

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

BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

**2321197 ONTARIO INC., CARLO DEMARIA, SANDRA DEMARIA,
2321198 ONTARIO INC., SASI MACH LIMITED and VICAR HOMES LTD.**

Respondents

FACTUM OF THE APPLICANT, BUDUCHNIST CREDIT UNION LIMITED

[Receivership Application: Puccini Property and Woodland Property, returnable Dec. 4, 2018]

Date: November 30, 2018

DENTONS CANADA LLP

77 King Street West, Suite 400

Toronto-Dominion Centre

Toronto, ON M5K 0A1

Insolvency.Toronto@dentons.com

Barbara Grossman

Tel: (416) 863-4417

Fax: (416) 863-4592

barbara.grossman@dentons.com

Kenneth Kraft

Tel: (416) 863-4374

kenneth.kraft@dentons.com

Lawyers for Buduchnist Credit Union Limited

TO: SERVICE LIST

SERVICE LIST
(as at November 15, 2018)

TO:	<p>DENTONS CANADA LLP 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1 Insolvency.Toronto@dentons.com</p> <p>Barbara Grossman Tel: (416) 863-4417 Fax: (416) 863-4592 barbara.grossman@dentons.com</p> <p>Kenneth Kraft Tel: (416) 863-4374 kenneth.kraft@dentons.com</p> <p><i>Lawyers for Buduchnist Credit Union Limited</i></p>
AND TO:	<p>2321197 ONTARIO INC. 211 Woodland Acres Crescent Vaughan, ON L6A 1G1</p> <p><i>Respondent in respect of 87 Elm Grove, Richmond Hill, Ontario ("Elm Property")</i></p>
AND TO:	<p>LAX O'SULLIVAN LISUS GOTTLIEB LLP 145 King Street West, Suite 2750 Toronto, ON M5H 1J8</p> <p>Andrew Winton Tel: (416) 644-5342 Fax: (416) 598-3730 awinton@counsel-toronto.com</p> <p>Philip Underwood Tel: (416) 645-5078 punderwood@counsel-toronto.com</p> <p><i>Lawyers for the Respondent, Carlo Demaria in respect of the following real properties:</i></p> <ul style="list-style-type: none"><i>(a) the Elm Property;</i><i>(b) 211 Woodland Acres Crescent, Richmond Hill, Ontario ("Woodland Property"); and</i><i>(c) 46 Puccini Drive, Richmond Hill, Ontario ("Puccini Property").</i>

AND TO:	SANDRA DEMARIA 211 Woodland Acres Crescent Vaughan, ON L6A 1G1 sandra@vapz.com <i>Respondent in respect of the Woodland Property and 506 Wilson Heights Blvd, Toronto, Ontario (the "Wilson Heights Property")</i>
AND TO:	2321198 ONTARIO INC. 211 Woodland Acres Crescent Vaughan, ON L6A 1G1 <i>Respondent in respect of the Puccini Property</i>
AND TO:	SASI MACH LIMITED 211 Woodland Acres Crescent Maple, ON L6A 1G1 <i>Respondent in respect of Wilson Heights Property</i>
AND TO:	VICAR HOMES LTD. 80 Bass Pro Mills, Suite 11-A Vaughan, ON L4K 5W9 <i>Respondent in respect of the Woodland Property and in respect of the Elm Property (as vendor)</i>
AND TO:	KSV KOFMAN INC. 150 King Street West, Suite 2308 Toronto, ON M5H 1J9 Bobby Kofman Tel: (416) 932-6228 bkofman@ksvadvisory.com David Sieradzki Tel: (416) 932-6030 dsieradzki@ksvadvisory.com <i>Interim Receiver and Receiver</i>
AND TO:	CHAITONS LLP 5000 Yonge Street North York, ON M2N 7E9 George Benchetrit Tel: (416) 218-1141 george@chaitons.com <i>Lawyers for KSV Kofman Inc.</i>

