

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

B E T W E E N:

**LAURENTIAN BANK OF CANADA**

Applicant

- and -

**9089802 CANADA CORP., SEPITMAN CANADA CORP., 8637989 CANADA CORP.,  
2404685 ONTARIO INC., LULOO HOMES INC., TEKSUN INC.,  
2717852 ONTARIO CORP. and 2717740 ONTARIO LTD.**

Respondents

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

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**FACTUM OF THE RESPONDING PARTIES**  
(Returnable August 27, 2025)

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Date: August 21, 2025

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## PART I – OVERVIEW

1. This application has been brought by the applicant, Laurentian Bank of Canada (hereinafter, the “**Bank**”), to appoint KSV Restructuring Inc. as receiver of the property, assets and undertaking of the respondents, 9089802 Canada Corp., Sepitman Canada Corp., 8637989 Canada Corp., 2404685 Ontario Inc., Luloo Homes Inc., Teksun Inc., 2717852 Ontario Corp. and 2717740 Ontario Ltd. (hereinafter, the “**Respondents**”), pursuant to Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3 (“**BIA**”) and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (“**CJA**”). Although the Notice of Application seeks relief against all the Respondents, the parties have agreed that, at this juncture, the relief is only sought against 9089802 Canada Corp. and not the other corporate entities.

2. In 2014 and 2015, the respondent, 9089802 Canada Corp. (hereinafter, “**908 Corp.**”), purchased land in Richmond Hill, Ontario for the purpose of a development project. To finance the purchase, 908 Corp. obtained a loan from the Bank.

3. The Bank seeks the appointment of a receiver on the basis that 908 Corp. has defaulted on its loan obligations. As a result of this default, the Bank asserts its entitlement to enforce its security and seek receivership.

4. To satisfy its outstanding obligations to the Bank, 908 Corp. has recently secured loan commitments for new financing from KingSett Captial (hereinafter, “**KingSett**”) and Sharno Developments Inc. (hereinafter, “**Sharno**”). These funds will be used to pay the Bank, exit the current financing structure, and move forward with the new lending partners. In the unlikely event that financing with KingSett and Sharno does not materialize, 908 Corp. has an alternative financing plan with Canada Mortgage and Housing Corporation (hereinafter, “**CMHC**”).

5. 908 Corp. submits that the evidence clearly demonstrates a viable and imminent plan to repay the Bank in full. With repayment forthcoming and a clear path to financial stability, the appointment of a receiver is neither just nor convenient in the circumstances.

## **PART II – THE FACTS**

### **BACKGROUND**

6. In 2014 and 2015, 908 Corp. purchased land municipally known as 40A, 40B and 60 Harris Avenue, Richmond Hill, Ontario (the “**Property**”) for the purpose of the development of approximately 49 homes (the “**Development Project**”).

**Reference:** Affidavit of Abbas Aameri, sworn August 8, 2025 (“**Abbas Affidavit**”), Responding Record (“**RR**”), Tab 1, p. 5, para. 2

7. To finance the purchase, 908 Corp. obtained a loan from the Bank consisting of the following: (a) a loan in the maximum amount of \$13,863,000, and (b) a letter of credit in the maximum amount of \$3,900,000. This financing was reflected in the Bank’s commitment letter dated March 10, 2021.

**Reference:** Abbas Affidavit, RR, Tab 1, p. 6, para. 3;  
Exhibit A – Laurentian Bank’s Commitment Letter and Amendments, Abbas Affidavit, RR, p. 13-88

8. After receipt of the loan money, 908 Corp. moved to start developing the project by obtaining various regulatory approvals.

**Reference:** Abbas Affidavit, RR, Tab 1, p. 6, para. 4

9. The Development Project and its associated regulatory approvals were delayed due to a number of factors beyond the Respondents’ control, primarily resulting from the COVID-19 pandemic. For instance, the approval of site plan amendments, which was originally expected to take one month, was delayed by more than a year.

