

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

-and-

1230172 ONTARIO INC.

Respondent

FACTUM OF THE APPLICANT

July 15, 2025

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PART I - OVERVIEW

1. The within application made by Cameron Stephens Mortgage Capital Ltd. (“Cameron Stephens”) seeks to appoint KSV Restructuring Inc. (“KSV”), as the Receiver and Manager (in such capacity, the “Receiver”), without security, of all present and future property, assets and undertakings, of 1230172 Ontario Inc. (the “Property”), including the real property known municipally as 110 Central Park Drive, Ottawa, Ontario and more particularly identified in Schedule “A” of the Notice of Application, pursuant to section 243 (1) of the *Bankruptcy and Insolvency Act* (Canada) (the “BIA”) and section 101 of the *Courts of Justice Act* (Ontario) (“CJA”) (the “Application”).

2. The Respondent corporation, 1230172 Ontario Inc. (the “Debtor”), is the registered owner of the property located at 110 Central Park Drive, Ottawa, Ontario (the “Central Park Property”).¹

3. The Debtor operates a retirement and nursing home facility (the “Park Place Retirement Home”) at the Central Park Property.²

PART II - FACTS

4. The Debtor is indebted to Cameron Stephens with respect to the credit facilities made available by Cameron Stephens pursuant to and under the terms of a Letter of Commitment dated March 1, 2024, hereinafter referred to as the “Letter of Commitment”. The Letter of Commitment provided for a loan facility in the amount of \$12,700,000.00 (the “Loan”).³

¹ Affidavit of Jeremy Izso sworn February 13, 2025, Exhibit B, Tab 2 of the Application Record of Cameron Stephens (“Izso Affidavit”)

² Para. 4 of the Izso Affidavit

³ Exhibit “C” to the Izso Affidavit

5. The obligations of the Debtor to Cameron Stephens were also guaranteed by David Choo (“Choo”), the principal of the Debtor, pursuant to a Guarantee dated March 28th, 2024 (the “Guarantee”). Pursuant to the Guarantee, Choo agreed unconditionally to pay all amounts owed by the Debtor to Cameron Stephens, together with interest thereon, and all costs, charges and expenses which may be incurred to enforce payment.⁴

6. The outstanding indebtedness to Cameron Stephens as of March 13, 2025, was \$12,520,831.45, plus further interest which has accrued at the rate of 6.09% per annum and legal costs and other expenses.

7. The indebtedness is secured, among other things, by:

- a) A first ranking Charge/Mortgage registered on the 28th day of March 2024, as Instrument No. OC2678575 for the principal sum of \$15,240,000.00 against the title to the Central Park Property (the “Cameron Stephens Charge”);⁵
- b) A General Security Agreement dated March 28th, 2024, (the “GSA”) which was registered under the Personal Property Security Act (“PPSA”) on March 26th, 2024, by means of a Financing Statement with Registration No. 20240326 1005 1462 2066;⁶ and
- c) A General Assignment of Rents (“GAR”) registered on the 28th day of March 2024, as Instrument No. OC2678576 against the Central Park Property.⁷

⁴ Exhibit “G” to the Izso Affidavit

⁵ Exhibit D to the Izso Affidavit

⁶ Exhibit E to the Izso Affidavit

⁷ Exhibit F to the Izso Affidavit

8. Related corporations under the Ashcroft Group of Companies are currently in receivership, and KSV has been appointed as Receiver of those related companies.⁸
9. The applications pertaining to those receiverships have been before the court and before Justice Mew on prior occasions, scheduled contemporaneous with the within application.
10. Following issuance of the Notice of Application, the parties entered into a Forbearance Agreement dated March 17, 2025, as extended by a Forbearance Extension Agreement dated April 28, 2025, and further extended by 2nd Forbearance Extension Agreement, dated June 6, 2025 (collectively, the “Forbearance Agreement”). In the Forbearance Agreement, the Respondent acknowledged the outstanding indebtedness; waived all defenses or claims for set off; and agreed to repay the indebtedness by the Forbearance Termination Date of July 9, 2025.⁹
11. The Debtor also executed a Consent to the appointment of the receiver in the within application in the event of a breach of the Forbearance Agreement terms.¹⁰
12. As a result, the application was originally adjourned, however, to date there is no binding Commitment for refinancing in place to pay out Cameron Stephens, and to pay out the creditors in the other Ashcroft Group receiverships.
13. The Respondent has not filed any opposition to the within application.

⁸ Exhibit J to the Izso Affidavit

⁹ Exhibit A to the Supplementary Affidavit of Jeremy Izso

¹⁰Exhibit A to the Supplementary Affidavit of Jeremy Izso and para. 4

PART III – ISSUES

14. This Application requires a resolution of the following issues:

- (a) Should this Court make an Order pursuant to subsection 243(1) of the BIA and section 101 of the CJA appointing KSV as the Receiver over Central Park Property?
- (b) Should this Court make an Order pursuant to subsection 243(6) of the BIA granting the Receiver's Charge?

