

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

B E T W E E N:

**C & K MORTGAGE SERVICES INC. o/a RESCOM CAPITAL and CANADIAN  
WESTERN TRUST COMPANY**

Plaintiffs

and

**11282751 CANADA INC., GAZI BELAYET HOSSAIN,  
STEVEN GALLEN and DEBRA GALLEN**

Defendants

**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**

**MOTION RECORD OF THE RECEIVER**

March 8, 2024

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Inc.

**TO: SERVICE LIST**

**SERVICE LIST**

(as at March 8, 2024)

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

B E T W E E N:

**C & K MORTGAGE SERVICES INC. o/a RESCOM CAPITAL and CANADIAN  
WESTERN TRUST COMPANY**

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# TAB 1

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

B E T W E E N:

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WESTERN TRUST COMPANY**

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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**

**NOTICE OF MOTION  
(returnable March 15, 2024)**

**ROSEN GOLDBERG INC.**, in its capacity as Court-appointed receiver (“**RGI**” or the “**Receiver**”), without security, of the lands and premises municipally known as 170 Burton Avenue, Barrie, Ontario, owned by the Defendant, 11282751 Canada Inc. (the “**Debtor**”), will make a motion to the Ontario Superior Court of Justice on Friday, March 15, 2024, at 12:00PM, or as soon after that time as the motion can be heard, by judicial videoconference via Zoom, for among other things, approving the sales process to be conducted by the Receiver.

**PROPOSED METHOD OF HEARING:** This motion is to be heard over videoconference.

**THE MOTION IS FOR:**

1. If necessary, abridging the time for and validating the service of this motion record and dispensing with service on any other person than those served such that the motion is properly returnable this day.
2. An Order approving the first report of the Receiver dated March 8, 2024 (the “**First Report**”) and the activities of the Receiver described therein.
3. An Order approving the sale process (the “**Sale Process**”) described in the First Report and directing the Receiver to conduct the Sale Process.
4. Such further and other relief as counsel may advise and this Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

1. On February 10, 2024, the Honourable Justice Osborne granted an order (the “**Receivership Order**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Ontario Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), appointing RGI as Receiver over the Debtor, without security, of the lands and premises municipally known as 170 Burton Avenue, Barrie, Ontario (the “**Property**”), owned by the Debtor.

**Background**

2. The Debtor is a federally incorporated company incorporated with a head office located at 3 Vanvalley Drive, Stouffville, Ontario.
3. On or about November 2, 2021, the Plaintiff, C & K Mortgage Services Inc., operating as Rescom Capital (the “**Lender**”), entered into a mortgage loan commitment with the Debtor in the principal amount of \$4,400,000.00 (the “**Loan**”) in connection with the Debtor’s acquisition of the Property.



4. The Lender registered a first charge (the “**Charge**”) against title to the Property on December 14, 2021 as Instrument No. SC1853148. The Lender also holds a General Security Agreement dated November 26, 2021.
5. In addition to the Lender’s Charge, the following charges are registered on title to the Property:
  - a. A \$3,500,000.00 charge/mortgage in favour of 2489876 Ontario Inc., which was postponed to the Lender’s Charge;
  - b. A \$100,000.00 charge/mortgage in favour of Suncor Energy Inc., which was postponed to the Lender’s Charge; and
  - c. A \$5,150,000.00 charge/mortgage in favour of Steven Gallen and Debra Gallen, registered against title to the Property on August 17, 2023.

#### **Default**

6. The Debtor operated a Petro-Canada gas station and convenience store at the Property.
7. On or about December 12, 2023, the Lender inspected the Property and discovered that it had been abandoned. Neither the gas station nor the convenience store was operating.
8. The Lender issued a Notice of Intention to Enforce on or about December 12, 2023. The Loan matured on January 1, 2024.
9. On February 7, 2024, the Lender served a motion for, *inter alia*, the appointment of the Receiver over the Property.
10. On February 9, 2024, the Lender’s motion for the appointment of the Receiver was heard by Honourable Justice Osborne.
11. On February 10, 2024, the Honourable Justice Osborne issued the Receivership Order, appointing RGI as Receiver over the Property.

