

**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:

**C & K MORTGAGE SERVICES INC.**

Applicant

-and-

**2781774 ONTARIO INC.**

Respondent

**MOTION RECORD OF ROSEN GOLDBERG INC.**  
*(Returnable November 29, 2022 at 10:00 am via Zoom Video Conference)*

November 28, 2022

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Lawyers for the Court-appointed receiver,  
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**TO: SERVICE LIST**

**SERVICE LIST**

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Court-appointed receiver

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**AND TO: HER MAJESTY THE QUEEN IN RIGHT OF THE  
PROVINCE OF ONTARIO AS REPRESENTED BY  
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# TAB 1

Court File No. CV-22-00684807-00CL

***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:

*(Court Seal)*

**C & K MORTGAGE SERVICES INC.**

Applicant

- and -

**2781774 ONTARIO INC.**

Respondent

**NOTICE OF MOTION**

**ROSEN GOLDBERG INC.**, in its capacity as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of the Respondent 2781774 Ontario Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including the property municipally known as 315 Brock Road South, in Puslinch, Ontario (the “**Property**”), and all proceeds thereof, will make a Motion to a Judge presiding over the Commercial List on Tuesday, November 29, 2022, at 10:00 am by Zoom videoconference.

**THE MOTION IS FOR:**

1. an Order substantially in the form attached as Schedule “A” hereto:
  - (i) abridging the time for service and validating service of this Notice of Motion and the Motion Record so that the Motion is properly returnable on November 29, 2022 and dispensing with further service thereof;
  - (ii) an Order approving the first report of the Receiver dated November 26, 2022 (the “**First Report**”) and the activities and proposed activities of the Receiver as set out in the First Report;
  - (iii) an Order assigning the Debtor’s right, title and interests in certain causes of action against 2335320 Ontario Inc. (“**233**”), Muhammad Latif and Sohan Kansal (and together with 233, collectively, the “**233 Defendants**”) to the Debtor’s principals, Dipal Patel, Jignesh Kumar Patel and Vishal Patel (collectively, the “**Debtor’s Principals**”); and
2. such further and other relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. The Receiver was appointed receiver and manager of the Debtor, including the Property, by order of Justice Dietrich dated August 4, 2022;
2. The Property is a 0.76 acre parcel improved with a one storey, 2,884 sq. ft. building and eight gas pumps upon which the Debtor operates a “Pioneer” gas station and “On the Run” convenience store;

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3. Upon its appointment, the Receiver attended at the Property and observed that gas pumps were need of service, the convenience store was short of inventory and the propane refill station was not operational;
4. A tenant of the Property has raised concerns about trees obstructing its signage. The Receiver has engaged a planner to prepare the required submission to the Township of Puslinch to address the issues as the adjacent property owner was not receptive to the Receiver's offer to pay for trimming the trees;
5. Rather than immediately bring the Property to market following its appointment, the Receiver determined that the better course would be to put the gas station and convenience store on a stabilized footing by completing equipment repairs, activating lottery machines, activating the propane refill station, and maintaining full inventory in the convenience store in order to build up volume;
6. The Debtor's Principals assert that certain misrepresentations, were made to the Debtor and other actionable wrongs were committed by the 233 Defendants (collectively, the "**Debtor's Causes of Action**") in connection with the Debtor's purchase of the Property from 233 on December 2, 2020;
7. The Receiver does not have the resources to fund the expenses to pursue the Debtor's Causes of Action, and the Applicant, C & K Mortgage Services Inc. ("**C & K**"), is not prepared to fund those expenses. The Receiver, however, is agreeable to the Debtor's right, title and interests being assigned to the Debtor's Principals provided that such assignment remained subject to the security of C & K;

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8. Sections 243, 246(1), 248 and 249 of the BIA, section 101 of the CJA, and rules 3.02(1), 5.02, 16.08 of the *Rules of Civil Procedure*; and
9. Such further and other grounds as the lawyers may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion

1. The First Report of the Receiver dated November 26, 2022;
2. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

November 28, 2022

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Lawyers for the Court-appointed Receiver, Rosen  
Goldberg Inc.

**TO: ATTACHED SERVICE LIST**



Schedule "A"

Court File No. CV-22-00684807-00CL

**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**

THE HONOURABLE	)	TUESDAY, THE 29TH
	)	
JUSTICE KIMMEL	)	DAY OF NOVEMBER, 2022

B E T W E E N:

**C & K MORTGAGE SERVICES INC.**

Applicant

- and -

**2781774 ONTARIO INC.**

Respondent

**ORDER**

**THIS MOTION** made by Rosen Goldberg Inc. in its capacity receiver and manager (in such capacities, the “**Receiver**”) of all of the assets, undertakings and properties of 2781774 Ontario Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including the lands and premises municipally known as 315 Brock Road South, in Puslinch, Ontario, was heard this day by Zoom judicial videoconference.