**Reference:** Abbas Affidavit, RR, Tab 1, p. 6, para. 5

10. In the meantime, dozens of housing units in the Development Project were sold to purchasers through pre-construction contracts, under which the purchasers provided deposits.

**Reference:** Abbas Affidavit, RR, Tab 1, p. 6, para. 6

11. Once the site plan was approved, the next step of the Development Project required the Respondents to obtain financing for the construction, which 908 Corp. actively began searching for; however, due to market fluctuation and increasing costs of labour and materials, some potential lenders, including Royal Bank of Canada, withdrew their interest.

**Reference:** Abbas Affidavit, RR, Tab 1, p. 6, para. 7

#### **THE RESPONDENTS HAVE SECURED FINANCING**

12. In November 2024, 908 Corp. approached KingSett to secure financing for the Development Project. During its initial review, KingSett advised that an estimated additional injection of \$800,000 would be required to address a funding gap caused by inflation. However, KingSett indicated that it would first need to obtain a cost opinion from a cost management consultant. To that end, KingSett retained the services of O’Keefe & Associates (hereinafter, the “**Cost Consultant**”).

**Reference:** Abbas Affidavit, RR, Tab 1, p. 6-7, para. 8-9

13. On January 14, 2025, KingSett presented 908 Corp. with a Commitment Letter for first mortgage construction financing on the Property, pending the review from the Cost Consultant. This offer was set to expire on March 31, 2025.

**Reference:** Abbas Affidavit, RR, Tab 1, p. 7, para. 10;  
Exhibit B – KingSett Commitment Letter, Abbas Affidavit, RR, p. 90-135

14. On March 6, 2025, the Cost Consultant issued a Budget Review and Progress Draw Report for the Development Project, which identified a financing shortfall of \$2,431,415.56<sup>1</sup>. The report indicated that KingSett would require this amount to be injected into the Development Project before it would agree to proceed with the financing. KingSett further required 908 Corp. to pay the outstanding arrears of \$600,000 in interest which were owing to the Bank before advancing its loan. This meant, in total, KingSett required 908 Corp. to contribute \$3,031,415.56 of its own funds toward the Development Project.

**Reference:** Abbas Affidavit, RR, Tab 1, p. 7, para. 11-13;  
Exhibit C – O’Keefe & Associates Budget Review & Progress Draw Report, Abbas Affidavit, RR, p. 137-199

15. At this point, 908 Corp. and its investors did not have the funds to cover the \$3,031,415.56 as their capital was tied up on other projects. As a result of this, 908 Corp. sought to obtain mezzanine financing and approached Sharno as a lender.

**Reference:** Abbas Affidavit, RR, Tab 1, p. 7-8, para. 14-15

16. Sharno advised that it required time to exercise due diligence before offering a loan of over \$3,000,000 to finance the construction of the Development Project. Since the expiry of KingSett’s commitment was coming near, 908 Corp. requested KingSett extend the expiry of the commitment it offered. KingSett agreed to extend the expiry of its offer to June 30, 2025.

**Reference:** Abbas Affidavit, RR, Tab 1, p. 8, para. 16

17. Around the same time, the Respondents sought to enter into a forbearance agreement with the Bank for the outstanding money owed. An agreement was negotiated; however, it was ultimately not finalized as the Respondents required a longer period, beyond just a couple of weeks, to finalize matters with Sharno and secure financing. It was neither financially nor

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<sup>1</sup> This amounted to three times the initial amount of capital injection required.

practically sensible to enter into an agreement that the Respondents knew they would not be able to honour without immediate renegotiation.

**Reference:** Abbas Affidavit, RR, Tab 1, p. 10, para. 28;  
Affidavit of Kevin Gongora sworn July 17, 2025 (“**Gongora Affidavit**”), Application Record (“**AR**”), Tab 3, p. 15, para. 19-21

18. In late July 2025, Sharno informed 908 Corp. that they were finalizing the financing and a commitment letter was on its way. Sharno also requested 908 Corp. contact KingSett to inquire about the status of their commitment, which had expired on June 30, 2025.

