

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CARE LENDING GROUP INC.

Applicant

and

1000209217 ONTARIO LTD.

Respondent

APPLICATION UNDER 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

FACTUM OF THE APPLICANT

**(Appointment of a Receiver)
(Returnable June 21, 2024)**

June 20, 2024

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TO: SERVICE LIST

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PART I - OVERVIEW

1. Care Lending Group Inc. (“**Care Lending**”) brings this application for the appointment of msi Spergel Inc. (“**Spergel**”) as receiver and manager (in such capacity, the “**Receiver**”) of the assets, undertaking and Property of 1000209217 Ontario Inc. (the “**Debtor**”). The Debtor has consented to the appointment of the Receiver and the proposed form of order sought.
2. The Debtor is the operator of the Cotton Mill Pharmacy (the “**Pharmacy**”), an independent pharmacy in Cornwall, Ontario.
3. Care Lending extended a loan (the “**Loan**”) to the Debtor pursuant to the terms of a Promissory Note (defined below) executed October 3, 2022.
4. The Debtor agreed to secure the Loan by granting Care Lending a general security interest in all of the Debtor’s assets and undertakings (defined below as the Collateral).
5. Care Lending is the Debtor’s senior secured creditor, perfected by registration.
6. The Debtor is in default of its obligations under the Promissory Note by failing to pay monies to Care Lending when due on April 15, 2024 and May 15, 2024.
7. Care Lending urgently requires the appointment of a receiver over the Debtor.
8. The Pharmacy is currently abandoned and has been since early May. The Pharmacy has not had any employees, including any pharmacists, since early May. The Pharmacy’s principals have informed Care Lending that they do not intend to re-start operations.

9. The Pharmacy's principals gave notice to the Ontario College of Pharmacists (the "College") that they intended to "temporarily" close the Pharmacy, effective May 21, 2024. Care Lending understands that the Pharmacy must reopen by August 21, 2024, failing which it will be permanently closed by the College. Care Lending understands that the Debtor has no ability or intention to reopen by August 21, 2024.
10. The Pharmacy is located within the Cotton Mill medical centre, and patrons at the medical centre must walk through the Pharmacy to access other medical services within the centre. As a result, other patrons of the medical centre can see that it has been abandoned and that drugs have been left on its shelves and behind the counter. A large volume of prescription and over-the-counter drugs remain at the Pharmacy, including methadone.
11. The abandonment of the Pharmacy has created a risk to public health. First, The Pharmacy's patients have been left, suddenly and unexpectedly, without their pharmacy. Second, because of the physical location of the pharmacy, there is a material risk of theft due to the existence of drugs in plain sight of passers-by. Care Lending has observed security footage from the area showing individuals appearing to "case" the Pharmacy.
12. On June 5, 2024, Care Lending and the landlord attended at the Pharmacy to secure (on site) certain potentially harmful drugs.
13. Care Lending's security is rapidly eroding because goodwill is a material asset of any pharmacy. The Pharmacy's patients were not given any notice of the Pharmacy's intention to stop operating. They have, presumably, begun to have their prescriptions filled at other pharmacies. As a result, the Debtor's goodwill is eroding on a daily basis.

14. On May 29, 2024, Care Lending served a Notice of Intention to Enforce Security (“**NITES**”) upon the Debtor in accordance with the requirements of the *Bankruptcy and Insolvency Act* (Canada). Under the NITES, Care Lending is free to enforce its security as of June 11, 2024.

PART II - FACTS

A. Background

15. The detailed factual background to this receivership application is detailed in the affidavit of Dan Gilchrist sworn June 12, 2024 (the “**Gilchrist Affidavit**”).¹
16. The Debtor is the operator of the Cotton Mill Pharmacy (the “**Pharmacy**”), an independent pharmacy in Cornwall, Ontario.²
17. Care Lending advanced a five-year term loan of \$600,450.00 (the “**Loan**”) to the Debtor pursuant to the terms of a promissory note executed October 3, 2022 (the “**Promissory Note**”).³ Interest on the Loan is calculated and compounded monthly at a rate of 7.75% per annum. Interest on any overdue amounts is owed at the rate of 18% per annum.⁴
18. Per paragraph 2 of the Promissory Note, the Loan is to be repaid in 60 monthly payments of \$7,224.40 (the “**Installments**”) and a final lump-sum payment of \$358,407.08, due on October 15, 2027 (the “**Maturity Date**”).⁵

¹ Gilchrist Affidavit, Tab 2 to the Application Record.

² Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 4.

³ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 19.

⁴ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 20.

⁵ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 22.

19. As of June 12, 2024, \$669,214.79 remains outstanding under the Loan.⁶
20. As security for the payment and performance of the Loan, the Debtor granted Care Lending a general security interest over all of its present and after-acquired property pursuant to a general security agreement (the “GSA”), executed on October 3, 2022.⁷
21. Section 16 of the GSA states:

Upon the occurrence of an Event of Default, we may require you to repay any or all of the Obligations in full, whether matured or not, and we may enforce this Agreement by any method permitted by law, and we may exercise any rights and remedies under applicable law, and **we may appoint any person, including our employee, to be an agent, a receiver or receiver and manager (the "Receiver")** of the Collateral. We and the Receiver shall be entitled to:

- (a) **seize and possess the Collateral;**
- (b) **carry on your business;**
- (c) sell, lease or otherwise dispose of the Collateral;
- (d) foreclose on the Collateral;
- ...
- (h) take any other action deemed necessary to carry into effect the provisions of this Agreement. [Emphasis added]⁸

22. The GSA was registered under the *Personal Property Security Act*, R.S.O. 1990, c. P.10, as amended (the “PPSA”) on September 14, 2022.⁹
23. Care Lending is the Debtor’s first-in-time registered secured creditor. The Debtor’s other secured creditors are 2471911 Ontario Inc. as the corporate successor of Cotton Mill

⁶ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 41.

⁷ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraphs 23 and 24.

⁸ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 57.

⁹ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 25.

Pharmacy Inc. (“**247 Ontario**”), McKesson Canada Corporation, and CWB National Leasing Inc.¹⁰

24. Notwithstanding that Care Lending’s GSA was registered under the PPSA prior to 247 Ontario’s, Care Lending and 247 Ontario executed a Subordination Agreement confirming that Care Lending’s security ranks in priority to 247 Ontario’s and that 247 Ontario is subordinated to Care Lending.¹¹

B. Defaults and Demands

25. The Debtor has failed to make payments under the Promissory Note since April 15, 2024. As a result of the Debtor’s breach of the Promissory Note, the Loan has accelerated pursuant to section 3 of the Promissory Note.¹²
26. The indebtedness owing under the Promissory Note (inclusive of the principal and interest, but exclusive of fees and costs) as of June 12, 2024 is \$669,214.79 (the “**Indebtedness**”), broken down as follows:¹³

Unpaid Instalments	\$296,200.40
Balloon Payment	\$358,407.08
Unpaid Instalments between April 15, 2024 and June 14, 2024	\$14,448.80
Interest on unpaid interest for the period of April 15, 2024 and June 14, 2024	\$158.51
Total (as of June 12, 2024, exclusive of fees and costs)	\$669,214.79

¹⁰ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 35.

¹¹ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraphs 38 and 39.

¹² Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 40.

¹³ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 41.

27. On May 23, 2024 Care Lending notified the Debtor of it being in default of its obligations under the Promissory Note (the “**First Demand**”).¹⁴ This letter provided a payment deadline of June 2, 2024 (the “**Payment Deadline**”), failing which Care Lending reserved its rights to enforce security, including but not limited to, appointing a receiver and commencing legal proceedings to recover the indebtedness owed at that time.
28. On May 29, 2024, Care Lending’s counsel notified the Debtor of it being in default of its obligations under the Promissory Note (the “**Second Demand**”). The letter provided an updated indebtedness owed and an updated payment deadline of June 10, 2024 (the “**Subsequent Payment Deadline**”), failing which Miller Thomson LLP (“**MT**”), on behalf of Care Lending, would commence legal proceedings claiming the indebtedness owed under the Promissory Note plus accrued interest, costs, fees and expenses.¹⁵
29. Pursuant to the NITES, Care Lending notified the Debtor of its intention to enforce its security on the loan once the Subsequent Payment Deadline has expired and no payment has been received. The Security is to be enforced in the form of a GSA, as described above, in favour of Care Lending.

