

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

BETWEEN

**BRIDGING FINANCE INC., as agent for
2665405 ONTARIO INC.**

Applicant

-and-

1033803 ONTARIO INC. and 1087507 ONTARIO LIMITED

Respondents

**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**

**MOTION RECORD
(Returnable December 2, 2019)
(Authorization to File Assignments in Bankruptcy)**

Date: November 27, 2019

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Lawyers for KSV Kofman Inc.,
in its capacity as Court-appointed Receiver

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R.S.O. 1990, c. C.43, AS AMENDED**

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TAB1

**ONTARIO
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R.S.O. 1990, c. C.43, AS AMENDED**

**NOTICE OF MOTION
(Returnable December 2, 2019)
(Authorization to File Assignments in Bankruptcy)**

KSV KOFMAN INC. (“KSV”), in its capacity as the Court-appointed receiver and manager (KSV, in such capacity, the “Receiver”) of: (i) all of the assets, undertakings and properties of 1033803 Ontario Inc. (operating as Forma-Con Construction and Forma Finishing) (“Forma-Con”), 1087507 Ontario Limited (“1087507”); (ii) certain assets of Bondfield Construction Company Limited (“BCCL”) and Bondfield Construction Equipment Ltd (“BCEL”); and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario ((i) – (iii), collectively, the “Property”), will make a motion to a Judge presiding over the Commercial List at 330 University Avenue, Toronto, Ontario, on December 2, 2019, at 10:00 a.m., or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR an order:

- (a) Authorizing the Receiver to file assignments in bankruptcy (collectively, the “**Assignments**”) on behalf of Forma-Con and 1087507 (collectively, the “**Forma-Con Debtors**”); and
- (b) Such further and other relief as counsel may request and this Court may deem just, substantially in the form of the draft order included at Tab 3 of the Receiver’s Motion Record.

THE GROUNDS FOR THE MOTION ARE:

- (a) On November 19, 2018, this Court granted an order (the “**Receivership Order**”) appointing KSV as Receiver pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, R.S.O. 1990, c. C.43, as amended (the “**CJA**”);
- (b) The Receivership Order authorizes the Receiver to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof (including the Brampton Property) and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (c) The Receiver has realized on substantially all of the assets of Forma-Con and 1087507;
- (d) The Bondfield Monitor has issued its report, dated October 30, 2019, with respect to an investigation of certain transactions (the “**Phase 2 Report**”);
- (e) The Phase 2 Report indicates that there are transactions involving the Forma-Con Debtors that remain to be investigated;
- (f) Pursuant to paragraph 3(j) of the Receivership Order, the Receiver is authorized to file assignments in bankruptcy on behalf of the Forma-Con Debtors;
- (g) Section 243(1) of the BIA;

- (h) Section 101 of the CJA;
- (i) The *Rules of Civil Procedure*, including, without limitation, Rules 1.04, 2.03, 3.02, and 37 thereof; and
- (j) Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Seventh Report; and
- (b) Such further and other evidence as counsel may advise and this Court may permit.

Date: November 27, 2019

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Lawyers for KSV Kofman Inc.,
in its capacity as Court-appointed Receiver

TO: This Court

AND TO: The Service List

Service List

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AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C.43, AS AMENDED

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SERVICE LIST
(Unions and PPSA Registrants)
May 28, 2019

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¹ PPSA registrants on this Service List include parties with registrations against 1033803 Ontario Inc. and 1087507 Ontario Limited as well as other companies within the Bondfield group of companies.

