Court File No. CL-26-00000152-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

B E T W E E N:

PIVOT FINANCIAL I LIMITED PARTNERSHIP

Applicant

- and -

BRIGHTPATH CAPITAL CORPORATION

Respondent

IN THE MATTER OF an application under subsection 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and section 101 of the *Courts of Justice Act*, RSO 1990, c C.43, as amended.

FACTUM OF THE RESPONDING CREDITORS (THE RABIDEAU PLAINTIFFS)

June 19, 2026

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PART I – OVERVIEW

1. The Responding Creditors (the "Rabideau Plaintiffs") do not oppose the creation of an Official Committee of Noteholders or the appointment of Representative Counsel. However, the Rabideau Plaintiffs oppose specific provisions of the Draft Order that attempt to use the Court's equitable jurisdiction to bypass the strict statutory regime of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [*BIA*].

2. Specifically, the Draft Order impermissibly attempts to: (a) grant a blanket, premature super-priority over the underlying debt of participating noteholders without satisfying the requirements of section 38 of the *BIA*; (b) create an information monopoly by directing the Receiver to share financial intelligence exclusively with the Official Committee; and (c) leave ambiguous Representative Counsel's authority to settle or compromise active, independent litigation being pursued by third parties against the corporation and its directors.

PART II – THE FACTS

A. The Responding Creditors and the Independent Litigation

3. The Rabideau Plaintiffs are unsecured noteholders of Brightpath Capital Corporation ("Brightpath"). They hold the same class of unsecured debt, and sit at the exact same level of priority, as the noteholders who comprise the moving party's proposed Official Committee. (Affidavit of Geoff Rabideau, sworn June 19, 2026, at paras 1-2 [Rabideau Affidavit])

4. The Rabideau Plaintiffs are not passive "free-riders" waiting for the Receiver or an Official Committee to recover funds on their behalf. They are actively investing their own resources to pursue independent, self-funded litigation. (Rabideau Affidavit, at para 3)

5. Specifically, the Rabideau Plaintiffs have commenced an action in Kitchener against both Brightpath and its directors (the "Kitchener Action"). The Kitchener Action advances independent claims, including claims for rescission and damages for negligent misrepresentation. (Rabideau Affidavit, at paras 4-5, Exhibit A)

6. The Kitchener Action remains active and is currently awaiting a stay motion hearing. (Rabideau Affidavit, at para 5)

7. At all material times, the Rabideau Plaintiffs have pursued their legal rights in good faith. There has been no inequitable conduct by the Rabideau Plaintiffs that would justify subordinating their debt, stripping their statutory priority, or penalizing them for pursuing an independent litigation track. (Rabideau Affidavit, at para 6)

B. The Overreach of the Draft Order

8. The Rabideau Plaintiffs do not oppose the creation of the Official Committee or the appointment of Representative Counsel to assist unrepresented noteholders. They seek only an amended form of the Draft Order. (Rabideau Affidavit, at paras 7-8)

9. The Draft Order presented by the Moving Party seeks to grant the Official Committee specific entitlements that prejudice the Rabideau Plaintiffs, namely:

a. Paragraph 16: Attempts to grant the Official Committee an entitlement to encumber the entirety of future noteholder funds and disburse those funds to Participating Noteholders in priority over the underlying debt of Non-Participating Noteholders.

b. Paragraph 19: Directs the Receiver to provide financial records and transaction information exclusively to the Official Committee, creating an information monopoly.

c. Lack of a Carve-Out: Fails to explicitly protect the independent, third-party claims currently being advanced by the Rabideau Plaintiffs in the Kitchener Action.

PART III – LAW & ARGUMENT

A. Paragraph 16 Impermissibly Bypasses the *BIA* Statutory Code

10. Paragraph 16 of the Draft Order attempts to use the Court's equitable jurisdiction under the *Courts of Justice Act*, RSO 1990, c C.43, s 101 [*CJA*] to grant a presumption of super-priority over the underlying debt of Non-Participating Noteholders. This is an impermissible circumvention of the *BIA*.

11. Section 141 of the *BIA* dictates that all claims proved in a bankruptcy shall be paid rateably (*pari passu*). In the absence of inequitable conduct, the Court lacks the inherent jurisdiction to alter this statutory distribution scheme or to sanction the equitable subordination of a creditor's claim (*Canada Deposit Insurance Corp v Canadian Commercial Bank*, [1992] 3 SCR 558 at 609-610, 97 DLR (4th) 385). Furthermore, the Supreme Court of Canada has established a hierarchical approach to insolvency proceedings, expressly cautioning that courts should "rely first on an interpretation of the provisions" of the applicable insolvency statute before turning to "inherent or equitable jurisdiction" (*Century Services Inc v Canada (AG)*, 2010 SCC 60 at para 65). The *BIA* is a "stricter rules-based scheme" and a "comprehensive and exhaustive mechanism" (*Century Services*, at paras 21, 80). Consequently, general equitable jurisdiction under the *CJA* cannot be used to bypass its strict statutory mechanisms. As established, the Rabideau Plaintiffs have engaged in no inequitable conduct. (Rabideau Affidavit, at para 6).