**ON READING** the Notice of Motion, the First Report of the Receiver dated November 26, 2022 (the “**First Report**”), and upon hearing the submissions of counsel for the Receiver, counsel for Dipal Patel, Jignesh Kumar Patel and Vishal Patel (collectively, the “**Plaintiffs**”), no one else appearing for any other person on the service list, although served,

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

2. **THIS COURT ORDERS** that the First Report and the activities and proposed activities of the Receiver set out in the First Report be and are hereby approved.

3. **THIS COURT ORDERS** that all of the right, title and interests of the Debtor in and to the claims and causes of action against 2335320 Ontario Inc., Muhammad Latif and Sohan Kansal (collectively, the “**Defendants**”) asserted in the draft statement of claim attached hereto as Schedule “A” (collectively, the “**Claims**”) be and are hereby assigned to the Plaintiffs, subject to the rights and security of C & K Mortgage Services Inc. (the “**Applicant**”) in the Claims and the proceeds thereof.

4. **THIS COURT ORDERS** that the Plaintiffs be and are hereby authorized to commence, prosecute and continue the Claims in their own names and at their own risk and expense.

5. **THIS COURT ORDERS** that the Plaintiffs shall provide the Applicant with periodic reports on the status of the Claims, and shall not settle or compromise the Claims for an amount

less than the amount of the indebtedness then owing by the Debtor to the Applicant, except with the prior written consent of the Applicant.

6. **THIS COURT ORDERS** that net of legal fees and disbursements incurred by the Plaintiffs in connection with the Claims, the proceeds realized from the Claims shall be paid firstly to the Applicant until the indebtedness then owing by the Debtor to the Applicant is satisfied in full.

7. **THIS COURT ORDERS** that the Plaintiffs shall be entitled to the surplus proceeds of the Claims and all benefits of the Claims remaining after the indebtedness then owing by the Debtor to the Applicant is satisfied in full.

8. **THIS COURT ORDERS** that the Plaintiffs shall execute and deliver to the Applicant a security agreement in form and content satisfactory to counsel for the Applicant, granting the Applicant a security interest in the Claims and the proceeds thereof, as security for the performance and payment by the Plaintiffs of their obligations to the Applicant pursuant to this Order.

9. **THIS COURT ORDERS** that this Order is without prejudice to the rights of the Applicant to assert such claims or causes of action that it may have against the Defendants, or any of them.

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**C & K MORTGAGE SERVICES INC.**  
Applicant

-and- **2781774 ONTARIO INC.**  
Respondent

Court File No. CV-22-00684807-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
PROCEEDING COMMENCED AT  
TORONTO**

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**ORDER**

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**DICKINSON WRIGHT LLP**

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**C & K MORTGAGE SERVICES INC.**  
Applicant

-and- **2781774 ONTARIO INC.**  
Respondent

Court File No. CV-22-00684807-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF MOTION**

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Lawyers for the Court-appointed Receiver, Rosen Goldberg  
Inc.

# TAB 2



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

Court File No. CV-22-00684807-00CL

**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**

**BETWEEN:**

**C & K MORTGAGE SERVICES INC.**

Applicant

- and -

**2781774 ONTARIO INC**

Respondent

**FIRST REPORT OF ROSEN GOLDBERG INC.**

**November 26, 2022**

**I. INTRODUCTION**

1. By Order of Justice Dietrich dated August 4, 2022 (the “**Appointment Order**”), Rosen Goldberg Inc. was appointed receiver and manager (in such capacities, the “**Receiver**”) of all of the assets, undertakings and properties of 2781774 Ontario Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including the lands and premises municipally known as 315 Brock Road South, in Puslinch, Ontario (the



“**Property**”) and all proceeds thereof, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* and Section 101 of the *Court of Justice Act*. A copy of the Appointment Order is attached as **Appendix A**. A copy of Justice Dietrich’s endorsement in connection with granting the Appointment Order is attached as **Appendix B**.

## II. TERMS OF REFERENCE

2. In preparing this First Report, the Receiver has relied upon information from third party sources (collectively, the “**Information**”). Certain information contained in this First Report may refer to, or be based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Receiver has relied on this Information, and to the extent possible reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy and completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

## III. PURPOSE OF THIS REPORT

3. The purpose of this First Report is to:
  - (a) report on the Receiver’s activities and proposed activities since its appointment; and
  - (b) recommend that an Order be granted assigning the Debtor’s right, title and interests in certain causes of action against 2335320 Ontario Inc. (“**233**”), Muhammad Latif and Sohan Kansal (and together with 233, collectively, the “**233 Defendants**”) to the Debtor’s principals, Dipal Patel, Jignesh Kumar Patel and Vishal Patel (collectively, the “**Debtor’s Principals**”).





