



Court File No.: CV-22_____ -00CL

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

Electronically issued : 23-Mar-2022
Délivré par voie électronique : 23-Mar-2022
Toronto

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as
amended*

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.

(solely in its capacity as court-appointed receiver and manager of
Bridging Finance Inc. and certain related entities and investment funds)

Applicant

– and –

MJARDIN GROUP, INC.

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following pages.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- In person
- By telephone conference
- By video conference

Before Justice Penny of the Ontario Superior Court of Justice (Commercial List) on **March 23, 2022 at 8:30 am** and heard by judicial video conference via Zoom at Toronto, Ontario, in accordance with the changes to the Commercial List operations in light of the COVID-19 pandemic and the Notice to the Profession updated on February 16, 2022.

Please refer to the conference details attached as Schedule “A” hereto and advise if you intend to attend the hearing by emailing Adam Driedger at adriedger@tgf.ca.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant(s) lawyer or, where the Applicant(s) do not have a lawyer, serve it on the Applicant(s), and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

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

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

Date _____ Issued by _____
Local Registrar

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

TO: THIS HONOURABLE COURT

AND TO THE RESPONDENT: MJARDIN GROUP, INC.
1 Toronto Street, 801
Toronto, ON M5C 2V6

APPLICATION

1. PricewaterhouseCoopers Inc., solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. (“**BFI**”) and certain related entities and investment funds (the “**Applicant**” or the “**Bridging Receiver**”) makes this Application for an Order (the “**Receivership Order**”) 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, c. C.43, as amended (the “**CJA**”), substantially in the form attached at Tab 3 of the Applicant’s application record, among other things:
 - (a) abridging the time for service of this Notice of Application and the materials filed in support of the Application, authorizing service via electronic mail, and dispensing with further service thereof;
 - (b) appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the current and future assets, undertakings, and properties, excluding certain Excluded Assets (the “**Property**”) of MJardin Group, Inc. (“**MJar**”); and
 - (c) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE:

Overview

2. All capitalized terms not expressly defined herein are defined in the Affidavit of Graham Page sworn March 22, 2022, located at Tab 2 of the Bridging Receiver’s Application Record (the “**Page Affidavit**”).
3. By orders of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 30, 2021 (the “**Appointment Order**”), May 3, 2021 (the “**Additional Appointment Order**”), and May 14, 2021 (the “**Continuation Order**” and collectively, the “**Appointment Orders**”), PwC was appointed as the Bridging Receiver.

4. PwC was appointed as the Bridging Receiver pursuant to section 129 of the *Securities Act* R.S.O. 1990, c. S. 5, as amended (the “**Securities Act**”) upon application by the Ontario Securities Commission (the “**Commission**”) as a result of the Commission’s ongoing investigation into Bridging and certain related individuals and entities.
5. The Bridging Receiver was appointed to protect the interests of, and maximize value for, Bridging’s investors (the “**Unitholders**”) and other stakeholders. There are approximately 26,000 Unitholders (both retail and institutional) primarily located across Canada. As detailed in the Bridging Receiver’s various reports to the Court, the Unitholders are facing significant losses on their investments in Bridging’s investment funds as a result of, among other things, significant allegations of fraud, mismanagement, self-dealing, and poor lending practices that occurred at the BFI management level prior to the appointment of the Bridging Receiver.
6. The Bridging Receiver brings this application to appoint KSV as Receiver of the Property of MJar, save and except for the Excluded Assets, in an effort to minimize the losses that Bridging’s Unitholders and other stakeholders will suffer as a result of the loans made by Bridging to MJar and its subsidiaries.

MJar Corporate Information & Business

7. MJar is a corporation incorporated under the laws of the Province of Ontario. The registered head office of MJar is located at 1 Toronto Street, 801, Toronto, Ontario.
8. MJar is a publicly traded cannabis cultivation and management services company. In 2018, MJar’s shares commenced trading on the Canadian Securities Exchange under the ticker symbol “MJAR”.
9. MJar has two groups of subsidiaries. One group of subsidiaries is based out of the U.S. and provides professional management operational and cultivation services in Canada and the U.S. (this group is occasionally referred to as the “MJardin Group” and is largely comprised of the U.S. Borrowers). The other group of subsidiaries is based out of Canada and is engaged in the cultivation and sale of cannabis products in Canada (this group is

occasionally referred to as the “Growforce Group” and is largely comprised of the “Canadian Borrower” and the “Canadian Obligors”).

