Court File No. CL-26-00000233-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF 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

B E T W E E N:

CC2 (100) GP INC.

Applicant

and

KING DAVID INC.

Respondent

FACTUM OF THE APPLICANT

(Application to Appoint Receiver, Returnable July 9, 2026)

July 07, 2026

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TO:	**KING DAVID INC.** 212 King Street West Suite 204 Toronto ON, M5H 1K5 *Respondent*
AND TO:	**HELEN ROMAN-BARBER** 41 Glengrove Ave E Toronto, ON M4N 1E6 Email: rooney@paulfrooneyprofcorp.com; romanh@romandale.com *Guarantor*
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PART I - INTRODUCTION

1. CC2 (100) GP Inc. ("**CC2**" or the "**Applicant**") applies for the appointment of AlixPartners Restructuring ("**AlixPartners**") as receiver and manager of the respondent, King David Inc. (the "**Debtor**") in respect of the lands and premises municipally known as 100 Cathedral High Street, Markham, Ontario (the "**Real Property**"), and all personal property of the Debtor relating thereto.

2. CC2 holds a first-ranking mortgage over the Real Property, and a first-ranking site-specific, as a general security agreement, related to the Real Property, having acquired such security by assignment on April 21, 2026.

3. The Debtor is in continuing default under a $5 million credit facility (the **"Facility**') that matured on December 1, 2024, and remains unpaid. Demand and a Notice of Intention to Enforce Security pursuant to section 244 of the Bankruptcy and Insolvency Act (the "**BIA**") were delivered on January 16, 2025. The Debtor failed to cure its default.

4. As of April 30, 2026, the amount owing under the Facility was approximately $4,498,916.21, exclusive of continuing legal fees and disbursements.

5. The Debtor owns other properties (the "**Other Properties**") that are the subject of a separate receivership proceeding before the Commercial List, in Court File No. CV-23-0071411-00CL, in which TDB Restructuring Limited (formerly RSM Canada Limited) is the Court-

appointed receiver. The Other Properties are across the street from the Real Property which is the subject of the within application.

6. The Facility documents contain express contractual rights permitting the appointment of a receiver upon default. The statutory notice period under the BIA has expired and a Court-appointed receiver is best positioned to preserve and realize upon the Real Property in a fair and transparent manner for the benefit of all stakeholders.

7. There is no known opposition to the relief sought.

PART II – SUMMARY OF FACTS

A. Background

8. The Debtor is an Ontario corporation with its registered or head office at 212 King Street West, Suite 204, in Toronto.[1]

9. The Real Property is a 1.48-acre parcel of vacant land, within the Cathedraltown development, in the City of Markham. It is identified as PIN 03052-2361 (LT) and legally described as:

> BLOCK 1, PLAN 65M4597; SUBJECT TO AN EASEMENT OVER PART 6 PLAN 65R35097 IN FAVOUR OF PART LOT 23 CONCESSION 3 (MKM) PARTS 3 AND 4 PLAN 65R35097 AS IN YR2616280; CITY OF MARKHAM[2]

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[1] Corporate Profile Report for the Debtor, **Exhibit A**, Affidavit of Jonathan Tkatch, sworn May 14, 2026 (the "**Tkatch Affidavit**"), Applicant's Application Record dated May 25, 2026 ("**AR**"), Tab 2A, p. 37.
[2] Parcel Register dated April 28, 2026, **Exhibit B**, Tkatch Affidavit, AR, Tab 2B, p. 52.

10. As security for the Facility, the assignor of the Facility received, among other things:

(a) a first charge registered against the Real Property on October 17, 2023, as Instrument No. YR3608760 (the "**First Charge**");

(b) a site-specific general security agreement dated October 17, 2023, securing all present and after-acquired personal property of the Debtor relating to the Real Property (the "**GSA**"); and

(c) a guarantee from Helen Roman-Barber ("**Ms. Roman-Barber**" or the "**Guarantor**") dated October 17, 2023 (the "**Guarantee**")[3]

(collectively, the Security).