12. The Receiver seeks approval of an open marketing process to sell the Property. The Receiver has received numerous queries from parties who have significant interest in purchasing the Property.
13. The Sale Process is described in the First Report. Key milestones include:
  - a. the distribution of a teaser to potentially interested parties following the issuance of the Order approving the Sale Process;
  - b. providing access to a virtual data room to potentially interested parties upon execution of a satisfactory confidentiality agreement;
  - c. a bid deadline 30 days after the date the teaser is distributed;
  - d. a period for the review and negotiation of bids after the bid deadline;
  - e. selection of a successful bid immediately following the review and negotiation period; and
  - f. seeking Court approval of a sale transaction as soon as possible after the selection of a successful bid.
14. The Receiver seeks approval of its activities as described in the First Report, including the decision to seek approval of the Sale Process.
15. The Receiver has acted diligently and within the scope of its appointment, with the primary objective of maximizing realization for creditors.
16. Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.
17. Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.
18. Rules 1.04, 2.01, 2.03, 3.02, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.
19. Such further and other grounds as counsel may advise and this Court may permit.

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

1. The First Report of the Receiver dated March 8, 2024; and
2. Such further and other material as counsel may submit and this Court may permit.

March 8, 2024

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Lawyers for the Receiver, Rosen Goldberg  
Inc.

**TO: SERVICE LIST**

**C & K MORTGAGE SERVICES INC. o/a  
RESCOM CAPITAL, et al.**  
Plaintiffs

- and -

**11282751 CANADA INC., GAZI  
BELAYET HOSSAIN, et al.**  
Defendants

Court File No. CV-24-00712796-00CL

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

Proceeding commenced at  
TORONTO

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**NOTICE OF MOTION**

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Inc.

# TAB 2



ROSEN GOLDBERG  
INSOLVENCY & RESTRUCTURING

Court File No. CV-24-00712796-00CL

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

**BETWEEN:**

**C & K MORTGAGE SERVICES INC. o/a RESCOM CAPITAL and CANADIAN WESTERN  
TRUST COMPANY**

**Plaintiffs**

**and**

**11282751 CANADA INC., GAZI BELAYET HOSSAIN,  
STEVEN GALLEN and DEBRA GALLEN**

**Defendants**

**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**

**FIRST REPORT OF ROSEN GOLDBERG INC.**

**March 8, 2024**



## I INTRODUCTION

1. By Order of the Honourable Mr. Justice Osborne dated February 10, 2024, Rosen Goldberg Inc. was appointed as receiver (the “**Receiver**”) of the assets, undertakings and properties of 11292751 Canada Inc. (the “**Debtor**”), which includes the property municipally known as 170 Burton Street, Barrie, Ontario (“**170 Burton**” or “**Property**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, section 101 of the *Courts of Justice Act* (the “**Receivership Order**”). A copy of the Receivership Order is attached as **Appendix “A”** to this First Report.

## 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.
3. The purpose of this First Report is to:
  - a) to report on and seek this Honourable Court’s approval of the actions of the Receiver to date; and
  - b) to seek approval of the Receiver’s proposed sale process as described herein, in respect of the Property.

## III BACKGROUND

4. The Debtor operated a Petro Canada gas station and a convenience store under the banner “Neighbors” at 170 Burton. 170 Burton is zoned General Commercial and has 200 ft. frontage



on Burton Avenue with a total site area of 29,482 sq ft. The convenience store is approximately 3,702 sq. ft.

5. The Plaintiffs registered a first mortgage against the Property with a face amount of \$4.4 Million. Additionally, the Plaintiffs have registered GSA against the personal property of the Debtor.
6. In addition to the Plaintiffs' charge, the following mortgages/charges are registered against 170 Burton:
  - a) A \$3,500,000 charge/mortgage in favour of 2489876 Ontario Inc. registered against title to the Property on June 28, 2019, which was postponed to the Plaintiffs' Charge pursuant to a Postponement of Interest registered on December 15, 2021:
  - b) A \$100,000 charge/mortgage in favour of Suncor Energy Inc. registered against title to the Property on February 4, 2020, which was postponed to the Plaintiffs' Charge pursuant to a Postponement of Interest dated December 15, 2021:and
  - c) A \$5,150,000 charge/mortgage in favour of Steven and Debra Gallen (the "Gallens") registered against title to the Property on August 17, 2023 ("Gallen Charge").
7. We understand that the Debtor abandoned the gas station and convenience store operations on or about June 23, 2023.
8. Upon its appointment, the Receiver became aware that the Property had been listed for sale with Global West Realty Limited by the Gallens purportedly pursuant to the Gallen Charge. We understand that the listing has been terminated at the request of the Receiver.