10. Two of the Canadian Obligors, Highgrade MMJ Corporation (“**Highgrade**”) and 8586985 Canada Corporation (“**858**”), are licensed producers of cannabis in accordance with the *Cannabis Act*, S.C. 2018, c. 16 (the “**Cannabis Act**”) and the regulations thereto.
11. Highgrade and 858 are the primary operating subsidiaries of MJar. Highgrade is 75.51% owned by Growforce Holdings Inc. (“**Growforce**” or the “**Canadian Borrower**”) and 858 is 100% owned by the Canadian Borrower. MJar wholly owns the Canadian Borrower.
12. Highgrade primarily operates out of a cannabis production facility located in Dunville, Ontario (the “**Dunville Facility**”), which is owned by Highgrade. 858 primarily operates out of a cannabis production facility located in Brampton, Ontario (the “**Brampton Facility**”), which is leased by 858. MJar and its subsidiaries currently employ approximately 79 employees, who are primarily located in Ontario.

The Loan Agreements

13. Pursuant to the Canadian Loan Agreement, the Agent and the Lenders made available to the Canadian Borrower a revolving demand loan in the original principal amount of \$59,060,232 (the “**Canadian Loan**”).
14. As at March 22, 2022, the total amount owing by the Canadian Borrower to the Lenders under the Canadian Loan Agreement is \$134,587,534 (the “**Canadian Indebtedness**”).
15. Pursuant to the U.S. Loan Agreement, the Agent and the Lenders made available to the U.S. Borrowers certain demand loans in the aggregate principal amount of \$32,300,000 (the “**U.S. Loans**” and together with the Canadian Loan, the “**Loans**”).
16. According to the books and records of Bridging, as at March 22, 2022, the total amount owing by the U.S. Borrowers to the Lenders under the U.S. Loan Agreement is \$43,526,613 (the “**U.S. Indebtedness**” and together with the Canadian Indebtedness, the “**Indebtedness**”).

17. As at March 22, 2022, the total amount of the Indebtedness is \$178,114,147.

Security and Guarantees granted in favour of Bridging

18. As security for all of the present and future indebtedness and obligations of the Credit Parties to the Agent and the Lenders under the Loan Agreements, the Credit Parties granted in favour of the Agent and the Lenders the following (collectively, the “**Security**”):

- (a) the Canadian Borrower GSA, in respect of which registrations were made by the Agent against the Canadian Borrower pursuant to the PPSA;
- (b) the Canadian Guarantees (including a guarantee from MJar of the Canadian Indebtedness);
- (c) the Canadian Obligor GSAs (including a GSA granted by MJar), in respect of which registrations were made by the Agent against each Canadian Obligor pursuant to the PPSA;
- (d) the Canadian Cross Guarantee (including a cross guarantee from MJar of the U.S. Indebtedness which guarantee is secured by, among other things, the MJar GSA);
- (e) the U.S. Security; and
- (f) the U.S. Cross Guarantees.

19. Based on the PPSA searches appended to the Page Affidavit, it appears that there are no registrations against the Canadian Borrower or the Canadian Obligors (including MJar) that are prior in time to the Agent’s registrations against the Canadian Borrower and the Canadian Obligors.

History of Defaults & Failed Sales Process

20. As at April 21, 2021, MJar and the other Credit Parties were in default (or were expected to be in default forthwith) of their obligations under the Loan Agreements as a result of their failure and/or inability to comply with certain provisions of the Loan Agreements (collectively, the “**Provisions**”).

