding under the Loan, together with per diem interest of $261.10 and with interest, fees and costs continuing to accrue (the "**Indebtedness**").[13]

C. The James Property and Status of Development

21. The James Property is a development consisting of six townhomes constructed on a parcel of land in Georgetown, Ontario. 266 Ontario acted as the builder of the Project. The construction of the Project remains incomplete.[14]

22. The Lender understands that three of the completed townhomes are presently occupied by their purchasers. However, the James Property has not been severed into separate lots or units and the common-elements condominium for the Project has not been registered. As a result, the sales of the units cannot be completed and the Lender has not received its anticipated repayment from the proceeds of those closings.[15]

23. Beginning in or around March 2026, the Lender and its real estate counsel engaged in discussions with counsel to 271 Ontario concerning the status and completion of the Project. At the outset of those discussions, the Lender understood that 271 Ontario required additional financial support to complete the development and that, once certain remaining development steps were completed, the units could close and the proceeds could be used to repay the Indebtedness.[16]

24. The Lender initially understood that the remaining development work was relatively straightforward and principally involved the payment of certain municipal levies and fees required to complete the severance and condominium registration process. The Lender accordingly

[12] *Levinson Affidavit* at paras 30-31.
[13] *Levinson Affidavit* at para 14.
[14] *Levinson Affidavit* at paras 5-6.
[15] *Levinson Affidavit* at para 7.
[16] *Levinson Affidavit* at paras 9 and 42-43.

understood that the Project could be completed within a reasonable period if sufficient funding and professional assistance were made available.[17]

25. As the discussions progressed, however, the Lender was unable to obtain clarity regarding the actual status of the Project. Questions arose as to whether all applications required to complete the Project had been submitted, whether the condominium application had progressed to the extent previously understood by the Lender and whether the remaining approval process was as straightforward as initially represented. Given that the Lender was not able to get a clear answer from the Debtor, the Lender was required to rely on information obtained from public sources and Tarion records in attempting to ascertain the status of the development and the builder's licence.[18]

26. 271 Ontario retained legal counsel to assist with the development and planning matters affecting the James Property. The Lender understands, however, that such counsel's involvement was limited principally to preparing applications because 271 Ontario was corresponding directly with municipal and regional authorities. The Lender further understands that the Debtor's counsel has not been paid and, when later asked whether he could assist with completing the severance and condominium registration, advised that he did not have sufficient time to do so due to his workload.[19]

27. By the end of March 2026, additional questions had emerged concerning the Project's development approvals. In particular, although the Town of Halton Hills had granted an occupancy permit in respect of the James Property, the related building permit had not been closed and the occupancy permit identified several outstanding deficiencies, including incomplete elevator installation, deck framing and finishing, exterior cladding and grading, and the installation of anti-siphon devices on hose bibs.[20]

D. The Events of Default, Demands and NITES

28. Beginning in the latter half of 2025, 271 Ontario experienced difficulties satisfying its payment obligations in the ordinary course. Among other things, realty taxes owing in respect of the James Property remained unpaid. On November 6, 2025, the Town of Halton Hills issued a tax certificate showing arrears of $9,621.65 and advised that the James Property was in the tax-

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[17] *Levinson Affidavit* at para 43.
[18] *Levinson Affidavit* at paras 10-11, 44 and 48.
[19] *Levinson Affidavit* at paras 12 and 45.
[20] *Levinson Affidavit* at paras 48-49 and Exhibit "Q".

sale process. To preserve its security, HCI was required to remit $11,103.27 through its real estate counsel to clear the registered tax certificate.[21]

29. 271 Ontario has not made any monthly payment under the Loan since the payment due on December 1, 2025 and the Loan has remained in arrears since that date.[22]

30. The Debtor also failed to maintain the insurance required in respect of the James Property. HCI was required to pay premiums totalling $17,674.20 to maintain insurance coverage over the property. The James Property is presently insured under a course-of-construction policy effective from August 18, 2026 through November 18, 2026, on which the Lender is named as first mortgagee and loss payee.[23]