#### IV INITIAL ACTIVITIES OF THE RECEIVER

9. Upon its appointment, the Receiver, in consultation with representatives of the Plaintiffs, assessed whether the gas and convenience store operations should be recommenced. Based on the fact that there would have to be a significant investment to fund the purchase of inventory, shelving and





racking, as well as the need to hire personnel to staff the operations, it was determined that the Receiver would not operate and it would be marketed as is.

10. Since its appointment, the Receiver has undertaken the following activities:
  - Taken possession of the Property;
  - Ongoing correspondence and communication with stakeholders including meetings, telephone calls and written communication;
  - Dealt with appraisers;
  - Prepared statutory reports;
  - Attended at the sites;
  - Established and maintained a Case Website;
  - Reviewed of various reports, financial information, etc pertaining to the Property.

## **VI SALES PROCESS**

11. After considering its realization options, including both a listing process as well as a tender process, the Receiver believes that a tender process will provide the best opportunity to maximize recoveries in a timely manner.
12. The Receiver has received numerous queries from parties whom it believes may have significant interest in purchasing the Property. A tender process will allow the Receiver to present this opportunity to all of the parties which it believes may be interested in the Property and expose the assets to the marketplace.
13. To date, the Receiver has undertaken the following with respect to the sales process:
  - Compiling information for data room and other sales process information;
  - Prepared a form of offer; and



- Prepare confidentiality agreement.

### Proposed Sales Process

14. The Receiver believes that a sales process of approximately five weeks will allow sufficient time to adequately market the Property. In this regard, the Receiver has prepared a five-week timeline which it proposed to follow:

Week 1	<ul style="list-style-type: none"><li>- Receiver to prepare teaser for distribution to potentially-interested parties.</li><li>- Receiver to place newspaper advertisement in the <i>Globe and Mail</i> (national edition), as well as local newspapers.</li></ul>
Weeks 1 through 4 (inclusive)	<ul style="list-style-type: none"><li>- Receiver to contact all identified potentially interested parties and advise regarding the opportunity, including distribution of teaser.</li><li>- Receiver to facilitate due-diligence of interested parties by distributing confidentiality agreement, arranging for access to on-line data room, distributing information package, responding to requests for additional information, arranging and conducting tours of Property</li></ul>
Final day, week 4	<ul style="list-style-type: none"><li>- Deadline for offers from prospective purchasers</li></ul>
Week 5	<ul style="list-style-type: none"><li>- Selection of successful purchaser and distribution of purchase agreement to successful purchaser</li><li>- Receiver and successful purchaser to finalize purchase agreement</li><li>- Conditional period (if required) for the successful purchaser</li></ul>
Final day, week 5	<ul style="list-style-type: none"><li>- Deadline for waiver of conditions by successful purchaser</li></ul>



As soon as possible after waiver of conditions	- Court approval of purchase agreement and vesting order
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## VII CONTINUING ACTIONS OF THE RECEIVER

15. The Receiver intends to take the following continuing actions:
- a) Undertake the sales process identified above; and
  - b) Deal with the stakeholders on an ongoing basis.

## VIII RECOMMENDATION

16. On the basis of the foregoing, the Receiver respectfully requests that this Honourable Court grant an Order:
- a) Approving the Receiver's actions to date; and
  - b) Approving the Receiver's proposed sales process.

All of which is respectfully submitted.

