

COURT FILE NUMBER 2603-04944
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF COMPUTERSHARE TRUST COMPANY OF CANADA
DEFENDANTS 2597427 ALBERTA LTD., MUJTABA SYED and ALI HASSAN
DOCUMENT **BENCH BRIEF OF SPIRE PACIFIC CAPITAL CORPORATION**

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BENCH BRIEF OF SPIRE PACIFIC CAPITAL CORPORATION

**APPLICATION TO BE HEARD BY
THE HONOURABLE JUSTICE C.J. FEASBY**

March 13, 2025 at 1:00 p.m.

TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. THE FACTS	2
III. ISSUES	6
IV. LAW	6
V. ARGUMENT.....	7
A. The Statutory Prerequisites to the Appointment of the Receiver Have Been Met.....	7
B. It is Just and Convenient to Appoint the Receiver	7
VI. ORDERS REQUESTED.....	13
VII. LIST OF AUTHORITIES.....	14

I. INTRODUCTION

1. This bench brief is submitted by Spire Pacific Capital Corporation (“**Spire**”) (the “**Lender**”) in support of its application (the “**Application**”), seeking an order (the “**Receivership Order**”), appointing KSV Restructuring Inc. (“**KSV**”) as the receiver and manager (when referred to in such capacity, the “**Receiver**”) of:

(a) the real property legally described as:

CONDOMINIUM PLAN 9022742L UNITS 1-34 INCLUSIVE; EXCEPTING
THEREOUT ALL MINES AND MINERALS
(the “**Lands**”); and,

(b) all of the Debtor’s present and after-acquired goods, chattel paper, money, securities, documents of title, instruments, and intangibles, which are now or at any time hereafter located at, related to, or used in connection with the Lands, and all parts, accessories, attachments, equipment, additions, accretions, and accessions thereto and proceeds thereof,

(collectively, the “**Property**”),

of 2597427 Alberta Ltd. (the “**Debtor**”), pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) and section 13(2) of the *Judicature Act*, R.S.A. 2000, c. J-2 (the “**Judicature Act**”).

2. The Debtor owes the Lender approximately \$4.2 million, and has committed numerous defaults under the loan and security documents. The Lender issued demands for repayment, and corresponding Notices of Intention to Enforce Security, pursuant to section 244 of the BIA, to each of the Debtors, on February 12, 2026. The 10 day statutory waiting period under section 244 of the BIA has expired.

3. The Debtor has ceased responding to the Lender, and has ceased construction on the Project (as defined and described below). A construction lien has been registered against title to the Lands, in favour of ARH Developments Inc. (“**ARH**”), who has ceased construction on the Project, further affecting the ability of the Borrower to refinance or secure additional funds to complete the Project. Significant work is required to complete the Project, without which the value of the Lands and the Project is significantly diminished.

4. The appointment of a Receiver is just, convenient, necessary, and appropriate, in order to ensure the fair treatment of all stakeholders, the preservation and protection of the Property, and to maximize the value of the Debtors' Property.

II. THE FACTS

5. The facts are fully set out in the Affidavit of Chris Enns, sworn on March 5, 2026 (the "**Enns Affidavit**") and the Supplemental Affidavit of Chris Enns, sworn on March 12, 2026 (the "**Supplemental Enns Affidavit**", the Enns Affidavit and the Supplemental Enns Affidavit are collectively referred to as, the "**Enns Affidavits**"). Capitalized terms used herein and not otherwise defined have the same meaning(s) as ascribed to such terms in the Enns Affidavits.

The Obligors and the Business

6. The Debtor is involved in the renovation of a multi-unit residential tenancy buildings in and around Edmonton, Alberta, including the development of a three-storey, thirty-four (34) unit apartment building (the "**Project**"), located on the Lands.

Affidavit of Chris Enns, sworn March 5, 2026 ("First Enns Affidavit"), at para. 4.

7. Mujtaba Syed ("**Syed**") is an individual residing in Edmonton, Alberta, and is the sole director of the Debtor.

First Enns Affidavit, at para. 11.

8. Ali Hassan ("**Hassan**", the Debtor, Syed, and Hassan are collectively referred to as, the "**Obligors**") is an individual residing in Edmonton. Hassan owns and operates ARH, a company that is involved in the renovation business, including the renovation of the Project.

First Enns Affidavit, at para. 5.

