



Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

*(Court Seal)*

CALICOM SOLUTIONS INC., LARDAN INVESTMENTS INC., 1407659  
ONTARIO INC., 1961362 ONTARIO INC., SOLEST INVESTMENTS  
LIMITED, SOUDAN MANAGEMENT SERVICE LTD., MARK J. SHINER  
PROFESSIONAL CORPORATION, MARILYN GOLDSTEIN, STEWART  
MILLER, PAUL KETTNER, PAUL HERBERT, RORDEN HOLDINGS  
LIMITED, MILES KETTNER, KEN KEY, THE MCRAE FAMILY TRUST,  
2292818 ONTARIO INC., HARTLEY GARSHOWITZ, MALTRIX GROUP  
INC., FRANCES MEYERS, SHELDON MEYERS, ELLIOTT STEINBERG,  
HAGOP CELIL, HUGH SCHURE and ROBERT CONWAY

Applicants

and

2538983 ONTARIO INC.

Respondent

**APPLICATION UNDER SUBSECTION 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**

**NOTICE OF APPLICATION**

TO THE RESPONDENT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following page.

THIS APPLICATION will come on for a hearing

- In person
- By telephone conference
- By video conference

at the following location: Zoom coordinates to be provided.

-2-

*(Courthouse address or telephone conference or video conference details, such as a dial-in number, access code, video link, etc. if applicable)*

on Thursday, May 30<sup>th</sup>, 2024, at 9:30 a.m. *(or on a day to be set by the registrar).*

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date May 22, 2024

Issued by \_\_\_\_\_  
Local Registrar

Address of court office: Superior Court of Justice  
330 University Avenue, 9<sup>th</sup> Floor  
Toronto, Ontario, M5G 1R7

TO: **THIS HONOURABLE COURT**

AND TO: **SPETTER ZEITZ KLAIMAN PROFESSIONAL CORPORATION**  
850-100 Sheppard Ave E  
Toronto, Ontario  
M2N 6N5

**Mark A. Klaiman** – LSO# 21724T  
Tel.: 416-789-0650  
[mklaiman@szklaw.ca](mailto:mklaiman@szklaw.ca)

Lawyer for the Respondent,  
2538983 Ontario Inc.

AND TO: **ROSEN GOLDBERG INC.**  
5255 Yonge Street  
North York, ON M2N 5P8

**Brahm Rosen**  
Tel: 416-224-4210  
Email: [brosen@rosengoldberg.com](mailto:brosen@rosengoldberg.com)

Proposed Receiver

AND TO: **AMBER SUNIL**  
535 Broadgreen Street  
Pickering, Ontario L1W 3E8

Guarantor

AND TO: **SUNIL ZUBAIR**  
535 Broadgreen Street  
Pickering, Ontario L1W 3E8

Guarantor

AND TO: **NOOR ZUBAIR**  
1527 Avonmore Square  
Pickering, Ontario L1V 7H5

Guarantor

AND TO: **SHAMAIL ZUBAIR**  
535 Broadgreen Street  
Pickering, Ontario L1W 3E8

Guarantor

AND TO: **TAHIRA ZUBAIR**  
1537 Avonmore Square  
Pickering, Ontario L1V 7H5

Guarantor

AND TO: **TDL Group Corp**  
7460 51<sup>st</sup> Street SE  
Calgary, Alberta T2C 4B4

[propertymanagement@rbi.com](mailto:propertymanagement@rbi.com)

The Tenant

-4-

AND TO: **2769141 ONTARIO INC.**  
515 Consumers Road, Suite 701  
Toronto, ON M2J 4Z2

Lien Claimant

AND TO: **ON DECK CAPITAL CANADA**  
610-1100 Rene Levesque O.  
Montreal, QC H3B 4N4

Lien Claimant

AND TO: **BANK OF MONTREAL**  
250 Yonge Street, 9<sup>th</sup> Floor  
Toronto, ON M5B 2L7

Lien Claimant

AND TO: **VENDORLENDER FUNDING CORP.**  
90C Centurian Drive, Suite 213  
Markham, ON L3R8C5

Lien Claimant

AND TO: **BMW CANADA INC.**  
50 Ultimate Drive  
Richmond Hill ON L4S 0C8

Lien Claimant

AND TO: **276914 ONTARIO INC.**  
515 Consumers Road, Suite 701  
Toronto, ON M2J 4Z2