Dated at Toronto, Ontario, this 8<sup>th</sup> day of March 2024.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS  
COURT-APPOINTED RECEIVER OF  
11282751 CANADA; AND NOT IN A PERSONAL OR CORPORATE CAPACITY**

*Rosen Goldberg Inc.*

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# APPENDIX A

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

THE HONOURABLE ) FRIDAY, THE 10<sup>th</sup>  
 )  
JUSTICE OSBORNE ) DAY OF  
 )  
B E T W E E N : FEBRUARY, 2024

**C & K MORTGAGE SERVICES INC. o/a RESCOM CAPITAL and  
CANADIAN WESTERN TRUST COMPANY**

Plaintiffs

- and -

**11282751 CANADA INC., GAZI BELAYET HOSSAIN,  
STEVEN GALLEN and DEBRA GALLEN**

Defendants

**ORDER  
(appointing Receiver)**

**THIS MOTION**, made by the Plaintiffs 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 (the “**Receiver**”) without security, of the lands and premises municipally known as 170 Burton Avenue, Barrie, Ontario owned by the Defendant, 11282751 Canada Inc. (the “**Debtor**”) and legally described in Schedule “A” hereto, including all proceeds thereof (the “**Property**”) was heard this day via videoconference.

**ON READING** the Affidavit of Gary Gruneir sworn January 24, 2024 and the Exhibits thereto, and on hearing the submissions of counsel for the Plaintiffs, the Defendants, and the other parties listed on the Participant Information Sheet, no one else appearing for the parties listed on the service list although duly served as appears from the affidavits of service filed with

the Court, 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 Notice of Motion and the Motion Record is hereby abridged and validated so that this motion 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 the lands and premises municipally known as 170 Burton Avenue, Barrie, Ontario owned by the Debtor and described legally in Schedule "A" attached hereto.

### **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, 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, 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 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 \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; 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 is 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 its 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 \$250,000 (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 Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at [www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/](http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/)) 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 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide.

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.

27. **THIS COURT ORDERS** that the Plaintiff, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor’s creditors or other interested parties and their

advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

## GENERAL

28. **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.

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

30. **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.

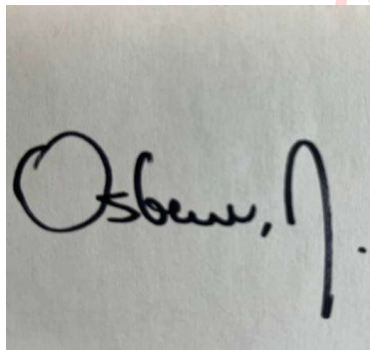
31. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is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

32. **THIS COURT ORDERS** that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff'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.



33. **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.

34. **THIS COURT ORDERS** that this order is effective from the date it is made, and it is enforceable without any need for entry and filing.



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## **SCHEDULE "A"**

**Legal Description:** PART OF LOTS 8, 9 AND 10; S/S BURTON AVENUE; PLAN 433;  
BEING PART 3, PLAN 51R41122; TOGETHER WITH AN EASEMENT AS IN RO1364447

**PIN:** 58750 – 0655 LT

**Municipal Address:** 170 BURTON AVENUE, BARRIE, ONTARIO

**SCHEDULE "B"**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Rosen Goldberg Inc., the receiver (the "**Receiver**") of the of the lands and premises municipally known as 170 Burton Avenue, Barrie, Ontario, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the \_\_\_\_<sup>th</sup> day of \_\_\_\_, 2024 (the "**Order**") made in a motion having Court file number CV-24-00712796-00CL, 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 \_\_\_\_\_, 202\_\_.

**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. o/a RESCOM**  
**CAPITAL and CANADIAN WESTERN TRUST COMPANY**  
Plaintiffs

**11282751 CANADA INC., GAZI BELAYET HOSSAIN, et al.**  
Defendants

-and-

Court File No. CV-24-00712796-00CL

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

Proceeding commenced at Toronto

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**ORDER**

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**CHAITONS LLP**  
5000 Yonge Street, 10th Floor  
Toronto, ON M2N 7E9

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**Lawyers for the Plaintiffs**



**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**ENDORSEMENT**

COURT FILE NO.: CV-24-00712796-00CL

DATE: February 9 2024

REGISTRAR: T. COLEMAN

NO. ON LIST: 1

TITLE OF PROCEEDING: C & K MORTGAGE SERVICES INC. et al v. 11282751 CANADA  
INC. et al

BEFORE JUSTICE: P. OSBORNE

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
George Benchetrit Laura Culleton	C & K Mortgage Services Inc.	<a href="mailto:George@chaitons.com">George@chaitons.com</a> <a href="mailto:Laurac@chaitons.com">Laurac@chaitons.com</a>

