

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

BETWEEN:

**MIZUE FUKIAGE, AKIKO KOBAYASHI, YOSHIKI FUKIAGE, KOBAYASHI  
KYOHODO CO., LTD. AND TORU FUKIAGE**

Applicants

- and -

**CLEARVIEW GARDEN ESTATES INC., TALBOT CROSSING INC., NIAGARA  
ESTATES OF CHIPPAWA II INC., LONDON VALLEY INC., LONDON VALLEY II  
INC., LONDON VALLEY III INC., LONDON VALLEY IV INC., LONDON VALLEY V  
INC., FORT ERIE HILLS INC., 2533430 ONTARIO INC., CGE CAPITAL  
MANAGEMENT INC., TGP-TALBOT CROSSING INC., NEC II CAPITAL  
MANAGEMENT INC., LV CAPITAL MANAGEMENT INC., LV II CAPITAL  
MANAGEMENT INC., LV III CAPITAL MANAGEMENT INC., LV IV CAPITAL  
MANAGEMENT INC., LV V CAPITAL MANAGEMENT INC. AND FORT ERIE  
HILLS CAPITAL MANAGEMENT INC.**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE *COURTS OF  
JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED AND RULES 14.05(2) AND (3) OF  
THE *RULES OF CIVIL PROCEDURE*, R.R.O. 1990, REG. 194, AS AMENDED**

**AIDE-MÉMOIRE OF THE APPLICANTS  
(Scheduling Conference Returnable February 20, 2025)**

February 18, 2025

**BENNETT JONES LLP**  
3400 One First Canadian Place  
P.O. Box 130  
Toronto, ON M5X 1A4

Amanda McLachlan (LSO# 58365O)  
Mike Shakra (LSO#: 64604K)  
Joshua Foster (LSO# 79447K)

Lawyers for the Applicants

1. The Applicants submit this Aide-Mémoire in connection with a scheduling appearance on February 20, 2025, the purpose of which is to schedule a 2-hour application for a Receivership Order, among other things, appointing a receiver over the Respondents' Property, including their Real Property, and declaring that the Nominee Respondents hold the applicable Real Property in trust for the benefit of the Co-Owners thereof (the "**Receivership Application**").<sup>1</sup>

2. The Respondents are privately held special purpose companies incorporated pursuant to the OBCA. The Respondents, other than 2533430 Ontario Inc., were purportedly formed to hold title to, as nominees and bare trustees, or operate, as applicable, various Land Banking Projects in Ontario.

3. The Applicants consist of Kobayashi Kyohodo Co., Ltd.,<sup>2</sup> a privately held corporation incorporated under the laws of Japan, and four members of the Kobayashi family (collectively with other members of the Kobayashi family, the "**Kobayashi Group**"). The Kobayashi Group is a major stakeholder of the Respondents and beneficial owner of the Real Property.

4. Between 2012 and 2016, the Kobayashi Group invested or was caused to invest in excess of \$21 million in the Land Banking Projects. As a result, the Kobayashi Group acquired or was caused to acquire fractional undivided beneficial interests in each of the Land Banking Projects ranging between approximately 3%-72% pursuant to Sale Agreements, among, *inter alios*, the applicable member of the Kobayashi Group and Nominee Respondent.

5. Each of the Sale Agreements was accompanied by a Co-Owners Agreement among, *inter alios*, the applicable member of the Kobayashi Group, Nominee Respondent, and Operator Respondent. Principally, the Co-Owners Agreements govern the ownership of the undivided

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<sup>1</sup> Capitalized terms used in this Aide-Mémoire and not otherwise defined have the meaning ascribed to them in the Applicants' Notice of Application attached hereto as **Schedule "A"**.

<sup>2</sup> A/K/A Kobayashi Kyohodo K.K./K.K. Kobayashi kyoho dou/K.K. Kobayashi Kyohou Doh/ K.K Kobayashi kyohodou.

beneficial interests in the applicable Land Banking Project, any sale, financing and/or development of such Land Banking Project, the obligations and powers of the applicable Operator Respondent, and the distribution of any net proceeds or income derived from such Land Banking Project.

6. Notwithstanding the terms of the Co-Owners Agreements and the rights and interests of the Co-Owners in respect of the Land Banking Projects, the Respondents and their present and former principals have, by neglect and potentially, by design, allowed the Land Banking Projects to be lost to creditor enforcement efforts, inappropriately transferred, encumbered and/or sold.

7. What remains of the Land Banking Projects is, in part, ensnared in an application commenced under section 248 of the OBCA (the "**Hamilton Proceedings**") by, *inter alios*, the Respondents' former indirect parent company, Trans Global Partners Limited ("**TGP**"), and its principal (the "**Hamilton Applicants**"), against, *inter alios*, the Respondents' current indirect parent company, First Global Financial Corp., and its principal (the "**Hamilton Respondents**"), alleging, among other things, oppression and the perpetration of a fraudulent scheme. In the Hamilton Proceedings, the Hamilton Applicants seek:

- (a) to restrain the Hamilton Respondents from selling, dissipating, transferring, assigning, encumbering or dealing with their assets or the assets of any companies that they came to control pursuant to their indirect acquisition of the Respondents;
- (b) the sale of three of the Land Banking Projects pursuant to agreements (the "**APSs**") that have not been approved by the applicable Co-Owners and in which members of the Kobayashi Group, according to the Respondents' and TGP's records, collectively own 61%, 42% and 59% of the beneficial interest; and
- (c) the distribution of the proceeds of sale to the Hamilton Applicants, in disregard of the interest of the Co-Owners and the applicable Co-Owners Agreements.