Lien Claimant

AND TO: **Department of Justice**  
Ontario Regional Office  
120 Adelaide Street West, Suite 400  
Toronto, Ontario M2N 6P4

**Diane Winters**

Tel: 416-973-3172

Email: [diane.winters@justice.gc.ca](mailto:diane.winters@justice.gc.ca)

AND TO: **Minister of Finance**  
Legal Services Branch  
777 Bay Street, 11th Floor  
Toronto, Ontario M5G 2C8

**Steven Groeneveld**  
Tel: 905-433-5657  
Email: [Steven.Groeneveld@ontario.ca](mailto:Steven.Groeneveld@ontario.ca)

**Bankruptcy Department**  
Insolvency Unit  
Email: [insolvency.unit@ontario.ca](mailto:insolvency.unit@ontario.ca)

## APPLICATION

1. The Applicants, Calicom Solutions Inc., Lardan Investments Inc., 1407659 Ontario Inc., 1961362 Ontario Inc., Solest Investments Limited, Soudan Management Service Ltd., Mark J. Shiner Professional Corporation, Marilyn Goldstein, Stewart Miller, Paul Kettner, Paul Herbert, Rorden Holdings Limited, Miles Kettner Kettner, Ken Key, The Mcrae Family Trust, 2292818 Ontario Inc., Hartley Garshowitz, Maltrix Group Inc., Frances Meyers, Sheldon Meyers, Elliott Steinberg, Hagop Celil, Hugh Schure and Robert Conway (hereinafter the “Lenders”) make application for an Order substantially in the form filed herewith, seeking, *inter alia*, an Order:

- (a) if necessary, abridging the time for service and filing of this Notice of Application and the Application Record or, in the alternative, dispensing with same;
- (b) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“BIA”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (“CJA”) appointing Rosen Goldberg Inc. (“RGI”), as the Receiver and Manager (in such capacity, the “Receiver”), without security, of all present and future property, assets and undertakings, including the real property identified in Schedule “A” hereto (collectively, the “Property”) of 2538983 Ontario Inc. (the “Debtor”);
- (c) granting a first ranking super priority charge over the Property in favour of the Receiver and the Receiver’s counsel to secure their fees and disbursements in respect of this proceeding on the terms as set out in the draft Order filed (the “Receiver’s Charge”);

- (d) granting a second ranking super priority charge (the “Receiver’s Borrowing Charge”) over the Property for the purpose of funding the exercise of the duties and obligations conferred upon the Receiver pursuant to the proposed receivership order; and
- (e) such further and other relief as counsel may request and to this Honourable Court may seem just.

### **Background**

2. The Applicants are a syndicate of investors who loaned funds to the Debtor through C & K Mortgage Services Inc. operating as Rescom Capital (“Rescom”), who acted as the mortgage administrator.
3. The Respondent corporation, 2538983 Ontario Inc., (the “Corporation”) is a company incorporated pursuant to the laws of the Province of Ontario.
4. The Debtor is the registered owner of the Coboconk Property, as defined in Schedule “A” hereto, which consists of a 37,462 sq. ft. site improved with a newly built gas station featuring a 2,618 sq. ft. building, with 1,517 sq. ft. used as a convenience store and a separately occupied restaurant operated as Tim Hortons with a drive through (the “Project”).
5. The Debtor is indebted to the Lenders with respect to the credit facilities made available by the Creditors pursuant to and under the terms of a Letter of Commitment dated November 10<sup>th</sup>, 2021, and amended by a Renewal Letter dated February 20<sup>th</sup>, 2023 (collectively referred to as the “Commitment Letter”).

6. The Commitment Letter provided for a loan facility in the amount of \$5,950,000.00, with interest at the rate of 8.25 percent per annum (the “Loan”) to provide funding to assist the Debtor in the purchase of the Coboconk Property.

7. The Commitment Letter was renewed by Agreement dated February 20<sup>th</sup>, 2023, at which time the term was extended from March 1<sup>st</sup>, 2023 to March 1<sup>st</sup>, 2024, and the interest rate was revised from 8.25 percent per annum to a floating rate at Bank of Montreal’s prime plus 3.5 percent, adjusted with each change thereto, subject to a floor rate of 10 percent per annum.