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
Jeffery Frymer	Larden Investments Inc. 2489876 Ontario Inc. Steven Gallen & Debra Gallen	<a href="mailto:Jhfrymer@ynlclaw.com">Jhfrymer@ynlclaw.com</a>

**For Other Parties:**

Name of Person Appearing	Name of Party	Contact Info
Jake Harris	Suncor Energy Products Partnership	<a href="mailto:Jake.harris@blakes.com">Jake.harris@blakes.com</a>

## **ENDORSEMENT OF JUSTICE OSBORNE:**

1. The Plaintiffs move for the appointment of a receiver in this action.
2. The Service List, which includes for greater certainty the Debtors and the subsequent ranking lenders, has been served, although service was short.
3. As further set out below, I would have been prepared to consider an adjournment request, but counsel for all parties in Court today were clear that none was requesting an adjournment.
4. In the circumstances, and notwithstanding the short service, the Plaintiffs seek the appointment of a receiver today.
5. Defined terms in this Endorsement have the meaning given to them in the motion materials unless otherwise stated.
6. The relevant Property is located at 170 Burton Ave., Barrie, Ontario. Until recently, the Debtors ran a Petro Canada gas station and associated convenience store on the Property under the banner "Neighbours".
7. C&K is a mortgage broker and lender in the Toronto area. Canadian Western Trust Company is a Canadian financial institution. Those two parties together are the Lenders.
8. 11282751 Canada Inc. is a federally incorporated company and is the Borrower. Its principal, Gazi Belayet Hossain, personally guaranteed the indebtedness of the Borrower to the Lenders.
9. The Lenders have a first position mortgage in the amount of \$4,400,000 as well as a GSA. The GSA contains the contractual covenant to the effect that upon an event of default, the Lenders are entitled to appoint a receiver.
10. The Loan matured on January 1, 2024. The Record discloses that current indebtedness to the lenders is \$4,626,699.74 as of December 12, 2023 with interest continuing to accrue. Sporadic payments were made until last December; there have been no payments since January, 2024.
11. It appears that the Borrower and its principals have abandoned the premises. When representatives of the Lender inspected the property to ascertain status on December 12, 2023, they found that it had been abandoned. The gas station was not operating, and nor was the convenience store. Inventory in the convenience store had been stripped out. It has not operated since that time. This heightens, and the submission of the Plaintiffs, the necessity of the appointment of a receiver to preserve assets, and the urgency of this motion.
12. There is a subsequent mortgage in favour of Suncor Energy Inc., postponed to the charge of the Lenders. Suncor appears today represented by Mr. Harris and fully supports the appointment of a receiver and the relief sought by the Plaintiffs, with a view to preserving the assets and maximizing recovery for the benefit of all stakeholders.
13. Mr. Frymer appears today representing the Gallens who also hold a subsequent mortgage which he advises is a collateral mortgage to secure debt on an unrelated property. If that other property is sold, the indebtedness under that mortgage would be in the order of approximately \$150,000. The numbered company 2489876 Ontario Inc. also has a mortgage registered against the Property, also postponed to the Charge of the Lenders.
14. Mr. Frymer opposes the relief sought. I specifically inquired as to whether he was seeking an adjournment, and he candidly advised that he was not, and did not require a further opportunity to file responding materials, and made submissions today. He submits that a receivership will be unnecessarily expensive, and the Property should simply be sold. Indeed, his clients apparently caused the Property to be listed for sale pursuant to power of sale terms in their mortgage, in December, 2023. In the alternative, he submits

that if a receiver is appointed, its powers should be limited at least at this point to those of an investigative receiver, again to minimize costs.