**Reference:** Abbas Affidavit, RR, Tab 1, p. 8, para. 18

19. On July 30, 2025, 908 Corp.’s broker, Chad Gemmel, spoke with a KingSett representative, Adam Balaban (hereinafter, “**Mr. Balaban**”) regarding KingSett’s commitment that had expired. Mr. Balaban confirmed that KingSett remained interested in providing the required financing. On August 8, 2025, Mr. Balaban confirmed via email that KingSett extended its commitment to October 15, 2025, but noted that the matter would have to be reviewed again by the Internal Credit Committee since the commitment had expired.

**Reference:** Abbas Affidavit, RR, Tab 1, p. 8, para. 19

20. On August 5, 2025, Sharno offered a commitment of at least \$3,000,000 to 908 Corp., and agreed to use \$600,000 of this money to pay the Bank’s outstanding arrears.

**Reference:** Abbas Affidavit, RR, Tab 1, p. 8, para. 20

## **EXPECTED FINANCING TIMELINE AND PROJECT ADVANCEMENT**

21. Sharno has confirmed that they are prepared to close on their financial commitment within 60 days of August 5, 2025. 908 Corp. has been working collaboratively with Sharno to ensure that all necessary documentation and due diligence are completed in a timely manner to meet this schedule.

**Reference:** Abbas Affidavit, RR, Tab 1, p. 9, para. 21

22. It is expected that KingSett will be able to close within a similar timeframe.

**Reference:** Abbas Affidavit, RR, Tab 1, p. 9, para. 22

23. Based on the Respondents' ongoing engagement and communication with Sharno and KingSett, they are confident the closings will proceed smoothly.

**Reference:** Abbas Affidavit, RR, Tab 1, p. 9, para. 22

24. As it currently stands, three of KingSett's conditions for closing on its financing remain outstanding: (1) mortgage approval of the 41 pre-construction home purchasers, (2) a contract extension for the general contractor/property manager for the Development Project on the Property, and (3) meeting Sharno's financing conditions which are more or less similar KingSett's conditions.

**Reference:** Chart Summarizing Mortgage Approval Status, Respondents' Undertaking Productions ("RUP"), Tab 6;  
Text thread with broker Chad Gemmel RE KingSett Conditions, RUP, Tab 7

25. As it relates to these outstanding items, 908 Corp has issued notices to the home purchasers and some purchasers have submitted their documentation, while others are in the process of doing so. The contract extension for the general contractor/property manager are in progress and forthcoming.

**Reference:** Correspondence RE Purchasers' Mortgage Approvals, RUP, Tab 4;  
Purchasers' Mortgage Approvals Received, RUP, Tab 5;  
Chart Summarizing Mortgage Approval Status, RUP, Tab 6;  
Text thread with broker Chad Gemmel RE KingSett Conditions, RUP, Tab 7

26. With financing arrangements from KingSett and Sharno, the Respondents will have the capital required to satisfy their outstanding obligations to the bank, transition out of the current financing structure, and move forward with the Development Project through their new lending partners.



**Reference:** Abbas Affidavit, RR, Tab 1, p. 9, para. 23

## **A CONTINGENCY PLAN**

27. In the unlikely event that financing from KingSett and Sharno does not close, the Respondents have retained Michel Durand (hereinafter, “**Mr. Durand**”) who has developed a contingency plan for financing through Canada Mortgage and Housing Corporation (hereinafter, “**CMHC**”).

**Reference:** Abbas Affidavit, RR, Tab 1, p. 9, para. 25;  
Affidavit of Michel Durand sworn August 8, 2025 (“**Durand Affidavit**”), RR, Tab 2, p. 217-218, para. 4

28. Mr. Durand is a broker registered by the Financial Services Regulatory Authority of Ontario and has over 30 years of experience in securing loans of this nature.

**Reference:** Durand Affidavit, RR, Tab 2, p. 217-218, para. 1, 6;  
Exhibit A – Michel Durand Biography, Durand Affidavit, RR, Tab 2, p. 225

29. CMHC provides support only for rental units, not homes built for sale. As a result, using CMHC financing would require the development to shift from for-sale homes to rental housing.