31. The foregoing constitutes defaults under the Loan and Security Documents, including the Debtor's failure to make the required payments, maintain insurance over the James Property and keep realty taxes current. The James Mortgage also provides that a breach of a covenant under the charge constitutes a default, identifies a failure to maintain the required insurance as an event of default and provides for a cross-default in respect of defaults under the Commitment.[24]

32. On February 2, 2026, in light of the missed monthly payments, unpaid realty taxes and absence of evidence of satisfactory insurance, the Lender's real estate counsel issued a demand for repayment of the Loan to 271 Ontario and the Guarantors and enclosed a notice of intention to enforce security pursuant to section 244 of the BIA.[25]

33. The Debtor requested that the Lender refrain from enforcing and represented that the Loan would be repaid by May 2026. As such, the Lender agreed in February 2026 to extend the Loan for a further three months, to June 1, 2026, to afford 271 Ontario additional time to complete the condominium registration and close the unit sales. 271 Ontario executed the corresponding mortgage renewal on February 23, 2026.[26]

34. In or around April 2026, Transform ceased advancing funds to 271 Ontario for the completion of construction at the James Property. On April 16, 2026, Transform's counsel issued a Notice of Sale Under Mortgages and a notice of intention to enforce security under section 244 of the BIA. Transform claimed $4,507,509.83 as owing as of April 16, 2026 and advised that it

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21 *Levinson Affidavit* at paras 35-37 and Exhibit "N".
22 *Levinson Affidavit* at para 39.
23 *Levinson Affidavit* at paras 46-47.
24 *Levinson Affidavit* at para 50.
25 *Levinson Affidavit* at para 40 and Exhibit "O".
26 *Levinson Affidavit* at paras 41-43 and Exhibit "P".

would sell the James Property if payment was not made by June 1, 2026. The Lender understands that the amounts claimed by Transform remain unpaid.[27]

35. On May 27, 2026, following the continuing defaults, Loopstra Nixon LLP, on behalf of the Lender, issued a further formal written demand to 271 Ontario and each of the Guarantors requiring repayment of the Loan in full (the "**Demand Letter**"). The defaults identified in the Demand Letter included, among other things: (i) the non-payment of monthly amounts owing since December 1, 2025; (ii) the failure to pay realty taxes resulting in liens being registered against the James Property and the Samford Property; and (iii) the failure to provide satisfactory evidence of insurance.[28]

36. Two notices of intention to enforce security pursuant to section 244 of the BIA (the "**NITES**") accompanied the Demand Letter: one addressed to 271 Ontario and on each of the Guarantors in respect of the James Mortgage and another addressed to Natasha and Guerino in respect of the Samford Mortgage. The Demand Letter required payment by June 8, 2026. The prescribed ten-day period under the BIA (the "**Prescribed Period**") has long since expired and neither 271 Ontario nor the Guarantors has paid the amounts demanded or made arrangements for payment satisfactory to the Lender.[29]

E. Efforts to Achieve a Consensual Completion of the Project

37. Notwithstanding the defaults and expiration of the Prescribed Period, the Lender continued to explore a consensual strategy that could permit the Project to be completed and the remaining unit sales to close. Following issuance of the Demand Letter, discussions took place among counsel for the Lender, 271 Ontario and Transform regarding a proposal to provide the Debtor with an opportunity and financial support to advance the Project to completion (the "**Proposal**").[30]

38. Pursuant to the Proposal: (a) the Lender would advance additional funds to facilitate completion of the severance and condominium registration process; (b) the Debtor would retain lawyers at Loopstra Nixon LLP to complete the necessary applications and registrations; (c) the Lender, the Debtor and Transform would enter into a comprehensive forbearance agreement;