AND TO:	HORLICK LEVITT DI LELLA LLP 100 Sheppard Avenue East, Suite 870 North York, ON M2N 6N5 Brian Horlick Tel: (416) 512-7440 ext. 227 bhorlick@hldlawyers.com <i>Lawyers for Sylvia Conforti, potential purchaser of Elm Property</i>
AND TO:	LOOPSTRA NIXON LLP 135 Queens Plate Drive, Suite 600 Etobicoke, ON M9W 6V7 Michael McWilliams Tel: (416) 748-4766 Fax: (416) 746-8319 mmcwilliams@loonix.com Peter W.G. Carey Tel: (416) 748-4774 pcarey@loonix.com Christopher Lee Tel: (416) 748-5117 clee@loonix.com <i>Lawyers for Trade Capital Finance, in capacity as Plaintiff named in Mareva Order, registered against Woodland Property and Puccini Property</i>

Email List

kenneth.kraft@dentons.com; barbara.grossman@dentons.com;
Insolvency.Toronto@dentons.com; mmcwilliams@loonix.com; pcarey@loonix.com;
bhorlick@hldlawyers.com; sandra@vapz.com; cleee@loonix.com; awinton@counsel-
toronto.com; punderwood@counsel-toronto.com; bkofman@ksvadvisory.com;
dsieradzki@ksvadvisory.com; george@chaitons.com

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

BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

**2321197 ONTARIO INC., CARLO DEMARIA, SANDRA DEMARIA,
2321198 ONTARIO INC., SASI MACH LIMITED and VICAR HOMES LTD.**

Respondents

FACTUM OF THE APPLICANT, BUDUCHNIST CREDIT UNION LIMITED

PART I – OVERVIEW

1. This factum is filed in support of the application brought by Buduchnist Credit Union Limited (“BCU”) seeking a receivership order or, in the alternative, an interim receivership order, in respect of certain real properties.

2. At the original return date of BCU’s application, on November 13, 2018, this Honourable Court issued the following two Orders with the consent of Trade Capital (a non-party on the service list) and unopposed by the Respondent Carlo Demaria (none of the other Respondents participated at the November 13th hearing):

- (a) a receivership order appointing KSV Kofman Inc. (“KSV”), as receiver over the real property municipally known as 87 Elm Grove, Richmond Hill, Ontario; and
- (b) an interim receivership order appointing KSV as interim receiver (the “**Interim Receiver**”) over the real property municipally known as 46 Puccini Drive, Richmond Hill, Ontario (the “**Puccini Property**”).

First Report of the KSV Kofman Inc. (“KSV”) as Receiver and Manager and Interim Receiver, dated November 28, 2018 [KSV First Report], Tab A & Tab B, Motion Record of KSV, pages 20 of 36.

3. Pursuant to the Endorsement of the Honourable Justice Wilton-Siegel, dated November 13, 2018, the remaining relief sought by BCU in its application was adjourned to December 4, 2018.

Endorsement of Justice Wilton-Siegel, dated November 13, 2018, Supplementary Application Record of the Applicant, Tab 3.

4. At the December 4, 2018 return date, BCU will be seeking the appointment of KSV as receiver, pursuant to Section 243 of the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”) and Section 101 of the *Courts of Justice Act* (Ontario) (“**CJA**”), over the following real properties:

- (a) the Puccini Property (in respect of which KSV was appointed the Interim Receiver on the initial November 13th return date); and
- (b) the real property municipally known as 211 Woodland Acres Crescent, Maple, Ontario (the “**Woodland Property**” and together with the Puccini Property, the “**Woodland and Puccini Properties**”).

5. BCU’s application originally also sought a receiver in respect of the real property municipally known as 506 Wilson Heights Blvd, Toronto, Ontario (the “**Wilson Heights Property**”). However, the defaults in respect of the BCU mortgage over such property were cured by the Respondents Sandra Demaria and Sasi Mach Limited as of November 30, 2018 in accordance with arrangements BCU agreed to with their counsel and, accordingly, BCU is no longer seeking a receiver in respect of the Wilson Heights Property.

Supplementary Affidavit of Oksana Prociuk, sworn November 30, 2018 [Prociuk Supplementary Affidavit], para 5, Supplementary Application Record of the Applicant, Tab 2, page 51.

6. BCU intends to amend its Notice of Application to include a request for a receiver over a mortgaged cottage property owned by Carlo and Sandra Demaria, if BCU's November 21, 2018 demand for payment as a result of defaults in respect of the mortgage held by BCU over such property is not satisfied by December 1, 2018.

Prociuk Supplementary Affidavit, para 17 and Exhibit "H",
Supplementary Application Record of the Applicant, Tab 2, page 53 and
Tab 2H.