B. The Loan

11. Pursuant to a commitment letter dated September 18, 2023 (the "**Commitment**") given by the assignor of the Facility and the Security (the "**Assignor**") and accepted by the Debtor and by Helen Roman-Barber, as guarantor (the "**Guarantor**"), the Assignor extended the Facility to the Debtor, for a term of thirteen months, with interest at the greater of (i) 12.25% per annum (increasing to 20.25% per annum after 12 months), and (ii) the floating annual rate of interest established by Canadian Imperial Bank of Commerce ("**Prime**") plus 5.05% per annum (increasing to Prime plus 13.05% per annum after 12 months), calculated monthly, not in advance.[4]

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[3] Para. 7 of the Tkatch Affidavit, AR, Tab 2, p. 30; First Charge, **Exhibit D**, Tkatch Affidavit, AR, Tab 2D, p. 87; General Security Agreement dated October 17, 2023, **Exhibit E**, Tkatch Affidavit, AR, Tab 2E, p. 112.
[4] Commitment Letter dated September 18, 2023, **Exhibit C**, Tkatch Affidavit, AR, Tab 2C, p. 55.

12. The Facility matured on December 1, 2024, but was not repaid.[5]

13. On January 16, 2025, the Assignor, through its lawyers, made formal demand on the Debtor and the Guarantor for payment of $5,139,127.42 owing under the Facility and issued a Notice of Intention to Enforce Security pursuant to section 244 of the BIA.[6]

14. On February 4, 2025, the Assignor, the Debtor and the Guarantor entered into a Forbearance Agreement, pursuant to which, among other things:

(a) the Assignor agreed to forbear from exercising its remedies under the Security until December 1, 2025;

(b) the Debtor and the Guarantor agreed that:

(i) as at February 1, 2025, the indebtedness owing the Facility was $5,184,544.66;

(ii) as at February 1, 2025, there is no dispute regarding the quantum of the indebtedness;

(iii) there is no dispute respecting the liability of the Debtor and the Guarantor to repay the indebtedness; and

(iv) the Security is good and valid security for payment of the indebtedness.

[5] Para. 14 of the Tkatch Affidavit, AR, p. 31.
[6] Demand and Section 244 Notice, **Exhibit K**, Tkatch Affidavit, AR, Tab 2K, p. 182.

15. Ms. Roman-Barber, the Debtor's President and one of its two directors, was served personally with the Application Record on June 02, 2026. Ms. Roman-Barber is also a guarantor of the loan.

16. At the case conference before Justice Steele, on June 8, 2026, Dale Denis appeared as agent for the Debtor and consented to a timetable for the service of responding materials. To date, no responding materials have been served.

C. The Security

17. The First Charge and the GSA each contain contractual rights permitting the appointment of a receiver upon default.

18. The Real Property is also subject to a second charge in the principal amount of $3,500,000 currently held by Romandale Farms Limited.

19. In addition, the Debtor is subject to various PPSA registrations, including registrations in favour of Royal Bank of Canada, The Sovereign General Insurance Company and First Source Financial Management Inc.

20. Pursuant to a Transfer of Charge registered as Instrument No. YR3916309 on April 21, 2026, the First Charge was transferred from the Assignor to the Applicant. The PPSA registration associated with the GSA was also assigned to the Applicant.

21. As of April 30, 2026, the amount owing under the Facility was $4,498,916.21, exclusive of legal fees and disbursements.

22. Despite the demand, the expiry of the statutory notice period under the BIA, and the expiry of the Forbearance Agreement, the Facility remains unpaid and the Debtor remains in default.

PART III – ISSUE

23. The sole issue on this application is whether it is just and convenient to appoint ALIXPARTNERS as receiver and manager of the Real Property and the related personal property of the Debtor.

PART IV – LAW AND ARGUMENT

A. AlixPartners Should be Appointed Receiver and Manager

24. Pursuant to section 243(1) of the BIA[7] and section 101 of the *Courts of Justice Act*,[8] the Court may appoint a receiver and manager where it is "just or convenient" to do so.

