

## Garrafa, Shallon

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**From:** Cavanagh, Justice Peter (SCJ) <Peter.Cavanagh@scj-csj.ca>  
**Sent:** Monday, August 16, 2021 10:27 AM  
**To:** Iqbal, Asim; Finlayson, Gavin; Sawicki, Patryk; Tawfik, Elsir; bissell@gsnh.com  
**Cc:** JUS-G-MAG-CSD-Toronto-SCJ Commercial List  
**Subject:** [\*\*EXT\*\*] 1951584 Ontario Inc. et al v. 4231 Sheppard Avenue East Inc. et al. - Court File No. CV-20-00650853-00CL  
**Attachments:** 56415179\_1\_Draft Order (Adding Respondents) For Court\_.pdf

### Endorsement:

The motion for relief in the form of a procedural order is granted. Order to issue in form of attached order signed by me.



Cavanagh J.

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**From:** Cavanagh, Justice Peter (SCJ)  
**Sent:** August 16, 2021 9:24 AM  
**To:** Iqbal, Asim <aiqbal@millerthomson.com>; Finlayson, Gavin <gfinlayson@millerthomson.com>; Sawicki, Patryk <psawicki@millerthomson.com>; Tawfik, Elsir <etawfik@millerthomson.com>; bissell@gsnh.com  
**Cc:** JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>  
**Subject:** 1951584 Ontario Inc. et al v. 4231 Sheppard Avenue East Inc. et al. - Court File No. CV-20-00650853-00CL

### Counsel:

Gavin Finlayson and Asim Iqbal for CWB Maxium Financial Inc. and 1951584 Ontario Inc.  
Brendan Bissel for msi Spergel inc.

### Endorsement:

The Applicants CWB Maxium Financial Inc. and 1951584 Ontario Inc. (together, the “Lender”) brought a motion, without notice, to appoint an interim receiver over three pharmacies: Capital Pharmacy Inc., Sigma Healthcare Inc., and Anoop Brighton Pharmacy Inc. (referred to as the “Replacement Pharmacies”), pursuant to s. 47(1) of the BIA and s. 101 of the CJA.

The evidence in support of this motion is set out in the affidavits of Edward Hopkinson who is the VP Risk Officer of CWB Maxium Financial Inc. This evidence is referenced in the Lenders’ factum filed in support of this motion.

The Lenders’ initial receivership action commenced in October 2020 and involved approximately 22 respondent entities that were connected to and effectively controlled by John Gerges. Mr. Gerges is a pharmacist and the directing mind of the Respondents. Since the initial receivership application, the Respondents’ obligations continue to be in default and the Lender has taken enforcement measures.

Mr. Hopkinson’s evidence is that although Mr. Gerges has paid out certain loans owing to the Lender, he has also taken steps prejudicial to the Lender’s interests, including directing the improper transfers of assets, including inventory and customer lists, from three pharmacies over which the Lender held security (described herein as the “Liquidated Pharmacies”) to the Replacement Pharmacies through non-arm’s length transfers. The three Liquidated Pharmacies are St. Mary, SJ East and JM Westview.

The evidence of Mr. Hopkinson is that the Replacement Pharmacies are owned and operated by persons who are not at arm's length to Mr. Gerges.

Diep Nguyen was the director of SJ East and a director and officer of at least five Respondents, two of which are owned by Mr. Gerges. Mr. Gerges was authorized to negotiate on Mr. Nguyen's behalf in respect of these pharmacies. Mr. Nguyen is also the director of JG Tilbury which is the registered owner of the building where Sigma Drug Mart operates. Sigma Drug Mart received the assets of JM Westview.

Samir Shenoda is a 50% shareholder, officer, and director of another pharmacy to which the Lender provides financing. Mr. Gerges is the other 50% shareholder of this pharmacy. Mr. Shenoda operates Sigma Pharmacy in office space provided by JG Tilbury.

Anoop Gupta owns the New Brighton Pharmacy which received the assets of SJ East. Mr. Gupta was the designated manager of SJ East (owned by Mr. Nguyen) from the time SJ East commenced operations until around September 21, 2020. In past dealings with the Lender, Mr. Gerges, on behalf of SJ East, proposed to the Lender a transaction whereby Mr. Gupta would purchase SJ East. However, the Lender did not consent to this transaction.

Sandra Youssef, Mr. Gerges' wife, is a pharmacist and was the director and owner of St. Marys.

