

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

CAISSE DESJARDINS ONTARIO CREDIT UNION INC.

Applicant

- and -

ENGLISH LANE HOMES INC.

Respondent

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**FACTUM OF THE APPLICANT
(RECEIVERSHIP ORDER)**

NORTON ROSE FULBRIGHT CANADA LLP
22 Bay Street, Suite 3000
Toronto, ON M5K 1E7
Fax: 416.216.3930

Jennifer Stam LSO#: 46735J
Tel: 416.202.6707
jennifer.stam@nortonrosefulbright.com

Lauren Archibald LSO#: 87151U
Tel: 416.278.3787
lauren.archibald@nortonrosefulbright.com

Camille Pelet LSO# 93846O
Tel: 613.780.8634
Camille.pelet@nortonrosefulbright.com

Lawyers for Caisse Desjardins Ontario Credit
Union Inc., the Applicant

TO: **THE SERVICE LIST**

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FACTUM OF THE APPLICANT

PART I - INTRODUCTION

1. The Applicant, Caisse Desjardins Ontario Credit Union Inc. (the “**Applicant**”), is the secured lender and mortgagee in respect of certain Lands (defined below) beneficially owned by English Lane Homes Inc. (the “**Debtor**”) and personal property located at the Lands (collectively with the Lands, the “**Property**”), and seeks the appointment of KSV Restructuring Inc. (“**KSV**”), as receiver and manager, without security, over the Property.

2. The Debtor owes the Applicant nearly \$17 million, on which interest and fees continue to accrue (the “**Indebtedness**”). The Indebtedness has matured and despite the Applicant extending numerous accommodations to the Debtor over a period of more than eight (8) months, the Debtor has not proposed any credible repayment plan. The Debtor has also committed several defaults under the Offer of Financing (as defined below), which remain uncured. Most recently, at the

Debtor's request, the Applicant provided the Debtor with proposed forbearance terms; however, notwithstanding the Applicant's good faith efforts, the Debtor failed to engage meaningfully in those discussions and no agreement was reached.

PART II - SUMMARY OF FACTS

3. Capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the Affidavit of Geneviève Riverin-Boilard sworn January 29, 2026.¹

Background on the Lands, the parties and the Offer of Financing

4. The Debtor is a corporation incorporated under the laws of the Province of Ontario. Mohammad Ghasem Ghods ("**Ghods**") is the Debtor's sole director and officer and is also a personal guarantor of the Indebtedness. The Debtor is the registered title holder of the lands municipally known as 200 David Dunlap Circle, Toronto, Ontario (the "**Lands**"). The developer for the Project is Ghods Builders Inc., an entity controlled by Ghods.²

5. The Lands are the proposed site of a low-rise, three-storey, 63-unit freehold townhouse (the "**Project**"). The Project was intended to be Phase II of a multi-phase development known as "English Lane Towns", of which Phase I has been completed. The Lands remain vacant and development has not yet commenced.³

6. On November 30, 2022, the Debtor accepted an Offer of Financing from the Applicant dated November 23, 2022 (the "**Offer of Financing**"). The purpose of the Offer of Financing was to provide interim financing for the Project. Pursuant to the Offer of Financing, the Applicant agreed to provide the Debtor with the following two facilities: (i) a demand interim non-revolving

¹ Affidavit of Geneviève Riverin-Boilard sworn January 29, 2026 ("**Geneviève Affidavit**"), Application Record of Caisse Desjardins Ontario Credit Union Inc. returnable March 13, 2026 ("**Application Record**"), Tab 2.

² Geneviève Affidavit at paras 6-7, Application Record, Tab 2, p. 15.