#### IV. BACKGROUND

4. The Property is a 0.76 acre parcel improved with a one storey, 2,884 sq. ft. building and eight gas pumps upon which the Debtor operates a Pioneer gas station and “On the Run” convenience store. A portion of the building is leased to Redberry Crown Restaurants GP Inc., as general partner of Redberry Crown Restaurants LP (the “**Tenant**”) and operated as a Burger King restaurant.
5. The Property is subject to a \$4M first mortgage registered favour the Applicant C & K Mortgage Services Inc. (“**C & K**”) and a \$150K second mortgage registered in favour of Parkland Corporation (“**Parkland**”). Parkland’s second mortgage collaterally secures certain obligations of the Debtor’s predecessor-in-title under a Dealer Commission Plan and Equipment Loan Agreement in connection with the gas station.
6. C & K’s loan to the Debtor is also secured under a general security agreement given by the Debtor, notice of which is registered under the *PPSA*. C & K is the only *PPSA* registrant against the Debtor.
7. The Appointment Order was obtained upon application by C & K, and with the Debtor’s consent, following the Debtor’s failure to pay monthly interest due under its loan from C & K and the Debtor’s advice that it did not wish to remain in possession of the Property.

#### V. RECEIVER’S ACTIVITIES

8. Upon its appointment, the Receiver attended at the Property and observed that gas pumps were need of service, the convenience store was short of inventory and the propane refill station was not operational.



9. Since its appointment, the Receiver has undertaken the following activities;
- Made numerous attendances at the site;
  - Changed all supplier accounts to the name of Receiver;
  - Dealt with equipment repairs and ongoing maintenance of equipment;
  - Caused lottery machines to be reactivated;
  - Activated the propane refill station;
  - Filled and maintained convenience store inventory;
  - Placed insurance over the Property;
  - Had ongoing dealings with Parkland regarding the operation of the gas station;
  - Appointed a gas station and convenience store manager;
  - Had ongoing communication with the gas station and convenience store manager;
  - Reviewed daily reporting of gas station and convenience store and reconciliation of cash;
  - Communicated with one of the Debtor's Principals, Vishal Patel, for information gathering purposes;
  - Communicated through the Receiver's counsel with counsel for the Debtor's Principals;
  - Communicated with C & K;
  - Directed the Tenant to pay monthly rent to the Receiver and had ongoing communication with the Tenant regarding its concerns as described below;
  - Engaged a planner to assist the Receiver in addressing the Tenant's concerns with the Township of Puslinch;
  - Communicated with two prospective real estate brokers regarding listing the Property for sale.
10. After the Receiver directed the Tenant to pay rent to the Receiver, the Tenant raised concerns that its signage is obstructed by trees on an adjacent property. The obstruction of its signage



interferes with the visibility of the restaurant to road traffic and, the Tenant believes, negatively impacts sales. The Receiver contacted the adjacent property owner, who was not receptive to the Receiver's offer to pay for trimming the trees. The Receiver then contacted the Township, who indicated that it would be receptive to assisting in resolving the concerns. The Receiver has, therefore, engaged a planner to prepare the required submission to the Township.

11. Rather than immediately bring the Property to market following its appointment, the Receiver determined that the better course would be to put the gas station and convenience store on a stabilized footing by completing equipment repairs, activating lottery machines, activating the propane refill station, and maintaining full inventory in the convenience store in order to build up volume.
12. Having operated for some time, the Receiver recently engaged with two prospective real estate brokers with regard to listing the Property for sale. The Receiver intends to sign a listing agreement prior to December 16, 2022.

## VI. ASSIGNMENT OF CAUSES ACTION

13. The Debtor's Principals assert that certain misrepresentations, were made to the Debtor and other actionable wrongs were committed by the 233 Defendants (collectively, the "**Debtor's Causes of Action**") in connection with the Debtor's purchase of the Property from 233 on December 2, 2020.
14. The Debtor's Principals enquired whether the Receiver intended to pursue the Causes of Action. As the Debtor's Causes of Action are charged in favour of C & K under its general security with the Debtor, the Receiver reviewed the matter and consulted with C & K. C & K confirmed that although it was not prepared to fund the Receiver's expenses in pursuing the Debtor's Causes of Action, it was prepared to agree to the Debtor's right, title and



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

interests being assigned to the Debtor's Principals provided that such assignment remained subject to C & K's security.

