

ONTARIO
SUPERIOR COURT OF JUSTICE

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985,
C. B-3, AS AMENDED, 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 -

1001004738 ONTARIO INC.

Respondent

FACTUM OF THE APPLICANT

(application to appoint a receiver, returnable February 10, 2026 at 10:00 a.m.)

January 27, 2025

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TO: **SERVICE LIST**

PART I – OVERVIEW

1. The Applicant, C & K Mortgage Services Inc., doing business as Rescom Capital (“**Rescom**”), applies for the appointment of Rosen Goldberg Inc. (“**RGI**”) as receiver and manager of the undertakings, assets and property of the Respondent, 1001004738 Ontario Inc. (the “**Debtor**”), including the property municipally known as 10, 12, 14, 16, and 18 Bostwick Crescent, and 2, 6, and 8 Bond Crescent, in Richmond Hill, Ontario and legally described in Schedule “A” hereto (the “**Property**”).
2. The Debtor is indebted to Rescom in connection with a secured loan which matured on July 1, 2025 and has not been repaid (the “**Loan**”). No payments of interest have been received on account of the Loan since September 15, 2025.
3. On November 4, 2025, Rescom, through its counsel, made formal written demand for payment of the indebtedness under the Loan and delivered notices of intention to enforce security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (the “**BIA**”), but the Debtor has failed to repay the Loan.
4. Notwithstanding the expiry of the statutory ten day notice period under the *BIA*, the Debtor has failed to repay the Loan.
5. As of November 4, 2025, the amount owing under the Loan was \$23,462,637.97.

PART II – SUMMARY OF FACTS

A. The Debtor

6. The Debtor is an Ontario corporation. The Debtor’s registered or head office is located at 7130 Warden Avenue, Unit 409, Markham, Ontario, L3R 1S2.¹

¹ Corporate Profile Report of Debtor, **Exhibit A**, Affidavit of Gary Gruneir sworn December 5, 2025 (“**Gruneir Affidavit**”), Rescom’s Application Record (“**AR**”), Tab 2A, p. 21.

B. The Property

7. The Property is owned by the Debtor and is an assembly of development land at the northwest corner of Bond Crescent and Yonge Street and consists of nine previously separate parcels, which were consolidated on November 15, 2023.²

C. The Loan and Security

8. Rescom initially advanced the Loan on May 30, 2022, to Kings Development Inc., then named 1000162801 Ontario Corp. (the “**Prior Owner**”), the then-owner of the Property, in the principal amount of \$22 million, on the terms set out in a commitment letter dated April 28, 2022.³

9. The Loan proceeds were advanced to assist the Prior Owner in financing the purchase of the Property.⁴

10. The Loan initially matured on June 1, 2023, but was renewed and extended for 6 months and the interest rate payable under the Loan was increased from 10.75% to 12.8% *per annum*.⁵

11. The Prior Owner defaulted in making payment of interest under the Loan and, upon application by Rescom, the Court appointed RGI as receiver of the Prior Owner, including the Property.⁶

12. On September 24, 2024, the Court granted an Approval and Vesting Order approving the sale of the Property to the Debtor (the “**2024 Approval and Vesting Order**”).⁷ The purchase of the Property by the Debtor was completed on or about October 4, 2024.⁸

² Gruneir Affidavit at para. 4, AR, Tab 2, p. 14; Parcel Register, **Exhibit B**, Gruneir Affidavit, AR, Tab 2B, p. 28.

³ Commitment Letter, **Exhibit C**, Gruneir Affidavit, AR, Tab 2C, p. 30; Corporate Profile of Prior Owner, **Exhibit D**, Gruneir Affidavit, AR, Tab 2D, p. 37.

⁴ Gruneir Affidavit at para. 8, AR, Tab 2, p. 15.

⁵ Gruneir Affidavit at para. 9, AR, Tab 2, p. 15.

⁶ Receivership Order, **Exhibit F**, Gruneir Affidavit, AR, Tab 2F, p. 60.

⁷ 2024 Approval and Vesting Order, **Exhibit G**, Gruneir Affidavit, AR, Tab 2G, p. 81.

⁸ Rescom Charge, **Exhibit A**, Affidavit of Janet Nairne sworn January 27, 2026, p. 4.

13. On closing, the Debtor assumed a portion of the outstanding indebtedness under the Loan in connection with the purchase of the Property. The term of the Loan was also extended to July 1, 2025.⁹

14. The Rescom Charge and the assignment of rents were not vested off of title to the Property by the 2024 Approval and Vesting Order. Rather, the Debtor assumed the Rescom Charge and all other security given by the Prior Owner to Rescom in connection with the Loan.¹⁰

15. As security for the Loan, Rescom holds, among other things, a first-ranking charge registered against the Property on May 30, 2022, as Instrument No. YR3431506 (the “**Rescom Charge**”), which was amended by an Agreement Amending Charge/Mortgage of Land dated October 1, 2024, notice of which was registered against the Property on October 4, 2024, and a general security agreement given by the Debtor (the “**GSA**”), which was registered under the *Personal Property Security Act* (Ontario).¹¹

16. Each of the Rescom Charge and the GSA contain contractual entitlements to appoint a receiver upon default.¹²

D. Financial Encumbrances Registered Against the Debtor and the Property

17. The only other financial encumbrance registered against the Property is a subordinate ranking charge in favour of General Industries Global Limited in the principal amount of \$2,000,000 registered on title to the Property on December 2, 2025, as Instrument No. YR3871532.¹³

⁹ Mortgage Assumption Agreement, **Exhibit H**, Gruneir Affidavit, AR, Tab 2H, p. 92; Gruneir Affidavit at para. 12, AR, Tab 2, p. 16.

