Court File No. CV-24-00718535-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

BUSINESS DEVELOPMENT BANK OF CANADA

Applicant

- and -

1000265218 ONTARIO INC.

Respondent

APPLICATION UNDER Section 243 of the *Bankruptcy and Insolvency Act* R.S.C.1985 c. B-3, as amended, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

FACTUM OF THE APPLICANT

May 17, 2024

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TO: **SERVICE LIST**

PART I – OVERVIEW

1. The Respondent, 1000265218 Ontario Inc. (the "**Debtor**"), is indebted to the Applicant, Business Development Bank of Canada ("**BDC**"), pursuant to a loan for $10,000,000 made to the Debtor on August 3, 2022 (the "**BDC Loan**"), fully guaranteed by a related entity, Mangat Carriers Inc. ("**MCI**"), and partially guaranteed by the original (and now former) director of both the Debtor and MCI, Adnan Ahmad ("**Ahmad**, and collectively with MCI, the "**Guarantors**"), and secured by, among other things, the Applicant's first-ranking mortgage over the Debtor's property municipally known as 1 City View Drive, Toronto, Ontario (the "**City View Property**").

2. The Debtor has been in monetary default under the BDC Loan since June 23, 2023 (when the first principal payment under the BDC Loan payment was due), and has not made any payments since November 10, 2023. The Debtor has also failed to pay the property taxes on the City View Property since 2022. As of April 5, 2024, there was $125,081.60 outstanding to the City of Toronto for municipal taxes and water arrears for the City View Property (the "**Municipal Tax Arrears**").

3. As of April 8, 2024, the indebtedness owing under the BDC Loan was $10,365,588.34, excluding legal and other professional fees. Daily interest of $1,966.34 has continued to accrue since April 9, 2024.

4. BDC seeks a receivership Order (the "**Receivership Order**") appointing Grant Thornton Limited over the Debtor, including the City View Property.

5. The Debtor has not put forward any credible evidence that the Receivership Order is not just or convenient in the circumstances, because there is no such evidence. The Debtor's only "defence" is that it has entered an agreement to sell the City View Property. In fact, at the

scheduling attendance before Justice Kimmel on April 22, 2024, the Debtor's counsel confirmed that the sole basis the Debtor would advance to resist BDC's application herein was that it was "hopeful that it will be able to close a transaction [for the City View Property] before the end of May". On April 29, 2024, the Debtor's lawyer confirmed that the basis for the Debtor resisting the application was "on the basis of the pending sale transaction."

6. However, the Debtor has produced two versions of an agreement of purchase and sale for the City View Property, with no credible explanation why two versions of the agreement exist.

7. The Debtor initially relied on an agreement with a tenant at the City View Property, 2333555 Ontario Inc., also known as Road Runner Logistics ("**Road Runner**"), dated March 2, 2024 (the "**Alleged March 2 APS**"), which had a closing date of May 31, 2024. The Alleged March 2 APS was provided to BDC on March 11, 2024.

8. BDC's Application Record herein set out, among other things, the basis for BDC's doubts about the authenticity of, and the Debtor's ability to finalize, the Alleged March 2 APS.

9. Based on the Debtor's Responding Application Record, it appears to have abandoned the Alleged March 2 APS, and now relies on an agreement it purports to have with both Road Runner and another tenant at the City View Property, R&W Carriers Inc. ("**R&W Inc.**") dated March 4, 2024 (the "**Alternative March 4 APS**"), which sets out a closing date of May 30, 2024. The Alternative March 4 APS was provided to BDC on April 26, 2024.

10. The Respondent's counsel has been advised of myriad deficiencies in the Alternative March 4 APS, which have not been addressed. The agreement includes conditions that had to be fulfilled or waived by March 18, 2024, failing which it is "null and void". Those conditions were

not fulfilled or waived at all, let alone by March 18, 2024. There is no evidence of the financial ability of R&W Inc. and Road Runner to close the transaction contemplated by the Alternative March 4 APS, and no evidence that the deposit required by the agreement (a) was actually paid, and (b) was not returned following March 18, 2024 (when the conditions were not fulfilled or waived). As well, the purported deposit is wholly insufficient relative to the alleged sale price.