8. In seeking the disgorgement of the proceeds of the APSs, the Hamilton Applicants remarkably failed to disclose that the applicable Land Banking Projects were acquired using monies from, and are held in trust for, the applicable Co-Owners, the obligation to seek the applicable Co-Owners' approval of the transactions or the Co-Owners' interests in the proceeds thereof. The Hamilton Applicants similarly failed to provide notice of the Hamilton Proceedings.

9. The Respondents' and their present and former principals' conduct, the breaches of the Co-Ownership Agreements, the Applicants' substantial ownership interests in the Real Property, the deadlock created by, and material omissions in, the Hamilton Proceedings, and the number of Land Banking Projects, creditors and Co-Owners involved, demand that the Respondents and the Property be subject to the appointment of a receiver on an urgent basis.

10. The appointment of a receiver is not only just and convenient but, necessary to protect the interests of the Applicants and the other Co-Owners in the circumstances. Accordingly, the Applicants wish to schedule the Receivership Application for 2 hours on the nearest available date and, if necessary, establish a timetable for the delivery of materials and the completion of any other steps in advance thereof.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 18<sup>th</sup> DAY OF FEBRUARY 2025**

***Bennett Jones LLP***

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Bennett Jones LLP  
Lawyers for the Applicant

**SCHEDULE "A"**  
**NOTICE OF APPLICATION**

See attached.



Court File No.: \_\_\_\_\_

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

**MIZUE FUKIAGE, AKIKO KOBAYASHI, YOSHIKI FUKIAGE, KOBAYASHI  
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- and -

**CLEARVIEW GARDEN ESTATES INC., TALBOT CROSSING INC., NIAGARA  
ESTATES OF CHIPPAWA II INC., LONDON VALLEY INC., LONDON VALLEY II  
INC., LONDON VALLEY III INC., LONDON VALLEY IV INC., LONDON VALLEY V  
INC., FORT ERIE HILLS INC., 2533430 ONTARIO INC., CGE CAPITAL  
MANAGEMENT INC., TGP-TALBOT CROSSING INC., NEC II CAPITAL  
MANAGEMENT INC., LV CAPITAL MANAGEMENT INC., LV II CAPITAL  
MANAGEMENT INC., LV III CAPITAL MANAGEMENT INC., LV IV CAPITAL  
MANAGEMENT INC., LV V CAPITAL MANAGEMENT INC. AND FORT ERIE HILLS  
CAPITAL MANAGEMENT INC.**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE *COURTS OF  
JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED AND RULES 14.05(2) AND (3) OF  
THE *RULES OF CIVIL PROCEDURE*, R.R.O. 1990, REG. 194, AS AMENDED**

**NOTICE OF APPLICATION**

**TO THE RESPONDENTS:**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the Applicants. The claim made by the Applicants appears on the following page.

**THIS APPLICATION** will come on for a hearing

- ☐ In person
- ☐ By telephone conference
- ☒ By video conference

At the following location:

330 University Avenue, Toronto, Ontario, on a date to be set by the registrar.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil*

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*Procedure*, serve it on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date: February \_\_, 2025

Issued by:

	_____ Local Registrar
Address of court office:	330 University Avenue, 9th Floor Toronto, ON M5G 1R7

TO: **THE SERVICE LIST**

## APPLICATION

### 1. THE APPLICANTS MAKE AN APPLICATION FOR:

- (a) An order substantially in the form attached as Tab 3 of the Application Record (the "**Receivership Order**") pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended (the "**CJA**"), and Rules 14.05(2) and (3) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended (the "**Rules of Civil Procedure**"), among other things:
  - (i) if necessary, abridging the time for and validating the service of this Notice of Application and the Applicants' Application Record and dispensing with further service thereof;
  - (ii) declaring that Clearview Garden Estates Inc., Talbot Crossing Inc., Niagara Estates of Chippawa II Inc., London Valley Inc., London Valley II Inc., London Valley III Inc., London Valley IV Inc., London Valley V Inc. and Fort Erie Hills Inc. (collectively, the "**Nominee Respondents**") hold the applicable real property legally described in Schedule "A" to the proposed Receivership Order (collectively, the "**Real Property**") in trust for the benefit of the Co-Owners (as defined below), to the extent of each Co-Owner's respective interest;
  - (iii) appointing KSV Restructuring Inc. ("**KSV**") as receiver and manager (in such capacity, the "**Receiver**") without security, of all of the (A) assets, undertakings and personal property of the Nominee Respondents and



