Court File No. CL-26-00000406-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

AFC MORTGAGE ADMINISTRATION INC.

Applicant

and

ROMANDALE FARMS LIMITED and HELEN ROMAN-BARBER

Respondents

APPLICATION PURSUANT TO Section 243(1) of the BIA, section 101 of the *Courts of Justice Act,* and Rules 3.02(1), 14.05(3)(d),(e),(f),(g) and (h), 16.08 and 16.10 of the *Rules of Civil Procedure*

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TABLE OF CONTENTS

Page No.

PART I - INTRODUCTION **1**
PART II - SUMMARY OF FACTS **2**
BACKGROUND **2**
SECOND MORTGAGE AND DEFAULT **3**
PART III - STATEMENT OF ISSUES, LAW AND AUTHORITIES **7**
PART IV - ORDER REQUESTED **11**

PART I - INTRODUCTION

1. The Applicant, AFC Mortgage Administration Inc. ("**AFC**" or "**Mortgagee**" or "**Applicant**") seeks the appointment of a receiver as against a property municipally known as 3975 Elgin Mills Road, Markham, Ontario and more particularly described in Schedule A to the Notice of Application (the "**Property**"). The Property consists of approximately 89 acres of primarily vacant land, with a manor home and a number of ancillary structures on it.

2. The Respondent, Helen Roman-Barber ("**Guarantor**" or "**Ms. Roman-Barber**") is an officer and director of Romandale Farms Limited ("**Debtor**") and is a Guarantor under the terms of the First and Second Mortgages (as further defined below). She is currently an undischarged bankrupt. The Trustee in Bankruptcy has been provided notice of these proceedings.

3. Several other projects of related companies in which the Guarantor is the primary shareholder, officer and director are also in receivership or power of sale proceedings including:

   (a) Cathedral Town Piassa in Markham, Ontario which is owned by King David Inc. ("**King David Piassa Receivership**") bearing Court File No. CL-26-000233-00 wherein Justice Myers appointed a receiver by way of Order dated July 9, 2026.

   (b) Cathedral Town Courtyards bearing Court File No. CV-23-00710411-00CL ("**King David Courtyards Receivership")** wherein Justice Steele appointed a receiver by way of Order dated December 21, 2023.

(c) A mortgage as it relates to adjacent lands in favour of 5018204 Ontario Inc. and Beverly Francesconi wherein the Debtor is registered owner and debtor. A Notice of Default has been served showing an amount owing of $2,688,444.01 ("**501 Mortgage**").

4. The known debt obligations of the Debtor which are now in arrears and/or default total in excess of $8.5 million dollars (i.e., the First, Second and Rooney Mortgages (as defined below) plus the 501 Mortgage.

5. The loan documents contain express contractual rights permitting the appointment of a receiver upon default. The statutory notice period under the BIA has expired and a Court-appointed receiver is best positioned to preserve and realize upon the Property in a fair and transparent manner for the benefit of all stakeholders.

PART II - SUMMARY OF FACTS

BACKGROUND

6. The Property is encumbered by a first ranking mortgage registered as Instrument No. YR3670353 ("**First Mortgage**") which was registered on or about April 25, 2025. The First Mortgage was granted in favour of Vector Financial Services Limited ("**Prior Lender**") in the amount of $6 million dollars which was subsequently amended with notices registered on title.[1]

7. The First Mortgage was paid down and on or about January 29, 2025, AFC acquired all of the prior Lender's rights, title and interest in the First Mortgage. The transfer of charge

[1] Affidavit of Adit Kumar sworn September 23, 2026 ("Kumar Affidavit"), at para. 10

was registered as Instrument No. YR3806613 and further amended in favour of AFC by Instrument No. YR3817143. [2]

8. The amendment as indicated above, was pursuant to an amending agreement dated June 11, 2025 ("**June 2025 Amending Agreement**") which incorporated the terms set out in an Amended and Restated Commitment letter dated June 6, 2025, provided by AFC. [3]

9. Pursuant to the Amended and Restated Commitment Letter dated June 6, 2025, the First Mortgage matured on July 10, 2026, and is in arrears. As of October 1, 2026, it is 7 months in arrears. The amount owing is approximately $4,550,000.00.[4]

SECOND MORTGAGE AND DEFAULT

10. On or about June 18, 2025, AFC also granted a second mortgage registered against the Property as Instrument No. YR3817141 (the "**Second Mortgage**") in the amount of $1,400,000.00. The Second Mortgage matured on July 31, 2026.[5]

11. On or about August 6, 2026, AFC made a formal written demand to the Debtor to repay the amounts owing pursuant to the Second Mortgage (the "**Demand**"). Though properly served on the Debtor and Guarantor, there was no response from the Debtor or Guarantor.[6]