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<p>Bank of Montreal, as Administrative Agent 100 King Street West, 11th Floor, Toronto, ON M5X 1A1</p>	<p>CWB NL Financial Inc. 1525 Buffalo Place, Winnipeg MB R3T 1L9 Attn: Anna Neustaedter Email: Anna9093@cwbnationalleasing.com</p>
<p>Caisse Centrale Desjardins, as Administrative Agent 1170 Peel Street, Office 300 Montreal, QC H3B 0A9</p>	<p>The Toronto-Dominion Bank, as Administrative Agent TD Bank Tower 66 Wellington Street West, 9th Floor Toronto, ON M5K 1A2</p>
<p>GE Canada Equipment Financing G.P. (9755530001) RS GE Canada Equipment Financing G.P. (9754010001) RS GE Canada Equipment Financing G.P. 1919 Minnesota Court Mississauga, ON L5N 0C9</p>	<p>Bank of Montreal, as Administrative Agent 100 King Street West, 4th Floor 1 First Canadian Place Toronto, ON M5T 1T4</p>
<p>Mercedes-Benz Financial Services Canada Corporation Mercedes-Benz Financial 2680 Matheson Blvd. E, Suite 500 Mississauga, ON L4W 0A5</p>	<p>GM Financial Canada Leasing Ltd. 2001 Sheppard Ave. Suite 600 Toronto, ON M2J 4Z8</p>
<p>Her Majesty in Right of Ontario Represented by the Minister of Finance 400-130 Dufferin Avenue London, ON N6A 6G8</p>	<p>Zurich Insurance Company Ltd. 100 King Street Suite 5500 Toronto, ON M5X 1C9</p>
<p>Bridging Finance Inc., as Agent 77 King Street West Suite 2925 Toronto, ON M5K 1K7</p>	<p>Element Financial Corporation 161 Bay Street Suite 4600, PO Box 621 Toronto, ON M5J 2S1</p>

**BRIDGING FINANCE INC.,
as agent for 2665405 ONTARIO INC.**

**1033803 ONTARIO INC. and
1087507 ONTARIO LIMITED**

Applicant _____ Respondents _____

Court File No. CV-18-608978-00CL

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

Proceedings commenced in Toronto

**NOTICE OF MOTION
(Returnable December 2, 2019)
(Authorization to File Assignments in
Bankruptcy)**

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Lawyers for KSV Kofman Inc.,
in its capacity as Court-appointed Receiver



TAB2



**Seventh Report of
KSV Kofman Inc.
as Receiver and Manager of
1033803 Ontario Inc. and
1087507 Ontario Limited and
Certain Related Other Property**

November 27, 2019

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COURT FILE NO: CV-18-608978-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BRIDGING FINANCE INC. AS AGENT FOR
2665405 ONTARIO INC.

APPLICANT

- AND -

1033803 ONTARIO INC. AND 1087507 ONTARIO LIMITED

RESPONDENTS

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

SEVENTH REPORT OF
KSV KOFMAN INC.
AS RECEIVER AND MANAGER

NOVEMBER 27, 2019

1.0 Introduction

1. On November 19, 2018, Bridging Finance Inc., as agent (the "Agent") for 2665405 Ontario Inc. (the "Lender"), made an application to the Ontario Superior Court of Justice (Commercial List) (the "Court") for the appointment of KSV Kofman Inc. ("KSV") as receiver and manager of:
 - a. all the assets, undertaking and property of 1033803 Ontario Inc., operating as Forma-Con Construction and Forma Finishing ("Forma Con"), including the real property municipally known as 3420 Queen Street East, Brampton (the "Brampton Property") and 407 Basaltic Road, Concord (the "Head Office");
 - b. all the assets, undertaking and property of 1087507 Ontario Inc. ("108" and together with Forma Con, the "FC Debtors"), including the real property municipally known as 4431 Stouffville Road, Stouffville (the "Stouffville Property");
 - c. certain assets (the "Forma Con Related Assets") of Bondfield Construction Company Limited ("BCCL") and Bondfield Construction Equipment Ltd. ("BCEL", together with BCCL, Forma Con, 108 and several other related entities, the "Group"); and

- d. the real property municipally known as 131 Saramia Crescent, Vaughan ("the Vaughan Property") owned by Ralph Aquino, a limited guarantor of the indebtedness of the Group to the Lender (together, the Vaughan Property, the Stouffville Property and the Head Office are defined in this Report as the "Properties").
2. The Court granted the relief requested by the Agent on the return of the receivership application and KSV was appointed receiver (the "Receiver"). KSV is filing this report in its capacity as the Receiver.