2533430 Ontario Inc. acquired for, or used in relation to a business carried on by the Nominee Respondents (or any of them) and/or 2533430 Ontario Inc. and the proceeds therefrom, including, without limitation, the Real Property and any assets or property held by any of the Nominee Respondents and/or 2533430 Ontario Inc. in trust for any third party (collectively, the "**Nominee Property**"), and (B) Concept Planning Funds (as defined below), Net Income (as defined below, and together with the Concept Planning Funds, the "**Segregated Funds**") and all of the assets, undertakings and personal property of CGE Capital Management Inc., TGP-Talbot Crossing Inc., NEC II Capital Management Inc., LV Capital Management Inc., LV II Capital Management Inc., LV III Capital Management Inc., LV IV Capital Management Inc., LV V Capital Management Inc., and Fort Erie Hills Capital Management Inc. (collectively, the "**Operator Respondents**", and together with the Nominee Respondents and 2533430 Ontario Inc., the "**Respondents**") used in connection with or arising from or out of or which is necessary to access or use the Segregated Funds (collectively with the Nominee Property, the "**Property**");

- (iv) granting a first-ranking super-priority charge (the "**Receiver's Charge**") over the Property in favour of the Receiver and the Receiver's counsel to secure their fees and disbursements in respect of these proceedings (these "**Receivership Proceedings**"); and

- (v) granting a second-ranking super-priority charge (the "**Receiver's Borrowings Charge**") over the Property for the purpose of funding the exercise of the powers and duties conferred upon the Receiver pursuant to the proposed Receivership Order; and
- (b) Such further and other relief as counsel may request and this Honourable Court deems just.

2. **THE GROUNDS FOR THE APPLICATION ARE:**

*The Applicants*

- (a) The Applicants consist of Kobayashi Kyohodo Co., Ltd. (a/k/a Kobayashi Kyohodo K.K./K.K. Kobayashi kyoho dou/K.K. Kobayashi Kyohou Doh/ K.K Kobayashi kyohodou), a privately held corporation incorporated under the laws of Japan, and four members of the Kobayashi family (collectively, the "**Kobayashi Group**");

*The Respondents*

- (b) The Respondents are privately held special purpose companies incorporated pursuant to the *Business Corporations Act*, R.S.O. 1990, c. B. 16, as amended (the "**OBCA**"). With the exception of 2533430 Ontario Inc., the Respondents were purportedly formed to hold title to, as nominees and bare trustees, or operate, as applicable, various land banking projects in Ontario that involve the Real Property (collectively, the "**Land Banking Projects**");

- (c) Each of the Nominee Respondents other than Clearview Garden Estates Inc. and London Valley III Inc. (which have a registered or head office located at 77 City Centre Drive, Unit 602, Mississauga, Ontario, L5B 1M5, Canada), and Niagara Estates of Chippawa II Inc. (which has a registered or head office located at 901 Lawrence Avenue East, Ph5, Toronto, Ontario, M3C 3W2), has a registered or head office located at 50 West Wilmont Street, Suite 100, Richmond Hill, Ontario, L4B 1M5, Canada;
- (d) Elena Salvatore ("**Ms. Salvatore**") is the sole director and officer of Niagara Estates of Chippawa II Inc. while Behzad Pilehver ("**Mr. Pilehver**") is the sole director and officer of Talbot Crossing Inc., London Valley Inc., London Valley II Inc., London Valley IV Inc., London Valley V Inc. and Fort Erie Hills Inc. Randy Hoffner ("**Mr. Hoffner**") was previously the director and officer of each of the Nominee Respondents and remains the director and officer of Clearview Garden Estates Inc. and London Valley III Inc.;
- (e) Each of the Operator Respondents and 2533430 Ontario Inc. has a registered or head office located at 77 City Centre Drive, Unit 602, Mississauga, Ontario, L5B 1M5, Canada. Mr. Hoffner is the sole director and officer of each of the Respondents, except for LV Capital Management Inc. (of which Timothy Shields ("**Mr. Shields**") is the sole director and officer) and 2533430 Ontario Inc. (of which Akiko Kobayashi and K.K. Kobayashi Kyouhou Doh are the directors);

***The TSI/TGP Group***

- (f) Until recently, the Respondents, other than 2533430 Ontario Inc., were indirect subsidiaries of Trans Global Partners Limited ("**TGP**"). TGP is a corporation existing under the special administrative region of Hong Kong, of which Mr. Hoffner is a director;
- (g) On or about June 4, 2024, the Respondents, other than 2533430 Ontario Inc., were indirectly acquired by First Global Financial Corp. ("**First Global**"). First Global is a corporation incorporated under the OBCA, with a registered or head office located at 801 Lawrence Avenue East, Ph5, Toronto, Ontario, M3C 3W2. Ms. Salvatore is the sole director and officer of First Global;

***The Real Property, the Land Banking Projects and the Kobayashi Group's Investments Therein***

- (h) The Nominee Respondents and 2533430 Ontario Inc. are the registered owners of the Real Property;
- (i) The Real Property and the Land Banking Projects, certain of which are no longer owned by the Respondents, consist of the following:
  - (i) a property located at 5980 Colonel Talbot Road, London, Ontario (the "**TCX Project**"), which is owned by Talbot Crossing Inc.;
  - (ii) a property located at 5318 Colonel Talbot Road, London, Ontario (the "**LV Project**"), which is owned by London Valley Inc.;

