

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

B E T W E E N:

2106580 ONTARIO INC. AND OSMINGTON (WOOD STREET) INC.

Applicants

- and -

GREEN WORLD CONSTRUCTION INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 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 APPLICANTS
(ORDER APPOINTING RECEIVER)**

April 10, 2025

OSLER, HOSKIN & HARCOURT LLP
100 King Street West, Suite 6200
Toronto ON M5X 1B8

Marc Wasserman (LSO# 44066M)
Tel: 416.862.4908
Email: mwasserman@osler.com

Dave Rosenblat (LSO# 64586K)
Tel: 416.862.6573
Email: drosenblat@osler.com
Fax: 416.862.6666

Lawyers for the Applicants

TO: **THE SERVICE LIST**

PART I - NATURE OF THE APPLICATION

1. This application is brought by 2106580 Ontario Inc. (“**2106580**”) and Osmington (Wood Street) Inc. (“**Osmington**”, and together with 2106580, the “**Applicants**”) seeking an order (the “**Receivership Order**”) appointing a receiver over certain real property belonging to Green World Construction Inc. (“**Green World**” or the “**Debtor**”) pursuant to s. 243(1) of the *Bankruptcy and Insolvency Act*,¹ (the “**BIA**”) and s. 101 of the *Courts of Justice Act* (the “**CJA**”).²

2. The Applicants are the senior secured lenders of Green World, a real estate development company which is currently engaged in developing a residential development project (the “**Project**”) on certain real property located in Ontario (the “**Property**”). In connection with the Project, the Applicants provided vendor take-back mortgage financing (the “**VTB**”) to Green World, which is secured by a first ranking mortgage on the Property.

3. Green World has repeatedly defaulted on payments owing under the VTB. While the Applicants have repeatedly attempted to reach a consensual resolution, Green World has continued to fail to make required payments under the VTB, and has failed to obtain alternate financing. Owing to these repeated defaults, the Applicants have issued two demand letters to Green World for the payment of indebtedness owing under the VTB. In spite of the issuance of the demand letters, the VTB remains in default.

4. The Applicants therefore seek the Receivership Order, which will, among other things:

- (a) appoint KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacities, the “**Receiver**”), without security, of the Property;

¹ R.S.C. 1985, c. B-3, as amended.

² R.S.O. 1990, c. C-43 as amended.

- (b) grant 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; and
- (c) grant a second-ranking super-priority charge (the “**Receiver’s Borrowings Charge**”) over the Property in order to fund the exercise of the powers and duties conferred upon the Receiver pursuant to the proposed Receivership Order.

5. Green World has previously consented to the appointment of a receiver, which is further authorized by both the BIA and the CJA. The appointment of the Receiver will provide the stability, structure, and supervision needed to preserve the value of the Property and will maximize recoveries for Green World’s stakeholders.

PART II - SUMMARY OF FACTS

6. The facts are more fully set out in the Affidavit of Jason Levin.³

A. The Parties and the Project

7. 2106580 and Osmington are both incorporated pursuant to the laws of Ontario and headquartered in Toronto, Ontario. 2106580 and Osmington are wholly owned subsidiaries of Osmington Inc.⁴

³ Affidavit of Jason Levin, sworn April 4, 2025 [Levin Affidavit]. Capitalized terms not otherwise defined have the same meaning as in the Levin Affidavit. Dollar amounts are given in Canadian dollars unless otherwise specified.

⁴ Levin Affidavit at paras. 16-17.

8. Green World is incorporated pursuant to the laws of Ontario and is headquartered in Markham, Ontario.⁵ Green World is the registered owner of the Property, which it acquired on April 14, 2022. The Property is an approximately 55-acre site which is comprised of:⁶

- (a) the “**Essa Road Property**,” located at the lands municipally known as 175-199 Essa Road, Brampton, Ontario, which Green World acquired from 2106580; and
- (b) the “**Wood Street Property**,” located at the lands municipally known as 50 Wood Street, Barrie, Ontario, which Green World acquired from Osmington.

