

ONTARIO
SUPERIOR COURT OF JUSTICE
[IN BANKRUPTCY AND INSOLVENCY]
(COMMERCIAL LIST)

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
CLAIREVILLE PROPERTY HOLDINGS INC.
A CORPORATION INCORPORATED UNDER
THE ONTARIO *BUSINESS CORPORATIONS ACT***

**FACTUM OF THE DIP LENDER,
CANNECT MORTGAGE INVESTMENT CORPORATION
(Returnable December 14, 2021)**

December 7, 2021

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF CLAIREVILLE PROPERTY HOLDINGS INC.
A CORPORATION INCORPORATED UNDER
THE ONTARIO *BUSINESS CORPORATIONS ACT***

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(as at December 1, 2021)**

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¹ Served with notification of Motion Record, Factum and Brief of Authorities via letter enclosing electronic location of documents on Proposal Trustee's or proposed Receiver's website.

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² Served with notification of Motion Record, Factum and Brief of Authorities via letter enclosing electronic location of documents on Proposal Trustee's or proposed Receiver's website.

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⁸ Served with notification of Motion Record, Factum and Brief of Authorities via letter enclosing electronic location of documents on Proposal Trustee's or proposed Receiver's website.

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AND TO:	<p>ATTORNEY GENERAL OF CANADA Department of Justice Canada Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON</p> <p>Diane Winters Tel: (647) 256-7459 Email: diane.winters@justice.gc.ca</p> <p>Rakhee Bhandari Tel: (416) 952-8563 Email: Rakhee.bhandari@justice.gc.ca</p>
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AND TO:	<p>S. PAUL MANTINI, in trust for an Ontario Corporation to be incorporated c/o BENNETT JONES LLP Suite 3400, 1 First Canadian Place Toronto, ON M5X 1A4</p> <p>Attention: S. Paul Mantini Email: mantinisp@bennettjones.com</p> <p>Proposed Purchaser</p>
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¹⁰ Served with notification of Motion Record, Factum and Brief of Authorities via letter enclosing electronic location of documents on Proposal Trustee's or proposed Receiver's website.

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PART I – INTRODUCTION

1. Claireville Property Holdings Inc. (the “**Debtor**”) is or will be indebted to Cannect Mortgage Investment Corporation (“**Cannect**”), the DIP lender in these proposal proceedings under the *Bankruptcy and Insolvency Act* R.S.C. 1985 c.B-3 (“**BIA**”).
2. The Debtor has granted to Cannect security over all of its respective property including its leasehold interests. Cannect seeks the appointment of a receiver over the undertaking, property and assets of the Debtor.
3. The security documents granted by the Debtor in favour of Cannect provide for the appointment of a receiver.
4. The Debtor is or will be in default of its obligations to Cannect, and in the circumstances it is just and convenient to appoint a receiver over the undertakings, assets and properties of the Debtor.
5. The Debtor has filed a Notice of Intention to make a proposal under the BIA (the “**NOI**”). The stay of proceedings has been extended a few times by the Court. The Debtor (or proposal trustee) is not seeking another extension, nor is it filing a proposal. As a result, the NOI stay of proceedings will be expiring shortly and the NOI period coming to an end. Bankruptcy is imminent. However, the NOI stay is currently in place.
6. Cannect seeks, among other things, to terminate the period in which the Debtor or proposal trustee of the Debtor may file a proposal; to lift the stay of proceedings currently in place resulting from the filing of the NOI such that Cannect may apply on a *nunc pro tunc* basis for the appointment of a receiver; and to appoint a receiver over the Debtor.

PART II – SUMMARY OF FACTS¹

Background

7. The Debtor's main asset is its leasehold interest (the "**Leasehold Interest**") in 13 dual tenant industrial buildings municipally addressed as 18/20/22/24/26 Huddersfield Road, 350/354/358 Humberline Drive and 93/101/123/130/160 Claireville Drive, Toronto, Ontario (collectively, the "**Real Property**").
8. The Debtor is the registered owner of the Leasehold Interest, which it holds as bare trustee and nominee for and on behalf of several co-tenants.
9. The Leasehold Interest is subject to a 99-year ground lease with Kornwood Investments Ltd. dated September 1, 1973, which expires on August 31, 2073.