Commitment Letter

9. To fund the purchase and renovation of the Project, the Debtor entered into the Commitment Letter, dated January 7, 2025 (the "**Commitment Letter**"), between the Debtor, as borrower, Spire, as lender, and Computershare Trust Company of Canada

(“**Computershare**”, Spire and Computershare are collectively referred to as, the “**Lender**”), as nominee of the Lender.

First Enns Affidavit, at paras. 3 and 13, and Exhibit “C”.

10. Pursuant to the Commitment Letter, the Lender made a first mortgage loan facility available to the Debtor, in the maximum amount of \$4,125,000 (the “**Loan**”).

First Enns Affidavit, at para. 14.

11. As of March 4, 2026, the Obligors were indebted to the Lender, in the amount of \$4,208,217.63, plus any and all accruing interest, fees (including, without limitation, legal fees, on a solicitor and their own client, full indemnity basis), costs, and expenses, pursuant to and in accordance with the terms of the relevant agreements between the Lender and the Obligors, as applicable (collectively, the “**Indebtedness**”).

First Enns Affidavit, at para. 9 and Exhibit “A”.

12. The Indebtedness and all other debts, liabilities, obligations, and indebtedness, due and owing by the Debtor to the Lender, are guaranteed pursuant to the following Guarantees, granted by Hassan and Syed.

First Enns Affidavit, at para. 15 and Exhibits “D” and “E”.

Security

13. As continuing security for all Indebtedness, debts, liabilities, obligations, and claims owed to the Lender, the Obligors executed and delivered, among others, the following security agreements:

- (a) Security Agreement, dated January 22, 2025 (the “**Specific Security Agreement**”), granted by the Debtor, to and in favour of the Lender; and,
- (b) *Land Titles Act* Mortgage, dated January 22, 2025 (the “**Mortgage**”) and Assignment of Rents and Leases (the “**GARL**”), granted by the Debtor, to and in favour of the Lender,

(collectively, the “**Security**”).

First Enns Affidavit, at para. 17 and Exhibits “F”-“K”.

14. Pursuant to the Specific Security Agreement, the Debtor transferred, granted, assigned, mortgaged, pledged, and charged, as and by way of a specific mortgage, pledge, and charge, and granted to the Lender a security a security interest in the Specific Security Agreement Collateral (the Specific Security Agreement Collateral and the Lands are collectively referred to as, the “**Collateral**”), and Proceeds to secure payment of the Indebtedness and performance of any and all obligations of the Debtor to the Lender.

First Enns Affidavit, at para. 18.

15. Pursuant to the Mortgage, the Debtor granted a continuing security interest and mortgaged and charged, to and in favour of the Lender, all of the Borrower’s estate and interest in the Lands.

First Enns Affidavit, at para. 23.

16. Pursuant to the Security, upon default, the Lender may, among other rights and remedies:
- (a) declare all or any of the Indebtedness, which is not already by its terms payable on demand, to be immediately due and payable; and,
 - (b) apply to a court for the appointment of a receiver, manager, or a receiver and manager, with respect to the Collateral.

First Enns Affidavit, at paras. 22 and 24(i), Exhibit “F”, at s. 9(d), and Exhibit “G”, at s. 6.1.

17. The Lender has perfected its security interests, against the Collateral, by registration.

First Enns Affidavit, at para. 26 and Exhibits “L”-“M”.

Initial Default Events

18. The Obligors have committed defaults and events of default, including, among others:
- (a) the Debtor has failed to continue construction and development on the Lands in accordance with the terms of the Commitment Letter; and,
 - (b) a material adverse change occurs relating to any of the Obligors, the Project, or the risk associated with the Loan,
- (collectively, the “**Initial Default Events**”).

First Enns Affidavit, at para. 27.

Demand Letter and 244 Notices

19. As a result of the Initial Default Events, the Lender, through its counsel, delivered a demand letter (the “**Demand Letter**”), dated February 12, 2026, to all of the Obligors, together with corresponding Notices of Intention to Enforce Security (the “**244 Notices**”), to the Debtor, in accordance with section 244 of the BIA.

First Enns Affidavit, at para. 28 and Exhibit “N”.

20. The Obligors have failed, neglected, or refused to repay the Indebtedness, as required by the Commitment Letter, the Guarantees, and the Security.

First Enns Affidavit, at para. 30.