1.1 Purpose of this Report

1. The purpose of this report (the "Report") is to seek an order authorizing the Receiver to file an assignment in bankruptcy on behalf of the FC Debtors.

2.0 Background

2.1 Forma Con

1. Prior to its receivership proceedings, Forma Con operated a concrete forming business that provided services to construction projects. The shares of FC Debtors are believed to be owned by members of the Aquino family.
2. During the receivership proceedings, the Receiver closed five Court approved transactions to sell the Forma Con Related Assets and the Properties. The majority of the proceeds from the transactions have been distributed to the Agent pursuant to orders of the Court issued in these proceedings.
3. The principal economic stakeholders in the FC Debtors' receivership proceedings include the Agent and Canada Revenue Agency ("CRA"). As of the date of this Report, the Agent was owed approximately \$40 million, plus costs and expenses which continue to accrue. According to claims filed by CRA with the Receiver, CRA is owed approximately \$15 million in respect of the obligations listed in the table below.

Debtor	Type of Claim	Obligation	\$000s
Forma Con	Deemed Trust	Source Deductions	7,167
Forma Con	Deemed Trust	HST	5,363
Forma Con	Unsecured	HST	200
Forma Con	Unsecured	Source Deductions	2,409
			<u>15,139</u>
108	Deemed Trust	HST	35
108	Unsecured	HST	5
			<u>40</u>

2.2 Other Creditors

1. In addition to the CRA claims, a summary of Forma Con's other known third party obligations, excluding contingent and off-balance sheet liabilities (such as litigation claims) is provided in the table below.

(unaudited)	\$000s
Unions	50
Workplace Safety and Insurance Board	2,722
Suppliers	5,507
Total	8,279

2. There are no known third party obligations owing by 108, other than its obligations to CRA.

2.3 Investigation

1. BCCL is a full-service construction company operating in Southern Ontario. On April 3, 2019, BCCL and several related entities were granted protection under the *Companies' Creditors Arrangement Act* ("CCAA") and Ernst & Young Inc. was appointed the monitor in those CCAA proceedings (the "Monitor").
2. On May 30, 2019, the Court authorized the Monitor to, *inter alia*, undertake an investigation (the "Investigation") into certain transactions involving the Group and deliver a report summarizing its Investigation (the "Investigation Report").
3. On October 30, 2019, the Monitor issued an Investigation Report. The Investigation Report details, *inter alia*, that BCCL and certain affiliates, including certain of the FC Debtors, paid "Suppliers of Interest" in excess of \$80 million, and that no value was provided by the Suppliers of Interest to the Group in exchange for these payments. In connection with the Investigation Report, the Monitor is seeking a declaration that transactions between BCCL and certain Suppliers of Interest are transfers at undervalue. The Monitor is also seeking various ancillary relief, including that certain respondents are jointly and severally liable to BCCL for the value of the transactions. The Monitor does not have authority over the FC Debtors.

3.0 Bankruptcy of FC Debtors

1. The Receiver is seeking authority from the Court to file an assignment in bankruptcy on behalf of the FC Debtors. If appointed as Trustee in Bankruptcy ("Trustee"), KSV, as Trustee and Receiver, intends to conduct an investigation of the FC Debtors. The Trustee's participation in the investigation will be subject to approval of the inspectors appointed in the bankruptcy, unless otherwise ordered by the Court, as permitted by the *Bankruptcy and Insolvency Act*.

4.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Court make an order granting the relief detailed in Section 1.1(1) of this Report.