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[27] *Levinson Affidavit* at paras 51-52 and Exhibit "R".
[28] *Levinson Affidavit* at paras 53-54 and Exhibit "S".
[29] *Levinson Affidavit* at paras 15-16, 53-55 and 60.
[30] *Levinson Affidavit* at paras 18 and 56.

and (d) the Project would proceed toward completion, following which the remaining units would be sold and the resulting proceeds used to facilitate repayment of the Indebtedness.[31]

39. Although the Debtor and Transform were initially supportive of the Proposal, concerns subsequently arose regarding Tarion licensing, the builder's outstanding obligations and potential purchaser-related liabilities. Transform also raised the existence of purchaser disputes and potential litigation arising from purchaser claims, refund obligations and other disputes affecting the Project.[32]

40. The Debtor disputed those concerns and advised there was no pending litigation or known threat of litigation, that four purchasers wished to complete their transactions and that two purchasers had requested the return of their deposits and agreed to repayment arrangements.[33]

41. By June 23, 2026, the Lender determined that the proposed consensual completion strategy was no longer viable. On that date, the Lender's real estate counsel advised counsel to 271 Ontario that the Lender intended to commence a receivership application in light of several developments, including: (i) the impending expiry of the applicable Tarion registration on July 2, 2026; (ii) 271 Ontario's failure to provide further information despite repeated requests from the Lender; (iii) the reported existence of litigation involving one or more purchasers; and (iv) Transform's withdrawal of support for the proposed forbearance arrangement.[34]

F. Cara Partners' Review of the James Property

42. On July 29, 2026, after the Debtor failed to make satisfactory arrangements to repay the Indebtedness and in light of the continuing uncertainty concerning the status of construction, HCI retained Cara Partners Inc. ("**Cara Partners**"), an advisory firm specializing in distressed real estate matters, to review the development and identify the further steps required to complete the outstanding agreements of purchase and sale.[35]

43. Following its inspection of the James Property, Cara Partners identified several conditions that it characterized as "critical-life safety concerns", particularly given that some of the

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[31] *Levinson Affidavit* at para 56.
[32] *Levinson Affidavit* at paras 57-58.
[33] *Levinson Affidavit* at para 59.
[34] *Levinson Affidavit* at para 60.
[35] *Levinson Affidavit* at paras 17 and 62.

townhomes are presently occupied. Cara Partners' findings are documented in its Observation Report dated August 19, 2026.[36]

44. Among other things, Cara Partners observed that:

(a) elevator shaft openings in the units inspected were not properly blocked and were accessible from multiple floor levels. The condition of the elevators is further aggravated by the permit record. When the Town of Halton Hills had previously approved occupancy in June 2025 on the condition that safeguards be installed to prevent access to the elevators at floor levels, but Cara Partners observed that such safeguards had not been installed;

(b) the second-floor balcony of one unit lacked a railing or guard. This balcony is readily accessible from inside the dwelling and there is evidence of use by occupants; and

(c) exposed wiring was present and the presence and operation of smoke and carbon monoxide alarms had not been verified.[37]

45. Cara Partners identified additional material issues affecting the James Property, including: (i) an occupied unit for which there was no occupancy permit; (ii) water intrusion in basement areas; (iii) cracks in foundational elements that should be reviewed by a structural engineer; (iv) prior sewage backups; and (v) concerns regarding the termination or concealment of the foundation waterproofing membrane below the finished grade.[38]

46. A representative of Cara Partners attempted to arrange a site visit with the Debtor in connection with its review, but the Debtor did not attend the scheduled visit.[39]

47. Based on the issues identified by Cara Partners in addition to the deficiencies previously identified in the occupancy permits and the continuing uncertainty surrounding the severance and condominium registration and the Debtor's lack of sufficient funds to complete the Project, it does not appear likely that construction on the James Property will be completed in the near future.[40]

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[36] *Levinson Affidavit* at paras 63-64 and Exhibit "U".
[37] *Levinson Affidavit* at para 63 and Exhibit "U".
[38] *Levinson Affidavit* at para 65 and Exhibit "U".
[39] *Levinson Affidavit* at para 64.
[40] *Levinson Affidavit* at paras 49, 63-65 and 68.