11. In the circumstances, there is serous doubt as to the authenticity of, and the Debtor's ability to finalize, the Alternative March 4 APS, as well.

12. Regardless, the closing date in the Alternative March 4 APS (May 30, 2024) will have passed prior to the scheduled hearing date of the herein Application (June 3, 2024).

PART II – FACTS

Background – The BDC Loan and Security

13. The Applicant BDC is a Crown Corporation that provides financing, venture capital and consulting services.[1]

14. The Debtor was incorporated pursuant to the laws of Ontario on July 21, 2022. Ahmad (who has given a limited personal guarantee) was the sole director of the Debtor at incorporation and when the BDC Loan was made in August, 2022.[2]

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[1] Application Record of BDC dated April 18, 2024 ("**Record**"), affidavit of Matthew J. Goldings sworn April 11, 2024 ("**Golding Affidavit**"), at para 8.
[2] Record, Golding Affidavit, at para 9, Exhibit "1", Debtor resolution, and para 21, Exhibit "13", Guarantees.

15. Unbeknownst to BDC at the time, Ahmad ceased being a director of the Debtor on January 17, 2023, and was replaced by his wife Sadia Basir ("**Basir**"), who is currently the Debtor's sole officer and director.[3]

16. The corporate guarantor, MCI, is a trucking company that was incorporated pursuant to the laws of Ontario on November 28, 2007. Ahmad was MCI's sole director at the time the BDC Loan was made, but was replaced by Basir on January 17, 2023.[4] MCI carries on business as a freight carrier, and leases part of the City View Property from the Debtor.[5]

17. The BDC Loan was made to the Debtor pursuant to the terms of a letter of offer of credit dated August 3, 2022 (the "**Letter of Offer**").[6]

18. The term of the BDC Loan was for 25 years. The BDC Loan required monthly fixed payments of principal, though the first principal payment in the amount of $34,330 was not due until June 23, 2023, with the remaining 299 principal payments in the amount of $33,330 due on the 23rd of the month beginning July 23, 2023.

19. Interest was also due under the BDC Loan on the 23rd day of the month beginning in August, 2022, [7] with the interest payable at BDC's floating base rate, less 1.00%. As of the date of the Letter of Offer, the interest rate under the BDC Loan was 5.80%.

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[3] Record, Golding Affidavit, at para 10, Exhibit "2" Debtor corporate profile report dated February 6, 2024, and Exhibit "3" point in time report for the Debtor as of February 2, 2024.
[4] Record, Golding Affidavit, at para 13, Exhibit "6", corporate profile report of MCI dated February 6, 2024.
[5] Record, Golding Affidavit, at para 14, Exhibit "7", lease dated September 1, 2022.
[6] Record, Golding Affidavit, at para 15, Exhibit "8", Letter of Offer.
[7] Record, Golding Affidavit, at para 16.

20. In April, 2023, the Debtor chose to lock the BDC Loan into a three-year fixed interest rate of 6.85%. The Debtor also switched to a blended fixed payment at that time, resulting in monthly blended payments of $69,723.92 beginning June 23, 2023.[8]

21. As security for the BDC Loan, among other things, the Debtor granted BDC a first mortgage over the City View Property (the "**BDC Mortgage**"), a General Assignment of Rents and Leases over the City View Property (the "**BDC GAR**"), and a General Security Agreement (the "**BDC GSA**").[9]

22. On August 10, 2022, the Guarantors each provided BDC with a guarantee in respect of the debts and liabilities of the Debtor owing to BDC under the BDC Loan (the "**Guarantees**").[10]

23. The BDC GSA and the BDC Mortgage (pursuant to Standard Charge Terms 20011) each provide for the appointment of a receiver over the Debtor's assets, including the City View Property, upon default by the Debtor.[11]

Default and Demand for Payment under the BDC Loan

24. The Debtor first defaulted under the monthly payments due under the BDC Loan on June 23, 2023 (i.e. when the first payment of principal was due), and made its last payment to BDC on November 10, 2023. It has made no payments since then.[12]

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[8] Record, Golding Affidavit, at para 17.
[9] Record, Golding Affidavit, at para 18, Exhibit "9" BDC Mortgage, Exhibit "10" BDC GSA, and Exhibit "11" BDC GAR.
[10] Record, Golding Affidavit, at para 21, Exhibit "13", Guarantees.
[11] Record, Golding Affidavit, at para 20, Exhibit "9" BDC Mortgage, para. 11(h) and Exhibit "10", BDC GSA, para. 15.1(a).
[12] Record, Golding Affidavit, at para 24.