- (iii) a property located at 6172 Colonel Talbot Road, London, Ontario (the "**LV II Project**"), which is owned by London Valley II Inc.;
- (iv) a property located immediately adjacent to the LV III Project (as defined below) in London, Ontario, which is owned by 2533430 Ontario Inc.;
- (v) a property located at 6211 Colonel Talbot Road, London, Ontario (the "**LV IV Project**"), which is owned by London Valley IV Inc.;
- (vi) a property located at Wonderland Road. S, London, Ontario (the "**LV V Project**"), which is owned by London Valley V Inc.;
- (vii) a property located at 6237 27/28 Side Road Nottawasaga, Clearview, Ontario (the "**CGE Project**"), which was previously owned by Clearview Garden Estates Inc.;
- (viii) a property located at 5559 Sodom Road, Niagara Falls, Ontario (the "**NEC Project**"), which was previously owned by Niagara Estates of Chippawa II Inc.;
- (ix) a property located at 6188 Colonel Talbot Road, London, Ontario (the "**LV III Project**"), which was previously owned by 2533430 Ontario Inc.; and
- (x) a property located at 87 Crooks Street & 0 Thompson Road ES, Fort Erie, Ontario (the "**FEH Project**"), which was previously owned by Fort Erie Hills Inc.;

- (j) The Applicants and the other members of the Kobayashi Group are major stakeholders of the Respondents and beneficial owners of the Real Property. Indeed, between 2012 and 2016, the Kobayashi Group invested or were caused to invest in excess of \$21 million in the Real Property and the Land Banking Projects, approximately \$14 million of which was invested by the Applicants, or caused to be invested on, or purportedly on, their behalf;<sup>1</sup>
- (k) As a result of its substantial investments, the Kobayashi Group acquired or were caused to acquire fractional undivided beneficial interests in each of the Land Banking Projects ranging between approximately 3%-72% pursuant to agreements of sale and purchase, among the applicable member of the Kobayashi Group, as purchaser, Nominee Respondent, as nominee, and affiliate of such Nominee Respondent, as vendor (collectively, the "**Sale Agreements**");
- (l) Each of the Sale Agreements was accompanied by a co-owners agreement (collectively, the "**Co-Owners Agreements**") among the applicable member of the Kobayashi Group, as purchaser, Nominee Respondent, as nominee, Operator Respondent, as operator, and affiliate of such Nominee Respondent and Operator Respondent, as vendor;
- (m) Principally, the Co-Owners Agreements govern the ownership of the undivided beneficial interests in the applicable Real Property, any sale, financing and/or development of such Real Property, the obligations and powers of the applicable

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<sup>1</sup> Certain of the Applicants' investments were inherited following the death of another member of the Kobayashi Group.

Operator Respondent, and the distribution of any net proceeds or income derived from such Real Property;

- (n) The Co-Owners Agreements provide for the delivery of a declaration of trust or certificate of interest to each applicable Co-Owner, wherein the applicable Nominee Respondent declared or acknowledged, as applicable, that it holds title to the applicable Land Banking Project as nominee and bare trustee for and on behalf of such Co-Owner to the extent of such Co-Owner's interest;
- (o) The Co-Owners Agreements prohibit, absent a written resolution from the Co-Owners holding, in aggregate, not less than 51% of the interests in relevant Land Banking Project, the applicable Operator Respondent from exercising certain powers, including approving the sale or exchange of all or any part of, or a plan to develop, the applicable Land Banking Project;
- (p) Notwithstanding the terms of the Co-Owners Agreements and the rights and interests of the Co-Owners in respect of the Real Property and the Land Banking Projects, the Respondents and their present and former principals, as detailed in part below, have, by neglect and potentially, by design, allowed the Real Property to be lost to creditor enforcement efforts, inappropriately transferred, encumbered and/or sold;
- (q) What remains of the Real Property and the Land Banking Projects, as discussed below, is, in part, ensnared in an application commenced under section 248 of the OBCA (the "**Hamilton Proceedings**") by TGP, Mr. Hoffner and Mr. Hoffner's spouse, Pauline Hoffner (collectively, the "**Hamilton Applicants**") against First

Global, Ms. Salvatore, Vincent Salvatore ("**Mr. Salvatore**") and Tiberis Capital Corp. (collectively, the "**Hamilton Respondents**"), alleging, among other things, oppression and the perpetration of a fraudulent scheme;

- (r) In the Hamilton Proceedings, the Hamilton Applicants seek (i) the sale of the TCX Project, the LV II Project and the LV V Project pursuant to sale agreements that have not been approved by the applicable Co-Owners and in which members of the Kobayashi Group, according to the Respondents' and TGP's records, collectively own 61%, 42% and 59% of the beneficial interest, respectively, and (ii) the distribution of the proceeds of such sales to the Hamilton Applicants, in flagrant disregard of the interest of the Co-Owners and the terms of the applicable Co-Owners Agreements;
- (s) As discussed below, the proposed Receiver's appointment over what remains of the Land Banking Projects and the Respondents' assets, including the Real Property entangled in the Hamilton Proceedings, is necessary to protect the interests of the Applicants, the other members of the Kobayashi Group and the other Co-Owners, and protect, monetize and maximize the value of the Property for all stakeholders;

***The Sale and Loss of the CGE Project Without Notice or a Distribution of Proceeds***

- (t) On October 8, 2021, the CGE Project was transferred to CBJ – Clearview Garden Estates Inc., a corporation incorporated under the OBCA of which Christopher Agagnier and Jeffrey Burrell ("**Mr. Burrell**") are directors, for a reported purchase price of \$15 million;