15. A copy of the Debtor's Principals' draft Statement of Claim encapsulating the Debtor's Causes of Action is attached as **Appendix C**.

## **VII. CONCLUSION**

16. On the basis of the foregoing, the Receiver recommends that this Honourable Court approve the Receiver's activities and proposed activities described in this First Report and grant an Order assigning the Debtor's Causes of Action to the Debtor's Principals according to the terms of the draft Order attached to the Receiver's Notice of Motion.

All of which is respectfully submitted,

Dated at Toronto, Ontario, this 26th day of November, 2022.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS  
COURT-APPOINTED RECEIVER OF  
THE PROPERTY, AND NOT IN A PERSONAL OR CORPORATE CAPACITY**

# Appendix A

Court File No. CV-22-00684807-00CL

**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**

THE HONOURABLE	)	THURSDAY, THE 4TH
	)	
JUSTICE DIETRICH	)	DAY OF AUGUST, 2022

**C & K MORTGAGE SERVICES INC.**

Applicant

- and -

**2781774 ONTARIO INC.**

Respondent

**ORDER**  
**(appointing Receiver)**

THIS APPLICATION made by the Applicant C & K Mortgage Services Inc. for an 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”) appointing Rosen Goldberg Inc. as receiver and manager (in such capacities, the “Receiver”) without security, of all of the assets, undertakings and properties of the Respondent

2781774 Ontario Inc. (the “Debtor”) acquired for, or used in relation to a business carried on by the Debtor, was heard this day by Zoom judicial videoconference.

ON READING the Affidavit of Gary Gruneir sworn July 29, 2022 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant and counsel for the Debtor and being advised of the consent of the Debtor to the within Order, no one else on the service list appearing, although duly served as appears from the Affidavit of Service of Janet C. Nairne sworn July 29, 2022 and on reading the consent of Rosen Goldberg Inc. to act as the Receiver,

### **SERVICE**

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

### **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Rosen Goldberg Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including the lands and premises municipally known as 315 Brock Road South, in Puslinch, Ontario and legally described in Schedule “A” attached hereto, and all proceeds thereof (the “Property”).

### **RECEIVER’S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, rents, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, ~~experts, auditors, accountants,~~ *Dietrich J.* managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies, rents and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter



instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “Persons” and each being a “Person”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease,

such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a “Proceeding”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

**RECEIVER TO HOLD FUNDS**

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

**EMPLOYEES**

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such

amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

### **PIPEDA**

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “Sale”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “Possession”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the “Environmental Legislation”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order,

be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “Receiver’s Borrowings Charge”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “B” hereto (the “Receiver’s Certificates”) for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver’s Certificates.

#### **SERVICE AND NOTICE**

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to



Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [http://www.rosengoldberg.com/company-files.php?company\\_id=79](http://www.rosengoldberg.com/company-files.php?company_id=79).

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

27. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

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

30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within

proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

A handwritten signature in cursive script, reading "Dietrich J.", is positioned above a horizontal line that spans the width of the signature.

**SCHEDULE "A"****LANDS AND PREMISES**

<i>PIN</i>		<i>Interest/Estate</i>	<i>Fee Simple</i>
<i>Description</i>	71196 - 0246 LT		
	PT LTS 27, 28 CON 7 PUSLINCH, PT 2 & 3, PL 61R-20589; TOGETHER WITH ANEASEMENT OVER PT LTS 27, 28 CON 7 PUSLINCH DES PT 1 PL 61R-20589 AS IN WC442361; TOWNSHIP OF PUSLINCH		

**SCHEDULE "B"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. •

AMOUNT \$•

1. THIS IS TO CERTIFY that Rosen Goldberg Inc., the receiver (the "Receiver") of the assets, undertakings and properties of 2781774 Ontario Inc. (the "Debtor"), including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 4th day of August, 2022 (the "Order") made in an application having Court file number CV-22-00684807-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$•, being part of the total principal sum of \$• which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the • day of each month] after the date hereof at a notional rate per annum equal to the rate of • per cent above the prime commercial lending rate of Bank of • from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the • day of •, 20•.

ROSEN GOLDBERG INC., solely in its  
capacity as Receiver of the Property, and not in  
its personal capacity

Per: \_\_\_\_\_

Name:

Title:

**C & K MORTGAGE SERVICES INC.**  
Applicant

-and- **2781774 ONTARIO INC.**  
Respondent

Court File No.