15. The test for the appointment of a receiver pursuant to section 243 of the *BIA* or section 101 of the *CJA* is not in dispute. Is it just or convenient to do so?
16. In making a determination about whether it is, in the circumstances of a particular case, just or convenient to appoint a receiver, the Court must have regard to all of the circumstances, but in particular the nature of the property and the rights and interests of all parties in relation thereto. These include the rights of the secured creditor pursuant to its security: *Bank of Nova Scotia v. Freure Village on the Clair Creek*, 1996 O.J. No. 5088, 1996 CanLII 8258.
17. Where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: while the appointment of a receiver is generally an extraordinary equitable remedy, the courts do not so regard the nature of the remedy where the relevant security permits the appointment and as a result, the applicant is merely seeking to enforce a term of an agreement already made by both parties: *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 at para. 27. However, the presence or lack of such a contractual entitlement is not determinative of the issue.
18. The appointment of a receiver becomes even less extraordinary when dealing with a default under a mortgage: *BCIMI Construction Fund Corporation et al v. The Clover on Yonge Inc.*, 2020 ONSC 1953 at paras. 43-44.
19. As observed in *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186, the Supreme Court of British Columbia, citing *Bennett on Receivership*, 2<sup>nd</sup> ed. (Toronto, Carswell, 1999) listed numerous factors which have been historically taken into account in the determination of whether it is appropriate to appoint a receiver and with which I agree: *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para. 25):
  - a. whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;
  - b. the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;
  - c. the nature of the property;
  - d. the apprehended or actual waste of the debtor's assets;
  - e. the preservation and protection of the property pending judicial resolution;
  - f. the balance of convenience to the parties;
  - g. the fact that the creditor has a right to appointment under the loan documentation;
  - h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
  - i. the principle that the appointment of a receiver should be granted cautiously;
  - j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
  - k. the effect of the order upon the parties;



- l. the conduct of the parties;
  - m. the length of time that a receiver may be in place;
  - n. the cost to the parties;
  - o. the likelihood of maximizing return to the parties; and
  - p. the goal of facilitating the duties of the receiver.
20. How are these factors to be applied? The British Columbia Supreme Court put it, I think, correctly: “these factors are not a checklist but a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient: *Pandion Mine Finance Fund LP v. Otso Gold Corp.*, 2022 BCSC 136 at para. 54).
21. It is not essential that the moving party establish, prior to the appointment of a receiver, that it will suffer irreparable harm or that the situation is urgent. However, where the evidence respecting the conduct of the debtor suggests that a creditor’s attempts to privately enforce its security will be delayed or otherwise fail, a court-appointed receiver may be warranted: *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007 at paras. 24, 28-29.
22. Accordingly, is it just or convenient to appoint a receiver in the particular circumstances of this case? If so, on what terms?
23. In my view, it is not only just *or* convenient, but in fact just *and* convenient to appoint a receiver here. There is no dispute about the indebtedness (some \$4.6 million) to the Lenders, their contractual right to appoint a receiver in the event of default, the delivery of demands for payment and section 244 *BIA* notices in, December 2023 and the other facts set out above.
24. The Borrower appears to have walked away and abandoned the Property completely. Neither the Borrower nor the principals thereof have responded in any way whatsoever to the demands, to the Statement of Claim which was personally served on the Defendants, or to this motion. They appear to have simply cleared out the inventory from the convenience store and fled.
25. In the circumstances, I am satisfied that the appointment of a receiver will be to the benefit of all stakeholders in that the receiver can get into the property, determine what is there and what is not, and determine next steps to maximize recoveries.
26. Mr. Frymer advises that the gas station is relatively new, and that the tanks, pumps and equipment are relatively new and in good condition. In my view, a receiver can consider whether or not the parties can find a buyer who will operate the business as a going concern, which may very well provide a more favourable outcome to an asset sale. Such a going concern outcome is automatically precluded by the refusal to appoint a receiver and, by implication, by the power of sale listing already begun. In my view, it is premature to preclude that possibility, this point. It should be explored, and the receiver can and should make a recommendation as to the most advantageous path forward.
27. In the circumstances, it is equally important that a receiver be appointed as soon as possible, since the gas station is effectively abandoned at this point in time. It is best preserved by someone managing the Property, and that person should be the receiver under the supervision of this Court.
28. In my view, there is no basis to restrict the powers of a receiver to those necessary for investigation only.
29. I acknowledge Mr. Frymer’s concerns about controlling expenses, and the receiver will engage in a dialogue with all stakeholders as part of its considerations of the path forward.