³ Geneviève Affidavit at para 9, Application Record, Tab 2, p. 16.

construction loan facility in the principal amount of \$43,169,500 (the “**Construction Loan Facility**”); and (ii) a letter of credit facility in the principal amount of \$700,000 (the “**LC Facility**”).⁴

7. The Construction Loan Facility was to be advanced in the following three initial stages, each subject to certain conditions precedent and requirements: the “Initial Land Advance”, the “Second Land Advance,” and the “Development Charges Advance”. Subsequent advances under the Construction Loan Facility were to be made based on the work completed and the remaining cost to finish the Project.⁵

8. On or around December 21, 2022, the Applicant provided the Initial Land Advance of \$11,500,000 under the Construction Loan Facility to the Debtor. On January 30, 2023, the Applicant provided the Second Land Advance of \$3,500,000 to the Debtor. There are currently three (3) outstanding standby letters of credit in the aggregate principal amount of \$1,667,743 issued under the LC Facility.⁶

9. The Offer of Financing is secured by, among other things, a mortgage in favour of the Applicant and registered on title to the Lands on December 20, 2022, securing the principal amount of \$43,869,500, accompanied by an Acknowledgment of Standard Charge Terms No. 201909 by the Debtor (collectively, the “**Mortgage**”), and a general security agreement dated December 20, 2022 from the Debtor (the “**GSA**”). The Mortgage and GSA expressly provide that the Applicant can appoint a receiver if the Offer of Financing is in default.⁷

⁴ Geneviève Affidavit at paras 3 and 8-9, Application Record, Tab 2, pp. 14 and 15-16.

⁵ Geneviève Affidavit at paras 10(a)-(b), Application Record, Tab 2, pp. 16-17.

⁶ Geneviève Affidavit at paras 11-12, and 14, Application Record, Tab 2, p. 18.

⁷ Geneviève Affidavit at paras 15(a), 15(d), and 27(g)-(h), Application Record, Tab 2, pp. 18-19 and 22-23.

Defaults and events leading up to this Application

10. The Offer of Financing included an original maturity date of July 1, 2025 (the “**First Maturity Date**”). On April 8, 2025, the Applicant notified the Debtor that it would not be renewing the Mortgage past the First Maturity Date.⁸

11. During the spring of 2025, the Debtor requested several extensions from the Applicant while it worked to refinance the Indebtedness. As a result, on July 15, 2025 and September 26, 2025, the Applicant delivered two separate Amending Agreements to the Debtor, which resulted in an extension of the maturity date to November 1, 2025 (the “**Second Maturity Date**”). The Indebtedness was not repaid on the Second Maturity Date and remains outstanding.⁹

12. In addition, the Debtor has committed the following defaults under the Offer of Financing, which remain uncured and outstanding:

- (a) the Debtor has failed to make any of its monthly interest payments since November 3, 2025; and
- (b) the Debtor has failed to pay or keep current the realty taxes on the Lands payable to the City of Toronto for the 2025 taxation period in the amount of \$82,987.45 (inclusive of interest) and has not provided confirmation to the Applicant that such taxes are current.¹⁰

⁸ Geneviève Affidavit at paras 20-21, Application Record, Tab 2, p. 20.

⁹ Geneviève Affidavit at paras 22-23, Application Record, Tab 2, p. 20.

¹⁰ Geneviève Affidavit at para 23, Application Record, Tab 2, pp. 20-21.

The demands for payment

13. On December 4, 2025, the Applicant sent Demand Letters to both the Debtor and Ghods and a Notice of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (the “**BIA**”) to the Debtor.¹¹

14. As of January 30, 2026, the total amount owing was \$16,943,719.07, inclusive of interest accrued to that date (but excluding all fees, costs, and expenses). Interest and costs continue to accrue.¹²

15. Despite the Applicant having afforded the Debtor more than eight (8) months to arrange refinancing, no firm refinancing commitment has been provided. During this period, there has been little to no appreciable progress on the Project.¹³

16. Most recently, the Applicant agreed to enter into forbearance discussions with the Debtor. However, notwithstanding the Applicant’s good faith engagement and the delivery of final proposed terms, the Debtor failed to respond, and no forbearance agreement was concluded.¹⁴

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

17. The issue raised on this Application is whether the Court should appoint KSV as the receiver and manager over the Property.

18. The Applicant seeks the appointment of a receiver and manager pursuant to: (i) its contractual authority under the Mortgage and GSA; (ii) subsection 243(1) of the *BIA*; and (iii) section 101 of the *Courts of Justice Act* (“**CJA**”).¹⁵

¹¹ Geneviève Affidavit at para 24, Application Record, Tab 2, p. 21.