9. The Property is intended to be developed by Green World into 4054 residential units, as well as various commercial uses and a school block (as defined above, the “**Project**”). No development in respect of the Project has yet occurred, and Green World has not pre-sold or received deposits in respect of any units.⁷

B. Secured Creditors

(a) The Vendor Take-Back Mortgage

10. In connection with Green World’s acquisition of the Property, 2106580 and Osmington extended vendor take-back mortgage financing to Green World (as defined above, the “**VTB**”). The VTB is secured by a Charge/Mortgage in the principal amount of \$48,025,000 granted by Green World, as chargor, in favour of 2106580 (as to a 90% interest) and Osmington (as to a 10% interest), collectively as chargee, which was registered on title to the Property on April 14, 2022 (the “**Original Charge**”). As is discussed further below, the Original Charge was subsequently

⁵ Levin Affidavit at para. 18.

⁶ Levin Affidavit at paras. 6-7.

⁷ Levin Affidavit at para. 6.

amended by several unregistered mortgage amending agreements (the “**Mortgage Amending Agreements**”, and, together with the Original Charge, the Charge Additional Provisions, and the Standard Charge Terms, the “**Charge**”).⁸

11. As of April 4, 2025, the total indebtedness under the Charge was approximately \$31.7 million (the “**Indebtedness**”). Interest, fees, and costs have since accrued and continue to accrue.⁹

(b) The MarshallZehr Loan

12. Green World, as chargor, additionally granted a charge/mortgage in favour of MarshallZehr Group Inc. (“**MarshallZehr**”), as chargee, in the principal amount of \$13,300,000, which was registered on title to the Property on April 14, 2022. MarshallZehr’s loan to Green World is also secured by (i) a general assignment of rents; (ii) an Application to Annex Restrictive Covenants s. 118, which prohibits any further charge on the Property without the consent of MarshallZehr, and (iii) a guarantee by Digram Developments Inc.¹⁰

13. MarshallZehr’s loan is subordinated and postponed in favour of the Applicants’ loan pursuant to a subordination agreement dated April 14, 2022. Notice of these receivership proceedings has been provided to MarshallZehr.¹¹

C. Initial Events of Default and Initial Receivership Application

14. Green World repeatedly failed to pay the principal or interest owing under the Charge as it became payable. Following each such event of default, the Applicants, by way of a Mortgage Amending Agreement, agreed to amend the terms of payments under the VTB in order to provide

⁸ Levin Affidavit at paras. 19-20, 22.

⁹ Levin Affidavit at para. 21.

¹⁰ Levin Affidavit at para. 25.

¹¹ Levin Affidavit at paras. 26-27.

Green World with the opportunity to honour its obligations. Despite these repeated amendments, Green World continued to default on its payment obligations:

- (a) On July 31, 2023, Green World defaulted on the Original Charge by failing to make a principal payment of \$2,825,000 as it became due. On September 13, 2023, in order to accommodate Green World, the Applicants entered into the first Mortgage Amendment Agreement, which extended the date of the principal payment to September 30, 2023.¹²
- (b) On September 30, 2023, Green World defaulted on the first Mortgage Amending Agreement by failing to meet the amended principal payment deadline. On October 2, 2023, to further accommodate Green World, the Applicants entered into the second Mortgage Amendment Agreement, which extended the date of the principal payment and permitted Green World to make such payment in installments between October 15, 2023, and November 30, 2023.¹³
- (c) In January 2024, Green World once again defaulted on the Original Charge by failing to make a principal payment of \$11,300,000 as it became due. Once again, the Applicants agreed to further accommodate Green World by entering into the third Mortgage Amending Agreement (the “**Third Amendment**”), which extended the date of the principal payments and permitted Green World to make such payments in installments between February 15, 2024, and July 15, 2024. The Third

¹² Levin Affidavit at para. 30.

¹³ Levin Affidavit at para. 31.

Amendment also required a further principal payment of \$28,250,000.00 on January 31, 2025.¹⁴

15. Despite these repeated amendments, Green World failed to make a single scheduled principal payment, including payments scheduled under the Third Amendment. On April 17, 2024, owing to these repeated defaults, the Applicants issued a demand letter to Green World for the repayment of the Indebtedness (the “**Initial Demand Letter**”). The Initial Demand Letter attached a notice to enforce security in accordance with s. 244 of the BIA (the “**NITES**”) and notified Green World that if payment in respect of the Indebtedness was not received immediately, the Applicants would take whatever steps they considered necessary to collect and recover the amounts owing, including the appointment of a receiver.¹⁵