25. By way of letter dated October 17, 2023, BDC issued a notice of breach to the Debtor and the Guarantors (the "**Breach Letter**"), setting out (among other things) that the Debtor was in monetary and non-monetary default, and that the arrears under the BDC Loan totaled $140,053.68 as of that date.[13]

26. The Debtor ignored the Breach Letter. By way of letter from BDC's counsel dated January 19, 2024, the Debtor was again advised of the arrears under the BDC Loan, as well as the various non-monetary defaults under the BDC Loan (the "**BDC Default Letter**").[14]

27. The Debtor did not remedy the defaults under the BDC Loan. Accordingly, by way of letter dated February 6, 2024, BDC's counsel made formal written demand on the Debtor for repayment of the arrears outstanding under the BDC Loan, which totaled $313,931.36 at that time, exclusive of legal costs and other fees (the "**Arrears Demand Letter**"), and gave notice of BDC's intention to enforce its security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the *"**BIA**"*). [15]

28. By way of letter dated April 8, 2024, BDC made formal written demand on the Debtor for repayment of the BDC Loan in full.[16] As of April 8, 2024, the indebtedness owing by the Debtor to BDC under the BDC Loan was $10,365,588.34, excluding legal and other professional fees, with interest continuing to accrue.[17] The Debtor had also failed to pay the Municipal Tax Arrears, which totalled $125,081.60 as of April 5, 2024.[18]

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[13] Record, Golding Affidavit, at para 25, Exhibit "14", Breach Letter.
[14] Record, Golding Affidavit, at para 27, Exhibit "16", BDC Default Letter.
[15] Record, Golding Affidavit, at para 26, Exhibit "15", Demand Letter and NITES dated February 6, 2024.
[16] Record, Golding Affidavit, at para 30, Exhibit "19", Demand Letters and NITES dated April 8, 2024.
[17] Record, Golding Affidavit, at para 28, Exhibit "17", BDC payout statement dated April 5, 2024.
[18] Record, Golding Affidavit, at para 29, Exhibit "18", tax certificate for the City View Property dated April 5, 2024.

29. The Debtor has failed to honour any of BDC's demands for payment

Occupancy Check and Rent Attornment

Occupancy Check

30. On February 15, 2024, in response to BDC's requests for production of the leases for the City View Property, counsel for the Debtor provided counsel for BDC with copies of nine third-party leases (the "**City View Leases**"), including a lease agreement between the Debtor and Iconic Global Services Corporation ("**Iconic**") dated January 1, 2023 (the "**Alleged Iconic Lease**")[19]

31. On or about February 23, 2024, MFS Property Services Inc. ("**MFS**"), performed an occupancy check for BDC of the City View Property.[20]

32. The results of the MFS occupancy check did not align with the City View Leases provided by counsel for the Debtor, as three of the nine alleged tenants at the City View Property were not located at the City View Property.[21]

Rent Attornment

33. On or about March 18, 2023, MFS served rental attornment documents on behalf of BDC on the six tenants remaining at the City View Property.[22] As of April 11, 2018, only one of the tenants, Iconic, had complied with its obligation to remit rents. However, Iconic only remitted

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[19] Record, Golding Affidavit, at para 31, Exhibit "20", email exchange between Mr. Golden and Wasef Ahmad between February 13 and February 15, 2024.
[20] Record, Golding Affidavit, at para 32, Exhibit "21", email exchange between Tom McGrath of MFS and Mr. Golden dated February 23, 2024.
[21] Record, Golding Affidavit, at para 33, Exhibit "22", MFS occupancy report dated February 27, 2024.
[22] Record, Golding Affidavit, at para 34, Exhibit "23", MFS Occupancy Check and Attornment Report dated April 4, 2024.