PART IV - LAW AND ARGUMENT

1. THE TEST FOR THE APPOINTMENT OF A RECEIVER

15. This Court has the power to appoint a Receiver or a Receiver and Manager under subsection 243(1) of the BIA and section 101 of the CJA.¹¹

16. Pursuant to subsection 243(1) of the BIA, the court may appoint a Receiver where it considers it to be just or convenient to do so. Subsection 243(1) provides¹²:

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

¹¹ Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended [BIA], subsection 243(1), Schedule B to this Factum; Court of Justice Acts, R.S.O. 1990, c. C.43, as amended [CJA], section 101, Schedule B to this Factum

¹² BIA, subsection 243(1), Schedule B to this Factum.

(c) take any other action that the court considers advisable.

17. As a threshold issue, where an appointment is to be made under section 243 of the BIA, the court must be satisfied that either: (i) the insolvent person received ten days' notice under section 244 of the BIA of the moving party's intention to enforce its security; (ii) the insolvent person consented to the appointment of a receiver prior to the expiry of the ten day period; or (iii) it is otherwise appropriate to order the appointment prior to the expiry of the ten day notice period.¹³

18. Similarly, the test for the appointment of a receiver under section 101 of the CJA is also whether such appointment would be just or convenient. Subsection 101(1) of the CJA provides as follows¹⁴:

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.

19. In determining whether it would be just, appropriate or convenient to appoint a receiver, Canadian courts have historically considered a number of factors, including, but not limited to, whether¹⁵:

- (i) the applicant has the power to appoint a receiver under its security instrument;
- (ii) the security held by the applicant is or may become insufficient to secure the indebtedness;
- (iii) the debtor has broken or otherwise failed to carry out its obligations;

¹³ BIA, sections 243(1.1) and 244, Schedule B to this Factum.

¹⁴ CJA, subsection 101(1), Schedule B to this Factum

¹⁵ [*Standard Trust Co. v Pendygrasse Holdings Ltd.pdf*](#), 1988 CarswellSask 27 (Sask. Q.B.)

- (iv) an appointment is necessary to protect the security from existing or realistically perceived jeopardy or danger;
- (v) the debtor has failed to account;
- (vi) the applicant will suffer irreparable harm or injury if a receiver is not appointed;
- (vii) there is demonstrated urgency for the appointment of a receiver;
- (viii) the cost to the parties of making the appointment is justified relative to the expected realization to be achieved from the appointment;
- (ix) the balance of convenience favours the appointment; and
- (x) the proposed appointee is capable of carrying out the purpose for which the appointment is sought.

20. In deciding whether to appoint a receiver, the court must have regard to all the circumstances, but in particular to the nature of the property and the rights and interests of all parties in relation thereto. Typically, the issues for a court to determine on a receivership application include the following¹⁶:

- (a) the existence of a debt and default;
- (b) the quality of the security; and
- (c) the need for the appointment of a receiver in view of alternate remedies available to the creditor, the nature of the property, the likelihood of maximizing the return to the parties, the costs associated with the appointment, and any need to preserve the property pending realization.

¹⁶ [*Bank of Montreal v. Carnival National Leasing Ltd.*](#), 2011 CarswellOnt 896 (Ont. S.C.J.) [Carnival Leasing];
[*Bank of Nova Scotia v. Freure Village on Clair Creek*](#), 1996 CarswellOnt 2328 (Ont. Gen. Div. [Commercial List]) [Freure Village]
[*Central 1 Credit Union v. UM Financial Inc. and UM Capital Inc.*](#), 2011 CarswellOnt 11979 (Commercial List) [UM Financial]

21. Additionally, the fact that the moving party has a right under its security documentation to appoint a receiver is an important factor to be considered. While the appointment of a receiver is generally viewed as an extraordinary remedy, in cases where the security documentation of the moving party provides for a private or court-appointed receiver, the issue is reduced to a consideration of whether it is in the interests of all concerned to have the receiver appointed by the court. This involves an examination of, *inter alia*, (i) the potential cost of the receivership, (ii) the relationship between the debtor and the creditors, (iii) the likelihood of maximizing the return on and preserving the subject property, and (iv) the best way of facilitating the work and duties of the receiver.¹⁷

22. It is not necessary for a creditor, whose security documentation provides for the appointment of a receiver, to demonstrate that it will suffer irreparable harm if the appointment of a receiver is not granted by the court.¹⁸

2. THE APPOINTMENT OF A RECEIVER IS JUST AND CONVENIENT

23. The appointment of a Receiver is just and convenient in this case. Pursuant to the Loan and Security Documents, the Applicant has a contractual right to the appointment of a receiver upon the occurrence of a default or event of default, as applicable. In furtherance of its contractual rights, the Applicant is entitled to commence these receivership proceedings to protect its investments and preserve and maximize the value of the property.¹⁹

¹⁷ [Carnival Leasing](#), supra at para 27.

¹⁸ [Carnival Leasing](#), supra at para 28.