PART II – THE FACTS

The Loans and Mortgages in respect of the Woodland and Puccini Properties

7. 2321198 Ontario ("**198 Ontario**") is the registered owner of the Puccini Property. The Puccini Property is a large, luxury residential home that is currently occupied, rent-free, by a family friend of Carlo Demaria and his friend's elderly parents. Prior to this rent-free occupancy arrangement it was inexplicably vacant from the time it was built in the spring of 2015 until the end of May 2018 (approximately 3 years).

Affidavit of Oksana Prociuk, sworn November 6, 2018 [Prociuk
November 6 Affidavit], para 4, Applicant's Application Record, Tab 2,
page 22.

Affidavit of Carlo Demaria, sworn November 11, 2018 [Demaria
Affidavit], para 5, Tab 1 of Responding Application Record of Carlo
Demaria.

KSV First Report, paras 1.1 (e), 4.0 and 6.0, pp. 2, 5-6 and 8, Motion
Record of KSV, Tab 2.

8. Carlo Demaria is the sole director and officer of 198 Ontario.

Prociuk November 6 Affidavit, para 4, Applicant's Application Record,
Tab 2, page 22.

9. Carlo Demaria and Sandra Demaria are individuals and the registered owners of the Woodland Property. The Woodland Property is the family home of Carlo Demaria and Sandra Demaria.

Prociuk November 6 Affidavit, para 5, Applicant's Application Record,
Tab 2, page 22.

10. Vicar Homes Ltd. ("**Vicar Homes**") is a borrower pursuant to a line of credit advanced by BCU and secured by a second mortgage on the Woodland Property. Carlo Demaria is a director and officer of Vicar Homes.

Prociuk November 6 Affidavit, para 7, Applicant's Application Record,
Tab 2, page 23.

11. BCU is the largest Ukrainian credit union in Canada and advanced loans (the "**Loans**") secured by mortgages (the "**Mortgages**") on the Woodland and Puccini Properties, described in more detail in the below table.

Prociuk November 6 Affidavit, para 8, Applicant's Application Record,
Tab 2, page 23.

12. Below is an overview of the Loans and Mortgages which are the subject of the adjourned portion of BCU's receivership application:

Borrower	Property	Mortgage Description	Principal Amount	Minimum Monthly Payment	Amount outstanding as of November 1, 2018 (before costs)
198 Ontario	Puccini Property	First mortgage, registered on February 27, 2015 <i>Payable on Demand</i>	\$2,500,000	\$8,704-\$11,629 interest, plus \$500 principal	\$2,582,078.43
Carlo and Sandra Demaria	Woodland Property	First mortgage, registered on August 16, 2010 <i>Matures May 7, 2020</i> ("First Woodland Mortgage")	\$1,490,000	\$2,700 (blended interest and principal)	\$995,199.35
Vicar Homes	Woodland Property	Second mortgage, registered on December 5, 2012 <i>Payable on Demand</i> ("Second Woodland Mortgage")	\$3,000,000	\$9,052-\$11,470 interest, plus \$500 principal	\$2,198,910.42

Prociuk November 6 Affidavit, paras 9-38, Applicant's Application Record, Tab 2, pages 23-29.

Prociuk Responding Affidavit, para 3, Supplementary Application Record of the Applicant, Tab 1, page 2.

13. BCU also holds personal property security, in the form of a general security agreement, from 198 Ontario. BCU registered its security interest over the personal property of 198 Ontario pursuant to the *Personal Property Security Act* (Ontario).

Prociuk November 6 Affidavit, para 24, Applicant's Application Record,
Tab 2, pages 26-27.

Default and Demand

14. The Loans and Mortgages securing them are each in default due to the failure of the respective borrowers/mortgagors to, (a) make payments of principal and interest when due, and (b) pay realty taxes when due.

Prociuk November 6 Affidavit, paras 28, 40 & 43, Applicant's
Application Record, Tab 2, pages 27, 30-31.

15. By letters delivered to each of the borrowers and respective guarantors, BCU demanded repayment of each of the Loans and Mortgages. The demand letters were each accompanied by Notices of Intention to Enforce Security ("**BIA Notices**"), issued pursuant to s. 244 of the BIA. The ten (10) day notice period prescribed by the BIA for each of the BIA Notices expired prior to the issuance of BCU's Notice of Application seeking the appointment of a Receiver.