$2,700 in monthly rent for April, 2024, even though the Alleged Iconic Lease provided that monthly rent was $12,500 plus HST. Upon further inquiry, Iconic provided MFS with a commercial lease agreement between Iconic and the Debtor dated April 1, 2023 (the "**Alternative Iconic Lease**") that provided for monthly rent of only $2,700.[23]

The Debtor's Purported Attempts to Sell the City View Property

The Alleged March 2 APS

34. On March 11, 2024, counsel for BDC was provided with the Alleged March 2 APS between the Debtor and Road Runner.[24] Contrary to what is set out below, on March 12, 2024, counsel for the Debtor provided counsel for BDC with a purported Notice of Fulfillment of Conditions between the Debtor and Road Runner dated March 11, 2024 (the "**Road Runner Notice of Fulfillment**").[25]

35. BDC had significant concerns with the Alleged March 2 APS, including:

(a) the directors listed on the Road Runner's corporate profile report (Abdul Manan Khan and Abdul Wahab Rana), one of whom (Abdul Wahab Rana) signed the Alleged March 2 APS on behalf of Road Runner, were different than the individual who signed as Road Runner's director in respect of its lease for the City View Property (Sajjad Ahmad).[26]

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[23] Record, Golding Affidavit, at para 35 – 36, Exhibit "24" Iconic attornment documents, and Exhibit "25", Alternative Iconic Lease.
[24] Record, Golding Affidavit, at para 39, Confidential Exhibit "B", Alleged APS.
[25] Record, Golding Affidavit, at para 39, Confidential Exhibit "C", Notice of Fulfillment of Conditions
[26] Record, Golding Affidavit, at paras 42 – 43, Exhibit "27" lease agreement between Road Runner and the Debtor dated November 1, 2022, "28" Corporate Profile report of the Alleged Purchased dated April 8, 2024.

(b) the deposit under the Alleged March 2 APS was insufficient relative to the purported purchase price, and there was no evidence that the deposit had been paid;

(c) there was no evidence of Road Runner's financial ability to close on the Alleged March 2 APS, or of it having secured financing from a lender;

(d) the Alleged March 2 APS is conditional on an inspection by a "Home Inspector", and the obtaining of a report satisfactory to Road Runner (the "**Buyer's Home Inspection Condition**");

(e) the Alleged March 2 APS is conditional "upon the terms hereof by the Sellers [sic] solicitor and their financial implications for the Seller" (the "**Seller's Financing Condition**");

(f) both the Buyer's Home Inspection Condition and the Seller's Financing Condition had to be fulfilled or waived in writing by March 8, 2024, failing which the Alleged March 2 APS "shall be null and void". The Road Runner Notice of Fulfillment references both the Buyer's Home Inspection Condition and the Seller's Financing Condition, but is signed only by Road Runner. As well, it is dated March 12, 2024 (after the condition period). Accordingly, the Alleged March 2 APS is "null and void" according to its terms.

36. A scheduling attendance in this matter that took place on April 22, 2024 before Justice Kimmel. At that time, the Debtor's lawyer asked that the application be returnable in early-June, to allow for the closing of the sale of the City View Property. The hearing was booked for the first available date in June, being June 3, 2024. In Justice Kimmel's Endorsement, Her Honour noted

that BDC was "skeptical about [the Alleged March 2 APS] transaction because, among other reasons, it was subject to conditions that have not been waived."[27]

The Alternative March 4 APS

37. The Debtor has abandoned the Alleged March 2 APS, and now seeks to rely on the Alternative March 4 APS that was provided to BDC on April 26, 2024. The Debtor's "explanation" for this change of position was set out in an email from its counsel to BDC's counsel dated April 29, 2024, and was that the Alternative March 4 APS was entered into "in light of issues concerning the Alleged [March 2] APS."[28]

38. As with the Alleged March 2 APS, BDC has significant concerns with the Alternative March 4 APS, some of which overlap:

(a) instead of Road Runner, just the purchasers in the Alternative March 4 APS are Road Runner and another City View Property Tenant, R&W Inc. (the "**Purported Purchasers**"). The signatory for Road Runner is Abdul Wahab Rana, but, again, Road Runner's lease for the City View Property was signed by Sajjad Ahmad;

(b) the deposit under the Alternative March 4 APS is the same amount as under the Alleged March 2 APS, and continues to be insufficient relative to the purported purchase price in the new agreement, with no evidence that the deposit had been paid;

