Court File No. 26-00000136-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

Ad Hoc Group of Noteholders of Brightpath Capital Corporation

Applicants

- and –

Brightpath Capital Corporation

Respondent

APPLICATION UNDER section 241 of the *Canada Business Corporations Act*, RSC 1985, c C-44 and section 101 of the *Courts of Justice Act,* R.S.O. 1990, c. C.43

FACTUM OF THE APPLICANTS

April 6, 2026

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PART I. OVERVIEW

1. The applicants are investors, through unsecured promissory notes, in the private mortgage company and respondent, Brightpath Capital Corporation ("**Brightpath**"). In total, Brightpath raised approximately $60 million through unsecured promissory notes (the "**Notes**"), which range from $25,000 to $5,000,000 per Note. Brightpath has about 141 investors (the "**Noteholders**"). Many of the Noteholders are individuals and they range in their level of sophistication.

2. The Noteholders reasonably understood that they were investing in a company that provided private mortgage services and that their investments would be used by Brightpath to directly fund mortgages on Canadian real property.

3. Initially, the Noteholders were paid interest on their Notes and received regular updates regarding the status of Brightpath's business and the mortgages it had funded.

4. In its September 2024 update, Brightpath advised that it had $351,000,000 in funds under management, that the funds were invested in mortgages on real properties in Canada, that the loan-to-value ratio for the portfolio would not exceed 85%, and that in practice the actual loan-to-value ratio at the time was about 73%. At that time, Brightpath did not disclose how much of its capital under management came from the Notes, the aggregate amount of which was not disclosed to the individual Noteholders.

5. However, after the September 2024 update, the Noteholders stopped receiving regular updates and, in May 2025, Brightpath stopped making interest payments on the Notes.

6. In February 2026, Noteholders received notice that Brightpath had applied under section 192 of the CBCA to recapitalize its business (the "**Proposed Arrangement**"). In the court filings associated with the Proposed Arrangement, Brightpath's principal Blake Albright swore an affidavit stating that Brightpath had only about $19 million in assets. Brightpath's own evidence is that it lost more than 95% of its assets in 18 months.

7. The Proposed Arrangement sought to exchange the Noteholders' debt for equity, with Brightpath and Albright representing that this was in the best interests of Brightpath and of the Noteholders in that it was the best chance of Brightpath avoiding liquidation and of the Noteholders receiving any recovery on their investments whatsoever.

8. The Noteholders were shocked by these developments. While open to considering the Proposed Arrangement, groups of Noteholders organized and sought to understand what went wrong at Brightpath and what happened to the money they invested.

9. The Disclosure Statement received by the Noteholders in connection with the Proposed Arrangement contained no specific financial information or reporting, nor any schedule of the mortgages or specifics on the performance or recovery of particular mortgages. Given Brightpath's representations that the Noteholders' investments were backed by real property in Canada, it is difficult to imagine an innocent explanation for the company's current situation. But the Noteholders tried anyway, asking Brightpath to provide basic financial disclosure, such as a schedule of mortgages and the company's most recent financial statements.

10. Rather than provide the Noteholders with anything they requested, Brightpath chose to abandon the Proposed Arrangement that it had—one month prior—represented

to be the Noteholders' only chance of recovery. This is fundamentally unfair and oppressive.

11. The Noteholders are open to working with Brightpath to move forward with an arrangement in the best interests of all stakeholders. The applicants do not seek to jump the repayment queue. They simply seek basic information regarding their investments and Brightpath's business.

PART II. FACTS

A. Brightpath's Corporate History

12. Brightpath was founded in 2016 by Albright, who now acts as its CEO, sole shareholder, and sole director.[1]

13. In 2022, Brightpath was acquired by Monfort Capital Corporation ("**Montfort**")—a public company listed on the TSX-V.[2]

14. In 2025, Albright re-acquired control of Brightpath through a holding company, allegedly due to disagreements with Montfort-appointed directors of Brightpath.[3]

15. Shortly after Albright's re-acquisition, Brightpath defaulted under its senior debt agreements and stopped paying interest on the Notes. The default was apparently the result of Brightpath's auditors' determination that Brightpath had incurred bad debt