Construction Lien

21. Following the issuance of the Demand Letter, the Lender became aware that ARH has filed a construction lien against title to the Lands, in the amount of \$1,107,750.00 (the “**Construction Lien**”), the registration of which is a further default under the Commitment Letter (the “**Subsequent Default Event**”, the Initial Default Events and the Subsequent Default Event are collectively referred to as, the “**Default Events**”).

First Enns Affidavit, at para. 31.

Inspection of the Project

22. On March 11, 2026, representatives of Spire attended at the Lands and conducted an inspection of the Lands and the Project (the “**Inspection**”).

Supplemental Affidavit of Chris Enns, sworn March 12, 2026 (“Supplemental Enns Affidavit”), at paras. 6-7.

23. Based on the Inspection of the Project and the Lands, as of March 11, 2026:
- (a) construction and renovation work at the Project has ceased;
 - (b) the Project requires significant renovation work to complete; and,
 - (c) utilities, including heat, electricity, and water, are being provided to the Lands.

Supplemental Enns Affidavit, at paras. 8-9.

III. ISSUES

24. The issue to be determined is whether it is just and convenient to appoint the Receiver over the Debtor and the Property.

IV. LAW

Subsection 243(1) of the BIA Provides Jurisdiction to Appoint the Receiver

25. Section 243 of the BIA contemplates the appointment of a receiver and states, in pertinent 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:**

- (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.”

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, ss. 243(1) [emphasis added] [*BIA*] [Book of Authorities (“BOA”) TAB 1].

Subsection 13(2) of the Judicature Act Provides Jurisdiction to Appoint the Receiver

26. Subsection 13 of the Judicature Act also contemplates the appointment of a receiver and states, in pertinent part:

“Part performance

(2) An order in the nature of a mandamus or injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it appears to the Court **to be just or convenient that the order should be made**, and the order may be made either unconditionally or on any terms and conditions the Court thinks just.”

Judicature Act, R.S.A. 2000, c. J-2, at s. 13(2) [emphasis added] [*Judicature Act*] [BOA TAB 2].

V. ARGUMENT

A. The Statutory Prerequisites to the Appointment of the Receiver Have Been Met

27. All statutory prerequisites for the appointment of the Receiver have been met. The Demand Letter and the 244 Notices were issued to the Obligors on February 12, 2026.

First Enns Affidavit, at paras. 28-30 and Exhibit “N”.

28. The requirement for a ten (10) day notice period, pursuant to subsections 243(1)-(1.1) and 244(1) of the BIA, is satisfied.

BIA at ss. 244(1)-(2) [BOA TAB 1].

B. It is Just and Convenient to Appoint the Receiver

29. In the circumstances, it is just and convenient to appoint the Receiver over the Property.
30. Subsection 243(1) of the *BIA* and subsection 13(2) of the *Judicature Act* each authorize the appointment of a receiver where it is “just or convenient” to do so.

BIA, s. 243(1) [BOA TAB 1]; *Judicature Act*, s. 13(2) [BOA TAB 2].

31. In *Paragon Capital Corporation Ltd. v Merchants & Traders Assurance Co.* (“**Paragon**”), the Honourable Justice B.E.C. Romaine set out the following non-exhaustive list of factors that the Court ought to consider in determining whether it is just or convenient to appoint a receiver:

“[27] The factors a court may consider in determining whether it is appropriate to appoint a receiver include the following:

- a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
- b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
- c) the nature of the property;
- d) the apprehended or actual waste of the debtor's assets;
- e) the preservation and protection of the property pending judicial resolution;
- f) the balance of convenience to the parties;
- g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
- i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
- j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its' duties more efficiently;
- k) the effect of the order upon the parties;
- l) the conduct of the parties;
- m) the length of time that a receiver may be in place;
- n) the cost to the parties;
- o) the likelihood of maximizing return to the parties;
- p) the goal of facilitating the duties of the receiver.

Bennett, Frank, *Bennett on Receiverships*, 2nd edition, (1995), Thompson Canada Ltd., page 130 (cited from various cases)”

Paragon Capital Corporation Ltd. v Merchants & Traders Assurance Co.,
2002 ABQB 430, at paras. 27 – 28 [Paragon] [BOA TAB 5].

32. In assessing the *Paragon* factors, the “factors are not a checklist but are to be viewed holistically” to determine whether it is just or convenient to appoint the receiver.

Vancouver Coastal Health Authority v Seymour Health Centre Inc.,
2023 BCSC 1158, at para. 53 [BOA TAB 6].