8. As security for its obligations to the Lenders, the Debtor provided the following security, which included:

- (i) A first ranking Charge/Mortgage registered on the 23<sup>rd</sup> day of February 2022 as Instrument No. KL189078 for the principal sum of \$5,950,000.00 against the title to the Coboconk Property (the “Coboconk Charge”);
- (ii) A General Assignment of Rents dated February 8<sup>th</sup>, 2022, registered on February 23<sup>rd</sup>, 2022, in the Land Registry Office for the Land Titles Division of Victoria (No. 57), as Instrument No. KL189079(the “GAR”);
- (iii) A General Security Agreement dated February 8<sup>th</sup>, 2022, and registered on February 23<sup>rd</sup>, 2022, pursuant to *The Personal Property Security Act (Ontario)*, under Financing Statement No. 20220223 1552 1590 9410 (the “GSA”); and



- (iv) An Assignment of Lease dated January 13<sup>th</sup>, 2022, whereby the Debtor assigned a Lease dated March 15<sup>th</sup>, 2019, between the Debtor (as “Landlord”) and The TDL Group Corp. (as “Tenant”) of the Coboconk Property.

9. The obligations of the Debtor to the Lenders were also guaranteed by Amber Sunil, Sunil Zubair, Noor Sunil, Shamail Zubair and Tahira Zubair (collectively, the “Guarantors”) by a Guarantee and Postponement of Claim dated February 8<sup>th</sup>, 2022 (hereinafter the “Guarantee”), whereby the Guarantors, jointly and severally and unconditionally, guaranteed the debt obligations of the Debtor to the Lenders pursuant to the Loan.

10. As security for the Guarantee and as part of the terms of the Loan, the Guarantors granted a second mortgage on three residential properties, which Mortgage was registered on February 23<sup>rd</sup>, 2022, as Instrument No. DR2103368 in the Land Registry Office for the Land Titles Division of Lindsay (No. 57) (the “Collateral Mortgages”). The Collateral Mortgages secured the same principal amount of \$5,950,000.00 at the same interest rate provided for under the Loan.

### **Other Creditors**

11. A search of title to the Coboconk Property reveals the following additional encumbrances:

- a) a second Charge in the amount of \$500,000.00 registered in favor of 276914 Ontario Inc. on March 21<sup>st</sup>, 2023;

12. The PPSA search results reveal the following additional creditors:

- (a) On Deck Capital Canada, Inc., Registration Number 20230523 1603 1901 0223;

- (b) Bank of Montreal, Registration Number 20230301 1110 1532 0593;
- (c) Vendorlender Funding Corp., Registration Numbers 20230104 1701 1462 8572;  
20220901 1005 1462 9824; 20220727 1002 1462 5465; and 20220517 1701 1462  
5457;
- (d) BMW Canada Inc., Registration Number 20220623 0832 1532 9431;
- (e) 2769141 Ontario Inc., Registration Numbers 20220526 1639 1590 4214;
- (f) 276914 Ontario Inc., Registration Number 20220504 1722 1590 0931

### **The Default**

13. The Mortgage fell into default on or about July 1<sup>st</sup>, 2023, when the Debtor failed to make the payment then due. Although the Debtor made some payments thereafter, interest due under the Mortgage remained in default and further payments were missed or late. No further payments have been made on account of the Mortgage since February of 2024.

14. As a result of the Debtor's continuing default, on January 18<sup>th</sup>, 2024, the Lenders issued demands for payment and Notices of Intention to Enforce Security pursuant to Section 244(1) of the *Bankruptcy and Insolvency Act* (the "January NITES") to the Debtor. The statutory notice period expired without payout.

15. On January 18<sup>th</sup>, 2024, the Lenders also made written demand on the Guarantors with respect to the Guarantee.

16. Following receipt of the January NITES, the Debtor agreed to bring the Loan back into good standing. They failed to do so.

17. On March 6<sup>th</sup>, 2024, the Lenders issued a Notice of Sale.

18. The Lenders have also issued a Statement of Claim as against the Guarantors dated April 25<sup>th</sup>, 2024 (the “Guarantee Claim”), which Guarantee Claim remains outstanding.