Proposal Proceedings and DIP Loan

10. The NOI was filed on July 2, 2021, naming KSV Restructuring Inc. ("**KSV**"), as the proposal trustee (the "**Proposal Trustee**").
11. At the commencement of the NOI proceedings, the Debtor's principal secured creditor was DUCA Financial Services Credit Union Ltd. ("**DUCA**"), which was owed approximately \$2.4 million. The Debtor also had accrued unpaid property tax arrears of approximately \$2 million. DUCA issued a demand letter together with a Notice of Intention to Enforce Security pursuant to section 244 of the BIA in June 2021. The Debtor filed its NOI prior to the expiry of the statutory 10-day notice period.

¹ The summary of facts is based on the Affidavit of Marcus Tzaferis sworn December 1, 2021.

12. In July 2021, the Debtor obtained a commitment from Cannect to repay DUCA and bring the outstanding property taxes current by way of a DIP loan in the principal amount of \$4.5 million. The July 28 Order (defined below) approved, among other things, the DIP loan, which funding was advanced on July 30, 2021 and used to repay DUCA and the property tax arrears.
13. On July 28, 2021 (the “**July 28 Order**”), the Honourable Justice Pattillo granted various relief including the following:
 - (a) approving the debtor-in-possession financing from Cannect in the principal amount of \$4.5 million (the “**DIP Loan**”), the debtor-in-possession financing term sheet between Cannect and the Debtor dated July 23, 2021 (the “**DIP Term Sheet**”), the priority charges to secure the DIP Loan (the “**DIP Lender's Charge**”) and certain professional costs (the “**Administration Charge**”), and a payout of property tax arrears and DUCA;
 - (b) extending the Proposal Trustee’s powers in respect of the Debtor, to the exclusion of all others Persons (as defined in the July 28 Order), including the Debtor itself;
 - (c) approving a sale and investment solicitation process (“**SISP**”);
 - (d) extending the time for the Proposal Trustee to file a proposal on the Debtor’s behalf under the BIA to and including September 15, 2021; and
 - (e) approving the First Report of the Proposal Trustee dated July 26, 2021 (the “**First Report**”); and the conduct and activities of the Proposal Trustee described therein.

14. On September 15, 2021 (the “**September 15 Order**”), the Honourable Justice Cavanagh granted various relief including the following:
 - (a) extending the time for the Proposal Trustee to file a proposal on the Debtor’s behalf under the BIA up to and including October 30, 2021;
 - (b) approving the Second Report of the Proposal Trustee dated September 7, 2021 (the “**Second Report**”), and the conduct and activities of the Proposal Trustee described therein; and
 - (c) approving the fees and disbursements of the Proposal Trustee and its lawyer as set out in the Second Report.
15. On October 27, 2021 (the “**October 27 Order**”), the Honourable Justice Koehnen granted various relief including the following:
 - (a) extending the time for the Proposal Trustee to file a proposal on the Debtor’s behalf under the BIA up to and including December 14, 2021;
 - (b) approving the Third Report of the Proposal Trustee dated October 20, 2021 (the “**Third Report**”), and the conduct and activities of the Proposal Trustee described therein; and
 - (c) approving the fees and disbursements of the Proposal Trustee and its lawyer as set out in the Third Report.
16. During the NOI period and as further detailed in the First Report, Second Report and Third Report of the Proposal Trustee, the Proposal Trustee advanced the SISP through its

sales advisor, CB Richard Ellis Limited (“**CBRE**”). In accordance with the July 28 Order, the Proposal Trustee solicited listing proposals from five commercial realtors to act as listing agent for the Leasehold Interest in the Real Property. Following consultation with Cannect, the Proposal Trustee entered into a listing agreement for the Leasehold Interest on or about August 25, 2021 with CBRE. CBRE subsequently made marketing materials available and created a data room to share these materials with potential purchasers; and the Proposal Trustee, in consultation with CBRE, set down a timeline to receive offers.