16. On May 16, 2024, the Applicants, Green World, and MarshallZehr (as subordinate lender) entered into a forbearance agreement (the “**Forbearance Agreement**”) pursuant to which the Applicants agreed to forbear from exercising their rights and remedies under the Charge and applicable law for the earlier of 28 days following May 16, 2024, or the occurrence of an Intervening Event (as defined therein) (the “**Forbearance Period**”), in order to allow Green World to seek alternate financing.¹⁶ Attached to the Forbearance Agreement was a consent to receiver, whereby Green World consented to the appointment of a receiver (the “**Consent to Receiver**”).¹⁷

17. Green World failed to secure alternate financing, and the Forbearance Period expired on June 13, 2024. On July 15, 2024, following Green World’s continued failure to repay the

¹⁴ Levin Affidavit at para. 32.

¹⁵ Levin Affidavit at paras. 9, 29, 32.

¹⁶ Levin Affidavit at para. 33.

¹⁷ Levin Affidavit at para. 11.

Indebtedness, the Applicants served their application record for a receivership application (the “**Initial Receivership Application**”), which was scheduled to be heard on July 22, 2024.¹⁸

D. Revised Payment Terms and Continued Default

18. Following service of the application record, the Applicants continued to make good faith efforts to address the outstanding Indebtedness. Ultimately, on July 17, 2024, in advance of the hearing of the Initial Receivership Application, the Applicants and Green World agreed to revised payment terms for the VTB by email (the “**Revised Payment Terms**”).¹⁹

19. Pursuant to the Revised Payment Terms, the Applicants were to receive \$500,000 on account of \$11.3 million in principal owing under the Charge on July 18, 2024, following which Green World would pay down a further \$250,000 a week until the \$11.3 million of outstanding principal was repaid. The Revised Payment Terms further provided that any missed payment or other default under the Charge would result in an immediate application by the Applicants to install a receiver, and that there would be no cure period for any missed or late payments.²⁰ Upon Green World’s agreement to the Revised Payment Terms, the hearing date for the Initial Receivership was vacated.²¹

20. Following the agreement to the Revised Payment Terms, Green World made most (but not all) of the required weekly payments until February 28, 2025. In January 2025, the Applicants offered Green World a further six-month extension for the payment of the remaining principal amount of the Charge, which would run from January 31, 2025, to July 25, 2025. While Green

¹⁸ Levin Affidavit at paras. 36-37.

¹⁹ Levin Affidavit at para. 37.

²⁰ See Levin Affidavit at para. 37 for a detailed summary of the Revised Payment Terms. The Revised Payment Terms further provided, among other things, that: (i) any additional financing secured by Green World would be used to pay down the principal; and (ii) interest would continue be paid to both the Applicants and MarshallZehr on a monthly basis.

²¹ Levin Affidavit at para. 38.

World expressed interest in negotiating this fourth amendment, it failed to make the weekly payments required by the Revised Payment Terms. Accordingly, the Applicants informed Green World that Green World would be required to catch up on its missed weekly payments before the Applicants would agree to the six-month extension.²²

21. Despite multiple attempts by the Applicants to secure these payments, Green World did not catch up on the missed weekly payments and has failed to make any of the payments required under the Revised Payment Terms since February 28, 2025. At that time, Green World had paid \$6.75 million of the remaining principal payment owing to the Applicants. As a result, the proposed fourth amendment was never signed, and the outstanding Indebtedness currently stands at \$31.7 million as of April 4, 2025.²³

22. Given the continuing defaults under the Revised Payment Terms, on April 4, 2025, the Applicants issued a second demand letter (the “**Second Demand Letter**”), with an attached NITES, informing Green World that the loan came due on January 31, 2025, in accordance with the terms of Third Amendment.²⁴

23. Most recently, following service of the Applicants’ application record in this matter on April 4, 2025, Green World again reached out to the Applicants to propose partial repayment under the Revised Payment Terms, which proposed amounts were modest relative to the quantum of the missed payments to date and total amount outstanding. The Applicants advised Green World that this would not be acceptable. In response, Green World again advised that it would be securing

²² Levin Affidavit at para. 39.

²³ Levin Affidavit at paras. 39-40.