33. Unless outweighed by other factors, a secured creditor is entitled to elect the means by which its security will be enforced:

“[52] BNS could have commenced foreclosure proceedings. It could have agreed to a judicial sale order. However, unless outweighed by other factors, a secured creditor, like BNS, is entitled to elect its security enforcement path: *[citation omitted]*.”

Bank of Nova Scotia v Smiling Simba Learning Academy Inc, 2025 ABKB 11, at para. 52 [BOA TAB 4], citing *Bank of Montreal v Haro-Thurlow Street Project Limited Partnership*, 2024 BCSC 47, at para 95 [BOA TAB 3].

34. In the current circumstances, it is just and convenient to appoint the Receiver, as substantially all of the *Paragon* factors are in favour of granting the relief. Specifically:

- (a) **Whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation:** The Security specifically authorizes the Lender to seek appointment of a Receiver, upon the Debtor’s default. There is no question that the Debtor is in default; and such defaults are serious. While it is accordingly not “essential” for the Lender to establish the likelihood of irreparable harm, the Lender is nonetheless likely to suffer irreparable harm if the Receiver is not appointed. Specifically: significant renovations are required to complete the Project, which the Borrower is unable or unwilling to complete; construction and renovation work has stopped; and, the Borrower is unable to repay the Indebtedness;

First Enns Affidavit, at paras. 22 and 24(i), Exhibit “F”, at s. 9(d), and Exhibit “G”, at s. 6.1.

- (b) **The risk to the security holder taking into consideration the size of the debtor’s equity in the assets and the need for protection or safeguarding of the assets while litigation takes place:** The Debtor has been unable to repay the Indebtedness and does not appear to have the ability to fund or complete the Project. There is no reasonable prospect of the Obligor repaying the

Indebtedness. In addition to the factors in relation to irreparable harm described above, the Borrower and Syed have been non-responsive to requests, from the Lender, to either repay the Indebtedness or provide information with respect to the status of the Project. The Construction Lien has been registered on title to the Lands. There is a need for protection and safeguarding of the Property, as a result;

First Enns Affidavit, at paras. 7, 31; Supplemental Enns Affidavit, at para. 17.

- (c) **The preservation and protection of the property pending judicial resolution:** The Lender's Collateral is at risk, as described above. A Court-appointed Receiver will be capable of protecting the Property and determining the best method to maximize value for all creditors and stakeholders, including, if the Receiver determines it is necessary, completing the Project. In addition to the Lender's security interest, the Lands are subject to the Construction Lien, confirming the Debtor's inability to pay creditors generally. The current security at the lands is being provided by ARH, as the Borrower is non-responsive. The stay of proceedings under the Receivership Order will prevent the Debtor's creditors from taking actions (the Construction Lien has already been registered), which may negatively affect the value of the Property to the detriment of all stakeholders;

First Enns Affidavit, at para. 31 and Exhibit "M"; Affidavit of Ali Hassan, sworn March 6, 2026, at para. 11.

- (d) **The balance of convenience to the parties:** This factor favours the appointment of the Receiver, because: (i) the Debtor is and remains unable to comply with their obligations to the Lender, and has committed defaults under the Commitment Letter and the Security, including ongoing defaults after the issuance of the Demand Letter; (ii) despite having had an opportunity, the Debtor has been unable to cure the defaults, repay the Indebtedness, or communicate with the Lender; and, (iii) the Lender will suffer significant prejudice if the Receiver is not appointed, as described herein;

First Enns Affidavit, at paras. 27, 31-33.

- (e) **The fact that the creditor has the right to appoint a receiver under the documentation provided for the loan:** The Security includes provisions granting the Lender the right to appoint a Receiver, following the Default Events;

First Enns Affidavit, at paras. 22 and 24(i), Exhibit “F”, at s. 9(d), and Exhibit “G”, at s. 6.1.

- (f) **The principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly:** As stated by Justice Romaine, because the Mortgage and Specific Security Agreement provide an express right to appoint a receiver, “the extraordinary nature of the remedy sought is less essential to the inquiry”;

Paragon, supra at para. 28 [BOA TAB 5];
First Enns Affidavit, at paras. 22 and 24(i), Exhibit “F”, at s. 9(d), and Exhibit “G”, at s. 6.1.