12. To the extent the Moving Party seeks a super-priority reward for taking the financial risk to fund estate litigation, Parliament has already provided the exclusive statutory code for that relief: section 38 of the *BIA*.

13. Under section 38 of the *BIA*, a creditor who funds an action that the Receiver refuses to pursue is statutorily entitled to recover their costs and their entire underlying claim in priority to the rest of the estate. However, the jurisprudence is clear that section

38 provides a "complete code" for this relief. The statutory reward requires strict compliance with its procedural safeguards: the Receiver must refuse to act, a specific Court Order must be obtained for a specific chose in action, and all other creditors must be given notice and the opportunity to participate (*Toyota Canada Inc v Lipson*, 2008 ONCA 440 at paras 25, 41; *BIA*, s 38).

14. Paragraph 16 of the Draft Order is a premature, blanket attempt to secure the ultimate reward of section 38 without satisfying any of its mandatory statutory safeguards. The Court of Appeal has cautioned against allowing creditors to circumvent the strict requirements of section 38 to gain an unwarranted priority. Furthermore, the Draft Order attempts to cast this blanket priority over any future "Noteholder Fund"—which could impermissibly capture non-estate assets (such as third-party D&O insurance proceeds) that fall entirely outside the scope of section 38.

15. The Rabideau Plaintiffs are actively funding their own litigation. The risk that the Official Committee or other noteholders might later attempt to piggyback on recoveries generated by the Kitchener Action is further evidence of the inherent unfairness of granting the Official Committee a blanket super-priority today. All language regarding the entitlement to encumber or disburse in priority in Paragraph 16 must be struck.

B. Paragraph 19 Violates the Receiver's Duty of Impartiality

16. A Court-appointed Receiver is an officer of the Court and owes a fiduciary duty of impartiality, transparency, and even-handedness to all creditors.

17. Paragraph 19 of the Draft Order directs the Receiver to provide financial records, books of account, and transaction information specifically and exclusively to the Official Committee. This creates an unfair information monopoly.

18. The Rabideau Plaintiffs are equal noteholders pursuing independent claims against the corporation and its directors. Directing the Receiver to open its books exclusively to one subset of noteholders prejudices those who are actively litigating on a parallel track. The statute requires information parity. Paragraph 19 must be amended to direct the Receiver to provide the same informational access to any non-participating noteholders who are actively litigating, subject to standard confidentiality undertakings.

C. The Necessity of a Settlement Carve-Out

19. While this motion is properly before the Court in the context of the receivership proceeding, it is procedurally improper for an Order within this proceeding to grant broad settlement or representation powers that could inadvertently prejudice an independent action currently before another Court (the Kitchener Action).

20. Because the Rabideau Plaintiffs have an existing, active claim against the corporation and its directors in a separate proceeding, a strict carve-out is required. An explicit provision must be added to the Draft Order stating that Representative Counsel and the Official Committee have no authority to settle, compromise, release, or otherwise bind the Rabideau Plaintiffs regarding independent third-party claims,

including those currently advanced in the Kitchener Action or discovered during its process.

PART IV – ORDER REQUESTED

21. The Rabideau Plaintiffs respectfully request that the Court decline to grant the Draft Order unless Paragraph 16 is struck, Paragraph 19 is amended to ensure information parity, and an explicit third-party litigation carve-out is included.

SCHEDULE "B" – RELEVANT STATUTES

***Bankruptcy and Insolvency Act*, RSC 1985, c B-3:**

Proceeding by creditor when trustee refuses to act

38 (1) Where a creditor requests the trustee to take any proceeding that in his opinion would be for the benefit of the estate of a bankrupt and the trustee refuses or neglects to take the proceeding, the creditor may obtain from the court an order authorizing him to take the proceeding in his own name and at his own expense and risk, on notice being given the other creditors of the contemplated proceeding, and on such other terms and conditions as the court may direct.

Transfer to creditor

(2) On an order under subsection (1) being made, the trustee shall assign and transfer to the creditor all his right, title and interest in the chose in action or subject-matter of the proceeding, including any document in support thereof.

Benefits belong to creditor

(3) Any benefit derived from a proceeding taken pursuant to subsection (1), to the extent of his claim and the costs, belongs exclusively to the creditor instituting the proceeding, and the surplus, if any, belongs to the estate

Claims generally payable rateably

141 Subject to this Act, all claims proved in a bankruptcy shall be paid rateably.

***Courts of Justice Act*, RSO 1990, c C.43**

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.

Terms

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

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