17. On or about December 1, 2021, the Proposal Trustee entered into or was about to enter into an agreement of purchase and sale regarding the Leasehold Interest in the Real Property with the successful purchaser. The Proposal Trustee has indicated that it is not possible to complete or close this sale transaction, if it closes, by January 1, 2022 or during the NOI period.
18. The Proposal Trustee or Debtor is not seeking an extension of the NOI stay of proceedings, which expires on December 15, 2021, or filing a proposal by that date.
19. The time referenced in section 50.4(9) of the BIA and the October 27 Order currently expires on December 15, 2021, and the Court is not authorized pursuant to section 50.4(9) of the BIA to extend the time referenced in such section beyond January 1, 2022.
20. The Debtor will be deemed to have made an assignment in bankruptcy pursuant to section 50.4(8) of the BIA on the expiry of the stay period on December 15, 2021.

Security, Default and Appointing a Receiver

21. On December 14, 2021 or December 15, 2021, the Debtor will be indebted to Cannect in the amount of \$4.5 million plus interest and costs under the DIP Term Sheet.
22. The maturity or termination date (the “**Termination Date**”) of the DIP Loan under the DIP Term Sheet is generally the earliest of the following: (a) on or about January 30, 2022; (b) the date the NOI stay of proceedings expires without being extended (i.e., December 15, 2021) or the date the NOI proceedings are terminated (i.e., December 14, 2021, if these proposal proceedings are terminated on that date) or the Debtor becomes bankrupt; and (c) an Event of Default.
23. The expiry of the NOI stay of proceedings, the termination of the BIA proposal proceedings or bankruptcy regarding the Debtor also constitute an Event of Default under the DIP Term Sheet. Also, any action (or inaction) of the Debtor which would, in the sole determination of Cannect, have a material adverse effect on the Debtor or the collateral (i.e., Leasehold Interest) constitutes an event of default under the DIP Term Sheet. In Cannect's sole determination, the intended failure of the Debtor to file a proposal during the NOI period and the resulting deemed bankruptcy will have a material adverse effect on the Debtor's collateral.
24. Upon the Termination Date (i.e., December 14 or 15, 2021) or the occurrence of an Event of Default under the DIP Term Sheet, all of the indebtedness of the Debtor to Cannect,

together with all interest and other amounts owing under the DIP Term Sheet, shall become immediately due and payable and Cannect is entitled to enforce its security.

25. Cannect holds the following security (collectively, the “**Security**”) regarding the DIP Loan: a court-ordered, super-priority DIP Lender's Charge (ranking behind the Administration Charge); a general security agreement (“**GSA**”) dated August 16, 2021, granted by the Debtor to Cannect; and an indenture regarding the assignment of rents (“**Assignment of Rents**”) dated August 17, 2021, granted by the Debtor to Cannect.
26. The GSA was perfected by registering under the *Personal Property Security Act* on or about August 12, 2021 and the Notice of Assignment of Rents was registered on title of the Real Property on or about October 20, 2021. Under the GSA and DIP Lender's Charge or July 28 Order, on default, Cannect may, among other things, apply to this Court for the appointment of a receiver against the Debtor.
27. Under the DIP Term Sheet and July 28 Order, before Cannect can enforce its Security, including applying to this Court for the appointment of a receiver, it must provide five (5) days' notice to the Debtor and the Proposal Trustee. The Debtor and the Proposal Trustee, or their counsel, are included on the Service List in this motion and will be provided approximately seven (7) days' notice of this motion for the appointment of a receiver.
28. On December 1, 2021, Cannect had a notice of application issued on the Commercial List for the appointment of KSV as the receiver (the “**Receiver**”) over the Debtor.

PART III – ISSUES, LAW AND ARGUMENT

Issues

29. The issues before this Court, and addressed below, are:
- (a) Should this Court terminate the period in which the Proposal Trustee or Debtor may file a proposal and should the Court lift the NOI stay of proceedings?
 - (b) Should this Court appoint the Receiver?
 - (c) If this Court decides to appoint the Receiver, then are the terms of the Receivership Order appropriate in the circumstances of this receivership?
 - (d) If this Court decides to appoint the Receiver, then should KSV be appointed as the Receiver?