¹² Geneviève Affidavit at para 5, Application Record, Tab 2, p. 15.

¹³ Geneviève Affidavit at para 26, Application Record, Tab 2, pp. 21-22.

¹⁴ Geneviève Affidavit at para 25, Application Record, Tab 2, p. 21.

¹⁵ R.S.O. 1990, c. C-43 [**CJA**], s. [101](#).

It is just and convenient for this Court to appoint a receiver

19. Section 101 of the *CJA* provides courts with the ability to appoint a receiver where it is “just or convenient” to do so.¹⁶ Similarly, subsection 243(1) of the *BIA* provides that, on an application by a secured creditor, this Court may appoint a receiver to do any of the following if it considers it to be “just or convenient to do so”: (a) take possession over the assets of an insolvent person, (b) exercise any control that the Court considers advisable over the insolvent person’s property and business, or (c) take any other action that the Court considers advisable.¹⁷

20. Pursuant to Section 2 of the *BIA*, an insolvent “person” includes, among others, corporations.¹⁸

21. Under the *BIA*, a secured creditor who intends to enforce its security on all or substantially all of the property of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person, may satisfy the applicable notice requirement by delivering at least ten days’ prior written notice of the secured creditor’s intention to enforce its security.¹⁹ As defined in section 2 of the *BIA*, the term “secured creditor” means, among other things, a “person holding a mortgage, hypothec, pledge, charge or lien on or against the property of the debtor or any part of that property as security for a debt due or accruing due to the person from the debtor [...]”.²⁰

22. In determining whether it is “just or convenient” to appoint a receiver under either the *BIA* or *CJA*, the court “must have regard to all of the circumstances but in particular, the nature of the property and the rights and interests of all parties in relation thereto”, which includes the rights of the secured creditor under its security.²¹ Neither the *BIA* nor the *CJA* set out a list

¹⁶ *CJA*, s. [101](#).

¹⁷ *BIA*, s. [243\(1\)](#).

¹⁸ *BIA*, s. [2](#).

¹⁹ *BIA*, s. [244](#).

²⁰ *BIA*, s. [2](#).

²¹ [Bank of Nova Scotia v Freure Village of Clair Creek](#), 1996 CanLII 8258 (ONSC) at para [10](#).

of factors to be considered when determining whether it is just and convenient to appoint a receiver. Nevertheless, in evaluating whether the appointment of a receiver is appropriate, this Court has considered a range of non-exhaustive factors, including the following:

- (a) the fact the creditor has a right to appointment under the loan documentation;
- (b) the lenders' security is at risk of deteriorating;
- (c) loss of confidence in the debtor's management;
- (d) the enforcement of rights under a security instrument where the security-holder encounters difficulties with the debtor;
- (e) the conduct of the parties;
- (f) the preservation and protection of the property pending judicial resolution; and
- (g) the balance of convenience to the parties.²²

23. It is well established that the appointment of a receiver, while generally considered an extraordinary remedy, "is significantly reduced when dealing with a secured creditor who has the right to a receivership under its security arrangements".²³ Furthermore, this Court has recognized that there is a clear distinction between cases where the borrower is in default and those where no default has occurred, and has held that the burden is lowered in cases where the loan and security documents are in default.²⁴

24. The Court has often considered whether or when it is just and convenient for a receiver to be appointed in respect of mortgaged lands, particularly when mortgagees have other remedies

²² [Maple Trade Finance Inc. v CY Oriental Holdings Ltd.](#), 2009 BCSC 1527 at para 25; [BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc.](#), 2020 ONSC 1953 [BCIMC] at para 45; [Canadian Equipment Finance and Leasing Inc. v The Hypoint Company Limited](#), 2022 ONSC 6186 at para 25.

²³ BCIMC at para 43; See also [C & K Mortgage et al. v 11282751 Canada Inc. et al.](#), 2024 ONSC 1039 at para 17-18.