- (g) **The consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently:** The authority to be provided under the Receivership Order is necessary to enable the Receiver to carry out its duties efficiently. A receivership is required to ensure a comprehensive, open, and fair marketing process for the Property. If the Receiver determines that completing the Project will maximize value for all creditors, the Receiver will have the ability to borrow funds for the completion of the renovations. Finally, a court-approved vesting order may be necessary to convey any Property to any purchaser(s) and maximize value;
- (h) **The effect of the order upon the parties:** The Debtor has failed or been unable to resolve their financial difficulties, to complete the Project, or to safeguard the Lands. There is no realistic alternative currently available;

First Enns Affidavit, at paras. 33; Supplemental Enns Affidavit, at paras. 15-17.

- (i) **The conduct of the parties:** The Debtor’s conduct underscores the necessity of appointing the Receiver to preserve and protect the Property, for the benefit of all creditors and stakeholders, on an urgent basis. The Lender has lost faith in the Debtor’s management, due to factors including, among others: (i) the Debtor’s inability to cure the defaults; (ii) the fact that there is no reasonable prospect of the Debtor repaying the Indebtedness; (iii) the registration of the Construction Lien on title to the Lands; and, (iv) the Debtor’s inability or unwillingness to communicate with the Lender or with Hassan, the guarantor whose company is responsible for the renovations at the Project.

First Enns Affidavit, at paras. 7 and 31.

- (j) **The likelihood of maximizing return to the parties:** The Receiver is a neutral third party and best placed to maximize returns to all of the Debtors' stakeholders; including the Lender. Appointing the Receiver will allow an experienced party to complete a fair and open marketing process to seek the highest and best offer for the Property and, if determined to be appropriate, to complete the Project. A Court-appointed Receiver is also able to exercise control over all of the Property, and is capable of applying for vesting orders to convey the Property, or any other remedial orders required; and,
- (k) **The goal of facilitating the duties of the receiver:** For substantially the same reasons that a Court appointment is required to enable the Receiver to carry out its duties more efficiently, the appointment of the Receiver, with the corresponding powers under the Receivership Order to take possession of the Property and take steps on behalf of the Debtor, is necessary to ensure the preservation of the Property. Additionally, the Receivership Order will provide the Receiver with the authority to borrow funds for the administration of the estate, the completion of the Project, and/or operation of the Debtor's business, which, based on current circumstances, will likely be required. The Lender is not prepared to extend any further credit to the Debtors, other than any provided under and secured by a Receiver's borrowings charge.

First Enns Affidavit, at para. 36; Supplemental Enns Affidavit, at para. 18.

35. The appointment of the Receiver is to the benefit of the Lender and the Debtor's other creditors and stakeholders, as it will: (i) permit the Receiver to take possession and control of the Property and preserve same, while minimizing the possibility of further erosion of the Lender's Collateral; (ii) allow the Receiver to conduct a sales process, with the benefit of authority to apply for vesting orders, sealing orders, and such other relief as may be necessary or desirable to obtain the highest and best offer(s) in respect of the Property, along with the "breathing room" provided by a stay of proceedings to enable such orderly process; (iii) allow for the injection of working capital, if and as required, by way of the Receiver's borrowings facility, in turn enabling the Receiver to continue operations and complete the Project, if the Receiver determines it is in the best interests of all stakeholders to do so, and complete a sales process; and, (iv) ensure that the proceeds of the Property, following realization, are distributed in accordance with legal rights and entitlements of the Debtor's creditors.

VI. ORDERS REQUESTED

36. The Lender respectfully submits that it is just and convenient to appoint the Receiver, over the Property.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 12th DAY OF MARCH, 2026

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Sean Collins, KC / Samantha Arbor
Counsel to Spire Pacific Capital Corporation

VII. LIST OF AUTHORITIES

Statutes

1. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, at ss. 243(1) and 244(1)-(2);
2. *Judicature Act*, R.S.A. 2000, c. J-2, at s. 13(2);

Case Law

3. *Bank of Montreal v Haro-Thurlow Street Project Limited Partnership*, 2024 BCSC 47;
4. *Bank of Nova Scotia v Smiling Simba Learning Academy Inc*, 2025 ABKB 11;
5. *Paragon Capital Corporation Ltd. v Merchants & Traders Assurance Co.*, 2002 ABQB 430;
and,
6. *Vancouver Coastal Health Authority v Seymour Health Centre Inc.*, 2023 BCSC 1158.