- (u) Approximately \$13 million of the purchase price for the CGE Project was paid by way of a subordinated vendor take-back mortgage (the "**Clearview VTB Charge**"). A \$6 million priority mortgage/charge was also registered on title to the CGE Project on the date of the transfer in favour of 1180554 Ontario Limited ("**118**");
- (v) On January 26, 2024, 118 obtained an order from this Court appointing TDB Restructuring Limited (f/k/a RSM Canada Limited) ("**TDB Restructuring**") as receiver and manager of all of the assets, undertakings and properties of CBJ – Clearview Garden Estates Inc., CBJ Bridle Park II Inc. and CBJ Developments Inc. (the "**CBJ – CGE Receivership Proceedings**");
- (w) On April 12, 2024, Clearview Garden Estates Inc. transferred the Clearview VTB Charge to First Global for \$2.00. The CGE Project was subsequently sold to 118 pursuant to a credit bid;
- (x) Contrary to the applicable Co-Owners Agreement, the Applicants were not provided with advance notice of the sale of the CGE Project to CBJ – Clearview Garden Estates Inc., the Clearview VTB Charge or the CBJ – CGE Receivership Proceedings. Moreover, the Applicants did not receive any proceeds of the purchase price for the CGE Project or from the transfer of the Clearview VTB Charge;

***The Sale and Loss of the FEH Project Without Notice or a Distribution of Proceeds***

- (y) On November 1, 2021, the FEH Project was sold to CBJ – Fort Erie Hills Inc., a corporation incorporated pursuant to the OBCA of which Ms. Salvatore and Mr.

Salvatore are currently the directors and officers and Mr. Burrell was previously a director, for a reported purchase price of \$15.95 million;

- (z) Approximately \$13.1 million of the purchase price for the FEH Project was paid by way of a subordinated vendor take-back mortgage (the "**FEH VTB Charge**"). Mortgages/charges in favour of Mr. Burrell and Salvatore Romeo ("**Mr. Romeo**") in the amounts of \$1,053,000 and \$620,000, respectively, were also registered against the FEH Project on the date of the transfer;
- (aa) The FEH VTB Charge and mortgages/charges in favour of Messrs. Burrell and Romeo were postponed to a mortgage/charge in favour of 2703738 Ontario Limited (the "**270**") in the amount of \$2.5 million and thereafter, discharged when a mortgage/charge in the amount of \$8 million in favour of Hillmount Capital Mortgage Holdings Inc. ("**Hillmount**") was registered against the FEH Project;
- (bb) On October 29, 2024, 1001045239 Ontario Inc. (the "**Salvatore Numbered Co.**"), a corporation incorporated pursuant to the OBCA just four days prior thereto, of which Mr. Salvatore is the sole director, registered a mortgage/charge in the amount of \$49 million against the FEH Project;
- (cc) On December 19, 2024, Hillmount obtained an order from this Court appointing TDB Restructuring as receiver and manager of all of the assets, undertakings and properties of CBJ – Fort Erie Hills Inc. (the "**CBJ – FEH Receivership Proceedings**");

- (dd) Contrary to the applicable Co-Owners Agreement, the Applicants were not provided with advance notice of the sale of the FEH Project to CBJ – Fort Erie Hills Inc., the FEH VTB Charge, the CBJ – FEH Receivership Proceedings, or the mortgages/charges registered in favour of Messrs. Burrell and Romeo, 270, Hillmount or the Salvatore Numbered Co. Further, the Applicants did not receive any proceeds of the purchase price for the FEH Project or from the FEH VTB Charge;

***The Encumbrance and Loss of the NEC Project***

- (ee) On April 19, 2023, a mortgage/charge was registered against the NEC Project in favour of 2229815 Ontario Ltd. ("**222**") in the amount of \$5.25 million. On August 30, 2024, 222 obtained an order for default judgement for immediate foreclosure from the Ontario Superior Court of Justice (the "**Foreclosure**");
- (ff) The Applicants were not provided with advance notice of the mortgage/charge registered in favour of 222 or the Foreclosure;

***The Encumbrance of the LV IV Project***

- (gg) On December 6, 2023, Olympia Trust Company registered a collateral mortgage in the amount of \$700,000 against the LV IV Project to secure a mortgage loan principally registered against a property located at 601 Maplehurst Ave, Oakville, Ontario, of which Mr. Hoffner is the registered owner. Such property is currently listed for sale;

- (hh) The Applicants were not provided with advance notice of the mortgage/charge registered in favour of Olympia Trust Company and are not aware of any basis upon which the LV IV Project ought to have been used as collateral to secure financing for Mr. Hoffner's residential property;

***The Titan Shield Acquisition and the Respondents' Change of Control***

- (ii) On or about June 4, 2024, First Global acquired all of the shares in the capital of Titan Shield Inc., a corporation incorporated under the OBCA of which Messrs. Shields and Pilehver are directors, pursuant to a share purchase agreement (the "**Titan Shield SPA**") among, *inter alios*, TGP Canada Management Inc., a corporation incorporated under the OBCA of which Mr. Pilehver is currently, and Mr. Hoffner was previously, a director, as vendor, First Global, as purchaser, Titan Shield Inc. and TGP;
- (jj) Under the transaction contemplated by the Titan Shield SPA (the "**Titan Shield Acquisition**"), First Global was to become the indirect owner of each of the Respondents;
- (kk) Following the Titan Shield Acquisition, the Applicants were provided with written notice from TSI Global Co., Ltd., an affiliate of TGP, that the "TGP Group was to be absorbed into First [Financial] Group" and "the co-owners' interests in land and real estate are segregated and protected indivisibly, regardless of the management of the TGP Group";