(c) not only is there no evidence of the Purported Purchasers' financial ability to close on the Alternative March 4 APS, the only evidence regarding financing is an email

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[27] Endorsement of Justice Kimmel dated April 22, 2024.
[28] Supplementary Record of BDC dated May 9, 2024 ("**Supplementary Record**"), affidavit of Kelly Vickers sworn May 9, 2024 ("**Vickers Affidavit**"), at para 5, Exhibit "2", Email from Aneal Seegobin dated April 29, 2024.

from RBC to R&W Inc. dated April 19, 2024, advising that RBC would "try our level best to provide our decision before the closing of 30th may [sic] 2024";[29]

(d) the Alternative March 4 APS includes a condition almost identical to the Seller's Financial Condition in the Alleged March 2 APS, though with a condition period that expired on March 18, 2024. There is no evidence that the condition was fulfilled or waived in writing by that date, and accordingly the Alternative March 4 APS is "null and void" according to its terms;

(e) the Alternative March 4 APS includes a condition that the Purported Purchasers be provided with a Phase 1 environmental report for the City View Property, or if one is not available, a Phase 2 environmental report (the "**Purchasers' Environmental Condition**").[30] It also requires a building condition report, though this condition is expressly stated to be in favour of the "Seller" (which is likely a drafting error), and can only be waived "at the Sellers [sic] sole option by notice in writing to the Buyer" (the "**Building Report Condition**").[31] There is no set deadline in the Alternative March 4 APS for the fulfillment or waiver of the Buyers' Environmental Condition. The Building Report Condition, however, had to be fulfilled or waived in writing by March 18, 2024; and,

(f) the Debtor produced a "Notice of Fulfillment of Conditions" dated March 12, 2024 in respect of the Alternative March 4 APS (the "**Purported Waiver**"), signed by the Purported Purchasers.[32] However, the Purported Waiver is not in respect of either the Purchaser's Environmental Condition nor the Building Report Condition,

[29] Supplementary Record, Vickers Affidavit, at para 4, Exhibit "4", email from RBC dated April 19, 2024.
[30] Responding Record, Ahmad Affidavit, Exhibit "A", Alternative March 4 APS – Schedule A.
[31] Ibid.
[32] Responding Record, Ahmad Affidavit, Exhibit "D", Notice of Fulfillment dated March 12, 2024.

or any other condition in the Alternative March 4 APS. It appears that the Road Runner Notice of Fulfillment dated March 12, 2024 (delivered in respect of the Alleged March 2 APS) was simply used as a precedent for the Purported Waiver, and so the Purported Waiver references the conditions in the Alleged March 2 APS instead of the Alternative March 4 APS.

39. By way of email dated April 29, 2024, the Debtor's lawyer advised BDC's lawyer that the Alternative March 4 APS was the basis for the Debtor resisting BDC's application to appoint a Receiver.[33] However, that Alternative March 4 APS has been deemed null and void since March 18, 2024, given the fact that the various conditions referenced above were not fulfilled or waived in writing by that date.

PART III – ISSUES

40. The following issues are raised on this Application:

(a) whether it is just and convenient to appoint a Receiver over the Debtor, including the City View Property; and,

(b) whether a sealing order should be granted, sealing those documents and materials marked as "Confidential" pending further order of the Court.

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[33] Supplementary Record, Vickers Affidavit, at para 5, Exhibit "2", Email from Aneal Seegobin dated April 29, 2024.

PART IV – LAW AND ARGUMENT

A. A Receiver and Manager Should be Appointed

i. *Test to Appoint a Receiver*

41. Pursuant to section 243(1) of the *BIA* and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the "***CJA***"), the Court may appoint a receiver and manager where it is "just or convenient" to do so.