¹⁰ 2024 Approval and Vesting Order, **Exhibit G**, Gruneir Affidavit, AR, Tab 2G, p. 81; Charge Amending Agreement, **Exhibit J**, Gruneir Affidavit, AR, Tab 2J, p. 104.

¹¹ Rescom Charge, **Exhibit A**, Affidavit of Janet Nairne sworn January 27, 2026, p. 4; Charge Amending Agreement, **Exhibit J**, Gruneir Affidavit, AR, Tab 2J, p. 104; GSA, **Exhibit L**, Gruneir Affidavit, AR, Tab 2L, p. 115.

¹² Rescom Charge, **Exhibit A**, Affidavit of Janet Nairne sworn January 27, 2026, p. 4; GSA, **Exhibit L**, Gruneir Affidavit, AR, Tab 2L, p. 115.

¹³ GIGL Charge, **Exhibit M**, Gruneir Affidavit, AR, Tab 2M, p. 129.

18. Rescom's security interest is registered under the PPSA. There are no other PPSA registrants.¹⁴

E. Default, Demand and Notices of Intention to Enforce Security

19. The Loan matured on July 1, 2025, and was not repaid. The last payment of interest received on account of the Loan was received on September 15, 2025. No payments of interest have been made since that date.¹⁵

20. On November 4, 2025, Rescom caused written demand for payment to be made under the Loan and issued a notice of intention to enforce security pursuant to section 244 of the *BIA*.¹⁶

21. Despite the demand and the expiry of the statutory ten-day notice period under the *BIA*, the Debtor has failed to repay or make any payment under the Loan.¹⁷

22. As of November 4, 2025, the amount owing under the Loan was \$22,830,659.61.¹⁸

PART III – ISSUE

23. The sole issue raised on this application is whether it is just, convenient and appropriate for the Court to appoint Rosen Goldberg Inc. as receiver and manager of the Debtor and the Property on the terms of the proposed receivership order.

PART IV – LAW AND ARGUMENT

A. Rosen Goldberg Inc. Should be Appointed as Receiver and Manager

i. Test to Appoint Receiver

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

¹⁴ PPSA search report for the Debtor, **Exhibit N**, Gruneir Affidavit, AR, Tab 2N, p. 145.

¹⁵ Gruneir Affidavit at para. 20, AR, Tab 2, p. 18.

¹⁶ Demand and BIA Notice, **Exhibit O**, Gruneir Affidavit, AR, Tab 2O, p. 148.

¹⁷ Gruneir Affidavit at para. 21, AR, Tab 2, p. 18.

¹⁸ Demand and BIA Notice, **Exhibit O**, Gruneir Affidavit, AR, Tab 2O, p. 148.

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

26. In making this determination, courts have been informed by the following factors, among others:¹⁹

- (a) the need to preserve and maximize the return on the subject property;
- (b) the relationship between the debtor and its creditors;
- (c) the risk of the lender’s security deteriorating; and
- (d) loss of confidence in the debtor’s management.

27. The applicant need not establish that it will suffer irreparable harm if the proposed receiver is not appointed.²⁰ Where, as here, a debtor has expressly agreed to the appointment of a receiver in the event of default, the court should not ordinarily interfere with the contract between the parties.²¹

28. It is well established that the extraordinary nature of a receiver “is significantly reduced when dealing with a secured creditor who has the right to a receivership under its security arrangements.” The appointment of a receiver “becomes even less extraordinary when dealing with a default under a mortgage”.²²

ii. *It is Just, Convenient and Appropriate to Appoint Rosen Goldberg Inc. as Receiver and Manager*

29. In the case at bar it is just, convenient and appropriate to appoint Rosen Goldberg Inc. as receiver and manager given that:

¹⁹ *BCIMC Construction Fund Corporation et al v. The Clover on Yonge Inc.*, [2020 ONSC 1953](#) at para 45.

²⁰ *Bank of Montreal v. Carnival National Leasing Limited*, [2011 ONSC 1007](#) at paras 24 and 28.

²¹ *United Savings Credit Union v. F & R Brokers Inc.*, [2003 BCSC 640](#) at para 16.

²² *BCIMC Construction Fund Corporation et al v. The Clover on Yonge Inc.*, [2020 ONSC 1953](#) at paras 43-44.

- (a) the Loan has matured and not been repaid, and no payment of interest has been made on the Loan since September 15, 2025;
- (b) notwithstanding the issuance of the demand and notice of intention to enforce security, the Debtor has failed to repay the Loan;
- (c) the statutory notice period under the *BIA* has long expired;
- (d) the Rescom Charge and the GSA contain contractual entitlements to appoint a receiver upon default;
- (e) a Court-appointed receiver will be in the strongest position to assess how best to achieve maximum realization in a fair and transparent process, considering the interests of all stakeholders involved.

PART V – ORDER REQUESTED

30. For the reasons set out above, Romspen respectfully requests an Order appointing Rosen Goldberg Inc. as receiver and manager of the Debtor and the Property.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 27th day of January, 2026.



David Preger and Blair McRadu

Dickinson Wright LLP
Lawyers for the Applicant

SCHEDULE "A"
LIST OF AUTHORITIES

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



Blair McRadu

1. *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc*, 2020 ONSC 1953
2. *Bank of Montreal v Carnival National Leasing Limited*, 2011 ONSC 1007
3. *United Savings Credit Union v. F & R Brokers Inc.*, 2003 BCSC 640

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

Bankruptcy and Insolvency Act, RSC 1985, c. B-3

Court may appoint receiver

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

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

Courts of Justice Act, RSO 1990, c. C.43

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

C & K MORTGAGE SERVICES INC.
Applicant

-and- **1001004738 ONTARIO INC.**
Respondent

Court File No. CV-26-00093393-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
HAMILTON

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