Mr. Hopkinson's evidence is that the assets, including inventory and customer lists, of the Liquidated Pharmacies (St. Mary, SJ East, and JM Westview) were improperly transferred to the Replacement Pharmacies through non-arm's length transfers:

Sigma Drug Mart, located a short distance from the former location of JM Westview, received the assets of JM Westview. Capital Pharmacy Inc. is located in a neighbouring plaza to the pharmacy that was owned and operated by St. Mary. Capital Pharmacy improperly received the assets of St. Mary and appears to continue to pay St. Mary's obligations through pre-authorized automatic withdrawals from its bank account. The New Brighton Pharmacy is located across the street from where SJ East used to operate. It received the assets of SJ East.

Mr. Hopkinson's evidence is that the Lender entered into a forbearance agreement with JM Westview and SJ East on January 4, 2021 and, on January 7, 2021, St. Mary entered into a substantially similar forbearance agreement with the Lender. Mr. Hopkinson's evidence is that by January 24, 2021, the Lender had issued letters against JM Westview, SJ East and St. Mary declaring each in default of the Forbearance Agreement because Mr. Gerges and his wife, Ms. Youssef, misled the Lender because they signed a Forbearance Agreement with knowledge that the entities were no longer operational at the time of the agreement.

The Lender sought and obtained the appointment of a receiver against the Liquidated Pharmacies. Prior to the appointment of a receiver, the proposed receiver visited the locations for each of JM Westview, SJ East and St. Mary and reported that each pharmacy was closed and all the shelves were cleared out. The receiver conducted an investigation and concluded that the Liquidated Pharmacies were transferred to the Replacement Pharmacies. The evidence with respect to the investigation is summarized in paragraphs 47 to 51 of the Lender's factum.

Mr. Hopkinson's evidence is that Mr. Gerges misled the court when he swore that the Replacement Pharmacies are simply competing pharmacies which took advantage of his situation and set up shop nearby and hired away employees of the Liquidated Pharmacies. This evidence is summarized in paragraphs 52-54 of the Lender's factum.

On the evidence before me, there is good reason to believe that when the transfers of assets took place, the parties were not dealing with each other at arm's length.

Section 101 of the CJA provides that a receiver may be appointed by an interlocutory order where it appears to a judge of the court to be just or convenient to do so. In addition, this Court has jurisdiction to appoint an interim receiver under

section 47(1) of the BIA if it is satisfied that the appointment is necessary to protect the interests of the creditor. Each of the Liquidated Pharmacies executed security agreements with the Lender under which the Lender has the right to appoint a receiver. The Lender has not discharged its security interest over the assets of the Liquidated Pharmacies and it appears that the Replacement Pharmacies are substantially the same operations as the Liquidated Pharmacies.

On the evidence before me, I am satisfied that it is just and convenient for an interim receiver to be appointed. The powers of the interim receiver under the proposed interim receivership order are limited and include (a) the power to monitor the applicable debtor's receipts and disbursements; (b) to have access to the applicable debtor's premises; to engage experts and counsel to assist with the exercise of the interim receiver's powers; (c) to conduct examinations; and (d) to report to the Court on any matter it considers appropriate. The interim receiver will not have the power to take possession of property, sell property, compromise claims or other parties often afforded to a receiver appointed under section 243 of the BIA. The proposed interim receivership order does not include a charge to secure the interim receiver's fees and disbursements, nor does it contemplate a borrowing charge.

The proposed interim receivership order imposes certain restrictions and duties on the Replacement Pharmacies including (a) to not sell, transfer or otherwise dispose of property other than in the ordinary course of business without the proposed interim receiver's prior written consent; (b) to not enter into a contract or make an expenditure in excess of \$2,500 without the prior written consent of the interim receiver; and (c) to provide in a timely fashion to the interim receiver, upon request, such reporting as may be required.

I am satisfied on the evidence that the lender was entitled to bring this motion without notice. Mr. Hopkinson has provided evidence that when the Lender was negotiating forbearance agreements, it appears that Mr. Gerges was directing the transfer of assets from the Liquidated Pharmacies to the Replacement Pharmacies. Mr. Hopkinson provides evidence that CWB was contacted on August 6, 2021 by legal counsel for a purchaser of assets of Sigma Drug Mart which was expected to close "early next week". I am satisfied that there is a risk to the assets that are subject to the lender's security if notice of this motion is provided.

Orders to issue in forms of attached orders signed by me. Entry of these orders is dispensed with. The interim receiver is not required to post information concerning the interim receivership on its web site, pending further order.

Orders to issue in forms of attached orders signed by me. Entry of these orders is dispensed with. The interim receiver is not required to post information concerning the interim receivership on its web site, pending further order. A comeback hearing is scheduled before me on September 7, 2021 at 2:00 p.m. for one hour.



Cavanagh J.

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[EXTERNAL EMAIL / COURRIEL EXTERNE]

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