[Swiss Bank Corp \(Canada\) v Odyssey Industries Inc.pdf](#), 1995 CarswellOnt 39 (Ont. Gen. Div. [Commercial List]) at para 28

¹⁹ Cameron Stephens General Security Agreement, paragraph 11(a)

24. In deciding whether it is just or convenient to appoint a Receiver, the court will consider matters including the preservation and protection of the property and the balance of convenience.²⁰

25. A court-appointed Receiver is an officer of the court and acts in a fiduciary capacity with respect to all interested parties.²¹

26. The appointment of the Receiver is just and convenient for the following reason:

- a) The Debtor is unable to fulfill its obligations to Cameron Stephens and other creditors and is unable to properly manage and financially carry the ongoing expenses associated with the Central Park Property.
- b) Cameron Stephens has lost confidence in the Debtor's ability to manage its business carried on at the Central Park Property.
- c) A Receiver is required to take the steps necessary to increase occupancy rates and normalize rental revenues in order to maximize the value of the security and engage in a sales process.
- d) The Respondent consented to the appointment of a Receiver, in the event of nonpayment, by the Forbearance Termination Date which has now expired.
- e) KSV is acting as Receiver of the other Ashcroft Debtors (other than 213), and their properties, including in respect of Park Place Senior, which is the property abutting the

²⁰ [*Citibank Canada v. Calgary Auto Centre*](#), 1989 CarswellAlta 343 at para 31 (Alta. Q.B.)

²¹ [*Ostrander v. Niagara Helicopters Ltd.*](#), (1973), 1 O.R. (2d) 281 at para 6 (Ont. H.C.)

Central Park Property. KSV has engaged consultants to assist with the management of the seniors' homes in that Ashcroft portfolio and will be in a position to coordinate the management of the Central Park Property by the same consultants.

f) KSV is a licensed Insolvency Trustee.

g) KSV has consented to be appointed as Receiver and Manager, without security, of the Property and the Central Park Property.²²

3. THE TERMS OF THE REQUESTED ORDER ARE APPROPRIATE

27. Subsection 243(6) of the BIA provides as follows with respect to granting a Receiver's charge²³:

(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.

28. In this case, it is appropriate for the Court to grant the Receiver's Charge over the Central Park Property to ensure that KSV and its counsel are able to recover any fees and disbursements owed to them. As previously stated, Cameron Stephens is the first ranking creditor of the Property. The Receiver's Charge is reasonable, and Cameron Stephens is agreeable to the Receiver's Charge being granted. Furthermore, all secured creditors have been given reasonable notice of this Application and have been provided with an opportunity to make representations.

²² Tab 3 of the Cameron Stephens Application Record

²³ BIA, section 243(6), Schedule B to this Factum.

PART V - CONCLUSION

29. For the foregoing reasons, it is respectfully submitted that the relief requested should be granted and KSV be appointed as Receiver over the Property and the Receiver's Charge ought to be granted, on the terms of the Order sought.

PART VI - ORDER REQUESTED

30. The Applicant requests that this Court issue an Order substantially in the form attached at Tab 3 to the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

July 15, 2025



Wendy Greenspoon-Soer
Lawyers for the Applicant

SCHEDULE “A” – AUTHORITIES CITED

1. Standard Trust Co. v. Pendygrasse Holdings Ltd., 1988 CarswellSask 27 (Sask. Q.B.)
2. Bank of Montreal v. Carnival National Leasing Ltd., 2011 CarswellOnt 896 (Ont. S.C.J.)
3. Bank of Nova Scotia v. Freure Village on Clair Creek, [1996] OJ No 5088 (Gen. Div.)
4. Central 1 Credit Union v. UM Financial Inc. and UM Capital Inc., 2011 CarswellOnt 11979 (Commercial List)
5. Swiss Bank Corp. (Canada) v. Odyssey Industries Inc., 1995 CarswellOnt 39 (Ont. Gen. Div. [Commercial List])
6. Citibank Canada v. Calgary Auto Centre, 1989 CarswellAlta 343 (Alta. Q.B.)
7. Ostrander v. Niagara Helicopters Ltd. (1973), 1 O.R. (2d) 281 at 286 (Ont. H.C.)

SCHEDULE “B” – LEGISLATION CITED

Bankruptcy and Insolvency Act, R.S.C., 1985, C. B-3, as amended

Section 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.

Section 243(1.1)

(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.

Section 243(6)

(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.

Section 244

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or
- (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

No advance consent

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

Exception

(3) This section does not apply, or ceases to apply, in respect of a secured creditor

(a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or

(b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

Idem

(4) This section does not apply where there is a Receiver in respect of the insolvent person.

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

Section 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.

(2) An order under subsection (1) may include such terms as are considered just.

CAMERON STEPHENS MORTGAGE
CAPITAL LTD.

Applicant

and 1230172 ONTARIO INC.

Respondent

Court File No. CV-25-00098742-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**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**

Proceeding commenced at Ottawa

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