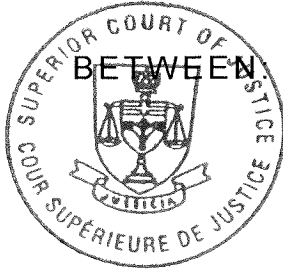


ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)



BETWEEN

CHINA MACHINERY ENGINEERING CORPORATION

Applicant

- and -

2284649 ONTARIO INC., 2270613 LIMITED PARTNERSHIP, and
2270613 ONTARIO INC.

Respondents

Application Under Section 101 of the *Courts of Justice Act*, R.S.O. 1990,
c. C.43, as amended, and Section 243 of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended

NOTICE OF APPLICATION

TO: THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED BY THE APPLICANT. The claim made by the Applicant appears on the following pages.

THIS APPLICATION will come on for a hearing before a Judge presiding over the Commercial List at 330 University Avenue, Toronto on Tuesday, February 6, 2018 at 9:00 a.m. or as soon after that time as the matter can be heard.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the Application, or to be served with any documents in the Application, you or an Ontario lawyer acting for you must forthwith prepare a Notice of Appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your Notice of Appearance, serve a copy of the evidence on the Applicant's lawyer and file it, with proof of service, in the court office where the Application is to be heard as soon as possible, but at least 2 days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: February 5, 2018

Issued by:



Address of Court Office:

330 University Avenue, 7th Floor
Toronto, ON M5G 1R7

TO: 2284649 Ontario Inc.
3601 Highway 7 East, Suite 903
Markham, ON L3R 0M3

AND TO: 2270613 Limited Partnership
3601 Highway 7 East, Suite 903
Markham, ON L3R 0M3

AND TO: 2270613 Ontario Inc.
3601 Highway 7 East, Suite 903
Markham, ON L3R 0M3

APPLICATION

1. The Applicant, China Machinery Engineering Corporation ("**CMEC**"), makes application for:

- (a) an Order abridging the time for, and validating the service of, the Application such that it is properly returnable on February 6, 2018;
- (b) an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**"), and section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), appointing KSV Kofman Inc. ("**KSV**") as receiver and manager of all of the assets, undertakings and properties of 2284649 Ontario Inc., including all of the real property for which 2284649 Ontario Inc. is the registered owner as set out on Schedule "A" hereto (collectively, the "**Real Property**") and all of the assets, undertakings and properties of 2270613 Limited Partnership and 2270613 Ontario Inc. acquired for, or used in relation to the Real Property (together with the Real Property, the "**Property**");
- (c) its costs of this Application, together with any applicable taxes; and
- (d) such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THE APPLICATION ARE:

2. 2284649 Ontario Inc. (the "**Debtor**") is a corporation incorporated under the laws of Ontario, with its head office in Markham. It is the owner and developer of lands municipally known as 250, 252, 254 and 256 Phillips Street in Waterloo, Ontario (the "**Lands**") on which it has built, or has proposed to build, four residential or mixed residential/commercial buildings intended to be rental units for students attending the nearby universities (the "**Waterloo Project**"). The Debtor holds registered title to the Lands for and on behalf of 2270613 Limited Partnership ("**Debtor LP**") as its bare trustee and nominee, pursuant to an intercompany arrangement among the Debtor, Debtor LP, and 2270613 Ontario Inc. ("**Debtor GP**"), the general partner of Debtor LP.
3. Pursuant to a commitment letter dated June 9, 2014, the Applicant CMEC provided a secured loan (the "**Loan**") to the Debtor in the amount of US\$61,380,000 and originally accruing interest at a rate of 2.9748% *per annum* (subsequently amended to a rate of 2.9930% *per annum*), and with a loan maturity date of June 11, 2016, in order to fund the construction of the first of the student housing buildings.
4. The Debtor's obligations under the Loan are guaranteed by the ultimate parent entity within the Debtor's corporate group.
5. In connection with the Loan, the Debtor granted CMEC security, including a Mortgage and Charge, as well as a General Security Agreement.
6. The Loan had a maturity date of June 11, 2016. The Loan was not repaid upon maturity, and the Debtor is and remains in default of its obligations.

7. The construction of the first building was substantially completed on November 16, 2015, and units in the building are being rented by the Debtor to university students.

8. CMEC and the Debtor are also party to a construction contract dated January 22, 2013 (as amended, the "**Construction Contract**") whereby CMEC agreed to act as general contractor in respect of phase 1 of the Waterloo Project. CMEC is entitled to the contract price of US\$80,300,000 plus interest at the rate of prime plus 3% *per annum* on amounts in default under the Construction Contract. CMEC asserts that an amount of approximately US\$10.89 million remains outstanding under the Construction Contract, although the Debtor disputes the quantum of such outstanding amounts. This dispute will be dealt with in the course of this receivership.

9. As at the date hereof, US\$59,038,263, inclusive of capitalized interest up to June 11, 2017 but excluding other interest, costs and other expenses is owing by the Debtor to CMEC under the Loan.

10. CMEC has made a written demand for repayment of the Loan, and provided the Debtor with Notice of its Intention to Enforce its Security in accordance with section 244 of the BIA.

11. The Debtor, Debtor LP and Debtor GP have consented to the appointment of KSV as receiver and manager of the Property.

12. KSV has consented to act as receiver and manager.

13. Section 101 of the CJA and Section 243 of the BIA.

14. Rules 1.04, 2.03, 3.02, 14.05 and 38 of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194.

15. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Application:

- (a) the Affidavit of Zhang Xiaofan, sworn February 5, 2018, and the exhibits attached thereto;
- (b) the Consent of KSV Kofman Inc.; and
- (c) such further and other materials as counsel may advise and this Honourable Court may permit.

February 5, 2018

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Lawyers for the Applicant

SCHEDULE "A"
LEGAL DESCRIPTION OF THE REAL PROPERTY

The real property legally described by the following PINs:

- a. 22365-0226 (LT)
- b. 22365-0227 (LT); and
- c. 23614-0001 (LT) through to and including 23614-0210 (LT).

China Machinery Engineering Corporation
Applicant

and 2284649 Ontario Inc. et al.
Respondents

Court File No: *CW-18-591534-DCL*

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

NOTICE OF APPLICATION

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