19. Notwithstanding the demands and expiry of the ten-day statutory notice, the Loan has not been repaid in whole or in part. The Debtor has been unable to successfully make payments to the Lenders and/or to refinance the Loan.

20. As of April 19<sup>th</sup>, 2024, the amount outstanding to the Lenders was \$6,361,900.44 with interest accruing at the rate of Bank of Montreal prime rate plus 3.5 percent per annum (\$1,796.40 per diem).

21. Despite repeated promises, the Debtor remains in default and unable to fulfill its obligations to the Lenders.

22. The Lenders delivered a Notice of Attornment of Rents to the Tenant at the Coboconk Property dated April 19<sup>th</sup>, 2024 (the “Attornment”), which Attornment the Tenant has acknowledged.

23. As the Coboconk Property and the Project include an operating gas station and Tim Hortons restaurant, the Lenders appointed RGI on May 15, 2024, to act as a private Receiver, pursuant to their rights under the General Security Agreement (the “GSA”) pending the hearing of the within application.

24. RGI will arrange to take possession and will engage an agent to operate the gas station pending a sale of the Coboconk Property.

25. The appointment of RGI to act as court appointed Receiver is urgent as:

- a) The Coboconk Property requires management, including the interim operation of the gas station and management of the Tenant pending a sale; and
- b) The appointment of RGI as a private receiver is only a temporary measure.

**It is just and convenient to appoint a Receiver**

26. The Debtor is unable to fulfill its obligations to the Lenders and other creditors and has been unable to refinance or sell the Coboconk Property.

27. A Receiver would be in the best position to manage the Property pending a sale.

28. Pursuant to the Loan and security documents, the Lenders have a contractual right to the appointment of a Receiver upon the occurrence of a default or event of default, as applicable. In furtherance of their contractual rights, the Lenders, are entitled to commence these receivership proceedings to protect their investment and preserve and maximize the value of the property.

29. The Lenders have provided the Debtor with more than sufficient time to repay the indebtedness. The Debtor has been unable to fulfill its obligations to the Lenders and default under the Loan, GSA, and Coboconk Mortgage, continues.

30. The Lenders consider it to be reasonable and prudent to begin enforcement of their security in an effort to recover the outstanding indebtedness.

31. RGI is a licensed Insolvency Trustee and has consented to be appointed as Receiver over the Debtor.

32. 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.

33. Rules 1.04, 2.03, 3.02, 16.08 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990. Reg. 194, as amended; and

34. 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 application:

- (a) Affidavit of Stan Borenstein with attached Exhibits referred to therein;
- (b) The Consent of RGI to act as Receiver of the Property; and
- (c) Such further and other evidence as counsel may advise and this Honourable Court may permit.

May 22, 2024

**GARFINKLE BIDERMAN LLP**  
Barristers & Solicitors  
1 Adelaide Street East, Suite 801  
Toronto, Ontario  
M5C 2V9

**Wendy Greenspoon-Soer** LSO#: 34698L  
[wgreenspoon@garfinkle.com](mailto:wgreenspoon@garfinkle.com)  
Tel: 416-869-7615

Lawyers for the Applicants

-13-

**SCHEDULE “A”**

THE DEBTOR’S REAL PROPERTY

PIN No. 63117-0375 LT

PT LT 18 GULL RIVER RANGE BEXLEY AS IN R261635; S/T R309453; TOGETHER WITH AN EASEMENT OVER PART LOT 18 GULL RIVER RANGE BEXLEY, PART 1, PLAN 57R10516 AS IN KL 123027; CITY OF KAWARTHA LAKE;

Known municipally as, 6720 Highway 35, Coboconk (the “Coboconk Property”)

CALICOM SOLUTIONS INC., et al.  
Applicants and 2538983 ONTARIO INC.  
Respondent

Court File No.

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

Proceeding commenced at Toronto

**NOTICE OF APPLICATION**

**GARFINKLE BIDERMAN LLP**  
Barristers & Solicitors  
1 Adelaide Street East, Suite 801  
Toronto, Ontario  
M5C 2V9

**Wendy Greenspoon-Soer** LSO#: 34698L  
[wgreenspoon@garfinkle.com](mailto:wgreenspoon@garfinkle.com)  
Tel: 416-869-7615

Lawyers for the Applicants

**File Number: 13396-008**

RCP-F 4C (September 1, 2020)