25. In determining whether it is just or convenient to appoint a receiver, the Court must have regard to "all of the circumstances, but in particular the nature of the property and the rights and interest of all parties in relation thereto".[9]

26. In making this determination, courts have been informed by the following factors, among others:[10]

[7] BIA, Section 243(1).
[8] *Courts of Justice Act*, RSO 1990, c C.43, Section 101.
[9] *Bank of Nova Scotia v. Freure Village on the Clair Creek*, 1996 O.J. No. 5088, 1996 CanLII 8258, at para. 10.
[10] *BCIMC Construction Fund Corporation et al v. The Clover on Yonge Inc.*, 2020 ONSC 1953 at para 45.

(a) the need to preserve and maximize the return on the subject property;

(b) the relationship between the debtor and its creditors;

(c) the risk of the lender's security deteriorating; and

(d) loss of confidence in the debtor's management.

27. The applicant need not establish that it will suffer irreparable harm if the proposed receiver is not appointed.[11] Where a debtor has expressly agreed to the appointment of a receiver in the event of default, the court should not ordinarily interfere with the contract between the parties.[12]

B. It Is Just and Convenient to Appoint AlixPartners

28. In the present case, all relevant factors favour the appointment of AlixPartners.

29. First, the Facility matured on December 1, 2024, and has not been repaid. The Debtor has been in continuing default for an extended period.

30. Second, CC2 issued both a demand and a Notice of Intention to Enforce Security under section 244 of the BIA on January 16, 2025. The statutory notice period expired long ago.

31. Third, notwithstanding a negotiated forbearance agreement, the Debtor failed to repay the indebtedness before the forbearance period expired on December 1, 2025.

[11] *Bank of Montreal v. Carnival National Leasing Limited,* 2011 ONSC 1007 at 28.
[12] *United Savings Credit Union v. F & R Brokers Inc.*, 2003 BCSC 640 at para 16.

32. Fourth, the mortgage and GSA expressly grant the secured creditor the contractual right to appoint a receiver following default.

33. Fifth, there remains a substantial indebtedness of approximately $4.5 million. Sixth, the Debtor's other real estate holdings are already subject to a separate Court-supervised receivership proceeding, demonstrating broader financial challenges affecting the Debtor's operations and assets.

34. Finally, an independent Court-appointed receiver is best positioned to preserve, market and sell the Real Property through a fair and transparent Court-supervised process, having regard to the interests of all stakeholders, including secured creditors and other interested parties.

35. AlixPartners has consented to act and is an experienced insolvency professional well suited to administer the proposed receivership.

36. In these circumstances, the appointment of AlixPartners is both just and convenient and represents the most effective means of maximizing value and protecting stakeholder interests.

PART V – ORDER REQUESTED

37. The Applicant respectfully requests an Order:

(a) appointing AlixPartners as receiver and manager of the Real Property and all personal property of the Debtor relating thereto, pursuant to section 243(1) of the BIA and section 101 of the *Courts of Justice Act*;

(b) granting AlixPartners the powers set out in the proposed Appointment Order; and

(c) granting such further and other relief as this Honourable Court considers just.

All of which is respectfully submitted,

July 07, 2026

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SCHEDULE "A"
LIST OF AUTHORITIES

I, Fernanda Martins, counsel for the Applicant, am satisfied as to the authenticity of every authority listed in the Factum of the Applicant as required by Rule 4.06.1.

Fernanda.

Fernanda Martins

1. *Bank of Montreal v. Carnival National Leasing Limited,* 2011 ONSC 1007

2. *Bank of Nova Scotia v. Freure Village on the Clair Creek*, 1996 O.J. No. 5088, 1996 CanLII 8258

3. *BCIMC Construction Fund Corporation et al v. The Clover on Yonge Inc.,* 2020 ONSC 1953

4. *United Savings Credit Union v. F & R Brokers Inc.*, 2003 BCSC 640

SCHEDULE "B"
TEXT OF STATUTES, REGULATIONS, & BY-LAWS

Court may appoint receiver
243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

***Courts of Justice Act*, R.S.O. 1990, c. C.43**

Injunctions and receivers
101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms
(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

CC2 (100) GP INC. -and- **KING DAVID INC.**
Applicant Respondent

Court File No. CL-26-00000233-0000

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