48. Meanwhile, the Loan has matured, no monthly payment has been made since December 1, 2025, the Indebtedness remains outstanding, HCI has been required to make protective payments in respect of taxes and insurance, Transform has commenced enforcement steps against the James Property and the Project remains unable to generate the anticipated sale proceeds from which the Lender expected to be repaid.[41]

PART III – ISSUES

49. The issues to be determined on this application are:

(a) whether this Court has jurisdiction to appoint Goldhar as receiver and manager over the Property;

(b) whether it is just or convenient to appoint Goldhar as receiver and manager over the Property; and

(c) whether the terms of the proposed Receivership Order, including the Receiver's Charge and the Receiver's Borrowings Charge, are appropriate in the circumstances.

PART IV – LAW & ARGUMENT

A. This Court has the Jurisdiction to Appoint the Proposed Receiver

50. Subsection 243(1) of the BIA and section 101 of the CJA vest courts with the jurisdiction to appoint a receiver where it is "just or convenient to do so".[42] In the case of the BIA, subsections 243(1) - (1.1) provide in part:

> **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:
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> …

[41] *Levinson Affidavit* at paras 67-73.

[42] *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 [*BIA*] s. 243(1); *Courts of Justice Act*, RSO 1990, c. C. 43 [*CJA*] s. 101; *Meridian v Okje Cho & Family Enterprise Ltd*, 2021 ONSC 3755 ["*Meridian*"] at para 19; *Elleway Acquisitions Ltd v Cruise Professionals Ltd*, 2013 ONSC 6866 ["*Elleway*"] at paras 24-25; *Bank of Montreal v Sherco Properties Inc*, 2013 ONSC 7023 [Sherco] at paras 38-40; and *Bank of Montreal v Carnival National Leasing Ltd*, 2011 ONSC 1007 [*Carnival*] at para 23.

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
>
> … (Emphasis Added)

51. The Lender is the Debtor's principal secured creditor having a claim of approximately $1,077,118.91. In addition, the Lender holds perfected security interests pursuant to its real property mortgage registrations and registrations under the PPSA. As such, the Lender is permitted to bring the within application under subsection 243(1) of the BIA. Such appointment is not precluded by subsection 243(1.1) of the BIA, as the Applicant has delivered the NITES in accordance with section 244 of the BIA and the ten-day Prescribed Period thereunder has long-since expired.[43]

52. As set out immediately below, each of the remaining technical requirements enumerated under the BIA for the appointment of the proposed Receiver are satisfied.

(i) The Locality of the Debtor is Ontario

53. Where an application is brought for the appointment of a receiver under subsection 243(1) of the BIA, subsection 243(5) requires that it be filed in "a court having jurisdiction in the judicial district in the locality of the debtor".[44]

54. The real property and the registered head office of the Debtor are located in the Regional Municipality of Halton. Thus, the locality of the Debtor and this application is properly returnable before the Milton Ontario Superior Court of Justice.

(ii) The Receiver is a Trustee under the BIA

55. Only a trustee may be appointed as a receiver under subsection 243(1) of the BIA. Goldhar is a trustee under the BIA, has provided its consent to act as Receiver, if so appointed, and is qualified to act in such capacity.[45]

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[43] *BIA*, s. 244; *Levinson Affidavit* at paras 16-17.
[44] *BIA,* s. 243(5). The "locality of the debtor" is defined in s. 2 of the BIA as the principal place: "(a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event, (b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or (c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated."
[45] *Levinson Affidavit* at para 76.