Law and Argument

- A. This Court should terminate the period in which the Proposal Trustee or Debtor may file a proposal and should lift the stay of proceedings**
30. The outside date to file a proposal is January 1, 2022. The NOI stay of proceedings expires December 15, 2021, unless the Debtor or Proposal Trustee on behalf of the Debtor obtains an extension or files a proposal on or before December 14, 2021. The Debtor or Proposal Trustee is not seeking an extension or filing a proposal on or before December 14, 2021. As a result, the Debtor will be deemed to have made an assignment in bankruptcy.
31. However, the NOI stay of proceedings is currently in place. Under subsection 50.4(11)(b) of the BIA, proposal proceedings may be terminated upon the application of, among others, a creditor, where an insolvent person will not likely be able to make a

viable proposal before the expiration of the period in question. Given that the Debtor or Proposal Trustee on behalf of the Debtor is not seeking an extension of the NOI stay of proceedings or filing a proposal on or before December 14, 2021 and the NOI stay of proceedings expires on December 15, 2021, the Debtor will not likely be able to make a viable proposal before the expiration of the period in question.²

32. In *NS United Kaiun Kaisha, Ltd. v. Cogent Fibre Inc.*, the court terminated the stay period pursuant to s. 50.4(11) of the BIA. At the outset, the court observed that there is no absolute immunity from creditors. The court noted that the debtor failed to provide “even a hint of its plan for a proposal”. The court held that, on a balance of probabilities, the debtor would not likely be able to make a viable proposal or likely have it accepted by the requisite majority of creditors.³
33. Under section 69.4 of the BIA, the court may lift a stay of proceedings where the creditor is likely to be materially prejudiced by the stay, or the court determines that it is equitable on other grounds to do so.⁴
34. What amounts to material prejudice or equitable grounds for lifting a stay of proceedings has included cases where the court has lifted the stay to permit the creditor to pursue remedies available to it⁵, including to appoint a receiver.⁶

² BIA, s. 50.4(11), Schedule “B”.

³ *NS United Kaiun Kaisha, Ltd. v. Cogent Fibre Inc.*, 2015 ONSC 5139, at paras. 27, 28, 29, 38.

⁴ BIA, s. 69.4, Schedule “B”.

⁵ *Quality Carpets Ltd. (Re)* (1995), 36 C.B.R. (3d) 143 (B.C.S.C.), at para. 17.

⁶ *White Oak Commercial Finance, LLC v. Nygard Holdings (USA) Limited.*, 2020 CarswellMan 174 (Man. Q.B.), at paras. 30-32.

35. It is respectfully submitted by Cannect that the proposal proceedings of the Debtor should be terminated and the NOI stay of proceedings should be lifted for the following reasons: firstly, the NOI expires on December 15, 2021, and the Debtor or Proposal Trustee on behalf of the Proposal do not intend on seeking an extension of the NOI; secondly, the Debtor or Proposal Trustee on behalf of the Debtor do not intend on filing a proposal during the NOI period; thirdly, the deemed bankruptcy of the Debtor is imminent; fourthly, to permit or allow Cannect to pursue its remedies and enforce its Security forthwith, including the court-appointment of the Receiver on December 14, 2021; and finally, to permit an immediate transition from the NOI proceedings to the receivership proceedings, so that the agreement of purchase and sale regarding the Leasehold Interest entered into during the proposal proceedings may be completed by the Receiver.
36. As such, the proposal proceedings no longer serve a useful purpose as the Debtor no longer requires the stay of proceedings in order to formulate a proposal to its creditors. However, Cannect proposes that this Court appoint a Receiver to ensure an orderly and fair process to complete the potential sale of the Leasehold Interest and to satisfy the outstanding obligations of the Debtor.