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
PROCEEDING COMMENCED AT  
TORONTO**

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**ORDER APPOINTING RECEIVER**

---

**DICKINSON WRIGHT LLP**

Barristers & Solicitors  
199 Bay Street  
Suite 2200, P.O. Box 447  
Commerce Court Postal Station  
Toronto, Ontario, M5L 1G4

**DAVID P. PREGER (36870L)**

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**ALYSSANDRA ANTONANGELI (82115T)**

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Lawyers for the Applicant

## Appendix B



SUPERIOR COURT OF JUSTICE  
**COUNSEL SLIP**

COURT FILE

NO.: (New Matter)

DATE: 04-AUG-2022

3

TITLE OF  
PROCEEDING  
BEFORE JUSTICE

C&K MORTGAGE SERVICES v. 2781774 ONT

**NAMES OF COUNSEL AND PARTY:**

APPLICANT(S)

- D. Preger

- A. Antonangeli

PLAINTIFF(S)

PHONE

EMAIL

[dpreger@dickinson-wright.com](mailto:dpreger@dickinson-wright.com);  
[aantonangeli@dickinson-wright.com](mailto:aantonangeli@dickinson-wright.com)

**NAMES OF COUNSEL AND PARTY:**

RESPONDENT(S)

- M. Simaan

RESPONDENT(S)

DEFENDANT(S)

DEFENDANT(S)

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**NAMES OF COUNSEL AND OTHER PARTIES:**

B. Rosen

PHONE

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PHONE

EMAIL

**ENDORSEMENT OF JUSTICE :**



[1] The applicant C & K Mortgage Services Inc. seeks an order pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act* and s. 101 of the *Courts of Justice Act* appointing Rosen Goldberg Inc. as the receiver over of the assets, undertakings and properties of the respondent 2781774 Ontario Inc. (the "Debtor") acquired for or used in relation to a business carried on by the Debtor.

[2] The court may appoint a receiver where it considers it to be just and convenient to do so.

[3] I have considered the relevant factors relating to the appointment of a receiver, as set out in the jurisprudence. I have also considered the relevant circumstances, including the nature of the property, and the rights and interests of all parties in relation thereto. I am satisfied that it is just and convenient to order the appointment of a receiver in this case. Rosen Goldberg Inc. has agreed to take on the role of receiver.

[4] The Debtor has said that it does not wish to remain in possession of the gas station on the land subject to the applicant's charge. The applicant submits that the value of its security could be seriously impaired if the gas station ceases to be operated as a result of the Debtor's abandonment of the property.

[5] The Debtor consents to the appointment of a receiver. The Debtor was represented by counsel at this hearing.

[6] The applicant is a first-ranking secured creditor in connection with a \$4 million loan. The loan matured on December 1, 2021 and was not repaid. Monthly interest is not being paid. The applicant also has a first-ranking general assignment of rents and a general security agreement.

[7] Based on the foregoing, I am satisfied that it is just and convenient that a receiver be appointed to ensure the continued operation of the gas station and a proper marketing and sale of the land having regard to the interests of all the stakeholders.

[8] There is no opposition to the applicant's application.

[9] An order shall issue in the form attached hereto and signed by me. The Order is effective as of today's date, and it does not need to be entered.

*Dietrich J.*

## Appendix C

Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

DIPAL PATEL, JIGNESH KUMAR PATEL and VISHAL PATEL

Plaintiffs

- and -

2335320 ONTARIO INC., MUHAMMAD LATIF and SOHAN KANSAL

Defendants

**STATEMENT OF CLAIM**

**TO THE DEFENDANTS:**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the plaintiff. The claim made against you is set out in the following pages.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU, IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

**IF YOU PAY THE PLAINTIFF'S CLAIM** and \$2,500.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

**TAKE NOTICE THIS ACTION WILL AUTOMATICALLY BE DISMISSED** if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: November \_\_\_\_, 2022

Issued by: Local registrar

Address of Court House:  
330 University Avenue  
Toronto, Ontario M5G 1E6

**TO: 2335320 ONTARIO INC.**  
8 Cortese Terrace  
Thornhill, Ontario  
L4J 8S4

**AND TO: MUHAMMAD LATIF**  
15 Pleasant Valley Drive  
Stouffville, Ontario  
L4A 7X4

**AND TO: SOHAN KANSAL**  
8 Cortese Terrace  
Thornhill, Ontario  
L4J 8S4

## CLAIM

1. The Plaintiffs claim against the Defendants, 2335320 Ontario Inc. (the "Vendor"), Muhammad Latif ("Latif") and Sohan Kansal ("Kansal") (collectively, the "Vendor Defendants"):

- a) Damages in the amount of \$8,000,000.00 for fraudulent misrepresentation, breach of contract, deceit and the breach of duty of good faith and honest performance;
- b) Punitive, aggravated and exemplary damages in the amount of \$100,000.00;
- c) A Declaration that any judgment granted as against the Vendor Defendants, or any one of them, constitutes a debt or liability that shall not be released by an order of discharge from bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, or any similar statute or regulation;
- d) Pre and post-judgment interest in the accordance with the *Courts of Justice Act*;
- e) Costs of this action; and
- f) Such further and other relief as this Honourable Court may permit.