30. I observe that the draft order includes at paragraph 33, and in a manner consistent with the Model Order of the Commercial List, the usual seven day comeback clause. If any affected party feels that the advice and directions of this Court, or other relief, is required, it may return to Court and seek that relief.
31. Rosen Goldberg Inc. is a well-qualified receiver and consents to being so appointed here.
32. The terms of the draft order are consistent with the Model Order of the Commercial List. While that is not determinative of the issue of whether receiver should be appointed, and what terms may be appropriate, it does in this case provide me with additional comfort.
33. Rosen Goldberg Inc. is appointed as receiver.
34. Order to go in the form signed by me today which is effective immediately and without the necessity of issuing and entering.
35. The Plaintiffs will ensure that the full Service List is provided with a copy of this Endorsement and the receivership order. For greater certainty, that will include the Borrower and the principals thereof, including the personal guarantor.

Ozawa, J.

# TAB 3

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MADAM ) FRIDAY, THE 15TH  
JUSTICE CONWAY ) DAY OF MARCH, 2024

BETWEEN:

**C & K MORTGAGE SERVICES INC. o/a RESCOM CAPITAL and CANADIAN  
WESTERN TRUST COMPANY**

Plaintiffs

and

**11282751 CANADA INC., GAZI BELAYET HOSSAIN,  
STEVEN GALLEN and DEBRA GALLEN**

Defendants

**ORDER  
(Sale Process Order)**

**THIS MOTION** made by Rosen Goldberg Inc. (“**RGI**”) in its capacity as court appointed receiver (the “**Receiver**”) without security, of the lands and premises municipally known as 170 Burton Avenue, Barrie, Ontario (the “**Property**”), owned by the defendant, 11282751 Canada Inc. (the “**Debtor**”), for an Order that, among other things, approves a sale process to be conducted by the Receiver, was heard this day at by judicial videoconference.

**ON READING** the first report of the Receiver dated March 8, 2024 (the “**First Report**”) and schedules thereto, and on hearing the submissions of counsel for the Receiver and anyone else appearing for any other party on the Service List as duly served as appears from the affidavit of service of Marianne D’ Souza sworn March 8, 2024, filed;

## **SERVICE**

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

## **RECEIVER'S ACTIVITIES**

2. **THIS COURT ORDERS** that the First Report and the activities of the Receiver as described therein are hereby approved.

## **SALE PROCESS APPROVAL**

3. **THIS COURT ORDERS** that the sale process and procedures described in the First Report (the "**Sale Process**") are hereby approved and the Receiver is hereby authorized to carry out the Sale Process and take such steps as it considers necessary and desirable in carrying out its obligations thereunder, all subject to approval by this Court of any sale transaction resulting from the Sale Process.

4. **THIS COURT ORDERS** that the Receiver and its affiliates, partners, directors, officers, employees, legal advisors, representatives, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the Receiver performing its duties under the Sale Process, except to the extent such losses, claims, damages or liabilities arise or result from the gross negligence or willful misconduct of the Receiver, as determined by this Court in a final order that is not subject to appeal or other review.

5. **THIS COURT ORDERS** that the Receiver may apply to the Court for directions with respect to the Sale Process at any time on at least seven (7) days' notice to the Service List established in these proceedings or such other notice as directed or permitted by the Court.

6. **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 a

sale of the Property (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 a 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.

7. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of the date of issuance without the need for entry or filing.

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**C & K MORTGAGE SERVICES INC. o/a RESCOM  
CAPITAL, et al.**  
Plaintiffs

- and -

**11282751 CANADA INC., GAZI  
BELAYET HOSSAIN, et al.**  
Defendants  
Court File No. CV-24-00712796-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at  
TORONTO

**ORDER  
(Approving Sales Process)**

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Lawyers for the Receiver, Rosen Goldberg Inc.

**C & K MORTGAGE SERVICES INC. o/a  
RESCOM CAPITAL, et al.**  
Plaintiffs

- and -

**11282751 CANADA INC., GAZI  
BELAYET HOSSAIN, et al.**  
Defendants

Court File No. CV-24-00712796-00CL

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

Proceeding commenced at  
TORONTO

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**MOTION RECORD**

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