

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED**

**B E T W E E N:**

*(Court Seal)*

**OWEMANCO MORTGAGE HOLDING CORPORATION**

Applicant

- and -

**CONCEPT LOFTS LTD. and DONALD DESROCHERS**

Respondents

**FACTUM OF THE APPLICANT / MOVING PARTY**  
*(Returnable October 21, 2022 at 11:00 AM by Zoom Videoconference)*

October 20, 2022

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## PART I – OVERVIEW

1. The Applicant, Owemanco Mortgage Holding Corporation, moves to appoint Rosen Goldberg Inc. as interim receiver pursuant to subsection 47(1) of the BIA to take possession and secure the Dufferin Property (defined below) and insure it.

## PART II – FACTS

2. The Applicant is a secured lender to the Respondent, Concept Lofts Ltd. (“CCL”), in connection with a loan in the principal amount of \$6.675M (the “**Facility A**”) and to CCL and the Respondent, Donald Desrochers (“**Desrochers**”), in connection with a further loan in the principal amount of \$2.05M (the “**Facility B**” and together with Facility A, collectively, the “**Loans**”).<sup>1</sup>

3. As security for the \$6.675M Loan, the Applicant holds, among other things, a first-ranking mortgage over the property municipally known as 1183 Dufferin Street, in Toronto (the “**Dufferin Property**”).<sup>2</sup> As security for Facility B, the Applicant holds, among other things, a second-ranking mortgage over the Dufferin Property.<sup>3</sup>

4. The Dufferin Property is a church converted to a residential condominium project (the “**Project**”). Construction of the Project is substantially complete.<sup>4</sup>

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<sup>1</sup> Affidavit of Graham Tobe sworn October 20, 2022 (the “Second Tobe Affidavit”) at para 12, Caselines A337.

<sup>2</sup> Exhibit E, Affidavit of Graham Tobe sworn October 19, 2022 (the “First Tobe Affidavit”), Caselines A74.

<sup>3</sup> Exhibit K, the First Tobe Affidavit, Caselines A120. The Applicant also holds a first mortgage over Desrochers’ residential condominium unit.

<sup>4</sup> The Second Tobe Affidavit at para 20, Caselines A338.

5. The Loans have been in financial default since September 7, 2022. The defaults have not been cured.<sup>5</sup>

6. On October 12, 2022, the Applicant commenced this application to appoint a receiver and manager over the Respondents pursuant to section 243(1) of the BIA and section 101 of the Courts of Justice Act.<sup>6</sup>

7. On October 14, 2022, it became apparent that the Dufferin Property is uninsured.<sup>7</sup> Accordingly, the Applicant is seeking the urgent appointment of Rosen Goldberg Inc. to take possession of and secure the Dufferin Property and insure it.

### **PART III – ISSUE**

8. The sole issue on this Application is whether it is appropriate to appoint an interim receiver over the Dufferin Property.

### **PART IV – LAW AND ARGUMENT**

#### **A. Jurisdiction to Appoint an Interim Receiver**

9. Pursuant to s. 47(1) of the *BIA*, the Court may appoint an interim receiver when, among other things, a Notice of Intention to Enforce Security has been sent under s. 244 of the BIA.<sup>8</sup>

10. The Applicant has given CCL notice of its intention to enforce its security under section 244 of the BIA.<sup>9</sup> Accordingly, this Court has jurisdiction to appoint an interim receiver.

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<sup>5</sup> Exhibit R, the First Tobe Affidavit, Caselines A191.

<sup>6</sup> Notice of Application, Caselines A5.

<sup>7</sup> The Second Tobe Affidavit at para 17, Caselines A338.

<sup>8</sup> *Bankruptcy and Insolvency Act* (the “*BIA*”) at s. 47(1).

**B. An Interim Receiver Should Be Appointed**

11. Pursuant to s. 47(3) of the *BIA*, an interim receiver will be appointed when it is shown to the Court to be necessary for the protection of (a) the debtor's estate; or (b) the interests of the creditor who sent the notice under s. 244.<sup>10</sup>

12. The Court may appoint an interim receiver pursuant to s. 47 of the *BIA* on the application of a secured party whose security is in jeopardy and when events of default have occurred under the security agreement.<sup>11</sup>

13. Given the continuing default and that the Dufferin Property is uninsured notwithstanding that construction of the Project is substantially complete, it is just and convenient that an interim receiver be appointed immediately by this Honourable Court to take possession of and secure the Dufferin Property and insure it.

**PART V – ORDER REQUESTED**

14. The Applicant seeks an Order appointing Rosen Goldberg Inc. as interim receiver over the Dufferin Property substantially in the form attached as Schedule "A" to the Notice of Motion.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 20<sup>th</sup> day of October, 2022.



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**DAVID P. PREGER / DAVID Z. SEIFER**

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<sup>9</sup> Exhibit R, the First Tobe Affidavit, Caselines A191.

<sup>10</sup> *BIA* at s. 47(3).

<sup>11</sup> *Retail Funding Inc. v. Cotton Ginny Inc.*, [2008 CarswellOnt 4808](#) (Ont. S.C.J.) at paras. 83-85, Caselines.

**SCHEDULE “A”**

**LIST OF AUTHORITIES**

1. *Retail Funding Inc. v. Cotton Ginny Inc.*, [2008 CarswellOnt 4808](#) (Ont. S.C.J.)
2. *Great Atlantic & Pacific Co. of Canada Ltd. v. 1167970 Ontario Inc.*, [2002 CanLII 12215](#)

## **SCHEDULE “B”**

### **RELEVANT STATUTES**

#### ***Bankruptcy and Insolvency Act, RSC 1985, c B-3***

##### **Appointment of interim receiver**

47 (1) If the court is satisfied that a notice is about to be sent or was sent under subsection 244(1), it may, subject to subsection (3), appoint a trustee as interim receiver of all or any part of the debtor’s property that is subject to the security to which the notice relates until the earliest of

- (a) the taking of possession by a receiver, within the meaning of subsection 243(2), of the debtor’s property over which the interim receiver was appointed,
- (b) the taking of possession by a trustee of the debtor’s property over which the interim receiver was appointed, and
- (c) the expiry of 30 days after the day on which the interim receiver was appointed or of any period specified by the court.

##### **Directions to interim receiver**

(2) The court may direct an interim receiver appointed under subsection (1) to do any or all of the following:

- (a) take possession of all or part of the debtor’s property mentioned in the appointment;
- (b) exercise such control over that property, and over the debtor’s business, as the court considers advisable;
- (c) take conservatory measures; and
- (d) summarily dispose of property that is perishable or likely to depreciate rapidly in value.

##### **When appointment may be made**

(3) An appointment of an interim receiver may be made under subsection (1) only if it is shown to the court to be necessary for the protection of

- (a) the debtor’s estate; or
- (b) the interests of the creditor who sent the notice under subsection 244(1).

##### **Place of filing**

(4) An application under subsection (1) is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

**OWEMANCO MORTGAGE HOLDING CORPORATION**  
Applicant

**-and- CONCEPT LOFTS LTD. et al.**  
Respondents

Court File No. CV-22-00688570-00CL

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PROCEEDING COMMENCED AT  
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