**Reference:** Durand Affidavit, RR, Tab 2, p. 218, para. 5

30. After a review of information concerning the Development Project, including the construction budget and costs to build, site plans, building plans, the financial status of 908 Corp., a breakdown of the ownership structure of the project, a history of the project’s progress, and proposed rental revenues, Mr. Durand has advised that 908 Corp. would be eligible for a loan in the amount of \$40,169,015.

**Reference:** Durand Affidavit, RR, Tab 2, p. 219, para. 11, 14

31. Mr. Durand has submitted evidence in this application detailing how the loan amount was determined. His analysis takes a conservative approach and has considered factors such as current

rental rates in the City of Richmond Hill, projected future expenses for the Property, market conditions, and other financial indicators.

**Reference:** Durand Affidavit, RR, Tab 2, p. 220-222, para. 17-30;  
Exhibit C – Proformas Analysis Summary, Durand Affidavit, RR, Tab 2, p. 230-233

32. Mr. Durand further confirmed that 908 Corp. meets CMHC minimum requirements for equity held personally for CMHC to approve the loan.

**Reference:** Durand Affidavit, RR, Tab 2, p. 222, para. 31

33. Ultimately, Mr. Durand’s analysis determined that there is a high likelihood of both 908 Corp. and the proposed project being approved, thereby securing a CMHC certificate of insurance in the amount of \$40,169,015.

**Reference:** Durand Affidavit, RR, Tab 2, p. 222, para. 32

34. Mr. Durand has estimated that a CMHC certificate for the Development Project could be obtained within eight to nine weeks of submitting the file to CMHC, and once a certificate is issued, the lender would need approximately an additional 30 to 45 days, at most, to finalize due diligence, legal documentation, and ensure all preconditions are met for the first draw.

**Reference:** Durand Affidavit, RR, Tab 2, p. 223, para. 33-34

### **PART III – ISSUES**

35. The sole issue on this application is whether a receiver should be appointed at this juncture under Section 101 of the *CJA* and Section 243 of the *BIA*.

### **PART IV – LAW AND ANALYSIS**

36. This Application has been brought pursuant to both Section 101 of the *CJA* and Section 243 of the *BIA*.

37. While the test for appointing a receiver under Section 101 of the *CJA* and Section 243 of the *BIA* is whether it is “just or convenient,” the context in which each statute is invoked differs. As a result, the analysis of what is “just or convenient” varies depending on whether the appointment is sought under the *CJA* or the *BIA*.

## **APPOINTMENT OF RECEIVER IS NOT JUST OR CONVENIENT: SECTION 101 OF THE *CJA***

38. Section 101(1) of the *CJA* provides:

### **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.

**Reference:** *Courts of Justice Act*, R.S.O. 1990, c. C.43, [s. 101\(1\)](#)

39. Section 101 of the *CJA* cannot apply to the within application as it provides for an *interlocutory* appointment of a receiver, meaning that the receiver will be appointed on a temporary basis until the underlying action is determined. In this case, there is no underlying action as the Bank has not issued a Statement of Claim against any of the Respondents in relation to the loan default.

**Reference:** *Luo v. Song*, 2024 ONSC 7043 (CanLII), paras. [45-46](#)

40. Beyond this, the Notice of Application does not seek the appointment of a receiver on an interim or interlocutory basis pending an action, nor is it ancillary to other relief claimed in the Notice of Application.

**Reference:** *Luo v. Song*, 2024 ONSC 7043 (CanLII), paras. [46-48](#)

41. This distinction is important as the test for the appointment of a receiver pursuant to Section 101 of the *CJA* requires an application of the three-part set out by the Supreme Court of Canada in *RJR-MacDonald v. Canada (Attorney General)*. Under this test, the applicant must demonstrate:

(a) that there is a serious issue to be tried, (b) that the creditor will suffer irreparable harm if the relief is not granted, and (c) that the balance of convenience favours the creditor.