[1] Application Record of Applicants ("**A.R.**") at 32, 37 (Tab 2, Exhibit 1B).
[2] A.R. at 38–39 (Tab 2, Exhibit 1B).
[3] A.R. at 38–39 (Tab 2, Exhibit 1B).

expenses and would have an expected credit loss provision of approximately $15 million for the fiscal year ending December 31, 2024.[4]

16. Brightpath apparently spent the remainder of 2025 negotiating some form of forbearance with its senior lenders.[5] Then in early 2026, it brought its application for the Proposed Arrangement, which sought to convert all Noteholder debt into equity.[6]

B. Terms of the Notes

17. The Notes provide that their entire balance becomes due and payable without notice or demand upon the occurrence of certain events, including if Brightpath "ceases or threatens to cease carrying on all or any material part of its business."[7]

18. Attached to the Notes is a postponement and subordination agreement, also signed by the Noteholders, which explains that Brightpath has entered into a credit agreement with Pivot Financial Inc. (the "**Senior Lender**") to evidence debt owed to the Senior Lender (the "**Senior Indebtedness**").[8] The agreement provides that payment cannot be made to the subordinated lender (i.e., the Noteholder) until the Senior Indebtedness is paid in full or otherwise consents. The Noteholder covenants not to take steps to collect or accelerate its debt until the Senior Indebtedness is paid in full.

[4] A.R. at 39 (Tab 2, Exhibit 1B).
[5] A.R. at 40–41 (Tab 2, Exhibit 1B).
[6] A.R. at 22 (Tab 2, Exhibit 1A).
[7] A.R. at 254 (Tab 3, Exhibit 1).
[8] A.R. at 261 (Tab 3, Exhibit 1).

C. Brightpath's Representations to Investors

19. Until late 2024, Brightpath provided its investors with regular reports. The Q3 2024 investor brochure describes Brightpath as a "private mortgage investment fund" that "allow[s] individuals to pool their money, much like a mutual fund, to invest in a diversified portfolio of Canadian residential mortgages", which Brightpath would then "administer[]" and "pay[] investors cash distributions for returns based on portfolio results."[9]

20. Brightpath represented to its investors that the private mortgage market "offers a steady source of income with higher yields, lower risk and less volatility than traditional investments." Brightpath pitched to investors that participating in its "fund" with its "diversified portfolio," "deal flow," and underwriting expertise would allow them access to a market they could not access as small individual investors.[10]

21. Under the heading "Security," the brochure represents that "[y]our investment is backed by actual Canadian real estate" and that "[t]he fund cannot hold real property located outside of Canada or loan funds secured by property outside of Canada." The brochure goes on to describe the due diligence Brightpath engages in for each mortgage, including that all potential mortgage investments must be approved by the senior management team and that potential borrowers are assessed by a licensed mortgage agent prior to all loans.[11] Brightpath also emphasized that although there was risk if a number of borrowers defaulted on loans, its "strict loan-to-value guidelines" would "increase the likelihood that enough equity is available to recover outstanding loan

[9] A.R. at 214–215 (Tab 2, Exhibit 2).
[10] A.R. at 215 (Tab 2, Exhibit 2).
[11] A.R. at 216–217 (Tab 2, Exhibit 2).

balances in the case of default."[12]

22. The investor brochure also includes an "Operations Overview" with a flow chart purporting to represent the relationship between Brightpath, a bank or credit union, management, and the mortgage portfolio. The chart indicates that loans flow directly from Brightpath to the mortgage portfolio, with fees, penalties, and interest flowing back to Brightpath. It also shows that there is a secured line of credit from a bank/credit union, to whom Brightpath pays interest and then individual investors to whom Brightpath pays interest.[13]

23. In the Frequently Asked Questions section of the brochure, Brightpath described that it was "reasonable to expect above average returns," that "[d]istributions will be made monthly," that should an investor want to get their money out, the "[m]aximum wait time for return is 6 months, and funds can often be returned quickly," and, finally, that Brightpath would "provide an updated statement of account on a quarterly basis" and "encourage[d] [its] investors to contact [it] anytime with questions or comments."[14]

D. Brightpath's Proposed Arrangement and Refusal to Provide Disclosure

24. In February 2026, when it submitted its materials regarding the Proposed Arrangement, Brightpath declared that the Proposed Arrangement was "the best alternative available to address Brightpath's capital structure and liquidity needs," that it would "avoid Brightpath ceasing to operate as a going concern," and "provide an

[12] A.R. at 221 (Tab 2, Exhibit 2).
[13] A.R. at 219 (Tab 2, Exhibit 2).
[14] A.R. at 220 (Tab 2, Exhibit 2).

opportunity for Noteholders to participate in the possible future success of Brightpath as equity owners, as well as potential distributions in the form of dividends (if, as and when declared)."