C. The Debtor has Abandoned the Pharmacy

30. Care Lending began making inquiries into the Debtor’s operations in mid-spring 2024 as the Debtor began falling behind on Installment payments, having paid the January Installment three days late and missed the February and March Installments. The Debtor

¹⁴ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 42.

¹⁵ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 43.

provided catch-up payments for the February and March Installments in April 2024, and then immediately defaulted on the April Installment.¹⁶

31. Upon inquiry, and following an attendance at the Pharmacy on June 5, 2024, Care Lending learned that:

(a) The Pharmacy has not had any employees, including any pharmacists, since early May;

(b) Non-prescription drugs were left on the Pharmacy's shelves, creating a significant risk of theft as the shelves are open to anyone walking through the Pharmacy to access other parts of the medical centre;

(c) Prescription drugs, including narcotics, were left behind the Pharmacy's counter, in full view to the public;

(d) Prescriptions have been filled and are behind the counter that are ready for pickup by patients, but are unable to be given to patients as there are no employees on site to hand over the drugs and collect payment;

(e) The Debtor's CEO has advised Care Lending that the Debtor lacks either the ability or the willingness to reinvest the working capital necessary to re-open the Pharmacy;

(f) On or around May 21, 2024, the Pharmacy's principals gave notice to the College that they intended to "temporarily" close the Pharmacy, effective May 21, 2024. Care

¹⁶ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 47.

Lending understands that the Pharmacy must reopen by August 21, 2024, failing which it will be permanently closed by the College; and

(g) The Debtor has made clear to Care Lending that it has no ability or intention to reopen by August 21, 2024.¹⁷

32. As a result of the foregoing, Care Lending has lost all confidence in the Debtor's willingness and ability to effectively manage, preserve and protect the Pharmacy, which constitutes Care Lending's primary collateral for the Loan.¹⁸

33. The Receiver's intention is to reopen and operate the Pharmacy, using the necessary qualified personnel in accordance with applicable regulations, while the Pharmacy is marketed for sale. This will mitigate concerns about theft and loss of goodwill.¹⁹

PART III - ISSUES

34. The issue to be addressed before this Honourable Court is whether it is just or convenient for Spergel to be appointed as receiver of the Debtor.

PART IV - LAW AND ARGUMENT

A. Technical Requirements for the Appointment of a Receiver are Met

35. Pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("**BIA**"), on the application of a secured creditor, a court may appoint a receiver to do any or all of the following if it is "just or convenient to do so":

¹⁷ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 48.

¹⁸ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 50.

¹⁹ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 52.

- (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.²⁰
36. The application must be filed in a court having jurisdiction in the judicial district of the locality of the debtor.²¹
37. The BIA defines locality of a debtor as the principal place:
- (a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event;
 - (b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event; or
 - (c) in cases not captured by paragraph (a) or (b), where the greater portion of the Property of the debtor is situated.²²
38. Where a notice of intention to enforce security is to be sent under section 244(1) of the BIA, a court cannot appoint a receiver until 10 days after the notice is sent unless the

²⁰ BIA section 243(1).

²¹ BIA section 243(5).

²² BIA section 2.

insolvent person consents to earlier enforcement, or the court considers it appropriate to appoint a receiver on an earlier date.²³

39. The Debtor is in breach of the Promissory Note and the GSA by failing to pay the Instalments when due and by abandoning the Pharmacy.
40. As a result of these breaches, the Debtor is in default of the Promissory Note and, pursuant to sections 15 and 16 of the GSA, Care Lending may enforce its security by appointing a receiver.²⁴
41. Care Lending issued a NITES on May 29, 2024.²⁵ As a result, this application may be brought on June 21, 2024 because more than 10 days have passed since the notice was sent. In any event, the Debtor has consented to the appointment of a receiver.²⁶
42. The application is properly brought in Cornwall because the Pharmacy is located in Cornwall, Ontario.²⁷

B. It is Just and Convenient to Appoint a Receiver

43. In addition to section 243 of the BIA, a court may appoint a receiver pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (“**CJA**”), if it is “just and convenient” to do so.²⁸

²³ BIA section 243(1.1).