Prociuk November 6 Affidavit, paras 29, 42, & 44, Applicant's
Application Record, Tab 2, pages 28, 30-31.

16. Despite demand made by BCU on September 24, 2018 (more than 2 months ago) in the case of the Puccini Property, and on October 18, 2018 (1.5 months ago) in the case of the Woodland Property, none of the Loans and Mortgages have been repaid or brought into good standing.

Prociuk November 6 Affidavit, paras 23, 26, 42, 44, Applicant's
Application Record, Tab 2, pages 26-27, 30-31.

17. Moreover, despite the three (3) week adjournment from November 13, 2018 (the initial return date) to December 4, 2018 to afford Carlo Demaria the additional time he desired to

determine if he could reorganize his affairs to resolve the Loan and Mortgage defaults, there has been no payment whatsoever to BCU towards the Loans and Mortgages in respect of the Puccini and Woodland Properties and no proposal has been communicated by Carlo Demaria to do so. In addition, there has been no reduction in the tax arrears owing on the Puccini Property and there continue to be tax arrears owing on the Woodland Property.

Demaria Affidavit, paras 31-36, Responding Application Record of Carlo Demaria, Tab 1, page 7.

Prociuk Supplementary Affidavit, paras 5-6 & 19, Supplementary Application Record of the Applicant, Tab 2, pages 51 and 54.

Mareva Order

18. Pursuant to the Order of the Honourable Justice Ricchetti, dated May 6, 2015 (the “**Mareva Order**”), in the proceeding *Trade Capital Finance Corp. v. Peter Cook et al.*, bearing Brampton Court File No. CV-15-2110-00, various defendants, including Carlo Demaria and certain corporations in which he is or was involved (but not the corporations which are the registered owners of the Elm Property and the Puccini Property), are subject to a Mareva injunction.

Prociuk November 6 Affidavit, para 22, Applicant’s Application Record, Tab 2, page 26.

19. Trade Capital registered the Mareva Order against the Woodland Property and the Puccini Property (but not the Elm Property); however, 198 Ontario, which is the registered owner of the Puccini Property, is not a Mareva defendant.

Prociuk November 6 Affidavit, paras 23 & 39, Applicant’s Application Record, Tab 2, pages 26 & 30.

PART III – THE ISSUE

20. The issue before this Honourable Court is whether it is just and convenient that KSV should be appointed as receiver in respect of the Woodland and Puccini Properties.

PART IV – THE LAW

It is Just and Convenient to Appoint a Receiver

21. It is submitted that it is just and convenient to appoint KSV as receiver in respect of the Woodland and Puccini Properties, pursuant to Section 101 of the CJA and Section 243 of the BIA.

Courts of Justice Act, R.S.O. 1990, c. C.43, s. 101

Bankruptcy and Insolvency Act, RSC 1985, c. B-3, s. 243.

22. The appointment of a receiver is a matter of discretion. The Court must have regard to all of the circumstances of the case, particularly the nature of the property and the rights and interests of all parties in relation to the property. There is no requirement that the applicant secured creditor establish that it will suffer irreparable harm if a receiver is not appointed.

Bank of Nova Scotia v. Freure Village on Clair Creek, 1996 CarswellOnt 2328, 40 C.B.R. (3d) 274, Ct. J. (Gen Div. [Commercial List]), para 11, Applicant's Book of Authorities, Tab 1.

23. A court appointed receiver may be necessary where a privately appointed receiver would encounter problems taking possession of the property, where there are numerous creditors exercising their remedies against the debtor or where there are priority issues.

9-Ball Interests Inc. v. Traditional Life Sciences Inc., 2012 CarswellOnt 5829, 2012 ONSC 2788, para 23, Applicant's Book of Authorities, Tab 2 [9-Ball]

24. BCU holds mortgages over each of the Woodland and Puccini Properties, which are in default as a result of the respective borrowers failing to make payments of principal and interest when due, and failing to pay realty taxes.

Prociuk November 6 Affidavit, paras 16, 28, 40, 43 & 55, Applicant's Application Record, Tab 2, pages 25, 27, 30, 31, 33-34.