25. Likewise, Albright swore in his affidavit that "it was Brightpath's considered view, based on advice from its professional advisors, that the Noteholders are unlikely to receive any recovery if Brightpath were liquidated" and that the Proposed Arrangement was "in the best interests of Brightpath and of paramount importance to both avoid a liquidation of Brightpath and facilitate recovery for the Noteholders."[15]

26. Albright's evidence to this Court, presented *ex parte* and without any cross-examination, was that Brightpath's current financial distress was a function of a downturn in the Canadian real estate market in 2022, plus a bad debt recognized by its auditors in 2025. He did not explain—and apparently cannot explain—how Brightpath lost 95% of its $351 million in assets in less than 18 months.

27. The Noteholders were open to considering the Proposed Arrangement but felt, reasonably so, that they needed to understand what had gone wrong in the business and what, specifically, had happened to their investments. The Noteholders accordingly asked for some financial disclosure.[16]

28. But despite its representations that the Proposed Arrangement was likely the only viable path to avoid Brightpath ceasing to operate as a going concern and for the Noteholders to receive any recovery whatsoever, Brightpath discontinued its application

[15] A.R. at 41, 44 (Tab 2, Exhibit 1B).
[16] A.R. at 168 (Tab 2, Exhibit 1D).

rather than provide the Noteholders with any financial disclosure.

E. The Noteholders' Mounting Concerns

29. The Noteholders have become increasingly concerned with Brightpath's refusal to provide even simple, readily available financial disclosure.

30. Brightpath's materials in support of the Proposed Arrangement refer to multiple senior lenders whose identities and interests in Brightpath's assets are unknown to the Noteholders and who are not subject to the postponement and subordination agreement signed by Noteholders.[17]

31. The Noteholders also learned that Albright has been acting as President of a different private mortgage lending company—Royal Canadian Mortgage Investment Corporation ("**RCMIC**")—since repurchasing Brightpath from Montfort in April 2025.

32. The Noteholders, through counsel, also reviewed a report under the Personal Property Security Act ("**PPSA**") which indicates that Brightpath may have transferred mortgages to an entity seemingly related to RCMIC, called "Royal Canadian Asset Management Inc." on approximately April 17, 2025.[18]

33. The PPSA report also lists a number of Brightpath-related entities whose relationship to Brightpath is unknown to the Noteholders.[19]

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[17] A.R. at, e.g., 38, 40, 41, 46 (Tab 2, Exhibit 1B).

[18] A.R. at 225 (Tab 2, Exhibit 3).

[19] A.R. at 224–247 (Tab 2, Exhibit 3), listing, among other entities: Brightpath Residential Mortgage LP I, Brightpath Servicing Corporation, Brightpath Residential Mortgage LP II, Brightpath II Servicing Corporation, and Brightpath
Opportunity Corporation.

PART III. LAW & ARGUMENT

34. As reflected above, the Noteholders do not seek to accelerate repayment of their debt or a reordering of the repayment queue.

35. However, given Brightpath's lack of disclosure, apparent financial ruin, and impending statutory deadlines, the applicants seek an interim order for the production of basic financial information from Brightpath.

36. The test for such interim relief is set out in *R.J.R. MacDonald* and has three prongs. The applicant must show that:

(a) there is a serious question to be tried or a strong prima facie case;

(b) they will suffer irreparable harm in the absence of relief; and that

(c) the balance of convenience weighs in favour of granting the relief.[20]

A. Serious Question to be Tried / Strong Prima Facie Case

37. In general, there is a low bar for an applicant to demonstrate a serious question to be tried—essentially, just that the claim is neither frivolous nor vexatious.[21] In cases of mandatory injunctions, courts typically require the applicant to clear the somewhat higher

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[20] *R.J.R. MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 SCR 311. Some courts have suggested that in certain circumstances, a more relaxed approach to the traditional *RJR* test can be applied in oppression proceedings. *See, e.g.*, *Le Maitre Limited v. Segeren*, 2007 CanLII 18735 (ON SC), at para 30 (noting that in some circumstances interim relief may be merited under the OBCA oppression provisions even absent all the traditional considerations of an interlocutory injunction); *Deluce Holdings Inc. v. Air Canada*, 1992 CanLII 7654 (ON SC) (courts need not make a finding of oppression under s. 241 of the CBCA before granting interim relief, and have very broad discretion to be creative and flexible depending on the circumstances).