[2] Kumar Affidavit, para. 11
[3] Kumar Affidavit, para. 11(a); Exhibit J to the Kumar Affidavit
[4] Kumar Affidavit, para. 12
[5] Kumar Affidavit, paras. 13 and 14; Exhibit K to the Kumar Affidavit
[6] Kumar Affidavit, para. 16; Exhibit L to the Kumar Affidavit being the Demand; Exhibit M to the Kumar Affidavit which consists of Affidavits of Service

12. Since the Guarantor was and is an undischarged bankrupt, notice of these proceedings and the default were also provided to Albert Gelman Inc., the Trustee in Bankruptcy ("**Trustee in Bankruptcy**").[7]

13. On August 20, 2026, AFC issued a Notice of Intention to Enforce Security pursuant to Section 244(1) of the *Bankruptcy and Insolvency Act* ("**BIA Notice"**) which was then served by registered mail as well as personal service.[8]

THE DEBTORS' OTHER CREDITORS

14. The Property is also encumbered by a subsequent mortgage registered as Instrument No. YR3923318 in favour of Paul F. Rooney Professional Corporation ("**Rooney Mortgage**") in the principal amount of $224,950.00.[9]

APPOINTMENT OF THE RECEIVER IS JUST AND CONVENIENT

15. The appointment of the proposed Receiver over the assets, undertakings and the Property of the Debtor is just and convenient in the circumstances of this case for the following reasons:

    (a) The Debtor has failed to cure their financial default under the Second Mortgage;

    (b) Notwithstanding the issuance of the Section 244 BIA Notice, the Debtor has failed to repay the Loan;

[7] Kumar Affidavit, para. 17; Exhibit N to the Kumar Affidavit being a copy of the email attaching copies of the Demand sent to the Trustee in Bankruptcy; Exhibit O being the Canada Post registered mail slips as it relates to the Debtor and the Guarantor
[8] Kumar Affidavit, paras. 19 to 21; Exhibit P to the Kumar Affidavit being the BIA Notice; Exhibit Q being the Canada Post registered mail slips and Affidavits of Service
[9] Kumar Affidavit, para. 23; Exhibit R to the Kumar Affidavit being the Rooney Mortgage

(c) The statutory notice periods under the BIA have long expired;

(d) The Second Mortgage and the related loan documents contain contractual entitlements permitting the appointment of a Receiver upon default:

(i) Article 19.1(1) of the Schedule attached to the Second Mortgage under the subheading "Appointment of Receiver" provides AFC the right to appointment a Receiver in the "Event of Default";

(ii) Similarly, paragraph 24 of Schedule A to the Commitment Letter provides that where is an "Event of Default", AFC has a right to appoint a Receiver.

(e) The Debtor has failed to provide any meaningful proposal for repayment of the Loan that would be acceptable to AFC;

(f) The Personal Debtor is bankrupt. This in breach of Section 8.1(f) and 8.2 of the Second Mortgage. The Guarantor declared bankruptcy on April 9, 2026. This constitutes another "Event of Default" pursuant to Section 18.1(g) of the Second Mortgage;

(g) Both the First and Second Mortgages are in arrears, and the Property is encumbered by a subsequent 3rd mortgage, being the Rooney Mortgage;

(h) The Debtor is also facing power of sale proceedings as it relates to the 501 Mortgage;

(i) Related entities to the Debtor which are owned and controlled by the Guarantor are also in receivership (ie. King David Piassa Receivership and King David Courtyards Receivership);

("**Mortgagee's Concerns**")

16. There does not seem to be any real possibility of the Debtor curing the defaults. The Debtor has provided no evidence to suggest a refinancing. The Debtor has no desire to proceed with a process where the Debtor controls the sales process. AFC specifically negotiated the contractual terms permitting the appointment of Court-appointed receiver when an Event of Default occurs.

17. Given the Mortgagee's Concerns and the other creditors, it is just and convenient that a Receiver be appointed by this Honourable Court without delay to determine how best to realize on the Debtor's assets for the benefit of all stakeholders.

18. The court appointed Receiver will ensure that interests of all stakeholders are considered and facilitate a fair and transparent marketing sales process maximising recovery from the disposition of the Debtor's assets.[10]

19. AFC proposes that Rosen Goldberg Inc. ("**Rosen**") be appointed as receiver / manager over the Debtor. Rosen is a licensed trustee in bankruptcy and is familiar with the Debtor's arrangements with AFC.