* * *

All of which is respectfully submitted,

KSV Kofman Inc

**KSV KOFMAN INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
10338083 ONTARIO INC., 1087507 ONTARIO LIMITED
AND CERTAIN OTHER PROPERTY
AND NOT IN ITS PERSONAL CAPACITY**



TAB3

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

THE HONOURABLE MR.)
JUSTICE HAINEY)
)
)

MONDAY, THE 2ND
DAY OF DECEMBER, 2019

BETWEEN

**BRIDGING FINANCE INC., as agent for
2665405 ONTARIO INC.**

Applicant

- and -

1033803 ONTARIO INC. and 1087507 ONTARIO LIMITED

Respondents

**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**

**ORDER
(Authorization to File Assignments in Bankruptcy)**

THIS MOTION, made by KSV Kofman Inc. (“KSV”), in its capacity as the Court-appointed receiver and manager (KSV, in such capacity, the “**Receiver**”) of: (i) all of the assets, undertakings and properties of 1033803 Ontario Inc. (operating as Forma-Con Construction and Forma Finishing) (“Forma-Con”), 1087507 Ontario Limited (“**1087507**”); (ii) certain assets of Bondfield Construction Company Limited (“**BCCL**”) and Bondfield Construction Equipment Ltd (“**BCEL**”); and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario (the “**Vaughan Property**”) ((i) – (iii), collectively, the “**Property**”), for an order (a) authorizing the Receiver to file assignments in bankruptcy on behalf of each of Forma-Con and

1087507 (collectively, the “**Forma-Con Debtors**”); and (b) certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion and Motion Record, each dated November 27, 2019, filed, and the Seventh Report, filed, and on hearing the submissions of counsel for the Receiver and Bridging Finance Inc., and such other counsel appearing on the counsel slip, no one else appearing although properly served as appears from the affidavit of service of Cathy Pellegrini sworn November ■, 2019, filed, [affidavit of service of Siva Sivaperuman sworn November ■, 2019, filed, and affidavit of service of Kunalan Shelvarajah sworn November ■, 2019, filed]:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

ASSIGNMENTS IN BANKRUPTCY

2. **THIS COURT ORDERS** that the Receiver is hereby authorized to file an assignment in bankruptcy for each of the Forma-Con Debtors at such time as the Receiver determines is appropriate.

3. **THIS COURT ORDERS** that each of the Receiver’s Charge and the Receiver’s Borrowings Charge (each as defined in the Order (Appointing Receiver) of this Court made in the within proceedings dated November 19, 2018) (the “**Receivership Order**”), shall not be affected by the bankruptcy of any of the Forma-Con Debtors and shall continue to enjoy the same priority such charges have in respect of the Property (as defined in the Receivership Order) pursuant to the terms of the Receivership Order following the bankruptcy of any of the Forma-Con Debtors.

4. **THIS COURT ORDERS** that all proceeds of the Property realized by the Receiver prior to the bankruptcy of any of the Forma-Con Debtors (the “**Receivership Proceeds**”) shall be maintained by the Receiver in a segregated account of the Receiver, such Receivership Proceeds to not form part of the estate of any of the Forma-Con Debtors and to be distributed by the Receiver as directed by further Order of this Court.

GENERAL

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or any other jurisdiction, to give effect to this Order and to assist the Receiver and its agents and advisors in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents and advisors in carrying out the terms of this Order.

**BRIDGING FINANCE INC.,
as agent for 2665405 ONTARIO INC.**

Applicant

**1033803 ONTARIO INC. and
1087507 ONTARIO LIMITED**

Respondents

Court File No. CV-18-608978-00CL

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

Proceedings commenced in Toronto

**ORDER
(Authorization to File Assignments in
Bankruptcy)**

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in its capacity as Court-appointed
Receiver

BRIDGING FINANCE INC.,
as agent for **2665405 ONTARIO INC.**
Applicant

1033803 ONTARIO INC. and
1087507 ONTARIO LIMITED
Respondents

Court File No. CV-18-608978-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

MOTION RECORD
(Returnable December 2, 2019)
(Authorization to File Assignments in
Bankruptcy)

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