**Reference:** *RJR-MacDonald v. Canada (Attorney General)*, [1994 CanLII 117 \(SCC\)](#)

42. The *RJR-MacDonald* test applies where the receivership order is purely interlocutory and ancillary to the pursuit of another relief claimed. Put another way, where, in effect, it is execution before judgment. In the within application, it is execution before claim.

**Reference:** *Akagi v. Synergy Group (2000) Inc.*, 2015 ONCA 368 (CanLII), para. [91](#)

43. While it is the Respondents' position that Section 101 of the *CJA* does not apply to the present matter, even if it were applicable, the criteria under the *RJR-MacDonald* test have not been met.

**(a) *There is no serious issue to be tried***

44. The first step of the *RJR MacDonald* test requires the applicant to show a strong likelihood of success on the merits, or that the claim is neither frivolous or vexatious.

**Reference:** *RJR-MacDonald v. Canada (Attorney General)*, [1994 CanLII 117 \(SCC\)](#)

45. The Bank has not met this threshold. While the Bank relies on a contractual right arising from the Respondents' loan default to appoint a receiver, the presence of a contractual entitlement to a receiver is not determinative of the issue. In such circumstances, it is whether or not an appointment by the Court is necessary to enable the receiver-manager to carry out its work and duties more efficiently. The central question of whether a judicial intervention is just and convenient when there is a contractual power of appointment will turn on factors such as the assessment of the costs of a receiver and the likelihood of maximizing and preserving the property.

**Reference:** *Aggregated Investments Inc. et al. v. Pace Group Holding Inc. et al*, 2025 ONSC 2595 (CanLII), para. [23](#);

*Royal Bank of Canada v. CFNDRS Inc.*, 2017 ONSC 7661 (CanLII), para. [8](#), [10](#)

46. The decision to appoint a receiver often comes down to whether there is a reason to incur the costs and formalities of involving an independent, court-appointed receiver. This happens when there is a dispute among parties and there is a risk that assets are in jeopardy. Default, on its own, does not necessarily mean that receivership is appropriate. Courts are likely to intervene if a secured creditor may not be able to recover their money.

**Reference:** *Royal Bank of Canada v. CFNDRS Inc.*, 2017 ONSC 7661 (CanLII), para. [10-11](#)

47. In the within application, the Property retains sufficient value to provide the Bank with security. Further, the Bank has not put forward any evidence of dissipation, mismanagement, or other wrong conduct that would put the Bank's security at risk. In these circumstances, there is no urgency or risk that would justify court intervention, and thus no serious issue to be tried.

***(b) The Bank will not suffer irreparable harm if the relief is not granted***

48. The applicant need not establish that it will suffer irreparable harm if a receiver is not appointed.

**Reference:** *Royal Bank of Canada v. CFNDRS Inc.*, 2017 ONSC 7661 (CanLII), para. [8](#)

49. Despite this, it is the Respondents' position that the Bank will not suffer irreparable harm if a receiver is not appointed. Irreparable harm is defined as harm that "either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other." Here, the Bank holds adequate security in the form of the Property with a large margin of equity, which retains sufficient value to cover the outstanding debt. As such, there is no risk of a loss that cannot be compensated through a monetary judgment, and no basis to suggest that the Bank's ability to recover would be prejudiced.

**Reference:** *RJR-MacDonald v. Canada (Attorney General)*, [1994 CanLII 117 \(SCC\)](#)

**(c) *The balance of convenience favours the Respondents***

50. The balance here involves an assessment of the harm that will be suffered if the appointment is not made, compared to the harm that will be suffered if it is.

**Reference:** *Milborne v. Kepinski*, 2024 ONSC 1825 (CanLII), para. [39](#)

51. In this case, the balance of convenience favours the Respondents. The appointment of a receiver would have significant consequences for the Development Project, including disrupting its operations, undermining its existing business relationships, and negatively impacting the project's marketability and realizable value. It may also delay or jeopardize the project's completion entirely. These are outcomes that would cause substantial harm to the Respondents and other stakeholders, including contractors, investors, and home purchasers.