²⁴ Levin Affidavit at para. 41.

alternative financing arrangements imminently in order to cure its defaults under the Revised Payment Terms. As in all the previous cases, such financing did not materialize.²⁵

PART III - THE ISSUES AND THE LAW

24. The issues to be considered on this application are whether:

- (a) it is just and convenient to appoint the Receiver; and
- (b) the terms of the Receivership Order are appropriate in the circumstances.

A. The Appointment of the Receiver is Just and Convenient

(a) Statutory Authority

25. This Court has the authority to appoint a Receiver pursuant to s. 243(1) of the BIA and s. 101 of the CJA. Section 243(1) of the BIA provides that a receiver may be appointed on application by a secured creditor where it is “just or convenient” to do so:

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.

²⁵ Supplemental Affidavit of Jason Levin sworn April 10, 2025 at para. 8.

26. Similarly, s. 101(1) of the CJA provides that this Court has the power to appoint a receiver where it is “just or convenient” to do so.

27. The Applicants are clearly entitled to seek the appointment of a receiver under s. 243(1), as they are the senior secured lenders of Green World and have registered and perfected their security interests under the applicable legislation. Further, this application complies with the remaining technical requirements which apply to the appointment of a receiver under the BIA:

- (a) **The Ten-Day Notice Period Has Expired:** Under s. 243(1.1) of the BIA, the court may not appoint a receiver under s. 243(1) prior to the expiry of 10 days after the secured creditor sends the notices required under s. 244 of the BIA. The ten-day notice period has expired, as the Second Demand Letter and the attached NITES were sent to Green World on April 4, 2025.²⁶
- (b) **The Proposed Receiver is a Trustee:** Section 243(4) of the BIA states that only a trustee may be appointed as a receiver under s. 243(1). KSV is a licensed trustee under the BIA.²⁷
- (c) **The Locality of the Debtor is Ontario:** Section 243(5) of the BIA states that an application under s. 243(1) must be filed in “a court having jurisdiction in the judicial district of the locality of the debtor.” As discussed in more detail above, Green World is incorporated and headquartered in Ontario, and the Property is located in Ontario. The application is therefore properly before this Court.²⁸

²⁶ Levin Affidavit at para. 41.

²⁷ Levin Affidavit at para. 47.

²⁸ See, for example, *Foremost Financial Corporation et al v. Alai Developments Inc. et al* (July 24, 2023), Ont S.C.J. [Commercial List], Court File No. CV- 23-00702528-00CL ([Endorsement of Justice Kimmel](#)) at paras. 13-22 [*Foremost Financial*], in which the court confirmed that the Commercial List has jurisdiction to deal with receivership applications pertaining to property outside of Toronto.

(b) It is Just and Convenient to Appoint the Receiver

28. In determining whether it is “just or convenient” to appoint a receiver, the Court should have regard for all the circumstances of the case, including: (i) the nature of the property over which the receiver is to be appointed; (ii) the rights and interests of all parties in relation to the property over which the receiver is to be appointed; and (iii) whether the secured creditor has the right under the security agreement to appoint a receiver privately.²⁹ Although the framing of relevant factors may differ in particular cases, the key considerations are substantially similar.³⁰

29. Applicants are not required to demonstrate that they will suffer irreparable harm if the receivership application is not granted, or that other potential remedies, including other private remedies the applicant may have access to, are defective or insufficient;³¹ rather, the Court is required to consider and balance the competing interests of various economic stakeholders. The specific factors which a court will take into account are therefore very “circumstance-oriented.”³²

30. For the reasons set out below, the Applicants submit that it is just and convenient to appoint the Receiver in the current circumstances:

(a) The Applicants’ Contractual Rights: Pursuant to the Forbearance Agreement, the

Applicants have a contractual right to the appointment of a receiver,³³ and Green

²⁹ *Bank of Nova Scotia v. Freure Village of Clair Creek*, [1996 CanLII 8258](#) (ON SC) at para. 10 [*Freure Village*]; *Canadian Western Bank v. 2563773 Ontario Inc.*, [2023 ONSC 4766](#) at para. 6 [*Canadian Western Bank*]; *Keb Hana Bank as Trustee v. Misrahi Commercial (The One) LP et al.*, (October 18, 2023), Ont S.C.J. [Commercial List], Court File No. CV- 23-00707839-00CL ([Endorsement of Justice Osborne](#)) at para. 36 [*The One*]; *KingSett Mortgage Corp. v. Maplevue Developments Ltd., et al.*, [2024 ONSC 1983](#) at para. 21 [*Maplevue*].