²⁴ Gilchrist Affidavit at paragraphs 54-56.

²⁵ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 43.

²⁶ Consent of the Debtor, Tab 6 of the Application Record.

²⁷ Exhibit “A” to the Gilchrist Affidavit, Tab 2 to the Application Record.

²⁸ *Courts of Justice Act*, R.S.O. 1990, c. C.43, section 101 as amended.

44. In determining whether it is just and convenient to appoint a receiver, a court must “have regard to all of the circumstances”.²⁹ There is no requirement for the Applicant to establish that it will suffer irreparable harm if the proposed receiver is not appointed.³⁰
45. At common law the appointment of a receiver is an extraordinary remedy, but where a security agreement between a creditor and its debtor permits the same, as is the case here, the appointment of a receiver is not extraordinary because the creditor “is merely seeking to enforce a term of an agreement that was assented to by both parties.”³¹
46. When evaluating whether, in all the circumstances, the appointment of a receiver is just or convenient, courts have considered numerous factors, including:
- (a) the nature of the property;
 - (b) the likelihood of preserving and maximizing the return on the subject property;
 - (c) the relationship between the debtor and its creditors;
 - (d) the conduct of the parties;
 - (e) the risk of the lender’s security deteriorating;
 - (f) loss of confidence in the debtor’s management;
 - (g) the potential costs of the receiver; and

²⁹ [Bank of Nova Scotia v Freure Village on Clair Creek, 1996 CanLII 8258 at para 10](#) (Ont Sup Ct J [Gen Div Commercial List]) [**“Freure”**].

³⁰ [Bank of Montreal v Carnival National Leasing Ltd, 2011 ONSC 1007 at paras 24 and 28; Freure at paragraph 10.](#)

³¹ [Kingsett Mortgage Corp v Maplevue Developments Ltd et al, 2024 ONSC 1983 at para 22](#) [**“Maplevue”**], citing [Elleway Acquisitions Ltd v Cruise Professionals Ltd, 2013 ONSC 6866 at para 27](#) [**“Elleway”**]; [Meridian v Okje Cho & Family Enterprise Ltd, 2021 ONSC 3755 \(CanLII\), at para 21.](#)

(h) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently.³²

47. Having regard to the foregoing considerations, the appointment of a receiver over the Debtor is just and convenient because:

(a) The Pharmacy has not operated or had any employees, including any pharmacists, since early May. As a result, the Collateral's value is rapidly eroding;³³

(b) Non-prescription drugs have been left on the Pharmacy's shelves. This has created a significant risk of theft as the shelves are open to anyone walking through the Pharmacy to access other parts of the medical centre;³⁴

(c) Prescription drugs, including narcotics, were left behind the Pharmacy's counter. As it is apparent to the public that the Pharmacy is abandoned, this has created a significant risk of theft;³⁵

(d) Prescriptions have been filled and are behind the counter that are ready for pickup by patients, but are unable to be given to patients as there are no employees on site to hand over the drugs and collect payment;³⁶

(e) Patients have begun to have their prescriptions filled by other pharmacies;³⁷

³² [Elleway](#), at para 28; [BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc](#), 2020 ONSC 1953, at para 45; [Canadian Western Bank v 2563773 Ontario Inc](#), 2023 ONSC 4766 at para 9; [Macquarie Equipment Finance Limited v Validus Power Corp. et al](#), 2023 ONSC 4772, at para 8; [Mapleview](#) at para 24.

³³ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 48(a).

³⁴ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 48(b).

³⁵ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 48(c).

³⁶ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 48(d).

³⁷ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 48(e).