21. In order to provide the Credit Parties with an opportunity to pursue strategic sale and/or restructuring alternatives (the “**Restructuring Efforts**”), the Agent and the Lenders agreed

- to temporarily waive the Provisions until May 1, 2022, pursuant to a temporary waiver agreement dated April 21, 2021 (the “**Previous Temporary Waiver Agreement**”).
22. After the appointment of the Bridging Receiver, the Credit Parties requested an extension of the temporary waiver until November 30, 2022, in order to continue to pursue strategic alternatives and avoid having a going concern qualification included in their audited financial statements. Pursuant to the Amended and Restated Temporary Waiver Agreements, the Bridging Receiver, on behalf of the Agent and the Lenders, agreed to temporarily waive the Provisions until the earlier of: (i) November 30, 2022; and (ii) the occurrence of an Event of Default.
 23. One of the primary purposes of the Amended and Restated Temporary Waiver Agreements was to allow the Credit Parties to further pursue the Restructuring Efforts with the support of the Bridging Receiver. To date, the Restructuring Efforts have largely centred around the appointment of Restructur Advisors as strategic advisor to the special committee of MJar’s board of directors and Chief Restructuring Officer of MJar (in such capacities, the “**CRO**”).
 24. The CRO launched the Canadian SISP on or around July 14, 2021. The Canadian SISP was terminated on or around December 15, 2021 on the basis that the bids received either: (i) provided insufficient value to stakeholders; or (ii) were disqualified because the bidder lacked sufficient financial resources.
 25. A similar process was undertaken in the United States. Certain of the U.S. Assets have been sold and MJar decided to pursue a non-sale strategy with respect to certain other U.S. Assets.
 26. As a result of the failure to generate any viable offers for the MJar business despite several months of marketing efforts, on or around October 27, 2021, the CRO recommended that MJar pursue a non-sale focused restructuring plan (the “**Restructuring Plan**”) or the Potential Alternative Transaction (in respect of which no details have been provided). Each of the foregoing contemplated the conversion of the Lenders’ senior secured claim into equity in a new cannabis company.

27. The Bridging Receiver does not support the Restructuring Plan or the Potential Alternative Transaction on the basis that neither of the foregoing are in the best interests of the Lenders (who appear to be the only stakeholders with an economic interest in MJar and the other Credit Parties). The Bridging Receiver is of the view that the interests of the Lenders would be better served by appointing the proposed Receiver to monetize and maximize the value of the assets under the supervision of the Court.
28. After the Bridging Receiver communicated that it did not support the Restructuring Plan or the Potential Alternative Transaction, the relationship and communication between the Bridging Receiver and the CRO and MJar began to break down. The Bridging Receiver became concerned with the status of the Restructuring Efforts and understood MJar was considering taking steps towards a potential CCAA filing.
29. In light of the foregoing concerns, counsel for the Bridging Receiver sent the February Letter to MJar's counsel, a copy of which is appended to the Page Affidavit. Following the February Letter, the Bridging Receiver and counsel had various discussions with MJar and its counsel on the path forward. The Bridging Receiver determined that a consensual insolvency filing was not in the best interest of the Lenders' stakeholders.

Demand Letter and BIA Notice

30. As a result of the foregoing, the ongoing inability of MJar to pay its debts as they become due, and the other Defaults under the Loan Agreements, the Bridging Receiver determined that the best path forward for the Lenders was to seek the appointment of the Receiver over MJar in order to run a Court-supervised sales process.
31. On March 10, 2022, the Bridging Receiver demanded payment of the Indebtedness from MJar (the "**Demand Letter**") and delivered a Notice of Intention to Enforce Security pursuant to section 244 of the BIA (the "**BIA Notice**").
32. The 10-day statutory deadline for the repayment of the Indebtedness set out in the BIA Notice expired on March 20, 2022. As at the date hereof, the Credit Parties have failed to repay the Indebtedness.