³⁰ Certain cases cite lengthier lists of factors: see, for example, *Canadian Western Bank* at para. 9; *Maplevue* at para. 24; *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, [2020 ONSC 1953](#) at para. 45 [*Clover on Yonge*]. Note that these factors are not a checklist which must be satisfied in all circumstances, but rather a collection of considerations which must be reviewed holistically: *Maplevue*, at para. 25.

³¹ *Foremost Financial*, at paras. 28, 30-31; *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited, 2618905 Ontario Limited, 2618909 Ontario Limited, Beverley Rockliffe and Chantal Bock*, [2022 ONSC 6186](#) at para. 26 [*Hypoint*].

³² *Romspen Investment Corporation v. 6711162 Canada Inc.*, [2014 ONSC 2781](#) at para. 61.

³³ Levin Affidavit at para 44.

World has provided the Consent to Receiver.³⁴ Further, the Revised Payment Terms provide that any missed payment or other default under the Charge would result in an application to appoint a receiver.³⁵ Where a secured creditor has a contractual right to appoint or seek the appointment of a receiver, the appointment of a receiver by the court ceases to be an extraordinary remedy,³⁶ and the court's consideration of "just" or "convenient" becomes a determination of whether a court-appointed receiver is preferable to a private receiver.³⁷ As part of this determination, the courts have noted that a court-appointed receiver is typically more beneficial to a debtor than a private receiver, as the process is more transparent and a court-appointed receiver is an officer of the court.³⁸

- (b) **The Debtor is in Default:** As outlined in detail above, Green World has repeatedly defaulted under the VTB and the Revised Payment Terms. Receivership applications are substantially easier to obtain where the debtor is in default.³⁹ Further, numerous courts have confirmed that the appointment of a receiver becomes substantially less extraordinary when dealing with a default under a mortgage such as the VTB.⁴⁰
- (c) **The Continuing Nature of the Defaults:** Prior to bringing this Application, the Applicants repeatedly attempted to reach a consensual resolution with Green

³⁴ Levin Affidavit at para. 11.

³⁵ Levin Affidavit at para. 44.

³⁶ See, i.e., *Canadian Western Bank*, at para. 7; *Freure Village*, at para. 12; *Clover on Yonge*, at para. 43; *Foremost Financial*, at para. 29.

³⁷ See, i.e., *Freure Village*, at paras. 11-12; *Bank of Montreal v. Carnival National Leasing Ltd.*, [2011 ONSC 1007](#) at para. 29; *Bank of Nova Scotia v. D.G. Jewelry Inc.*, [2002 CanLII 12477 \(ON SC\)](#) at para. 3.

³⁸ *7451190 Manitoba Ltd v. CWB Maxium Financial Inc et al*, [2019 MBCA 95](#) at para. 27.

³⁹ *Confederation Life Insurance Co. v. Double Y Holdings Inc.*, [1991 CarswellOnt 1511](#) (Ontario Court of Justice (General Division)) at para. 20.

⁴⁰ See, i.e., *Canadian Western Bank*, at para. 8; *Clover on Yonge*, at para. 44.

World, including by way of the Mortgage Amending Agreements, the Forbearance Agreement, and the Revised Payment Terms. Despite these repeated attempts, Green World has remains in default under the VTB. Further, Green World has failed to obtain alternate financing, despite advising the Applicants on no fewer than nine occasions in advance of the Initial Receivership Application that they were working to secure alternate financing and implying that such financing would be secured imminently, and continuing to make such representations following the vacating of the Initial Receivership Application, and, most recently, following the delivery of the application record for the current application. In the circumstances, the Applicants have lost all confidence in Green World's ability satisfy its obligations, obtain refinancing, manage the Property, and complete the Project in a timely manner or at all. The Applicants have likewise lost all faith in Green World's ability to protect the Property by which the Indebtedness is secured.⁴¹

- (d) **Stability Benefits:** The appointment of the Receiver will provide the stability, structure, and supervision required to preserve the value of the Property and the Project, and will, among other things, provide the most effective and appropriate means of attending to, securing, and advancing the development of the Project as and where appropriate, and/or effecting an orderly, efficient and transparent sale of the Property, with a view to maximizing recoveries for, and distributing funds to, the Debtor's stakeholders.⁴² Courts have frequently noted the stability benefits

⁴¹ Levin Affidavit at paras. 42-43. An applicant's loss of confidence in the debtor's management is a relevant factor supporting the appointment of a receiver: see, i.e., *Callidus v. Carcap*, [2012 ONSC 163](#) at para. 51; *The One*, at para. 43.