## THE PARTIES

2. The Plaintiff, Dipal Patel ("Dipal") is an individual residing in the Town of Port Hope, in the Province of Ontario. At all material times, Dipal was a shareholder, officer and director of 2781774 Ontario Inc. (the "Purchaser").

3. The Plaintiff, Jignesh Kumar Patel (“Jignesh”) is an individual residing in the City of Toronto in the Province of Ontario. At all material times, Jignesh was also a shareholder, officer and director of the Purchaser.

4. The Plaintiff, Vishal Patel (“Vishal”) is an individual residing in the City of Vaughan, in the Province of Ontario. At all material times, Vishal was also a shareholder, officer and director of the Purchaser.

5. By way of a Court Order dated November 29, 2022, all rights, title and interest of the Purchaser in respect of the claims herein were assigned to the Plaintiffs.

6. The Vendor is an entity incorporated pursuant to the laws of the Province of Ontario.

7. Latif is an individual who resides in the Province of Ontario. At all material times, Latif was an officer, director and/or principal of the Vendor.

8. Kansal is also an individual who resides in the Province of Ontario. At all material times, Kansal was also an officer, director and/or principal of the Vendor.

9. Latif and Kansal are hereinafter referred to as the “Vendor Principals”.

10. The Plaintiffs state that to the extent that either of Latif or Kansal are not principals of the Vendor, then their actions as described herein were conducted solely on their personal behalf.

#### **THE VENDOR’S SALE OF THE GAS STATION TO THE PURCHASER**

11. On or about June 19, 2020, the Purchaser and the Vendor entered into an agreement and purchase of sale (the “APS”).

12. Pursuant to the APS, the Vendor agreed to sell the property municipally known as 315 Brock Road South, Guelph, Ontario (the "Property"), inclusive of a gas station and convenience store thereon (the "Business") to the Purchaser (the "Transaction").

13. The purchase price for the Transaction was agreed to at \$4,425,000 based principally upon certain representations by the Vendor and the Vendor Principals as to certain sales volumes of the Business.

14. The representations of the Vendor and the Vendor Principals were further made to, and used to prepare a third party appraisal of the Business, which valued same at \$6,050,000.

15. Shortly after entering into the APS, the Vendor Principals indicated to the Purchaser and the Plaintiffs that they would secure a lease/tenancy from a "Tim Horton's" franchise for the Property/Business.

16. Based on said promise, the Purchasers were induced into increasing the purchase price of the Transaction to \$5,690,000.

17. The Vendor Principals promised that if a lease/tenancy for a Tim Horton's was not secured at the time of the closing for the Transaction, then the purchase price of the Transaction would be reduced back to \$4,425,000.

18. The Plaintiffs state that the Vendor Principals further represented to them that proceeding with the increased purchase price for the Transaction would benefit them in connection with future capital gains should a Tim Horton's be added to the Business at a future date and would be of no risk to them given the loan from the Vendor Principals.

19. At the time the Vendor Principals had raised the promise of securing of the Tim Horton's franchise as part of the Transaction, they had agreed that financing for the balance of the purchase price in relation to the increased price would be financed by way of a vendor take back mortgage offered by the Vendor Principals through another corporation, 1650333 Ontario Inc, of which Kansal and/or Latif were officers, directors and/or principals.

20. Almost immediately following the Closing, the Vendor Principals advised that they could not secure a lease/tenancy with Tim Horton's and thereby the purchase price of the Transaction reverted back to \$4,425,000.

21. The Plaintiffs state that they found the structure of this transaction rather odd, but as it was their first purchase of gas station, they relied upon the Vendor Principals who advised that such arrangements were common.

22. The Transaction closed on December 2, 2020 (the "Closing").

#### **FINANCING FOR THE TRANSACTION**

23. The APS specifically contemplated that the Vendor was responsible for arranging financing/a mortgage for Purchaser to complete the Transaction.

24. The Plaintiffs state that as per the terms of the APS, the Vendor was responsible for arranging financing through a private lender for a period of 12-months after the Closing, and that after the Closing, the Vendor would continue to work with the Plaintiffs and/or the Purchaser to arrange bank financing at a better rate, failing which the Seller would have to provide or obtain private financing for an additional one-year as per the terms stated in the APS.



