

Court File No. CV-23-00708970-00CL

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

BETWEEN:

OTÉRA CAPITAL INC.

Applicant

- and -

2495065 ONTARIO INC.

Respondent

**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**

AFFIDAVIT OF LEONARD DAMIANI

(Sworn January 8, 2024)

I, **LEONARD DAMIANI** of the city of Toronto, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Vice-President of the Applicant, Otéra Capital Inc. (“**Otéra**”). As a result, I have personal knowledge of the matters to which I hereinafter depose save and except where I refer to matters based on information and belief, in which case I verily believe that information to be true.
2. On December 12, 2023, the Ontario Superior Court of Justice [Commercial List] (the “**Court**”) issued an Order (the “**Appointment Order**”) appointing KSV Restructuring Inc. as receiver and manager (in such capacity, the “**Receiver**”) of the property, assets and undertakings of 2495065 Ontario Inc. (the “**Debtor**”), acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof, including without limitation the Real Property (as defined therein) pursuant to section 243 of the

Bankruptcy and Insolvency Act, R.S.C. 1985, c B-3 and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

3. Paragraph 2 of the Appointment Order provides that:

2. **THIS COURT ORDERS** that, notwithstanding the issuance of this Order as of the date hereof, this Order shall only become effective (without any further Order of this Court) on the earlier of: (A) January 8, 2024 (the "**Appointment Date**"), unless, in the case of the Debtor (i) all of the Debtor's liability, obligations and indebtedness to the Applicant (the "**Indebtedness**"), has been indefeasibly repaid in full on or before the Appointment Date; or (ii) the Debtor has entered into (and provided the Applicant with a copy of) a binding agreement that is not conditional on financing or any uncompleted diligence, is accompanied by a cash deposit equal to at least five percent (5%) of the purchase price thereunder, and has a closing date of no later than January 31, 2024 (the "**Outside Date**") that, if completed, will result in the repayment in full of the Debtor's Indebtedness to the Applicant; and (B) February 1, 2024, if the Indebtedness to the Applicant is not indefeasibly repaid in full by the Outside Date.

4. I am swearing this affidavit to confirm that as of today's date (being the Appointment Date) neither the conditions in A(i) or A(ii) in Paragraph 2 of the Appointment Order, as excerpted above, have been satisfied. In accordance with the terms of the Appointment Order, that Order and the appointment of the Receiver are now effective.

SWORN BEFORE ME VIA VIDEOCONFERENCE, the affiant being located in the City of Toronto in the Province of Ontario and the Commissioner being located in the City of Toronto in the Province of Ontario on January 8, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Katherine Yurkovich
BE136400C72D4E9...

Commissioner for Taking Affidavits



DocuSigned by:
Leonard Damiani
43BB7E2B93434EF...

LEONARD DAMIANI

OTÉRA CAPITAL INC.
Applicant

-and- 2495065 ONTARIO INC.
Respondent

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PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT OF LEONARD DAMIANI
(Sworn January 8, 2024)**

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