⁴² Levin Affidavit at para. 45.

provided by a court-appointed receiver,⁴³ which has been held to provide “stability, transparency and orderly process.”⁴⁴ The proposed Receiver has extensive experience in Canadian insolvency proceedings, including with respect to complex real estate developments.⁴⁵

B. The Terms of the Receivership Order are Appropriate

31. The proposed Receivership Order is substantially similar to the Commercial List’s model receivership order (the “**Model Order**”). In accordance with paragraphs 18 and 21 of the Model Order, the Receivership Order provides for the following super-priority charges:

- (a) 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; and
- (b) 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.

32. Super-priority charges of this type are routinely approved in BIA receiverships,⁴⁶ and operate to ensure the integrity, predictability, and fairness of the receivership process, and to protect receivers by providing security for their fees and disbursements.⁴⁷ Section 243(6) of the

⁴³ See., i.e., *NFC Acquisition GP Inc. (Re)*, [2012 ONSC 1244](#) at para. 16; *RMB Australia Holdings Ltd. v. Seafield Resources Ltd.*, [2014 ONSC 5205](#) at para. 30; *Callidus Capital Corp. v. Xchange Technology Group LLC*, [2013 ONSC 6783](#) at para. 17.

⁴⁴ *The One*, at para. 46.

⁴⁵ Levin Affidavit at para. 47.

⁴⁶ See, i.e., *KingSett Mortgage Corp v. Mapleview Developments Ltd. et al* (March 21, 2024), Ont S.C.J. [Commercial List], Court File No. CV-24-00716511-00CL ([Order Appointing Receiver](#)) at paras. 19, 22; *KingSett Mortgage Corp and Dorr Capital Corporation v. VanDyk – Uptown Limited et al* (November 14, 2023), Ont S.C.J. [Commercial List], Court File No. CV- 23-00709180-00CL ([Order Appointing Receiver](#)) at paras. 22, 25.

⁴⁷ *CCM Master Qualified Fund v. blutip Power Technologies*, [2012 ONSC 1750](#) at paras. 21-23; *Edmonton (City) v. Alvarez & Marsal Canada Inc.*, [2019 ABCA 109](#) at para. 17.

BIA authorizes the granting of a charge in respect of a receiver's fees and disbursements, while ss. 31(1) and 243(1)(c) of the BIA allow the court to authorize a receiver to borrow in order to fund its duties, and to grant a charge in respect of those borrowings.⁴⁸

33. For the reasons outlined above, the Applicants submit that the terms of the proposed Receivership Order, including the proposed Receiver's Charge and Receiver's Borrowing Charge, are appropriate in the circumstances.

PART IV - NATURE OF THE ORDER SOUGHT

34. The Applicants therefore request that the Receivership Order be granted substantially in the form found at Tab 3 of the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of April, 2025:



OSLER, HOSKIN & HARCOURT, LLP per Marleigh Dick
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Lawyers for the Applicants

TO: THE SERVICE LIST

⁴⁸ See, i.e., *The One*, at paras. 53-54, 61.