[10] Kumar Affidavit, para. 24

PART III - STATEMENT OF ISSUES, LAW AND AUTHORITIES

ISSUE 1: Should there be an appointment of a receiver under section 243 of the BIA or section 101 of the *Courts of Justice Act* over the properties of the CBJ Borrowers

20. Section 243(1) of the *Bankruptcy and Insolvency Act* ("**BIA**") provides that on application by a secured creditor, a court may appoint a Receiver to *inter alia,* take possession over the assets of an insolvent person and exercise any control the court deems advisable over that property and over the insolvent person's business, in circumstances where it is "*just or convenient*" to do so. Similarly, the *Courts of Justice Act* enable the court to appoint a receiver where such an appointment is "*just or convenient."*[11]

21. In making a determination as to whether or not in the circumstances of a particular case, 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 of interests of all the parties in relation thereto. Thes include the rights of the secured creditor pursuant to its security: Bank of Nova Scotia v. Freure Village on Clair Creek , 1996 OJ No. 5088, 1996 CanLII 8258."*[12]

22. The courts have considered numerous factors in the determination of whether it is appropriate to appoint a receiver. However, these factors are not a "*checklist but a*

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[11] *Bankruptcy and Insolvency Act,* RSC 1985 c.B-3, Section 243; *Courts of Justice Act,* R.S.O. 1990 c.C. 43 at Section 101; *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996, CanLII 8258 ON SC; *Romspen Investment Corporation v. Tung Kee Investments Canada Ltd.*, 2023 ONSC 5911 at para. 29

[12] *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996, CanLII 8258 ON SC*; Romspen Investment Corporation v. Tung Kee Investments Canada Ltd.*, 2023 ONSC 5911 at para. *30*

collection of considerations to be viewed holistically in an assessment as to whether, in the circumstances, the appointment of a receiver is just or convenient."

"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."[13]

[13] *Romspen Investment Corporation v. Tung Kee Investments Canada Ltd.*, 2023 ONSC 5911 at para. 32 and 33; *Canadian Equipment Finance Leasing v. The Hypoint Company Limited,* 2022 ONSC 6186; *Maple Trade Finance*

23. Where the enumerated rights of the secured creditor under its security include the right to seek the appointment of a receiver, the burden of the Applicant is significantly relaxed. As stated by Morawetz J., (as he then was), in *Elleway Acquisitions Ltd. v. The Cruise Professionals Limited,* 2013 ONSC 6866*:*

> *"…Where the appointment of receiver is generally regarded as an extraordinary equitable remedy, the courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. That is because the Applicant is merely seeking to enforce a term of an agreement that was assented to by both parties."* [14]

24. As stated by Justice Osborne:

> *"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 the parties: Elleway Acquisitions Ltd. v. The Cruise Professionals Limited, 2013 ONSC 6866 (Elleway at paragraph 27). However, the presence or lack of such a contractual entitlement is not determinative of the issue."*[15]

25. In other words, it is not essential that the moving party established, prior to the appointment of the receiver that:

(a) It will suffer irreparable harm;

Inc. v. CY Oriental Holdings Ltd., 2009 BCSC 1527 at para. 25; *Pandion Mine Finance Fund LP v. Otso Goldcorp.,* 2022 BCSC 136 at para. 54

[14] *Elleway Acquisitions Ltd. v. The Cruise Professionals Limited*, 2013 ONSC 6866, para. 27; Romspen Investment Corporation v. Tung Kee Investments Canada Ltd., 2023 ONSC 5911 at para. 31

[15] Elleway Acquisitions Ltd. v. The Cruise Professionals Limited, 2013 ONSC 6866 (Elleway at paragraph 27); *Romspen Investment Corporation v. Tung Kee Investments Canada Ltd.*, 2023 ONSC 5911 at para. *31*

(b) That the situation is urgent.[16]

26. The specific terms of the Existing Security Documents provide *inter alia,* for the appointment of a receiver.

27. Apart from the contractual right of AFC to appoint a receiver, in the circumstances of this matter, it is just and convenient for a receiver to be appointed.

28. Based on the Debtor and in particular, the Guarantor's history which shows their ineptitude as a developer, the Debtor has not made out a "*compelling commercial or other reason*" why an order denying appointing a receiver ought to be made.[17]

29. As set out in the case of *United Savings Credit Union v. FNR Brokers Inc.*, 2003 BSSC 640:

> *"Unless the Mortgagor or charge holder can show that extraordinary circumstances are present, the appointment of a Receiver or a Receiver Manager at the instigation of a foreclosing Mortgagee should be made as a matter of course if the Mortgagee can show default under the mortgage.*
>
> *...*
>
> *A Mortgagee is entitled to the appointment of a Receiver or Receiver Manager as a matter of course when the mortgage is in default. The court should only exercise its discretion not to make such an appointment in those rare occasions where a Mortgagor or subsequent charge holder can show compelling commercial or other reason why such an order ought not to be made. The onus will always be on the Mortgagor or subsequent charge holder in that regard."*[18]