B. The Proposed Receiver's Appointment is Just and Convenient

56. In determining in whether it is just or convenient to appoint a receiver, courts must have regard to "all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto".[46] This requires that the Court consider the rights of the secured creditors seeking the receiver's appointment.[47] It does not, however, require that the court be satisfied that such secured creditors will suffer irreparable harm if a receiver is not appointed, that the receiver's appointment is urgently required, or that other available remedies are defective.[48] Although in this case, the Applicant submits that these factors are also present.

57. Where, as is the case here, the moving secured creditor has a contractual right to the appointment of a receiver, the extraordinary nature of the remedy "is significantly reduced"[49] and the burden on the moving secured creditor is relaxed as the applicant is simply seeking to enforce a term of an agreement assented to by the parties.[50] Furthermore, the "appointment of a receiver becomes even less extraordinary when dealing with a default under a mortgage".[51]

58. When evaluating whether, in the circumstances, the appointment of a receiver is just or convenient, courts have considered numerous factors, including:

(a) the nature of the property;

(b) the likelihood of preserving and maximizing the return on the subject property;

(c) the relationship between the debtors and their creditors;

(d) the risk of the lenders' security deteriorating;

(e) the loss of confidence in the debtors' management;

(f) whether the lenders have a contractual right to the receiver's appointment;

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[46] *Bank of Nova Scotia v Freure Village on Clair Creek*, [1996] OJ No. 5088 [*Freure*] at para 10; *Carnival* at para 24; *Elleway* at para 26; *Meridian* at para 20; *Sherco* at para 41; *Royal Bank of Canada v 1731861 Ontario Inc,* 2023 ONSC 3292 at para 30 ["*1731861*"]; *Canadian Western Bank v 2563773 Ontario Inc*, 2023 ONSC 4766 at para 6 ["*Western Bank*"]; *Macquarie Equipment Finance Limited v Validus Power Corp et al,* 2023 ONSC 4772 at para 5 ["*Validus"*].

[47] *1731861* at para 30; *Western Bank* at para 6; *Validus* at para 5.

[48] *Carnival* at paras 24 and 28; *Freure* at para 10; *Foremost* at paras 28 and 30-31; *Validus* at para 10; *Western Bank* at para 11.

[49] *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc*, 2020 ONSC 1953 at para 43 ["*BCIMC*"]; *Freure* at para 12; *Meridian* at para 21; *Elleway* at para 27; *Carnival* at paras 24-25; *Sherco* at para 42; *Foremost* at para 29; *1731861* at para 31; *Western Bank* at para 7; *Validus* at paras 6-7

[50] *Sherco* at para 42; *Elleway* at para 27; *1731861* at para 31; *Western Bank* at para 7; *Validus* at paras 6-7.

[51] *BCIMC* at para 44; *Western Bank* at para 8; and *Validus* at para 7.

(g) the potential costs of the receiver; and

(h) the best way of facilitating the work and duties of the receiver.[52]

59. The appointment of the proposed Receiver is just and convenient. The Loan has matured and remains unpaid, the Debtor remains in default, and the Lender has made a demand and delivered the NITES.[53] Despite being afforded additional time and an opportunity to pursue a consensual completion of the Project, the defaults have not been cured and the proposed consensual strategy did not proceed. Meanwhile, the Project remains incomplete, the unit sales cannot close and Transform has commenced its own enforcement steps.

60. A receivership provides an orderly means of addressing the aforementioned issues. It will permit the Receiver to take control of and preserve the Property, address the outstanding deficiencies affecting the Project and to pursue an orderly and transparent realization process. This is particularly appropriate given the incomplete state of the Project and the outstanding deficiencies and "critical-life safety concerns" identified by Cara Partners.

61. The Lender has also pursued less extraordinary alternatives before seeking this relief. The Lender extended the maturity of the Loan after the Debtor requested additional time[54] and subsequently pursued a consensual completion strategy with the Debtor and Transform. Those efforts did not result in repayment or a viable path to completion of the Project.