SCHEDULE “A”: LIST OF AUTHORITIES

1. *7451190 Manitoba Ltd v. CWB Maxium Financial Inc et al*, [2019 MBCA 95](#)
2. *Bank of Montreal v. Carnival National Leasing Ltd.*, [2011 ONSC 1007](#)
3. *Bank of Nova Scotia v. D.G. Jewelry Inc.*, [2002 CanLII 12477 \(ON SC\)](#)
4. *Bank of Nova Scotia v. Freure Village of Clair Creek*, [1996 CanLII 8258](#) (ON SC)
5. *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, [2020 ONSC 1953](#)
6. *Callidus Capital Corp. v. Xchange Technology Group LLC*, [2013 ONSC 6783](#)
7. *Callidus v. Carcap*, [2012 ONSC 163](#)
8. *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited, 2618905 Ontario Limited, 2618909 Ontario Limited, Beverley Rockcliffe and Chantal Bock*, [2022 ONSC 6186](#)
9. *Canadian Western Bank v. 2563773 Ontario Inc.*, [2023 ONSC 4766](#)
10. *CCM Master Qualified Fund v. blutip Power Technologies*, [2012 ONSC 1750](#)
11. *Confederation Life Insurance Co. v. Double Y Holdings Inc.*, [1991 CarswellOnt 1511](#)
12. *Edmonton (City) v. Alvarez & Marsal Canada Inc.*, [2019 ABCA 109](#)
13. *Foremost Financial Corporation et al v. Alai Developments Inc. et al* (July 24, 2023), Ont S.C.J. [Commercial List], Court File No. CV- 23-00702528-00CL ([Endorsement of Justice Kimmel](#))
14. *Keb Hana Bank as Trustee v. Misrahi Commercial (The One) LP et al.*, (October 18, 2023), Ont S.C.J. [Commercial List], Court File No. CV- 23-00707839-00CL ([Endorsement of Justice Osborne](#))
15. *KingSett Mortgage Corp and Dorr Capital Corporation v. VanDyk – Uptown Limited et al* (November 14, 2023), Ont S.C.J. [Commercial List], Court File No. CV- 23-00709180-00CL ([Order Appointing Receiver](#))
16. *KingSett Mortgage Corp v. Mapleview Developments Ltd. et al* (March 21, 2024), Ont S.C.J. [Commercial List], Court File No. CV-24-00716511-00CL ([Order Appointing Receiver](#))
17. *KingSett Mortgage Corp. v. Mapleview Developments Ltd., et al.*, [2024 ONSC 1983](#)
18. *NFC Acquisition GP Inc. (Re)*, [2012 ONSC 1244](#)
19. *RMB Australia Holdings Ltd. v. Seafield Resources Ltd.*, [2014 ONSC 5205](#)

20. *Romspen Investment Corporation v. 6711162 Canada Inc.*, [2014 ONSC 2781](#)

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

Date April 10, 2025



Signature
Marleigh Dick

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

BANKRUPTCY AND INSOLVENCY ACT

R.S.C., 1985, c. B-3, as amended

Borrowing powers with permission of court

31 (1) With the permission of the court, an interim receiver, a receiver within the meaning of subsection 243(2) or a trustee may make necessary or advisable advances, incur obligations, borrow money and give security on the debtor’s property in any amount, on any terms and on any property that may be authorized by the court and those advances, obligations and money borrowed must be repaid out of the debtor’s property in priority to the creditors’ claims.

Security under *Bank Act*

(2) For the purpose of giving security under section 427 of the *Bank Act*, the interim receiver, receiver or trustee, when carrying on the business of the bankrupt, is deemed to be a person engaged in the class of business previously carried on by the bankrupt.

Limit of obligations and carrying on of business

(3) The creditors or inspectors may by resolution limit the amount of the obligations that may be incurred, the advances that may be made or moneys that may be borrowed by the trustee and may limit the period of time during which the business of the bankrupt may be carried on by the trustee.

Debts deemed to be debts of estate

(4) All debts incurred and credit received in carrying on the business of a bankrupt are deemed to be debts incurred and credit received by the estate of the bankrupt.

[...]

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.

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.

Definition of receiver

(2) Subject to subsections (3) and (4), in this Part, receiver means a person who

- (a)** is appointed under subsection (1); or
- (b)** is appointed to take or takes possession or control — 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 — under
 - (i)** an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or
 - (ii)** a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of receiver — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part

of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of disbursements

(7) In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

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).

Exception

(3) This section does not apply, or ceases to apply, in respect of a secured creditor

- (a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or
- (b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

Idem

(4) This section does not apply where there is a receiver in respect of the insolvent person.

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.

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 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

**2106580 ONTARIO INC. AND
OSMINGTON (WOOD STREET)
INC.**

and

**GREEN WORLD
CONSTRUCTION INC.**

Court File No: CV-25-00740691-00CL

Respondent

Applicants

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

FACTUM

OSLER, HOSKIN & HARCOURT LLP

100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman (LSO# 44066M)

Tel: 416.862.4908

Email: mwasserman@osler.com

Dave Rosenblat (LSO# 64586K)

Tel: 416.862.5673

Email: drosenblat@osler.com

Fax: 416.862.6666

Lawyers for the Applicants