- (f) The Debtor lacks either the ability or the willingness to reinvest the working capital necessary to re-open the Pharmacy;³⁸
- (g) The Debtor has given notice to the Ontario College of Pharmacists that it is “temporarily closed” until August 21, 2024, and has advised Care Lending that it does not intend to ever reopen;³⁹
- (h) A receivership will provide the stability, structure, and supervision required to preserve the value of the Pharmacy and, if deemed appropriate, to market the Pharmacy for sale in an open and transparent manner;
- (i) Care Lending has lost all confidence in the Debtor’s management and its ability to operate the Pharmacy and re-start making payments under the Promissory Note;⁴⁰
- (j) As the Debtor’s major secured creditor, Care Lending has the primary economic interest in the Debtor;
- (k) The Debtor is in default of the Loan and GSA, and these defaults are unaddressed, continuing, and increasingly longstanding;
- (l) The Debtor has demanded repayment of the Loan and issued a NITES. As of June 12, 2024, the Debtor was indebted to Care Lending in the amount of \$669,214.79, which remains unsatisfied;⁴¹

³⁸ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 48(f).

³⁹ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 48(g).

⁴⁰ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 50.

⁴¹ Gilchrist Affidavit, Tab 2 to the Application Record, at paragraph 41.

(m) Care Lending's security agreements with the Debtor provide Care Lending with the contractual right to appoint a receiver in these circumstances;⁴² and

(n) The potential cost of a receivership is reasonable in these circumstances, including in view of the secured loan, the substantial value of the collateral, and the business and commercial expertise that a receiver can bring to the situation.

48. Spergel is an experienced and professional licenced insolvency trustee. Spergel has acted as a court-appointed receiver on other occasions and in similar circumstances, including over pharmacies. Spergel is well equipped and prepared to administer and realize upon the collateral in a commercially reasonable manner.

49. In all of the above circumstances, Care Lending submits that a court-appointed receiver is required to take control of the Debtor, to prevent the further deterioration of the Debtor's assets, to preserve the value of the Debtor's assets for all of the Debtor's stakeholders, and to mitigate the risk to public health.

50. A court-appointed receiver will be able to realize on the Debtor's assets in a fair and reasonable manner that balances the interests of all of the Debtor's stakeholders in a transparent and court-supervised process.

C. The Terms of the Proposed Receivership Order are Appropriate

51. The proposed Receivership Order is tailored to the scope of the property and is substantially similar to the terms of the Ontario Superior Court of Justice Commercial List's model receivership order. The proposed Receivership Order is appropriate in the

⁴² Gilchrist Affidavit, Tab 2 to the Application Record, at paragraphs 56 and 57.

circumstances. A redline of the proposed order compared to the model order is attached as Tab 4 to the Application Record.

52. The proposed Receivership Order has been modified to include language that protects the privacy of the Pharmacy's patients' medical records.⁴³ This language was previously approved by this Court in another receivership application.⁴⁴
53. The proposed Receivership Order also allows the Receiver to retain the same counsel as Care Lending in respect of any matter where there is no conflict of interest between the Receiver and Care Lending. The Receiver will retain independent counsel in respect of any advice or issue where a conflict may exist or arise, including in conducting its own review of the various secured creditors' security. This Court has previously granted similar orders, including in the *HSBC Bank Canada v LSI Logistix Canada Inc., et al* matter.⁴⁵
54. As contemplated in the Model Order, the proposed Receivership Order grants the following charges:
- (a) the “**Receiver’s Charge**” to secure the fees and disbursements of the receiver and its counsel; and
 - (b) the “**Receiver’s Borrowings Charge**” for the purpose of funding the exercise of the powers and duties conferred upon the receiver pursuant to the proposed Receivership Order.

⁴³ See paragraphs 5, 5A, 6A, and 16 of the draft order.

⁴⁴ [Order of the Honourable Justice Cavanagh, December 7, 2020](#), 1951584 Ontario Inc and CWB Maxium Financial Inc. v 4321 Sheppard Avenue East Inc., et al, CV-20-00650853-00CL.

⁴⁵ [Order of the Honourable Justice Penny, June 20th, 2022](#), *HSBC Bank Canada v LSI Logistix Canada Inc., et al*, CV-22-00682169-00CL, at paragraph 26.