62. Additionally, the Loan and Security Documents provide the Lender with a contractual right to the appointment of a receiver over the Property upon an event of default. There is no reason to deprive the Lender of their contractual right for which they bargained to protect their investment.

63. Lastly, the Lender has lost all confidence in the Debtor's management to repay the Indebtedness and remedy the "critical life-safety concerns" that Cara Partners identified on the James Property.

64. In these circumstances, and having regard to the nature of the Property, the continuing defaults, the competing enforcement steps and the unsuccessful efforts to achieve a consensual resolution, the appointment of Goldhar as Receiver is just and convenient.

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[52] *Elleway* at para 28; *BCIMC* at para 45; *Western Bank* at para 9; *Validus* at para 8.
[53] *Levinson Affidavit* at paras 15, 40, and 55.
[54] *Levinson Affidavit* at para 41.

C. The Terms of the Proposed Receivership Order are Appropriate

65. The terms of the proposed Receivership Order is substantially similar to the terms of the model receivership order of the Ontario Superior Court of Justice (Toronto Commercial List) (the "**Model Order**"), consistent with prior orders of this Court, and the appropriate in the circumstances.[55] Select terms of the proposed Receivership Order are discussed further immediately below.

(1) The Super-Priority Charges are Appropriate

66. As contemplated by the Model Order, the proposed Receivership Order grants the following super-priority charges:

(a) the first-ranking Receiver's Charge over the Property in favour of the Receiver and the Receiver's counsel to secure their fees and disbursements in respect of these receivership proceedings; and

(b) the second-ranking Receiver's Borrowings Charge over the Property for the purpose of funding the exercise of the powers and duties conferred upon the Receiver pursuant to the proposed Receivership Order.

67. Priority charges sought by a receiver under the BIA provide the certainty required to ensure the integrity, fairness and predictability of receivership proceedings and achieve the objective of preserving and maximizing value for the benefit of a debtor's stakeholders.[56] In accordance with subsection 243(6) of the BIA, the Applicant has provided reasonable notice of the proposed Receivership Order to the parties likely to be affected by the Receiver's Charge and the Receiver's Borrowings Charge.[57]

68. The proposed Receiver's Charge and the Receiver's Borrowings Charge are appropriate in the circumstances and commensurate with the complexity of these receivership proceedings.

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[55] Applicant's Application Record, Tab 4, Blackline of the Draft Receivership Order to Commercial List's Model Receivership Order.
[56] *CCM Master Qualified Fund Ltd v blutip Power Technologies Ltd*, 2012 ONSC 1750 at paras 21-23; *Edmonton (City) v Alvarez & Marsal Canada Inc*, 2019 ABCA 109 at paras 16-23.
[57] BIA, s 243(6); Affidavit of Service of Levi Rivers sworn September 4, 2026.

(2) The Stay of Proceedings is Appropriate

69. Consistent with the Model Order, the proposed Receivership Order grants a stay of proceedings, which:

(a) prohibits, absent the consent of the proposed Receiver or leave of this Court, the commencement or continuation of any proceeding or enforcement process against or in respect of the Debtor or the Property; and

(b) stays and suspends the exercise of all rights and remedies against the Debtor, the Receiver or affecting the Property.

70. Courts routinely grant stays of proceedings in favour of debtors and their property in the context of receiverships pursuant to section 106 of the CJA and their general and inherent jurisdiction.[58] As observed in *Business Development Bank of Canada v 1673747 Ontario Inc.*:

> the appointment of a receiver and simultaneous imposition of a stay of proceedings is designed to establish a temporary oasis of relative financial calm; i.e., a period in which the receiver has an opportunity to consider, reorganize and deal with the affairs of the debtor, (by appropriate and orderly valuation and disposition of the debtor's assets if and as necessary), for the benefit of creditors and the debtor, without facing the pressures of addressing ongoing disputes concerning the debtor. In other words, the attention of the receiver can be focused on a static situation, without having to face new challenges or aim at a "moving target".
>
> Imposition of a formal stay of litigation proceedings involving the debtor facilitates this […].[59] (Emphasis Added)

71. Here, the proposed stay is appropriate for the same reason. It will provide the Receiver with the stability required to take control of the Property and pursue an orderly realization without having to respond to competing enforcement or other proceedings affecting the Property. This is particularly appropriate given Transform's existing enforcement steps against the James Property.