***Attempts to sell the TCX Project, the LV II Project and the LV V Project***

- (ll) On July 30, 2024, Talbot Crossing Inc., London Valley II Inc., and London Valley V Inc., in each case, as vendor, entered into a separate agreement of purchase and sale dated July 30, 2024 (collectively, the "**Outstanding APSs**"), with Clawson Group Inc., as assigned to Farhi Holdings Corporation and Farhi Farming Corporation, for the purchase of the TCX Project, the LV II Project and the LV V Project, respectively;
- (mm) According to the Respondents' and TGP's records, the Kobayashi Group owns approximately 61%, 42% and 59% of the beneficial interests in the TCX Project, the LV II Project and the LV V Project, respectively. Nonetheless, the Applicants, and to the Applicants' knowledge, the Kobayashi Group, were not provided with notice of the Outstanding APSs or an opportunity to vote in respect of a resolution approving such sale transactions (collectively, the "**Proposed Sale Transactions**"), contrary to the applicable Co-Owners Agreements;
- (nn) Given the terms of the applicable Co-Owners Agreements, the Proposed Sale Transactions in respect of the TCX Project and LV V Project cannot be approved absent the Kobayashi Group's consent;

***The Hamilton Proceedings and Allegations of a Fraudulent Scheme***

- (oo) On October 18, 2024, the Hamilton Applicants filed a Notice of Application with the Ontario Superior Court of Justice pursuant to section 248 of the OBCA against the Hamilton Respondents, for an order, among other things:

- (i) awarding damages payable to the Hamilton Applicants in the amount of \$12,444,121.92;
  - (ii) approving the Outstanding APSs and compelling the disgorgement of the net proceeds of the Proposed Transactions to the Hamilton Applicants; and
  - (iii) compelling the Hamilton Respondents to disclose the particulars of all sales of properties owned by First Global or companies that it came to control, directly or indirectly, pursuant to the Titan Shield Acquisition;
- (pp) The Hamilton Proceedings were commenced by the Hamilton Applicants following several alleged defaults under three promissory notes issued in connection with the Titan Shield SPA and three other share purchase agreements (collectively with the Titan Shield SPA, the "**Share Purchase Agreements**") related to the Titan Shield Acquisition;
- (qq) Notwithstanding their alleged defaults, the Hamilton Applicants have asserted that the Hamilton Respondents took action to monetize, dissipate and/or encumber the assets acquired pursuant to the Share Purchase Agreements while failing to satisfy their assumed obligations in furtherance of a fraudulent scheme, including by:
- (i) commencing a "fire sale of certain real properties" by entering into the Outstanding APSs, and listing the NEC Project, the LV Project, the LV IV Project and the FEH Project on MLS for sale (and subsequently removing such listings);

- (ii) assigning "receivables which are properly directed to certain Subsidiary Companies" to companies owned by the Hamilton Respondents;
- (iii) failing to comply with their assumed obligations, including by permitting Niagara Estates of Chippawa II Inc. to remain in default under the mortgage/charge registered by 222 despite having received a notice of sale (ultimately resulting in the Foreclosure); and
- (iv) encumbering "real properties owned by the Subsidiary Companies" to prohibit the Hamilton Applicants from enforcing their security in certain pledged shares;
- (rr) Following the commencement of the Hamilton Proceedings, the Salvatore Numbered Co. registered a blanket mortgage/charge in the amount of \$110 million against the TCX Project and the LV V Project and a \$49 million mortgage/charge against the FEH Project;
- (ss) On October 31, 2024, the Ontario Superior Court of Justice granted an order in the Hamilton Proceedings (the "**First Global Injunction**"), among other things, temporarily restraining the Hamilton Respondents from, directly or indirectly, selling, removing, dissipating, alienating, transferring, assigning, encumbering or dealing with their assets or the assets of any companies which they came to control pursuant to the Titan Shield Acquisition, approving the Outstanding APSs, and directing the purchaser under the Outstanding APSs to pay the proceeds of sale to the Hamilton Applicants' counsel, in trust;

- (tt) Remarkably, the Hamilton Applicants did not oppose the Outstanding APSs' approval, provided the proceeds arising therefrom were disgorged to them, and made no reference to the fact that the TCX Project, the LV II Project and the LV V Project were acquired using monies from, and are held in trust for, the applicable Co-Owners, the obligation to seek the applicable Co-Owners' approval of the Proposed Transactions, or the Co-Owners' interests in the proceeds of the Proposed Transactions;
- (uu) The First Global Injunction was subsequently extended and remains in effect as of the date hereof;

***Notice of the Hamilton Proceedings and Other Concerning Events***

- (vv) Despite their significant economic and ownership interests in the TCX Project, the LV II Project and the LV V Project, the Applicants were not provided with notice of the Hamilton Proceedings by the Respondents, the Hamilton Applicants or the Hamilton Respondents. Rather, the Applicants were first apprised of the Hamilton Proceedings by way of letter dated November 4, 2024, delivered by Mr. Pilehver to the Co-Owners (the "**November 4 Letter**");
- (ww) The November 4 Letter advised of various unauthorized actions, including the Outstanding APSs arranged by First Global in breach of the Co-Owners Agreements and violations of the *Ontario Securities Act*, R.S.O. 1990, c. S. 5, as amended, and the failure of First Global to meet its obligations that placed the Co-Owners' investments at immediate risk;