25. In addition, further to the Plaintiffs discussions with the Vendor Principals, and as per the terms of the APS, it was agreed that if the interest rate for the financing arranged by the Vendor was above 5.5%, then the Vendor would reimburse the Purchaser for any interest payments amounts beyond that set rate (the "Interest Differential").

26. The Plaintiffs further state that in order to induce them and the Purchaser into completing the Transaction, the Vendor Defendants agreed to and did make payment of a significant portion of the Lender's fee for the financing arranged by the Vendor.

27. To further induce the Plaintiffs and the Purchaser to complete the Transaction, the Vendor Principals advised the Purchaser and the Plaintiffs that financing for the Transaction could be arranged by the Vendor Defendants through C & K Mortgage Services Inc., which carries on business as Rescom Capital (the "Lender").

28. The Vendor Principals represented that they and the Vendor had a long-standing personal and professional relationship with the Lender, which they could leverage to secure favourable financing for the Purchaser to close the Transaction.

29. The Plaintiffs state that virtually all communication with the Lender regarding financing for completion of the Transaction was carried out and/or facilitated by the Vendor Principals.

30. With the assistance of the Vendor Principals, the Purchaser and the Plaintiffs entered into a commitment with the Lender to receive financing for the Transaction, and ultimately the Lender provided the necessary financing on Closing.

31. On Closing, a charge for the Lender's first-ranking security was registered on title to the Property for the amount of \$4,000,000 (the "Loan").

32. In addition to the charge on the Property, the Loan was also secured by a first-ranking general assignment of rents and a general security agreement.

33. The Plaintiffs state that pursuant to the terms of the APS, and as represented to them by the Vendor Principals, the Vendor delivered payments to the Purchaser with respect to the Interest Differential, as the financing with the Lender was at a rate beyond 5.5%.

34. The Plaintiffs state that after the Vendor was late in paying the Interest Differential to the Purchaser, they requested the Vendor Defendants to make payment of the Interest Differential directly to the Lender, but the Lender stated that it could only accept payments from the Purchaser.

#### **THE VENDOR DEFENDANTS' MISREPRESENTATIONS**

35. As part of the due diligence disclosure and other information exchanged prior to completion of the Transaction, the Vendor Defendants, including specifically the Vendor Principals, provided the Purchaser, among other things, unaudited financial statements, financial projects, financial statements, an "Appraisal", dated May 1, 2020 and other information regarding the Property and Business.

36. Most notably, the Vendor Principals provided information about the sales volumes to the Plaintiffs which significantly misrepresented the volume of fuel sales for the subject Business (the "Fuel Misrepresentation").

37. The Plaintiffs further state that this same Fuel Misrepresentation was also made to and/or otherwise conveyed to the author of the Appraisal, which was arranged for and addressed to Kansal, and thereby the Fuel Misrepresentation formed the basis of the appraised value which was also represented by the Vendor Defendants, including specifically the Vendor Principals, to the Purchaser and the Plaintiffs.

38. The Plaintiffs state that after the Closing, upon receiving "Commissions Reports" from the gasoline supplier for the Business, the Purchaser discovered the Fuel Misrepresentation by realizing that the fuel sales volume was actually a small fraction of the amount(s) represented to the Purchaser by the Vendor Defendants, including specifically the Vendor Principals.

39. The Purchaser further states that the Vendor Principals' promises to secure the lease/tenancy with Tim Horton's was another misrepresentation made by the Vendor Principals (the "Lease Misrepresentation").

40. The Fuel Misrepresentation, Lease Misrepresentation and other misrepresentations, which will be particularized prior to trial, are hereinafter referred to as the "Misrepresentations".

41. The Plaintiffs state that on behalf of the Purchaser, they detrimentally relied on the Vendor Defendants' Misrepresentations, as well as the Appraisal secured by and presented by the Vendor Defendants and other misrepresentations and promises made by the Vendor Defendants, including specifically the Vendor Principals, in the course of the Transaction.

42. The Plaintiffs state that the Misrepresentations, and the information resulting therefrom induced their decision for the Purchaser to complete the Transaction and the price which the Purchaser was willing to pay to complete the Transaction.

43. The Plaintiffs further state that the Misrepresentations were specifically made to induce the Purchaser into completing the Transaction, and to induce the Lender into providing a higher amount of financing for the Transaction.

44. The Plaintiffs state that they immediately approached the Vendor Principals upon learning of the Fuel Misrepresentation and were advised that it was a simple mistake and that the Vendor Principals would pay a significant portion of the Lender's financing costs while they worked on a solution.