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[58] CJA, s. 106; BIA, s. 183; *Eagle River International Ltd, Re*, 2001 SCC 92 at para 20; *Business Development Bank of Canada v 1673747 Ontario Inc*, 2013 ONSC 286 [*1673747*] at para 16.
[59] *1673747* at paras. 17-18.

72. Accordingly, the stay will facilitate the orderly administration of the receivership and permit the Receiver to focus its resources on preserving and realizing upon the Property for the benefit of stakeholders. The proposed stay is therefore appropriate in the circumstances.

PART V – RELIEF REQUESTED

73. Based on the foregoing, the Applicant respectfully requests this Court grant the proposed Receivership Order substantially in the form contained at Tab 3 of the Applicant's application record.

PURSUANT TO RULE 4.06.1(2.1), THE UNDERSIGNED certifies that they are satisfied as to the authenticity of every authority cited in this factum.

Simran Joshi

Simran Joshi (LSO No. 89775A)

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 8TH DAY OF SEPTEMBER, 2026

/s/ Reconstruct

RECONSTRUCT LLP

SCHEDULE "A"
List of Authorities

1. *Meridian v Okje Cho & Family Enterprise Ltd*, 2021 ONSC 3755.

2. *Elleway Acquisitions Ltd v Cruise Professionals Ltd*, 2013 ONSC 6866.

3. *Bank of Montreal v Sherco Properties Inc*, 2013 ONSC 7023.

4. *Bank of Montreal v Carnival National Leasing Ltd*, 2011 ONSC 1007.

5. *Bank of Nova Scotia v Freure Village on Clair Creek*, [1996] OJ No. 5088.

6. *Royal Bank of Canada v 1731861 Ontario Inc,* 2023 ONSC 3292.

7. *Canadian Western Bank v 2563773 Ontario Inc,* 2023 ONSC 4766.

8. *Macquarie Equipment Finance Limited v Validus Power Corp et al*, 2023 ONSC 4772.

9. *Foremost Financial Corporation et al v Alai Developments Inc et al* (July 23, 2023), Toronto, CV-23-00702528-00CL (Endorsement) (ONSC).

10. *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, 2020 ONSC 1953.

11. *CCM Master Qualified Fund Ltd v blutip Power Technologies Ltd*, 2012 ONSC 1750.

12. *Edmonton (City) v Alvarez & Marsal Canada Inc*, 2019 ABCA 109.

13. *Eagle River International Ltd, Re*, 2001 SCC 92.

14. *Business Development Bank of Canada v 1673747 Ontario Inc,* 2013 ONSC 286.

SCHEDULE "B"
Statutory Authorities

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

Section 2

locality of a debtor means the principal place

a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,
b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or
c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated.

Section 183

Courts vested with jurisdiction

(1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

a) in the Province of Ontario, the Superior Court of Justice;
b) [Repealed, 2001, c. 4, s. 33]
c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;
d) in the Provinces of New Brunswick and Alberta, the Court of Queen's Bench;
e) in the Province of Prince Edward Island, the Supreme Court of the Province;
f) in the Provinces of Manitoba and Saskatchewan, the Court of Queen's Bench;
g) in the Province of Newfoundland and Labrador, the Trial Division of the Supreme Court; and
h) in Yukon, the Supreme Court of Yukon, in the Northwest Territories, the Supreme Court of the Northwest Territories, and in Nunavut, the Nunavut Court of Justice.