42. In determining whether it is just or convenient to appoint a receiver, a 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". The Applicant need not establish that it will suffer irreparable harm if the proposed receiver is not appointed.[34]

43. 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.[35] The extraordinary nature of a receiver "is significantly reduced when dealing with a secured creditor who has the right to a receivership under its security arrangements." The appointment of a receiver "becomes even less extraordinary when dealing with a default under a mortgage".[36]

44. Where, as here, a secured creditor seeks to enforce a term of an agreement assented to by the parties, the inquiry as to whether it is just and convenient to appoint a receiver requires the Court to determine whether it is in the interests of all concerned to have the receiver appointed. In making such determination, courts are informed by the following factors, among others:

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[34] *Bank of Montreal v Carnival National Leasing Limited*, 2011 ONSC 1007, at paras 24 and 28.
[35] *Potentia Renewables Inc. v. Deltro Electric Ltd.*, 2018 ONSC 3437, at paras 47-48, aff'd 2019 ONCA 779.
[36] *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc*, 2020 ONSC 1953, at paras 43-44.

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

(b) relationship between the debtor and its creditors;

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

(d) loss of confidence in the debtor's management.[37]

i. *It is Just and Convenient to Appoint a Receiver*

45. Having regard to the forgoing considerations, in the case at bar it is just and convenient to appoint a Receiver given that:

(a) the BDC Loan as been in default since June 23, 2023, with last payment to BDC being made on November 10, 2023;

(b) notwithstanding the issuance of several demands and the section 244 *BIA* notices, the Debtor has failed to repay the BDC Loan;

(c) the outstanding Municipal Tax Arrears total over $125,000, and have not been paid since 2022;

(d) the BDC Mortgage and BDC GSA contain contractual entitlements to appoint a receiver upon default;

(e) the Debtor has abandoned the Alleged March 2 APS, and the Alternative March 4 APS is null and void. There will be no sale of the City View Property under either agreement;

(f) BDC has lost faith in the ability of management of the Debtor to rectify the situation;

[37] *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc*, 2020 ONSC 1953, at para 45.

(g) a Court-appointed receiver will ensure that the interests of all of the Debtor's stakeholders are considered for achieving a definitive disposition of the City View Property.

B. A Sealing Order Should be Granted in the Present Circumstances

i. *The Test for a Sealing Order*

46. Section 137(2) of the *CJA* provides that the Court may order any document filed in a civil proceeding to be treated as confidential, sealed and not part of the public record.

47. As set out in *Sherman Estate v Donovan ("**Sherman Estate**"),* in order to satisfy the court of the necessity of a sealing order, an Applicant seeking a sealing order must establish that:

(a) court openness poses a serious risk to an important public interest;

(b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and

(c) as a matter of proportionality, the benefits of the order outweigh its negative effects.[38]

i. *The Test for a Sealing Order is met*

48. There are three confidential exhibits attached to the Golding Affidavit, as confidential exhibits A through C (the "**Confidential Exhibits**").

49. An Order sealing all of the Confidential Exhibits will ensure that the information therein remains confidential to protect the business and commercial interests of BDC as well as the Debtor.

[38] *Sherman Estate v. Donovan*, 2021 SCC 25, at para 38.

50. Dissemination of the information contains in the Confidential Exhibits, would pose a legitimate risk to the commercial interests of stakeholders.[39]

51. The benefits of sealing the Confidential Exhibits outweigh the negative effect. Accordingly, the test from *Sherman Estate* has been met, and a sealing order ought to be granted.

PART V – ORDER REQUESTED

52. BDC respectfully requests Orders appointing a receiver and manager of all of the assets, undertaking and properties of the Debtor, including the City View Property, and sealing the Confidential Exhibits.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of May, 2024.

ERIC GOLDEN/CHAD KOPACH
Lawyers for Business Development Bank of Canada

[39] *Just Energy Group Inc. et al v Morgan Stanley Capital Group Inc. et al*, 2022 ONSC 6354 at 72.

SCHEDULE "A"
LIST OF AUTHORITIES

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

2. *Potentia Renewables Inc. v. Deltro Electric Ltd.*, 2018 ONSC 3437

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

4. *Sherman Estate v. Donovan*, 2021 SCC 25

5. *Just Energy Group Inc. et al v Morgan Stanley Capital Group Inc. et al*, 2022 ONSC 6354

SCHEDULE "B"
RELEVANT STATUTES

***Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3**

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.

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

The Court may appoint a receiver

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).

The Court may grant a sealing order

Documents public

137 (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Court File No. CV-24-00718535-00CL

BUSINESS DEVELOPMENT BANK OF CANADA and **1000265218 ONTARIO INC.**

Applicant | Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

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