25. Carlo Demaria admits that Loan and Mortgage payments to BCU in respect of the Woodland and Puccini Properties ceased in August 2018 (four months ago). BCU's evidence is that, with the exception of the First Woodland Mortgage, the last Loan payments it received were on October 30, 2017 and November 2, 2017 (over a year ago) and, furthermore, during the immediately prior period from July 2017 to October/November 2017 only partial payments were made on these Loans and Mortgages.

Prociuk Responding Affidavit, paras 6-7, Supplementary Application Record of the Applicant, Tab 1, pages 3-4.

26. On November 15, 2018 (two weeks ago), immediately following the initial November 13th return date for BCU's receivership application, BCU provided Carlo Demaria (through his counsel) with the transaction history printouts for the subject Loans and Mortgages which confirm the payment histories so he could satisfy himself that, with the exception of the First Woodland Mortgage, the last Loan payments BCU received in respect of the Woodland and Puccini Properties was over a year ago. However, Carlo Demaria has chosen to rely on his memory (without reference to any documents) that payments ceased in August 2018 rather than reviewing these printouts to determine the date when payments to BCU actually ceased. Additionally, there is a fulsome evidentiary record from BCU of correspondence and meetings with Carlo Demaria and his counsel from July 2017 through to April 2018 concerning the defaults which unquestionably demonstrates, (a) Carlo Demaria's awareness that the Loans and

Mortgages have been in default for over a year, and (b) BCU's patience and indulgences to afford him an opportunity to resolve the defaults.

Prociuk Responding Affidavit, paras 8-16, Supplementary Application Record of the Applicant, Tab 1, pages 4-6.

Transcript of cross examination of Carlo Demaria taken November 30, 2018.

27. Despite formal demands for payment served in September and October 2018, none of the Loans and Mortgages have been repaid or brought into good standing.

Prociuk November 6 Affidavit, paras 23, 26, 42, 44, Applicant's Application Record, Tab 2, pages 26, 27, 30-31.

28. As a result of the Mareva Order there is no expectation that Carlo Demaria has available resources of his own that can be used to repay his obligations as principal debtor to BCU or satisfy his personal guarantees. When Carlo Demaria was first contacted by BCU in respect of the default on the First Woodland Mortgage, prior to BCU's formal demand letter, he responded with an email on October 3, 2018 stating: "*Can't pay mortgage or any bills at the present time. Flat broke.*"

Prociuk November 6 Affidavit, para 63, Applicant's Application Record, Tab 2, page 36.

29. The Woodland and Puccini Properties are residential properties that are occupied by individuals. The Woodland Property is the family home of Carlo and Sandra Demaria. The rent-free occupancy of the Puccini Property by a family friend of Carlo Demaria since May 2018 was not disclosed to BCU, despite demand for same. In the circumstances, it would be very difficult for BCU to exercise its self-help power of sale remedy.

Prociuk November 6 Affidavit, paras 27 & 30, Applicant's Application Record, Tab 2, page 27, 28.

9-Ball, para 23.

30. Further, Trade Capital commenced its own receivership application in respect of various entities, including the Respondents. Accordingly, BCU is not the only stakeholder seeking the appointment of a receiver of both the Woodland and Puccini Properties. In light of the various potential competing interests, including any interests of Trade Capital as a Mareva plaintiff, a receiver is for the benefit of all stakeholders as all distributions will be subject to a further Order of the Court and made in accordance with the parties' respective priorities.

9-Ball, para 23.

(A) Appointment of Receiver over Puccini Property

31. The Interim Receiver was appointed over the Puccini Property, on the consent of Trade Capital and unopposed by Carlo Demaria, to secure the property. BCU now requests that KSV be appointed as receiver over the Puccini Property, with the power to sell same in accordance with the Interim Receiver's recommendation.

KSV First Report, para 1.1 (e), p.2, Motion Record of KSV, Tab 2.

32. The Affidavit sworn by Carlo Demaria on November 12, 2018, states that the Puccini Property is occupied by a family friend of Carlo Demaria and his friend's elderly parents. It further states that 198 Ontario does not collect rent from the Puccini Property occupants. The Interim Receiver has been informed that this rent-free occupancy arrangement has been in place since May 2018 and, prior to that, the Puccini Property was vacant since it was built in 2015, despite the fact that the Puccini Property has an estimated rental value in the range of \$3,500 -

\$4,000 on a monthly basis, before utilities and maintenance costs which would also be funded by the tenant.