Superior Court jurisdiction in the Province of Quebec

(1.1) In the Province of Quebec, the Superior Court is invested with the jurisdiction that will enable it to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during its term, as it is now, or may be hereafter, held, and in vacation and in chambers.

Courts of appeal — common law provinces

(2) Subject to subsection (2.1), the courts of appeal throughout Canada, within their respective jurisdictions, are invested with power and jurisdiction at law and in equity, according to their ordinary procedures, except as varied by this Act or the General Rules, to hear and determine appeals from the courts vested with original jurisdiction under this Act.

Court of Appeal of the Province of Quebec

(2.1) In the Province of Quebec, the Court of Appeal, within its jurisdiction, is invested with power and jurisdiction, according to its ordinary procedures, except as varied by this Act or the General Rules, to hear and determine appeals from the Superior Court.

Supreme Court of Canada

(3) The Supreme Court of Canada has jurisdiction to hear and to decide according to its ordinary procedure any appeal so permitted and to award costs.

Section 243

Court may appoint receiver

(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.

Section 244

Advance Notice

(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*, R.S.O. 1990, c. C.43**

Section 101

Injunctions and receivers

(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

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

Section 106

Stay of proceedings

A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just.

Section 137

Documents public

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

Sealing documents

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

Court lists public

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

Copies

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see.

***Rules of Civil Procedure*, RRO 1990, Reg 194**

Rule 14.05

Applications — By Notice of Application or Application for Certificate

(1) The originating process for the commencement of an application is, as applicable,

a) a notice of application (Form 2.2B, 14E, 14E.1, 68A or 73A); or
b) an application for a certificate of appointment of estate trustee (Form 74A or 74J), small estate certificate (Form 74.1A) or amended small estate certificate (Form 74.1E). O. Reg. 383/21, s. 3; O. Reg. 709/21, s. 2; O. Reg. 322/24, s. 3 (1).

Information for Court Use

(1.1) Form 14F (Information for court use) shall be filed together with a notice of application in Form 2.2B, 14E, 14E.1, 68A or 73A unless the notice of application is filed electronically through the Civil Submissions Online Portal under rule 4.05.2.

Application under Statute

(2) A proceeding may be commenced by an application to the Superior Court of Justice or to a judge of that court, if a statute so authorizes. R.R.O. 1990, Reg. 194, r. 14.05 (2); O. Reg. 292/99, s. 1 (2).

Application under Rules

(3) A proceeding may be brought by application where these rules authorize the commencement of a proceeding by application or where the relief claimed is,

a) the opinion, advice or direction of the court on a question affecting the rights of a person in respect of the administration of the estate of a deceased person or the execution of a trust;
b) an order directing executors, administrators or trustees to do or abstain from doing any particular act in respect of an estate or trust for which they are responsible;
c) the removal or replacement of one or more executors, administrators or trustees, or the fixing of their compensation;
d) the determination of rights that depend on the interpretation of a deed, will, contract or other instrument, or on the interpretation of a statute, order in council, regulation or municipal by-law or resolution;
e) the declaration of an interest in or charge on land, including the nature and extent of the interest or charge or the boundaries of the land, or the settling of the priority of interests or charges;
f) the approval of an arrangement or compromise or the approval of a purchase, sale, mortgage, lease or variation of trust;
g) an injunction, mandatory order or declaration or the appointment of a receiver or other consequential relief when ancillary to relief claimed in a proceeding properly commenced by a notice of application;
   (g.1) for a remedy under the Canadian Charter of Rights and Freedoms; or
h) in respect of any matter where it is unlikely that there will be any material facts in dispute requiring a trial.

Court File No. CV-26-00001551-0000

HILLMOUNT CAPITAL MORTGAGE HOLDINGS INC. **and** **2715573 ONTARIO INC., 2661793 ONTARIO INC., NATASHA PINTO-CIMICATA, and GUERINO MATTHEW CIMICATA**

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced at Milton

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