B. This Court should appoint the Receiver

37. Each of section 243 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

(the “CJA”) vest in this Honourable Court, authority to appoint a Receiver where it is just and convenient to do so.⁷

38. While the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security documents provide for or permit the appointment of a receiver. This is because the applicant is merely seeking to enforce a contractual term in its security documents. The extraordinary nature of the remedy sought is less essential to the inquiry and instead, the “just and convenient” question becomes one of the court determining, in its discretion, whether it is more in the interests of all concerned to have the receiver appointed by the court.⁸
39. In this case, the Debtor is or will be in default of the DIP Term Sheet, the DIP Loan becomes immediately payable on default and Cannect's Security provides for the appointment of a receiver, by private or court-appointment.
40. Therefore, with Cannect's contractual entitlement to appoint a receiver and the default of the DIP Term Sheet, the appointment of a receiver is not extraordinary relief, and the burden or onus on Cannect for the relief is lowered in the circumstances. With this lower burden, the following additional “just and convenient” factors identified by Justice Farley in *Confederation Life*⁹ may be considered:

- (a) The lender's security is at risk of deteriorating;

⁷ BIA, s. 243(1), Schedule “B”; CJA, s. 101, Schedule “B”.

⁸ *RMB Australia Holdings Limited v. Seafeld Resources Ltd.*, 2014 ONSC 5205, at paras. 28, 29.

⁹ *Confederation Life Insurance Co. v. Double Y Holdings Inc.*, 1991 CarswellOnt 1511 (Ontario Court of Justice (General Division)), at paras. 19-24.

- (b) There is need to stabilize and preserve the Debtor's business or property;
- (c) Loss of confidence in the Debtor; and
- (d) Positions and interests of other creditors.

41. Having regard to the above factors identified in the case law, Cannect submits that the burden to appoint a receiver has been met and that such appointment is just and convenient for the following reasons:

- (a) the Security granted by the Debtor authorizes the appointment of a receiver;
- (b) the risk to Cannect is significant, with the cumulative indebtedness under the DIP Loan in excess of \$4.5 million and the Debtor's bankruptcy imminent;
- (c) the appointment of the Receiver is necessary for the preservation and protection of the Debtor's property including its Leasehold Interest;
- (d) the Debtor is or will be indebted to Cannect and is or will be in default of its obligations to Cannect;
- (e) as noted above, Cannect has the right under its Security to appoint the Receiver;
- (f) the Debtor or Proposal Trustee, on behalf of the Debtor, is not seeking a further extension of the NOI stay or filing a proposal, which will result in the deemed bankruptcy of the Debtor;
- (g) while the appointment of a Receiver is extraordinary relief and should be granted cautiously and sparingly, this factor is less essential to the inquiry where the security documentation provides for the appointment of a receiver;

- (h) a court appointment is necessary to enable the Receiver to carry out its duties including the possible completion or closing of the sale transaction entered into during the NOI period; and
- (i) a receivership order in the circumstances would provide a quick and smooth transition from NOI to receivership proceedings and place all creditors and stakeholders on a level and transparent playing field under the administration of the Receiver and this Honourable Court to ensure the consistent and lawful treatment of all stakeholders.

C. The Terms of the Receivership Order are Appropriate

- 42. The terms of the proposed Receivership Order are substantially the same as the terms of the Commercial List's model receivership order, and the modifications to the model order are indicated in the comparison version at Tab 5 of the Motion Record.

D. KSV should be appointed Receiver

- 43. In an application for a court-appointed receiver, the court is faced with the task of deciding the appropriate person or firm to be appointed as receiver.
- 44. Notwithstanding that the discretion to select the receiver is that of this Honourable Court, Cannect respectfully submits that consideration ought to be given to the appointment as Receiver of the firm put forward by Cannect.

45. The proposition that significant consideration ought to be given to the applicant creditor's proposed appointment Receiver is supported by *Confederation Trust Co. v. Dentbram Developments Ltd.*¹⁰, in which Justice Borins held:

The mortgagor has not provided any evidence why Price Waterhouse, the receiver proposed by the plaintiff, should not be appointed. I am satisfied that Price Waterhouse is impartial, disinterested and able to deal with the rights of all interested parties in a fair manner. When receivers proposed by each party possess similar qualities, generally speaking [t]he receiver proposed by the creditor, who has carriage of the proceedings, should be appointed.