²⁴ BCIMC at para 44; See also [Royal Bank v Brodak Construction Services Inc.](#), 2002 CanLII 49590 (ONSC) at para 11.

available to them. While it is open to a court to find it is not just and convenient to appoint a receiver where the circumstances do not warrant it,²⁵ in other cases the courts have clearly found that a receiver can and should be appointed. This is the case both in instances of mortgaged land that has been partially or fully developed as well as cases involving undeveloped land.²⁶

25. While this Court must find that, based on the facts of the case, it is just or convenient for a receiver to be appointed, a receiver has been appointed in analogous circumstances where:²⁷

- (a) vacant lands were left undeveloped and the associated loan remained unpaid, despite the debtor having received multiple extensions and repeatedly representing that repayment would occur;
- (b) the debtor had no credible plan to repay the financing or sell the lands; and
- (c) where investigations and due diligence were required to prepare and implement an appropriate and orderly sales process.

26. A secured creditor, unless outweighed by other factors, is entitled to elect how it wishes to enforce its security.²⁸

The test for the appointment of a receiver is met

27. Having regard to the foregoing considerations, the appointment of a receiver is just and convenient in the circumstances for the following reasons, among other things:²⁹

²⁵ [2607087 Ontario Limited v 2654993 Ontario Ltd. et al.](#), 2024 ONSC 4595 at paras [54-61](#).

²⁶ [Institutional Mortgage Capital Canada Inc. v Mortise \(Scott Road Residential\) Holdings Ltd.](#), 2025 BCSC 1500 [IMC] at paras [31-59](#); [Bank of Montreal v Haro-Thurlow Street Project Limited Partnership](#), 2024 BCSC 47 [**Haro-Thurlow**] at paras [141-147, 159](#); See also [Endorsement of Justice Steele dated December 21, 2023](#), the [First Source Financial Management Inc. v King David Inc. et al.](#), Superior Court of Justice (Commercial List), CV-23-00710411-00CL [**KDI Endorsement**]; See also [Endorsement of Justice Steele dated December 19, 2023](#), the [1180554 Ontario Limited v CBJ Developments Inc. et al](#), Superior Court of Justice (Commercial List), CV-23- 00707989-00CL and subsequent [Endorsement of Justice Penny dated January 26, 2024](#), the [1180554 Ontario Limited v CBJ Developments Inc. et al](#), Superior Court of Justice (Commercial List), CV-23- 00707989-00CL [**CBJ Developments Endorsement**].

²⁷ IMC at paras [55-59](#); [Haro-Thurlow](#) at paras [141-147](#); See also [KDI Endorsement](#) and [CBJ Developments Endorsement](#).

²⁸ IMC at para [27](#); [Haro-Thurlow](#) at para [95](#).

²⁹ Geneviève Affidavit at para 27, Application Record, Tab 2, pp. 22-23.

- (a) it is clear that the Applicant is a secured creditor pursuant to the Mortgage, the GSA, and other security documents, and is entitled to make an application under subsection 243(1) of the *BIA*;
- (b) the Indebtedness has matured and the Debtor has defaulted in its obligations to the Applicant under the Offer of Financing;
- (c) the Applicant has delivered the Demand and 244 Notice to the Debtor and all related statutory notice periods have since expired;
- (d) the appointment of the receiver will allow it to bring a motion to sell the Lands immediately, if approved by the Court;
- (e) KSV is qualified to act as the receiver under the *BIA* and is consenting to do so;
and
- (f) the proposed powers of the receiver are within the scope of those listed in subsection 243(1) of the *BIA* and are consistent with the powers generally granted by the Court.

28. In addition to the above, there is no recent evidence to suggest that the Applicant is oversecured. The only appraisal offered by the Debtor was significantly dated and current only as of August 2022.³⁰ Instead, it appears that the Applicant's security position is deteriorating due to, among other things, the Debtor's failure to advance the development and construction of the Project and the accruing realty taxes payable on the Lands to the City of Toronto for the 2025 taxation period.³¹

³⁰ Affidavit of Kamila Sharapova sworn February 26, 2026, Responding Application Record of English Lane Homes Inc. returnable March 13, 2026, Exhibit "B" (Appraisal 200 David Dunlap Circle), p. 15.

³¹ Geneviève Affidavit at para 26, Application Record, Tab 2, pp. 21-22.