45. The Plaintiffs state that while the Vendor Principals did make certain such payments to the Lender, totaling approximately \$50,000, the Plaintiffs learned that the "solution" that the Vendor Principals were proposing was to have the Plaintiffs repeat the misrepresentations to other lenders that would replace the Lender, as well as to prospective subsequent purchasers.

46. The Plaintiffs state that the Vendor Principals arranged a new appraisal report for the Business which they used to arrange potential refinancing of the Loan for the Purchaser through other lenders and which they indicated they also intended to use to market the sale of the Business to other prospective subsequent purchasers.

47. The Plaintiffs state that like the first Appraisal report, the new appraisal report prepared by the Vendor Principals, was based upon fraudulently inflated fuel sales and other sales figures, which bore no resemblance to the actual sales of the Business.

48. The Plaintiffs state that they refused to participate in this fraud and instead contacted the Lender to advise them of the fraud being perpetrated upon the Lender and on the Purchaser/Plaintiffs by the Vendor Principals.

## **APPOINTMENT OF RECEIVER BY THE LENDER**

49. The Plaintiffs state that over the course of the Purchaser's ownership of the Property and Business, it made its best efforts to carry out the Business after the Closing, and the Plaintiffs made personal financial contributions to the Purchaser for the Business in an effort to maintain its viability and so that it could pay its Loan and other obligations.

50. The Plaintiffs state that notwithstanding the foregoing, the actual revenue generated by the Business was not sustainable to allow the Purchaser to satisfy the inflated purchase price for the Transaction, or the Loan obligations.

51. As such, following their notification to the Lender of the above-noted matters, the Lender took steps to appoint a "Receiver", which the Purchaser and Plaintiffs fully cooperated with.

52. On August 4, 2022, the Court granted the Lender's application to appoint a Receiver over the Purchaser's Assets, which included the Property and the Business (the "Receivership Order").

53. Paragraph 9 of the Receivership Order restricted any proceedings against or in respect of the Purchaser or the Property (as defined in the Receivership Order), from being commence or continued, except with written consent of the Receiver or with leave of the Court.

54. By way of a Court Order dated November 29, 2022, the Receiver assigned all rights, title and interest of the Purchaser in respect of the claims herein to the Plaintiffs.

## THE PURCHASER'S CLAIMS AND DAMAGES

55. The Plaintiffs state that the damages owed to it by the Vendor Defendants are as follows:

- a) All monies paid by the Plaintiffs directly or indirectly to complete the Transaction;
- b) All personal capital injections made by the Plaintiffs into the Purchaser/Business since the Closing and until the Receivership;
- c) The Plaintiffs' loss of their anticipated profit and investment gains from the Transaction;
- d) All costs and damages that it has been forced to expend and will be forced to expend in respect of monies owed to the Lender, including their costs in connection with the Receivership; and,
- e) Other damages to be particularized before trial.

56. The Plaintiffs state that the fraudulent and false representations made by the Vendor Defendants, including specifically the Vendor Principals, were known by them to be false and/or were recklessly made.

57. The Plaintiffs states that the representations made by the Vendor Defendants, including specifically the Vendor Principals, caused and/or induced the Plaintiffs to direct the Purchaser into entering the APS and completing the Transaction at a significantly inflated price.

58. The Plaintiffs state that had they known the true state of the fuel sales volume, they would not have directed the Purchaser to enter the Transaction.

59. Further and/or in the alternative, the Plaintiffs seek damages from the Vendor Defendants on the basis of breach of good faith and honest performance.

60. The Plaintiffs state that the Vendor Defendants, including specifically the Vendor Principals, knowingly and repeatedly lied and mislead the Purchaser vis-à-vis the Plaintiffs by way of the Fuel Misrepresentation, the Lease Misrepresentation and other related matters that are wholly within the knowledge of the Vendor Principals.

61. The Plaintiffs state that the actions of the Vendor Principals over the course of the Transaction, and also thereafter in attempting to fix their Misrepresentations by repeating them to another lender and prospective subsequent purchasers is shocking, callous, high-handed, intentional, wrongful and outrageous, and shows a wanton disregard of the rights of the Plaintiffs and others and is deserving of an award of punitive, exemplary and/or aggravated damages by this Honourable Court.

62. The Plaintiffs state that the Receiver has consented to the commencement of this action and it has been allowed by way of Court Order, dated November 29, 2022.

63. The Plaintiffs request that the trial of this action take place in the City of Toronto.

Date: November \_\_\_\_, 2022

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Defendants

Court File No:

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at TORONTO

**STATEMENT OF CLAIM**

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

PROCEEDING COMMENCED AT  
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