52. 908 Corp. has already secured financing with KingSett and Sharno, and have even arranged a contingency plan with CMHC to complete the Development Project and address the outstanding indebtedness, which renders the appointment of a receiver unnecessary and counterproductive. The imposition of a court-appointed receiver at this stage would introduce additional and avoidable costs, further eroding both the Bank's potential recovery and the equity value of the Property. In circumstances where the Bank's security is already protected and no urgency or mismanagement has been shown, the balance of convenience weighs decisively against the extraordinary remedy of receivership.

**Reference:** Abbas Affidavit, RR, Tab 1, p. 9-10, para. 23-26

## **APPOINTMENT OF RECEIVER IS NOT JUST OR CONVENIENT: SECTION 243 OF THE *BIA***

53. Section 243(1) of the *BIA* holds that, on application by a secured creditor, the court may appoint a receiver if it considers it to be “just and convenient to do so”.

**Reference:** *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, [s. 243\(1\)](#)

54. In considering whether it is just or convenient to appoint a receiver, the Court must have regard to all of the circumstances, but in particular, the nature of the property and the rights and interests of all parties.

**Reference:** *Aggregated Investments Inc. et al. v. Pace Group Holding Inc. et al*, 2025 ONSC 2595 (CanLII), para. [22](#)

55. Courts have historically considered a variety of factors in determining whether the appointment of a receiver is appropriate. These include:

- a. whether irreparable harm might be caused if no order is made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment 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 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 a right to appointment under the loan documentation;
- h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
- i. the principle that the appointment of a receiver should be granted cautiously;

- j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties 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; and
- p. the goal of facilitating the duties of the receiver.

**Reference:** *Aggregated Investments Inc. et al. v. Pace Group Holding Inc. et al*, 2025 ONSC 2595 (CanLII), para. [24](#)

56. These factors are not a checklist, but rather should be viewed holistically to determine whether, in all the circumstances, the appointment of a receiver is just or convenient.

**Reference:** *Aggregated Investments Inc. et al. v. Pace Group Holding Inc. et al*, 2025 ONSC 2595 (CanLII), para. [25](#)

57. In applying these principles to the circumstances of the within matter, it is not just or convenient that a receiver be appointed.

58. 908 Corp. concedes that it has defaulted on the Bank's loan and that, pursuant to the Standard Charge Terms and the General Security Agreement, the Bank is entitled to appoint a receiver. However, these factors alone are not determinative of whether it is just or convenient for the appointment of a receiver; and in fact, 908 Corp. submits that when the relevant factors are considered holistically, the balance strongly favours denying the appointment.

**Reference:** Exhibit F – Charge/Mortgage of Land and Standard Charge Terms, Gongora Affidavit, AR, Tab 3, p. 195-196;  
Exhibit H – General Security Agreement dated April 28, 2021, Gongora Affidavit, AR, Tab 3, p. 210-218



59. First, there is no evidence that the Bank will suffer irreparable harm if a receiver is not appointed. The Property retains significant value and equity to serve as adequate security. There is no indication of asset dissipation, mismanagement, or urgent risk to the Bank's ability to recover. Accordingly, there is no compelling reason to incur the substantial cost and disruption associated with appointing a receiver.

60. Second, the nature and stage of the Development Project makes the imposition of a receiver particularly harmful. The Development Project has obtained all necessary permits, secured financing, and is now on the eve of construction. The appointment of a receiver at this critical juncture would interrupt ongoing financing and operational arrangements, potentially delay or terminate the Development Project, disrupt purchasers' interests and complicate their expectations of project delivery, and diminish the Property's realizable value. This would not only prejudice the Respondents but could also undermine the Bank's own recovery position by eroding value. Moreover, appointing a receiver at this stage would be counterproductive, as it would require the receiver to take over the project, secure alternative financing (which has already been arranged), and retain its own cost consultant. In effect, the receiver would have to restart the very process that 908 Corp. has just completed, resulting only in an entirely unnecessary delay to the project.

