

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C-36, AS AMENDED (the "CCAA")

AND IN THE MATTER OF THE PLAN OF ARRANGEMENT AND COMPROMISE OF SUNRISE ACQUISITIONS (STAYNER) INC., 2846862 ONTARIO INC. AND SUNRISE ACQUISITIONS (ELMVALE) INC.

RESPONDING RECORD
AFC MORTGAGE ADMINISTRATION INC.
(Returnable on February 29th, 2024 at 10:00 am)

DATED: Monday, February 26, 2024

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AFC MORTGAGE ADMINISTRATION
INC.

TO: THE ATTACHED SERVICE LIST

SERVICE LIST

AND TO: **Tyr LLP**
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AND TO: **DEPARTMENT OF JUSTICE**
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Attention: Diane Winters

Tel: 416.973.3172

Email: diane.winters@justice.gc.ca

AND TO: Lawyers for the Department of Justice
**HIS MAJESTY THE KING IN RIGHT OF THE
PROVINCE OF ONTARIO AS REPRESENTED BY
THE MINISTER OF FINANCE**
Insolvency Unit
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Attention: Leslie Crawford

Tel 416.433.5657

Email: leslie.crawford@ontario.ca; insolvency.unit@ontario.ca

AND TO: Lawyers for the Minister of Finance
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Lawyers for the 1st Mortgagee on 299 Mowat Street North

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Proposed Monitor

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**ONTARIO
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C-36, AS AMENDED (the "CCAA")

AND IN THE MATTER OF THE PLAN OF ARRANGEMENT AND COMPROMISE OF SUNRISE ACQUISITIONS (STAYNER) INC., 2846862 ONTARIO INC. AND SUNRISE ACQUISITIONS (ELMVALE) INC.

BETWEEN:

AFC MORTGAGE ADMINISTRATION INC.

Applicant

- and -

SUNRISE ACQUISITIONS (ELMVALE) INC., SAJJAD HUSSAIN, MAHVESH HUSSAIN,
MUZAMMIL KODWAVI and SAFANA KODWAVI

Respondents

**RESPONDING AFFIDAVIT OF ADIT KUMAR
(Sworn February 26th 2024)**

I, Adit Kumar, of the Town of Oakville in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am an officer of the Applicant, AFC Mortgage Administration Inc. ("AFC"), the applicant in the receivership application CV-24-00713287-00CL (the "**Elmvale Receivership**") and as such have personal knowledge of the matters to which I depose herein. Where this affidavit

is based upon information received from others, I have stated the source of that information and verily believe that information to be true.

2. I have read the 3 affidavits of Matthew Castelli (collectively the “**Castelli Affidavit**”) sworn in support of Brexit Holdings Inc.’s (“**Brexit**”) application for the appointment of a receiver under Court File No. CV-23-00710361-00CL (the “**Stayner Receivership**”).
3. I have also read the affidavit of Sajjad Hussain affirmed February 23rd, 2024 (the “**Hussain Affidavit**”) which was filed in support of Sunrise Acquisitions (Stayner) Inc., 2846862 Ontario Inc. and Sunrise Acquisitions (Elmvale) Inc.’s (collectively the “**Sunrise Debtors**”) application under the *Companies Creditor Arrangement Act*, R.S.C. 1985 (the “**CCAA Application**”) and in response to the Elmvale Receivership and Stayner Receivership.
4. I have sworn one affidavit prior to this one, dated February 22nd, 2024 in support of the AFC’s application for a receiver in the Elmvale Receivership and swear this second one, in response to the Hussain affidavit and the Castelli Affidavit.
5. For the purposes of this affidavit, I adopt any references made in my previous affidavit.
6. AFC opposes the CCAA application for a number of reasons which are set out below:
 - a. The Elmvale Receivership and the Stayner Receivership are substantially unrelated because the underlying creditors are different and the underlying mortgage securities are not connected;

- b. The Sunrise entity under the Elmvale Receivership is a single purpose entity created for the sole purpose of land development;
- c. The security under the Elmvale Receivership concerns a first charge under land, which is in default and beyond maturity;
- d. AFC does not wish its first mortgage security to be subordinated in favour of any type of CCAA senior security because the risk associated with a subordinate debt was not priced into AFC's loan underwriting and would be extremely prejudicial to AFC;
- e. AFC has no interest in extending any more credit to Sunrise because of a complete loss of faith, lack of transparency, and the findings of misappropriation;
- f. The Sunrise Debtor's CCAA plan lacks any concrete details and amounts to nothing more than a "*wing and a prayer*";
- g. I believe the costs associated with a CCAA proceeding would far exceed those associated with a receivership and as such would be prejudicial to the creditors;
- h. There is no evidence that any jobs would be safeguarded by the imposition of a CCAA proceeding; and

- i. AFC's underlying security documents expressly contemplate the imposition of a receiver in the event of a default;

- 7. Further I do not believe that the implementation of a sales investment solicitation process ("SISP") would be a viable alternative to a receivership because:
 - a. I do not believe the Sunrise Debtors will be able to raise any equity or financing or other refinancing sufficient to payout the Sunrise Debtors;

 - b. The combination of a scarce capital, executions and the finding of misappropriation against the Sunrise Debtors make a SISP all but impossible; and

 - c. It keeps the debtors of possession whilst the underlying assets deteriorate and the debt increases;

- 8. I swear this affidavit in support of the AFC's application to appoint Rosen as Receiver and for no other or improper purpose.

SWORN BEFORE ME remotely before me by the)
 deponent by video conference this 26 day of February)
 2024 in accordance with O. Reg. 431/20 administering)
 Oath or declaration Remotely. The affiant was located in)
 the Town of Oakville, in the Province of Ontario and the)
 Commissioner was located in the City of Toronto, in the)
 Province of Ontario)
)

Adit Kumar

A Commissioner of Oaths, etc.
 Paul Mand LSO 46022F

AFC MORTGAGE ADMINISTRATION INC.
Applicant

AND

SUNRISE ACQUISITIONS (ELMVALE) INC., et al
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at TORONTO

AFFIDAVIT OF ADIT KUMAR

Sworn February 26, 2024

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