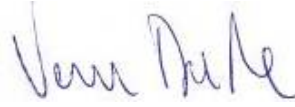
46. KSV is a well-recognized, experienced and respected insolvency firm. It is impartial, disinterested and able to deal with the rights of all interested parties in a fair manner. There is also the added advantage that KSV is or has been the Proposal Trustee in the NOI proceedings, and is therefore familiar with the issues. This knowledge, and no need for a learning curve, will add to efficiencies and cost savings in the receivership proceedings for the benefit of all stakeholders.

PART IV – ORDER REQUESTED

47. For the reasons set out, it is respectfully requested that this Court terminate the period in which the Debtor or Proposal Trustee of the Debtor may file a proposal; lift the stay of proceedings currently in place resulting from the filing of the NOI, such that Cannect may apply on a *nunc pro tunc* basis for the appointment of a receiver; and appoint the Receiver.

¹⁰ *Confederation Trust Co. v. Dentbram Developments Ltd*, 9 C.P.C. (3d) 399 (Ontario Court of Justice (General Division)), at para. 2.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of December, 2021.



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Cannect Mortgage Investment Corporation

SCHEDULE "A"

SCHEDULE “A”

LIST OF AUTHORITIES

1. *NS United Kaiun Kaisha, Ltd. v. Cogent Fibre Inc.*, 2015 ONSC 5139
2. *Quality Carpets Ltd. (Re)* (1995), 36 C.B.R. (3d) 143 (B.C.S.C.)
3. *White Oak Commercial Finance, LLC v. Nygard Holdings (USA) Limited.*, 2020 CarswellMan 174 (Man. Q.B.)
4. *RMB Australia Holdings Limited v. Seafeld Resources Ltd.*, 2014 ONSC 5205
5. *Confederation Life Insurance Co. v. Double Y Holdings Inc.*, 1991 CarswellOnt 1511 (Ontario Court of Justice (General Division))
6. *Confederation Trust Co. v. Dentbram Developments Ltd.*, 9 C.P.C. (3d) 399 (Ontario Court of Justice (General Division))

SCHEDULE "B"

SCHEDULE “B”

RELEVANT STATUTES

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

Where assignment deemed to have been made

50.4 (8) Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

- (a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;
- (b) the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;
- (b.1) the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49; and
- (c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b.1) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

Extension of time for filing proposal

50.4 (9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

Court may terminate period for making proposal

50.4 (11) The court may, on application by the trustee, the interim receiver, if any, appointed under section 47.1, or a creditor, declare terminated, before its actual expiration, the thirty day

period mentioned in subsection (8) or any extension thereof granted under subsection (9) if the court is satisfied that

- (a) the insolvent person has not acted, or is not acting, in good faith and with due diligence,
- (b) the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question,
- (c) the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors, or
- (d) the creditors as a whole would be materially prejudiced were the application under this subsection rejected,

and where the court declares the period in question terminated, paragraphs (8)(a) to (c) thereupon apply as if that period had expired.

Court may declare that stays, etc., cease

69.4 A creditor who is affected by the operation of sections 69 to 69.31 or any other person affected by the operation of section 69.31 may apply to the court for a declaration that those sections no longer operate in respect of that creditor or person, and the court may make such a declaration, subject to any qualifications that the court considers proper, if it is satisfied

- (a) that the creditor or person is likely to be materially prejudiced by the continued operation of those sections; or
- (b) that it is equitable on other grounds to make such a declaration.

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.

Courts of Justice Act, R.S.O.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. 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).

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF CLAIREVILLE PROPERTY HOLDINGS INC.
A CORPORATION INCORPORATED UNDER THE ONTARIO BUSINESS
CORPORATIONS ACT**

Estate/Court File No. 31-2749576

***ONTARIO*
SUPERIOR COURT OF JUSTICE
[IN BANKRUPTCY AND INSOLVENCY]
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

**FACTUM OF THE DIP LENDER,
CANNECT MORTGAGE INVESTMENT
CORPORATION
(Returnable December 14, 2021)**

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