33. As a result of the Defaults (which are detailed in the Page Affidavit), pursuant to the Loan Agreements, the Bridging Receiver was entitled to demand immediate repayment from MJar of the entire Indebtedness. The Loans are now past maturity and MJar failed to make any payments in respect of the Indebtedness prior to the expiry of the 10-day notice period under the BIA Notice.
34. In addition, on March 22, 2022, as the Receiver was inquiring into the current cash balance of MJar, it became aware of certain proposed payments to professional advisors and other unsecured creditors of MJar, notwithstanding the Bridging Receiver's requests that no such payments be made. As such, by letter dated March 22, 2022 (the "**March Letter**"), the Bridging Receiver advised MJar that, among other things, the Bridging Receiver would be bringing an application forthwith to appoint the Proposed Receiver and no payments in respect of professional fees or any other expenses and arrears should be made by MJar or any of the other Credit Parties using any collateral subject to the Lenders' Security without the express prior written consent of the Bridging Receiver.

Necessity for the Appointment of a Receiver

35. The appointment of the proposed Receiver over the Property of MJar is necessary and appropriate in the circumstances as a result of the following:
 - (a) MJar has repeatedly defaulted and/or been unable to comply with its obligations to the Agent and the Lenders under the Loan Agreements and the Temporary Waiver Agreements. The Bridging Receiver, the Agent, and the Lenders have accommodated and supported MJar since April 2021 by continuing to make credit available and temporarily waiving certain defaults to provide MJar with an opportunity to pursue the Restructuring Efforts. However, the Bridging Receiver is no longer prepared to do so given the unsuccessful Restructuring Efforts and the ongoing inability of MJar to achieve profitability and otherwise pay its debts as they become due (including the outstanding excises taxes and HST). The Bridging Receiver is of the view that a continuation of the *status quo* will erode the Lenders' Security position;

- (b) as set out in the February Letter and the March Letter, there has been a breakdown in the relationship and communication between the Bridging Receiver and the CRO and MJar. The Bridging Receiver is concerned that if the *status quo* were to continue, steps may be taken contrary to the interests of the Lenders (and their Unitholders and other stakeholders);
 - (c) the Bridging Receiver is of the view that the appointment of the proposed Receiver over the Property of MJar is necessary in the circumstances to preserve, protect, and ultimately realize upon the collateral subject to the Security for the benefit of the Lenders (who appear to be the only stakeholders with an economic interest in Mjar and the other Credit Parties);
 - (d) the 10-day notice period set out in the BIA Notice has expired; and
 - (e) the Bridging Receiver is of the view that it is just and convenient to appoint a Receiver in these circumstances.
36. KSV has consented to act as Receiver, subject to obtaining a Receivership Order on terms that are satisfactory to KSV.
37. Rules 2.03, 3.02, 14.05(2), 16, 41 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, Section 243(1) of the BIA and Section 101 of the CJA.
38. Such other grounds as counsel may advise and this Court may deem just.

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

1. the Page Affidavit;
2. the consent of KSV to act as Receiver; and
3. such further and other evidence as counsel may advise and this Court may permit.

March 22, 2022

Thornton Grout Finnigan LLP

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SCHEDULE "A"
ZOOM CONFERENCE DETAILS

Join Zoom Meeting

<https://tgf-ca.zoom.us/j/89881808715>

Meeting ID: 898 8180 8715

Participant one tap mobile

+16473744685, 89881808715#,# Canada (Toronto)

Host one tap mobile

+16473744685, 89881808715# Canada (Toronto)

Dial by your location

- +1 587 328 1099 Canada (Calgary)
- +1 613 209 3054 Canada (Ottawa)
- +1 647 374 4685 Canada (Toronto)
- +1 778 907 2071 Canada (Vancouver)
- +1 204 272 7920 Canada (Winnipeg)
- +1 438 809 7799 Canada (Montreal)
- +1 312 626 6799 US (Chicago)
- +1 646 518 9805 US (New York)
- +1 786 635 1003 US (Miami)
- +1 206 337 9723 US (Seattle)
- +1 213 338 8477 US (Los Angeles)
- +1 267 831 0333 US (Philadelphia)

Meeting ID: 898 8180 8715

Find your local number: <https://tgf-ca.zoom.us/u/kedq7Ji7kO>

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the
Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended*

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(solely in its capacity as court-appointed receiver and manager of
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Applicant

MJARDIN GROUP, INC.

Responden

Court File No. CV-21-_____ -00CI

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

Proceedings commenced at Toronto, Ontario

NOTICE OF APPLICATION

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