29. Given the amount of time already afforded by the Applicant to the Debtor to propose a repayment solution, as well as the Debtor's cessation of interest payments, the Applicant has lost confidence in the Debtor's ability to obtain alternative financing and repay the Offer of Financing.³² Notwithstanding the loss of confidence, the proposed form of Order has been amended to specifically recognize the Debtor's right of redemption (up to a specific point in the process – namely: the bid deadline established by the proposed receiver and its realtor, unless the proposed receiver agrees, with the consent of the Applicant, so as not to chill a sale process) and right to participate as a buyer in any sale process.³³ Given the Debtor's expressed desire to participate in these capacities, the conduct of a sale process overseen by a court appointed receiver (as opposed to other remedies available to the Applicant) will be the most efficient and transparent process for all parties.

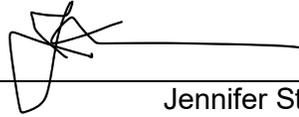
PART IV - ORDER REQUESTED

30. The Applicant respectfully requests a receivership order substantially in the form attached to the Application Record.

³² Geneviève Affidavit at para 23, Application Record, Tab 2, pp. 20-21.

³³ Proposed Order (appointing Receiver) returnable March 13, 2026 at para 3A.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of March, 2026.



Jennifer Stam

NORTON ROSE FULBRIGHT CANADA LLP

22 Bay Street, Suite 3000
Toronto, ON M5K 1E7
Fax: 416.216.3930

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SCHEDULE "A"

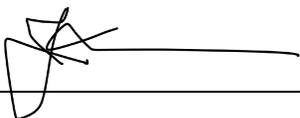
LIST OF AUTHORITIES

1. 2607087 Ontario Limited v 2654993 Ontario Ltd. et al., 2024 ONSC 4595
2. Bank of Montreal v Haro-Thurlow Street Project Limited Partnership, 2024 BCSC 47
3. Bank of Nova Scotia v Freure Village of Clair Creek, 1996 CanLII 8258 (ONSC)
4. BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc., 2020 ONSC 1953
5. C & K Mortgage et al. v 11282751 Canada Inc. et al., 2024 ONSC 1039
6. Canadian Equipment Finance and Leasing Inc. v The Hypoint Company Limited, 2022 ONSC 6186
7. Endorsement of Justice Penny dated January 26, 2024, the 1180554 Ontario Limited v CBJ Developments Inc. et al, Superior Court of Justice (Commercial List), CV-23-00707989-00CL
8. Endorsement of Justice Steele dated December 19, 2023, the 1180554 Ontario Limited v CBJ Developments Inc. et al, Superior Court of Justice (Commercial List), CV-23-00707989-00CL
9. Endorsement of Justice Steele dated December 21, 2023, the First Source Financial Management Inc. v King David Inc. et al., Superior Court of Justice (Commercial List), CV-23-00710411-00CL
10. Institutional Mortgage Capital Canada Inc. v Mortise (Scott Road Residential) Holdings Ltd., 2025 BCSC 1500
11. Maple Trade Finance Inc. v CY Oriental Holdings Ltd., 2009 BCSC 1527
12. Royal Bank v Brodak Construction Services Inc., 2002 CanLII 49590 (ONSC)

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date: March 4th, 2026



Jennifer Stam

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

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

Definitions

2 person includes a partnership, an unincorporated association, a corporation, a cooperative society or a cooperative organization, the successors of a partnership, of an association, of a corporation, of a society or of an organization and the heirs, executors, liquidators of the succession, administrators or other legal representatives of a person;

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

[...]

secured creditor means a person holding a mortgage, hypothec, pledge, charge or lien on or against the property of the debtor or any part of that property as security for a debt due or accruing due to the person from the debtor, or a person whose claim is based on, or secured by, a negotiable instrument held as collateral security and on which the debtor is only indirectly or secondarily liable, and includes

[...]

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 and 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.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a)** the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b)** the court considers it appropriate to appoint a receiver before then.

[...]

Advance notice

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

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

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

Period of notice

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

No advance consent

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

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

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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22 Bay Street, Suite 3000
Toronto, ON M5K 1E7
Fax: 416.216.3930

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