[21] *See, e.g.*, *Wong v. 10658987 Canada Inc. et al.*, 2020 ONSC 2469 at paras. 61, 64.

bar of making a strong prima facie case.[22] Notably here, the request for interim relief is simply for the production of readily-available information, and engages none of the concerns that courts typically express about mandatory injunctions.[23] But in any event, the applicants here meet either test.

38. The substantive relief on this application is for declarations of oppressive conduct and a crystallization of the Noteholders' debt.

39. First, it is clear that Brightpath has ceased or threatened to cease a material portion of its operations, given that its Proposed Arrangement, as explained above, described dire financial circumstances and explicitly indicated that if the Proposed Arrangement did not succeed, liquidation was imminent. The Noteholders are more likely than not to obtain this declaration on the return of the full application.

40. Second, with respect to the oppression claims, the Noteholders reasonably expected, based on the written agreements, Brightpath's representations, and the nature and context of the parties' relationship, that:

(a) they would receive regular financial reporting;

(b) their investments would be backed by mortgages on Canadian real property;

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[22] *See, e.g.*, *Thrive Capital Management Ltd. et al. v. Noble 1324 Queen Inc. et. al.*, 2020 ONSC 4412 at paras. 3–4.

[23] *See, e.g.*, *R v. Canadian Broadcasting Corp.*, 2018 SCC 5 at paras. 15–16 (noting typical concerns that mandatory injunctions are often burdensome or costly or result in effectively a final determination in favour of the moving party).

(c) there was a single senior lender who ranked ahead of them for repayment;

(d) they would be paid interest and their capital would be returned upon demand;

(e) Brightpath's management would operate Brightpath in a manner consistent with their fiduciary obligations and in the best interests of Brightpath's investors.

41. The Noteholders' reasonable expectations were breached, given that:

(a) there has been a complete suspension of any sort of financial updates or reporting;

(b) based on Brightpath's own submissions, it lost 95% of the value of its portfolio in 18 months, which would be impossible if its representations regarding its investments were true;

(c) Brightpath appears to have multiple senior lenders (and a complicated corporate structure) that were not disclosed to the Noteholders;

(d) no interest has been paid for approximately a year and no capital has been returned;

(e) there has been apparent self-dealing and Brightpath abandoned its own Proposed Arrangement, which it swore was the best and only option to avoid a liquidation and the total loss of the Noteholders' investments, in the

face of basic disclosure requests.[24]

42. The Noteholders have put forth a strong prima facie case for the declarations regarding their debt and oppressive conduct.

B. Irreparable Harm

43. The Noteholders face total annihilation of their investments upon Brightpath's liquidation according to Brightpath's and Albright's own statements mere weeks ago. Damages against an empty shell are no substitute for the relief requested.

44. Moreover, certain provisions of the *Bankruptcy and Insolvency Act* regarding preferences and transfers at undervalue operate only within one year "lookback" timeframes from the date a bankruptcy application is issued.[25] If the Noteholders ultimately need to challenge certain transfers in bankruptcy (such as the April 17, 2025 transfer recorded in the PPSA report), it is imperative that they file that application sooner rather than later to preserve those dates. They cannot do so without more information.

45. An award in the Noteholders favour at some later point is illusory if assets have been dissipated and the Noteholders have lost opportunities to unwind transactions. According to Brightpath's and Albright's own words just a few weeks ago, now that the Proposed Arrangement has been abandoned, liquidation is apparently the most likely path forward and the Noteholders are unlikely to receive any recovery in that scenario.[26]

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[24] *See BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at paras. 71–73.

[25] *See Bankruptcy and Insolvency Act*, RSC 1985 c B-3, at ss. 95 and 96.