Demaria Affidavit, para 5, Responding Application Record of Carlo Demaria, Tab 1, page 2.

KSV First Report, para 4.0, p.5, Motion Record of KSV, Tab 2.

33. The Puccini Property is a large, luxury residential home. There is no reason for the Puccini Property to be occupied rent-free or to be held by the mortgagor as a vacant property while the mortgage and property taxes go unpaid. BCU had no knowledge of this unreasonable occupancy arrangement prior to the service of the Demaria Affidavit just before the initial return date of BCU's receivership application. Further, Carlo Demaria admitted on his cross-examination that during the entire three year period the Puccini Property sat vacant and, even while tax arrears accumulated, he failed to list the Puccini Property for rent with a realtor.

Prociuk Responding Affidavit, paras 18-19, Supplementary Application Record of the Applicant, Tab 1, page 7.

Transcript of cross-examination of Carlo Demaria taken November 30, 2018.

34. The Interim Receiver recommends appointing it as full receiver in respect of the Puccini Property and expanding its powers to include the authority to market the Puccini Property for sale.

KSV First Report, para 1.1 (e), p.2, Motion Record of KSV, Tab 2.

35. Accordingly, it is appropriate that KSV be appointed as a full receiver in respect of the Puccini Property for the purposes of marketing and selling the Puccini Property.

(B) Appointment of Receiver over Woodland Property

36. The loans secured against the Woodland Property, which are in default, total approximately \$3.2 million, with approximately \$1 million of that owing under the Woodland First Mortgage Loan which has been in admitted default for four months. No payments have been received in respect of the First Woodland Mortgage since August 9, 2018 and no payments have been received in respect of the Second Woodland Mortgage for over a year, specifically since November 2, 2017.

Prociuk November 6 Affidavit, para 40 & 43, Applicant's Application Record, Tab 2, pages 30-31.

37. No proposal has been communicated by Carlo Demaria to resolve the Woodland Property Loan and Mortgage defaults despite the 3 week adjournment which was granted for that purpose. Additionally, the unpaid realty tax arrears owing on the Woodland Property have not been eliminated.

Prociuk Supplementary Affidavit, paras 5-6 & 19, Supplementary Application Record of the Applicant, Tab 2, pages 51 and 54.

Transcript of cross examination of Carlo Demaria taken November 30, 2018.

38. In the circumstances, it is just and convenient that KSV be appointed as receiver over the Woodland Property with the authority to market and sell same for the benefit of BCU and any other parties with an interest in the property.

PART VI – ORDERS SOUGHT

2. For the reasons set forth herein, the Applicant respectfully requests an Order appointing KSV as receiver of the Woodland and Puccini Properties.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

November 30, 2018

Dentons Canada LLP

DENTONS CANADA LLP

Lawyers for the Applicant, Buduchnist Credit
Union Limited

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CarswellOnt 2328, 40 C.B.R. (3d) 274, Ct. J. (Gen Div. [Commercial List]).
2. *9-Ball Interests Inc. v. Traditional Life Sciences Inc.*, 2012 CarswellOnt 5829, 2012 ONSC 2788.

SCHEDULE "B"
RELEVANT STATUTES

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

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

Bankruptcy and Insolvency Act, RSC 1985, c. B-3

Court may appoint receiver

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

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

Restriction on appointment of receiver

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

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

Definition of receiver

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

(a) is appointed under subsection (1); or

(b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under

(i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of receiver — subsection 248(2)

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

Trustee to be appointed

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

Place of filing

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

Orders respecting fees and disbursements

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

Meaning of disbursements

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

BUDUCHNIST CREDIT UNION LIMITED
Applicant

- and -

Court File No: CV-18-00608356-00CL

2321197 ONTARIO INC. et al.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE APPLICANT, BUDUCHNIST
CREDIT UNION LIMITED**

DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

Insolvency.Toronto@dentons.com

Barbara Grossman

Tel: (416) 863-4417

Fax: (416) 863-4592

barbara.grossman@dentons.com

Kenneth Kraft

Tel: (416) 863-4374

kenneth.kraft@dentons.com

Lawyers for Buduchnist Credit Union Limited