61. Third, the Respondents have taken proactive steps to remedy the default, including securing a new financing plan with KingSett and Sharno, and developing a contingency plan with CMHC in the unlikely event that financing with KingSett and Sharno falls through. This demonstrates responsible conduct and a good faith effort to complete the Development Project and satisfy the Bank's outstanding obligations. 908 Corp. is actively working to preserve the Property, not jeopardize it, and bring the Development Project to completion. There is no evidence to suggest they are acting in bad faith or refusing to cooperate.

**Reference:** Abbas Affidavit, RR, Tab 1, p. 9-10, para. 23-26

62. Fourth, a court-appointed receiver is not necessary to carry out any particular function or remedy any procedural obstruction. The Bank collecting its debt is not made more convenient by a court-appointed receiver. In this context, a court appointment would serve no practical purpose other than to formalize control at an unnecessarily high cost.

**Reference:** *Royal Bank of Canada v. CFNDRS Inc.*, 2017 ONSC 7661 (CanLII), para. [16](#)

63. Fifth, as aforementioned, the balance of convenience clearly favours 908 Corp. The potential harm to the Development Project, including loss of market confidence, interruption of contractual relations, and increased costs, significantly outweighs any benefit to the Bank, especially considering that the Bank's security is protected by equity in the Property. The preservation of the asset and continuation of the project will, in fact, maximize recovery for all stakeholders, including the Bank. This is not a situation where the project remains in its preliminary stages and 908 Corp. is dependent on uncertain or speculative financing to satisfy its obligations to the Bank. The Development Project has secured all permits and financing, and the construction will start immediately upon the closing of KingSett's and Sharno's commitments.

64. The commitment of two lenders to finance the project strongly reinforces that the project rests on firm financial footing and is stable in all other respects. It is unclear what could serve as a stronger indication of secured financing than firm commitments from two separate lenders. Ultimately, whether the financings close or not cannot be predicted with certainty by the Bank, nor anyone else; but despite this, the Bank's position rests on a speculative assumption that the financing will fail to close, without offering a shred of evidence to support that claim.

65. Sixth, aside from the enabling contracts, the Bank has not put forward any evidence to substantiate that a court-ordered receiver is just or convenient in the circumstances, and there is nothing inherent in the relationship between the parties that makes the mere existence of the default require a court-ordered neutral third party to act as a receiver.

**Reference:** *Royal Bank of Canada v. CFNDRS Inc.*, 2017 ONSC 7661 (CanLII), para. [16](#)

66. Seventh, aside from seeking receivership, the Bank has failed to present any plan or any proposed timeline for what would occur once a receiver is appointed. The lack of a cogent plan should weight against granting Bank's request. A receivership would undoubtedly lead to months of delay and exuberant costs, when in fact, within 60 to 90 days the Bank will be paid off.

67. Finally, it is trite law that the appointment of a receiver is an extraordinary remedy and must be granted with caution. The facts of this case do not rise to the level of urgency, mismanagement, or asset risk that would justify such a remedy. 908 Corp. is actively engaged in completing the project and resolving the default, and there is no reason for the Court to intervene in a manner that could destabilize those efforts.

## **THE RESPONDENTS' PROPOSAL**

68. 908 Corp. acknowledges its legal obligations to the Bank in respect of the outstanding debt and does not seek to avoid or evade those obligations. However, if a mutually beneficial outcome is to be achieved, it is in both parties' interests to engage in a cooperative and reasonable approach that accommodates the legitimate interests of the other.

**Reference:** *Royal Bank of Canada v. CFNDRS Inc.*, 2017 ONSC 7661 (CanLII), para. [17](#)

69. It is expected that the respective commitments from KingSett and Sharno will close within approximately 60 days. 908 Corp, KingSett, and Sharno are all actively working to meet this timeline and there is no reason to believe that the respective financings will not close. This means that within 60 days, 908 Corp. will have the capital required to pay the Bank and move forward.

**Reference:** Abbas Affidavit, RR, Tab 1, p. 9-10, para. 21-22, 24

70. Given the forthcoming financing, receivership is premature.

71. Courts have held that following a demand for payment, the debtor must be allowed a reasonable time to raise the necessary funds to satisfy the demand. Following this principle, the Respondents ought to be afforded a reasonable time to satisfy their outstanding debt to the Bank.