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[16] Bank of Montreal v. Carnival National Leasing Ltd., 2011 ONSC 1007 at para. 28 and 29
[17] *Ross v. Ross Mining Ltd.*, 2009 YKSC 55 at para. 19, The borrowers had no working capital, were in default and the security documentation provided for the appointment of a receiver, the court concluded that the borrower has not met the onus of showing a "*compelling commercial or other reason."*
[18] *United Savings Credit Union v. F&R Brokers Inc.*, 2003 BSSC 640 (CanLII) at para. 15 and 17

30. As stated by Justice Osborne in the recent decision of *Romspen v. Tung Kee:*

> *"Chaos is usually antithetical to the achievement of the overreaching objective of maximizing recovery for stakeholders. I am satisfied that the objective can be achieved and indeed in the present circumstances, can only be achieved, under the supervision of a court appointed receiver."*[19]

31. Since July 31, 2026, the date when the loan subject to the Second Mortgage matured, the Borrowers have had the opportunity to obtain refinancing or seek the sale of the Property. They have failed to do so. There is no evidence before the court that they have any ability to obtain any refinancing. The Debtor attends with nothing more than a "*wing and a prayer*."[20]

32. The oversight of a court appointed Receiver is needed.

PART IV - ORDER REQUESTED

33. The Applicant seeks the appointment of a receiver.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of October, 2026.

Jonathan Kulathungam

Jonathan Kulathungam

[19] *Romspen Investment Corporation v. Tung Kee Investment Canada Ltd. et al.*, 2023 ONSC 5911 at para. 37

[20] Endorsement of Justice Penny, 1180554 Ontario Limited v. CBJ Developments Inc. et al. Court File No. CV-23-00707989-00CL, wherein the debtor was seeking an adjournment on the basis of a potential sale. As stated by Justice Osborne: "*In my view, this latest adjournment request is based on nothing more than a wing and a prayer and must be denied."*

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SCHEDULE "A"

LIST OF AUTHORITIES

1. Romspen Investment Corporation v. Tung Kee Investments Canada Ltd., 2023 ONSC 5911
2. *Elleway Acquisitions Ltd. v. The Cruise Professionals Limited,* 2013 ONSC 6866
3. *Canadian Equipment Finance Leasing v. The Hypoint Company Limited,* 2022 ONSC 6186
4. Maple Trade Finance Inc. v. CY Oriental Holdings Ltd., 2009 BCSC 1527
5. Pandion Mine Finance Fund LP v. Otso Goldcorp., 2022 BCSC 136
6. Bank of Montreal v. Carnival National Leasing Ltd., 2011 ONSC 1007
7. Ross v. Ross Mining Ltd., 2009 YKSC 55
8. *United Savings Credit Union v. F&R Brokers Inc.*, 2003 BSSC 640 (CanLII)

I certify that I am satisfied as to the authenticity of every authority, and I am satisfied that every quotation from an authority that appears in the factum accurately reproduces the text of the authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date October 13, 2026

Jonathan Kulathungam

Signature

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Bankruptcy and Insolvency Act, RSC 1985 c.B-3, Section 243

Court may appoint receiver

- **243 (1)** Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:
    - **(a)** take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
    - **(b)** exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
    - **(c)** take any other action that the court considers advisable.
- **Restriction on appointment of receiver**

  (1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless
    - **(a)** the insolvent person consents to an earlier enforcement under subsection 244(2); or
    - **(b)** the court considers it appropriate to appoint a receiver before then.
- **Definition of *receiver***

  (2) Subject to subsections (3) and (4), in this Part, ***receiver*** means a person who
    - **(a)** is appointed under subsection (1); or
    - **(b)** is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
        - **(i)** an agreement under which property becomes subject to a security (in this Part referred to as a "security agreement"), or
        - **(ii)** a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.
- **Definition of *receiver* — subsection 248(2)**

(3) For the purposes of subsection 248(2), the definition ***receiver*** in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

- **Trustee to be appointed**

  (4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

- **Place of filing**

  (5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

- **Orders respecting fees and disbursements**

  (6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

- **Meaning of *disbursements***

  (7) In subsection (6), ***disbursements*** does not include payments made in the operation of a business of the insolvent person or bankrupt.

- 1992, c. 27, s. 89
- 2005, c. 47, s. 115
- 2007, c. 36, s. 58

Courts of Justice Act, R.S.O. 1990 c.C. 43 at Section 101

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

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