***The Receiver's Appointment is Urgently Required and Appropriate in the Circumstances***

- (xx) The Applicants have lost all confidence in the Respondents' management to comply with the Respondents' obligations under the Co-Owners Agreements or remedy the breaches thereunder, protect, manage and operate the Property in good faith and with a view to the best interests of the Co-Owners, advance any value accretive planning or development activities and solicit interest in potential value maximizing sale transactions for the Co-Owners' consideration and approval;
- (yy) The Respondents' and their present and former principals' conduct, the breaches of the Co-Ownership Agreements, the Applicants' and the other members of the Kobayashi Group's substantial ownership interests in the Real Property, the deadlock created by, and material omissions in, the Hamilton Proceedings, and the number of Land Banking Projects, creditors and Co-Owners involved, demand that the Respondents and the Property be subject to the appointment of the proposed Receiver on an urgent basis. Such appointment is not only just and convenient but, necessary in the circumstances;
- (zz) If the Receiver is appointed on the terms of the proposed Receivership Order, these Receivership Proceedings will provide the stability, structure and supervision required to identify, collect, preserve, protect and maximize the value of the Property. Moreover, these Receivership Proceedings will provide the most effective and appropriate means of:
  - (i) safeguarding the rights and interests of the Co-Owners and preventing any further irreversible prejudice to such Co-Owners;

- (ii) identifying and securing any and all monies remaining in each concept planning fund (collectively, the "**Concept Planning Funds**") and income derived in any way from the ownership, operation, use, leasing, financing, refinancing, sale, development, and/or any other dealing with the Property or any part thereof, less all proper expenses and charges incurred in connection therewith (collectively, the "**Net Income**");
- (iii) evaluating the Outstanding APSs and the Proposed Sale Transactions;
- (iv) accessing value-maximizing remedies not currently available to the Respondents, including, the sale of the Property free and clear of claims and encumbrances;
- (v) effecting an orderly, efficient and transparent sale of the Property, with a view to maximizing recoveries for, and distributing funds to, the Respondents' stakeholders, including the Co-Owners, in accordance with their respective priorities and entitlements;
- (vi) reviewing and reporting to this Court on all payments, receipts, disbursements, accounts payable, conveyances, transfers, preferences, transactions and other arrangements between or among any of the Respondents and other persons, including other companies and entities that are affiliates of any of the Respondents, that appear to the Receiver to be out of the ordinary course of business; and

- (vii) undertaking any investigations the Receiver deems appropriate with respect to the location and/or disposition of assets reasonably believed to be, or to have been, Property, and any ownership interest, claim, lien, charge, security interest or encumbrance asserted, filed or registered, as applicable, against the Property or any part thereof;
- (aaa) The proposed Receiver, KSV, is a "licensed trustee" as such term is defined under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), is qualified to act as the Receiver and has consented to act in such capacity if so appointed;
- (bbb) The secured creditors who may be affected by the granting of the proposed Receiver's Charge and the Receiver's Borrowings Charge will be served with the Application Record;

***These Receivership Proceedings are Properly Commenced on the Commercial List***

- (ccc) The within application for declaratory relief and the appointment of the proposed Receiver is a matter eligible and appropriate for the Commercial List in the Toronto Region;
- (ddd) Other than 2533430 Ontario Inc., the Respondents are special purpose companies incorporated pursuant to the OBCA for the purposes of holding title to, as nominees and bare trustees, or operating, as applicable, the Land Banking Projects located in various regions in Ontario.<sup>2</sup> While the Respondents have registered or head offices

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<sup>2</sup> The directors of 2533430 Ontario Inc. are Applicants in these proceedings and consent to its inclusion in the within application.

located in Mississauga, Toronto or Richmond Hill, as applicable, they are each ultimately controlled by First Global (except for 2533430 Ontario Inc.), which has a registered or head office in Toronto;

- (eee) The CBJ – CGE Receivership Proceedings and the CBJ – FEH Receivership Proceedings (together, the "**Related Proceedings**"), involving certain of the Land Banking Projects and similar stakeholders, in which the proposed Receiver may participate or seek relief, are already before, and familiar to, the Commercial List;
- (fff) Having regard to the location of the registered or head office from which the Respondents are controlled, the Commercial List's familiarity with the Related Proceedings, the substantial number of stakeholders and parties that may be impacted by or participate in these Receivership Proceedings, the geographic reach of the Real Property and the Co-Owners, and the magnitude of the Co-Owners' investments, the Commercial List is best positioned to hear the within application;

***Other Grounds***

- (ggg) Sections 101 and 106 of the CJA;
- (hhh) Subsections 14.06(1.1)(b) and (c), 31(1) and 243(2)(b)(ii) of the BIA;
- (iii) Rules 1.04, 1.05, 2.01, 2.03, 3.02, 14.05(2), 14.05(3), 16, 38 and 39 of the Rules of Civil Procedure; and
- (jjj) Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Application:

- (a) The affidavit of Akiko Kobayashi to be sworn, and the exhibits thereto;
- (b) The consent of KSV to act as the Receiver; and
- (c) Such further and other evidence as counsel may advise and this Honourable Court may permit.