**Reference:** *Prudential Assurance Co. (Trustee of) v. 90 Eglinton Ltd.*, [1994 CanLII 7256 \(ON SC\)](#)

72. Generally, reasonable time is of a short duration. Courts have acknowledged, however, that practically speaking, this is not always manageable.

**Reference:** *Bank of Montreal v. Carnival National Leasing Limited*, 2011 ONSC 1007 (CanLII), para. [13](#), [16](#)

73. Further, reasonable time is not to be open-ended due to the difficulties that a borrower may have in securing financing.

**Reference:** *Bank of Montreal v. Carnival National Leasing Limited*, 2011 ONSC 1007 (CanLII), para. [13](#)

74. 908 Corp. submits that, given the totality of the circumstances, a reasonable time in this case would be approximately 90 days from the date of the hearing of the Application to allow 908 Corp. to close on its financing commitments with KingSett and Sharno and pay off the Bank.

75. Should, in the unlikely event, that financing with KingSett and Sharno does not materialize, there is absolutely nothing preventing the Bank from returning to court to seek a receivership at that stage. However, it is unclear how a receivership is just or convenient now, when financing has already been secured.

76. Granting this requested extension would facilitate a resolution that serves the interests of both parties: the Bank would be made whole without the delay, cost, and risk associated with a receivership, and 908 Corp. would preserve the value and viability of the Development Project and move forward with its new lending partners to satisfy stakeholders in the Development Project. In this sense, the proposed timeline offers a win-win outcome and reflects the kind of balanced, fair approach courts have endorsed in the exercise of equitable discretion.

#### **PART V – ORDER REQUESTED**

77. The Respondents respectfully request that the within application be dismissed with costs on a substantial indemnity basis.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 21<sup>st</sup> DAY OF AUGUST, 2025:**



STEPHANIE  
MESSINA for:

**Esmail Mehrabi (LSO# 60792C)**

Lawyer for the Respondents,  
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Canada Corp., 8637989 Canada Corp.,  
2404685 Ontario Inc., Teksun Inc.,  
2717852 Ontario Corp. and 2717740  
Ontario Ltd

## SCHEDULE “A”

### AUTHORITIES

1. *Luo v. Song*, [2024 ONSC 7043 \(CanLII\)](#)
2. *RJR-MacDonald v. Canada (Attorney General)*, [1994 CanLII 117 \(SCC\)](#)
3. *Akagi v. Synergy Group (2000) Inc.*, [2015 ONCA 368 \(CanLII\)](#)
4. *Aggregated Investments Inc. et al. v. Pace Group Holding Inc. et al.*, [2025 ONSC 2595 \(CanLII\)](#)
5. *Royal Bank of Canada v. CFNDRS Inc.*, [2017 ONSC 7661 \(CanLII\)](#)
6. *Milborne v. Kepinski*, [2024 ONSC 1825 \(CanLII\)](#)
7. *Prudential Assurance Co. (Trustee of) v. 90 Eglinton Ltd.*, [1994 CanLII 7256 \(ON SC\)](#)
8. *Bank of Montreal v. Carnival National Leasing Limited*, [2011 ONSC 1007 \(CanLII\)](#)

## **SCHEDULE “B”**

### **STATUTES AND LEGISLATION**

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

##### **Interlocutory Orders**

##### **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, R.S.C., 1985, c. B-3, s. 243(1)***

##### **PART XI - Secured Creditors and Receivers**

##### **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.

##### **Interpretation**

##### **Definitions**

**2** In this Act,

...

***insolvent person*** means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (*personne insolvable*)



**LAURENTIAN BANK OF CANADA**  
Applicant

- and -

**9089802 CANADA CORP. et al.**  
Respondents

Court File No.: CV-25-00747532-00CL

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

Proceeding Commenced At TORONTO

**FACTUM OF THE RESPONDING PARTIES**

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