55. Priority charges sought by a receiver under the BIA, such as the Receiver's Charge and the Receiver's Borrowings Charge, provide the certainty required to ensure the integrity, fairness, and predictability of insolvency proceedings.⁴⁶ In accordance with subsection 243(6) of the BIA, the Applicant has provided reasonable notice to the parties likely to be affected by such charges of the proposed Receivership Order.
56. The Applicant submits that the proposed Receiver's Charge and the Receiver's Borrowings Charge are appropriate in the circumstances and commensurate with the administrative and borrowings charges granted by this Court in similar receivership proceedings.⁴⁷

PART V - ORDER SOUGHT

57. For the reasons set out above, Care Lending respectfully requests that this Court grant the proposed Receivership Order attached at Tab 3 of Care Lending's application record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED. this 20th day of June, 2024.



Patrick Corney & Matthew Cressatti,
Miller Thomson LLP

Lawyers for the Applicant,
Care Lending Group Inc.

⁴⁶ BIA, section 243(6);

⁴⁷ [In the Matter of the Receivership Proceedings of Sunrise Acquisitions \(Hwy 7\) Inc. \(June 9, 2021\), Toronto, CV 21-00663051-00CL \(Order Appointing Receiver\)](#) at paras 18, 21; [In the Matter of the Receivership of 2738283 Ontario Inc., 2738284 Ontario Inc. and 2738285 Ontario Inc. \(November 9, 2021\), Toronto, CV-21-00670723-00CL \(Order Appointing Receiver\)](#) at paras 18, 21.

SCHEDULE A – AUTHORITIES

1. *Bank of Nova Scotia v Freure Village on Clair Creek*, 1996 CanLII 8258 (Ont Sup Ct J [Gen Div Commercial List]).
2. *Bank of Montreal v Carnival National Leasing Ltd*, 2011 ONSC 1007.
3. *Kingsett Mortgage Corp v Mapleview Developments Ltd et al*, 2024 ONSC 1983.
4. *Elleway Acquisitions Ltd v Cruise Professionals Ltd*, 2013 ONSC 6866.
5. *Meridian v Okje Cho & Family Enterprise Ltd*, 2021 ONSC 3755.
6. *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc*, 2020 ONSC 1953.
7. *Canadian Western Bank v 2563773 Ontario Inc*, 2023 ONSC 4766.
8. *Macquarie Equipment Finance Limited v Validus Power Corp et al*, 2023 ONSC 4772.
9. [Order of the Honourable Justice Cavanagh, December 7, 2020](#), *1951584 Ontario Inc and CWB Maxium Financial Inc. v 4321 Sheppard Avenue East Inc., et al*, CV-20-00650853-00CL.
10. [Order of the Honourable Justice Penny, June 20th, 2022](#), *HSBC Bank Canada v LSI Logistix Canada Inc., et al*, CV-22-00682169-00CL, at paragraph 26.
11. *In the Matter of the Receivership Proceedings of Sunrise Acquisitions (Hwy 7) Inc* (June 9, 2021), Toronto, CV 21-00663051-00CL (Order Appointing Receiver).
12. *In the Matter of the Receivership of 2738283 Ontario Inc, 2738284 Ontario Inc and 2738285 Ontario Inc* (November 9, 2021), Toronto, CV-21-00670723-00CL (Order Appointing Receiver).

SCHEDULE B – STATUTES

Bankruptcy and Insolvency Act, R.S.C. 1985 c. B.3, as amended

Interpretation

Definitions

2 In this Act,

...

locality of a debtor means the principal place

- (a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,
- (b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or
- (c) in cases not coming within paragraph (a) or (b), where the greater portion of the Property of the debtor is situated

Secured Creditors and Receivers

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.

...

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.

Courts of Justice Act, R.S.O. 1990, c. c.43, as amended

Interlocutory Orders

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.

CARE LENDING GROUP INC.,
Applicant

1000209217 ONTARIO LTD.,
Respondent

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FACTUM
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