February 6, 2025

**BENNETT JONES LLP**  
3400 One First Canadian Place  
P.O. Box 130  
Toronto, ON M5X 1A4

**Amanda McLachlan** (LSO# 58365O)  
Tel: (416) 777-5393  
Email: [mclachlana@bennettjones.com](mailto:mclachlana@bennettjones.com)

**Mike Shakra** (LSO#: 64604K)  
Tel: (416) 777-6236  
Email: [shakram@bennettjones.com](mailto:shakram@bennettjones.com)

**Joshua Foster** (LSO# 79447K)  
Tel: (416) 777-7906  
Email: [fosterj@bennettjones.com](mailto:fosterj@bennettjones.com)

Lawyers for the Applicants

IN THE MATTER OF SECTION 96 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. 43, AS AMENDED AND RULES 170(4) AND (5) OF THE RULES OF CIVIL PROCEDURE, R.R.O. 1990, REG. 194, AS AMENDED

MIZUE FUKIAGE, AKIKO KOBAYASHI, YOSHIKI FUKIAGE, KOBAYASHI KYOHODO CO., LTD. AND TORU FUKIAGE

and

CLEARVIEW GARDEN ESTATES INC., TALBOT CROSSING INC., NIAGARA ESTATES OF CHIPPAWA II INC., LONDON VALLEY INC., LONDON VALLEY II INC., LONDON VALLEY III INC., LONDON VALLEY IV INC., LONDON VALLEY V INC., FORT ERIE HILLS INC., 2533430 ONTARIO INC., CGE CAPITAL MANAGEMENT INC., TGP-TALBOT CROSSING INC., NEC II CAPITAL MANAGEMENT INC., LV CAPITAL MANAGEMENT INC., LV II CAPITAL MANAGEMENT INC., LV III CAPITAL MANAGEMENT INC., LV IV CAPITAL MANAGEMENT INC., LV V CAPITAL MANAGEMENT INC. AND FORT ERIE HILLS CAPITAL MANAGEMENT INC.

Applicants

Respondents

Court File No.: \_\_\_\_\_

	<div>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)  Proceedings commenced in Toronto</div>
	<div>NOTICE OF APPLICATION</div>
	<div><b>BENNETT JONES LLP</b> One First Canadian Place, Suite 3400 P.O. Box 130 Toronto, ON M5X 1A4  <b>Amanda McLachlan</b> (LSO# 58365O) Tel: (416) 777-5393 Email: <a href="mailto:mclachlana@bennettjones.com">mclachlana@bennettjones.com</a>  <b>Mike Shakra</b> (LSO#: 64604K) Tel: (416) 777-6236 Email: <a href="mailto:shakram@bennettjones.com">shakram@bennettjones.com</a>  <b>Joshua Foster</b> (LSO# 79447K) Tel: (416) 777-7906 Email: <a href="mailto:fosterj@bennettjones.com">fosterj@bennettjones.com</a>  Lawyers for the Applicants</div>

IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED AND RULES 14.05(2) AND (3) OF THE *RULES OF CIVIL PROCEDURE*, R.R.O. 1990, REG. 194, AS AMENDED

MIZUE FUKIAGE, AKIKO KOBAYASHI, and  
YOSHIKI FUKIAGE, KOBAYASHI KYOHODO  
CO., LTD. AND TORU FUKIAGE

CLEARVIEW GARDEN ESTATES INC., TALBOT CROSSING INC.,  
NIAGARA ESTATES OF CHIPPAWA II INC., LONDON VALLEY  
INC., LONDON VALLEY II INC., LONDON VALLEY III INC.,  
LONDON VALLEY IV INC., LONDON VALLEY V INC., FORT ERIE  
HILLS INC., 2533430 ONTARIO INC., CGE CAPITAL  
MANAGEMENT INC., TGP-TALBOT CROSSING INC., NEC II  
CAPITAL MANAGEMENT INC., LV CAPITAL MANAGEMENT INC.,  
LV II CAPITAL MANAGEMENT INC., LV III CAPITAL  
MANAGEMENT INC., LV IV CAPITAL MANAGEMENT INC., LV V  
CAPITAL MANAGEMENT INC. AND FORT ERIE HILLS CAPITAL  
MANAGEMENT INC.

Applicants

Respondents

Court File No.: CV-25-00736577-00CL

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

Proceedings commenced in Toronto

**AIDE-MÉMOIRE OF THE APPLICANTS**

**BENNETT JONES LLP**

One First Canadian Place, Suite 3400  
P.O. Box 130  
Toronto, ON M5X 1A4

**Amanda McLachlan** (LSO# 58365O)

Tel: (416) 777-5393

Email: [mclachlana@bennettjones.com](mailto:mclachlana@bennettjones.com)

**Mike Shakra** (LSO#: 64604K)

Tel: (416) 777-6236

Email: [shakram@bennettjones.com](mailto:shakram@bennettjones.com)

**Joshua Foster** (LSO# 79447K)

Tel: (416) 777-7906

Email: [fosterj@bennettjones.com](mailto:fosterj@bennettjones.com)

Lawyers for the Applicants