[26] *See, e.g.*, *340268 Ontario Limited v. Georghiades and Georghiades v. Georghiades*, 2024 ONSC 6168 at para. 167 (noting that ongoing risk to assets that will available to satisfy any judgment is a relevant consideration for irreparable harm).

C. Balance of Convenience

46. The requested disclosure is all readily available to Brightpath and disclosure would cause it no burden and no harm.

47. The requested disclosure includes: identities of Brightpath's investors and lenders, which it obviously has at hand given the current financial circumstances and recent Proposed Arrangement; basic financial statements that any company has easily accessible; a schedule of mortgages that Brightpath must have given that this is what its entire business is allegedly based upon; and its own organizational charts. These are easy requests with which Brightpath could comply tomorrow.[27]

48. The ease of disclosure for Brightpath stands in stark contrast to the irreparable harm facing the Noteholders, who in Brightpath's own words are likely to lose the entirety of their investments and may also lose potential legal remedies if they do not receive more information quickly.

49. Finally, the Noteholders were informed on Monday, April 6 that Brightpath does not intend to file any opposition to this motion.

50. The Noteholders undertake to be liable for damages occasioned by an order for financial disclosure if it is later determined that they were not entitled to such disclosure

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[27] *See, e.g.*, *The Vincent Corporation v. Provis Inc.*, 2010 ONSC 750 at paras. 14, 16, 22, 28, 42 (granting interim relief that included accounting and financial disclosure under the OBCA where there was a prima facie case that majority partners had preferred their own interests over those of the applicants and diluted the applicants' interests and noting that financial disclosure on an interim basis was a reasonable first step); *see also Burton v. Bison Conservation Ranch Ltd. et al.*, 2026 MBKB 36 at paras. 18, 19, 28–31, 54 (granting interim disclosure of certain financial and organizational information in a case under Manitoba's oppression remedy involving a complex corporate structure where there were questions about how related corporate entities operated).

and Brightpath suffers damages through compliance.

PART IV. ORDER SOUGHT

51. The applicants seek an interim order that Brightpath:

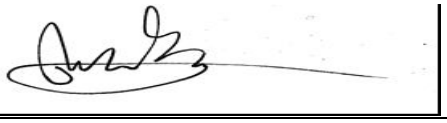
(a) Disclose the current balance of the Senior Indebtedness, as well as the identities and contact details of parties other than the Senior Lender, Pivot Financial Corp. ("Pivot") whose debt forms part of or who have an interest in the Senior Indebtedness, if any;

(b) Produce a schedule of mortgages and their status over the last 24 months, including appraised values, principal mortgage amounts, distribution of funds, and maturity dates; Produce Brightpath's financial statements (balance sheets, income statements, and cashflow statements), audited and unaudited from 2022 to present and general ledger of Brightpath from 2022 to present;

(c) Disclose a ledger of Noteholders, including amounts paid, proceeds returned, investments dates, balances owing (with and without accrued interest), and contact details; and

(d) Produce an organizational chart showing how mortgages have been funded and serviced amongst various Brightpath-related entities, including Brightpath Residential Mortgage LP I, Brightpath Servicing Corporation, Brightpath Residential Mortgage LP II, Brightpath II Servicing Corporation, and Brightpath Opportunity Corporation.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of April, 2026.



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SCHEDULE "A"

LIST OF AUTHORITIES

1. *R.J.R. MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 SCR 311

2. *Le Maitre Limited v. Segeren*, 2007 CanLII 18735 (ON SC)

3. *Deluce Holdings Inc. v. Air Canada*, 1992 CanLII 7654 (ON SC)

4. *Wong v. 10658987 Canada Inc. et al.*, 2020 ONSC 2469

5. *Thrive Capital Management Ltd. et al. v. Noble 1324 Queen Inc. et. al.*, 2020 ONSC 4412

6. *R v. Canadian Broadcasting Corp.*, 2018 SCC 5

7. *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69

8. *340268 Ontario Limited v. Georghiades and Georghiades v. Georghiades*, 2024 ONSC 6168

9. *The Vincent Corporation v. Provis Inc.*, 2010 ONSC 750

10. *Burton v. Bison Conservation Ranch Ltd. et al.*, 2026 MBKB 36

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