



ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

Electronically issued : 25-Oct-2021  
Délivré par voie électronique  
Toronto

THE HONOURABLE MR. ) WEDNESDAY, THE  
JUSTICE CAVANAGH )  
 ) 20<sup>th</sup> DAY OF OCTOBER, 2021

BETWEEN

CWB MAXIUM FINANCIAL INC.

Applicant

- and -

4231 SHEPPARD AVENUE EAST INC., ABU SEIFEIN BRIMLEY PHARMA INC., ANOOP BRIGHTON PHARMACY INC., BLESS HUI PHARMA INC., JG WINDSOR INC., JM WESTVIEW PHARMA INC., JUBILEE PROPERTY INVESTMENTS INC., MAPLE MEDI PHARMA INC., RIVER HILL PHARMACY LTD., SIGMA HEALTHCARE INC., SJ EAST PHARMA INC., ST MARY COOKSVILLE PHARMA INC., ST. MARY THEOTOKOS PHARMA INC., STONEY CREEK PHARMA INC., TORONTO APOTHECARY PHARMA INC., WESTWAY HOLDINGS INC. and OLDE WALKERVILLE HOLDINGS INC.

Respondents

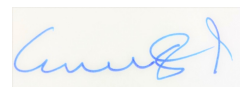
APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985 C. B-3 AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C-43, AS AMENDED

**ORDER**  
**(Removal of Respondent)**

THIS MOTION made by the Applicant for an Order (a) terminating the Interim Receivership Order (as defined below) and discharging the msi Spergel inc. (“**Spergel**”) as Interim Receiver (in such capacity, the “**Interim Receiver**”) of ANOOP BRIGHTON PHARMACY INC. (the “**Debtor**”), and (b) removing the Debtor as a Respondent to these proceedings, was heard this day by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 crisis.

ON READING the Order of this Court dated August 16, 2021 appointing Spergel as Interim Receiver of the Debtor (the “**Interim Receivership Order**”) and the Consent executed by the Applicant and the Debtor consenting to this Order and on hearing the submissions of counsel for the Applicant and the Debtor and the other Counsel listed on the Counsel Slip;

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that the Interim Receivership Order granted in these proceedings is terminated and of no further force and effect.
3. THIS COURT ORDERS that the Interim Receiver shall not be required to pass its accounts pursuant to Sections 16-18 of the Interim Receivership Order.
4. THIS COURT ORDERS AND DECLARES that Spergel is released and discharged from any and all liability that Spergel now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Spergel while acting in its capacity as Interim Receiver of the Debtor, save and except for any gross negligence or wilful misconduct on the Interim Receiver’s part. Without limiting, the foregoing, Spergel is hereby and forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Interim Receiver’s part.
5. THIS COURT ORDERS that the Debtor is removed as Respondent to these proceedings.
6. THIS COURT ORDERS that the Applicant is granted leave to amend the Amended Notice of Application, issued September 29, 2021, to remove the Respondent, ANOOP BRIGHTON PHARMACY INC., in the form attached as **Schedule “A”** hereto.



Digitally signed by  
Mr. Justice Cavanagh

**Schedule "A"**  
**Amended Amended Notice of Application**

Court File No.: CV-20-00650853-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE -  
(COMMERCIAL LIST)

B E T W E E N:

CWB MAXIUM FINANCIAL INC.

Applicant

- and -

4231 SHEPPARD AVENUE EAST INC., ABU SEIFEIN BRIMLEY PHARMA INC., ~~ANOOB  
BRIGHTON PHARMACY INC.~~, BLESS HUI PHARMA INC., JG WINDSOR INC., JM  
WESTVIEW PHARMA INC., JUBILEE PROPERTY INVESTMENTS INC., MAPLE MEDI  
PHARMA INC., RIVER HILL PHARMACY LTD., SIGMA HEALTHCARE INC., SJ EAST  
PHARMA INC., ST MARY COOKSVILLE PHARMA INC., ST. MARY THEOTOKOS  
PHARMA INC., STONEY CREEK PHARMA INC., TORONTO APOTHECARY PHARMA  
INC., WESTWAY HOLDINGS INC. and OLDE WALKERVILLE HOLDINGS INC.

Respondents

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

**AMENDED AMENDED NOTICE OF APPLICATION**

TO THE RESPONDENTS:

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

THIS APPLICATION will come on for a hearing on Monday, December 7, 2020, at 2:00p.m. at 330 University Avenue, Toronto, Ontario, via zoom video conference.

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 applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, 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 applicants' lawyer or, where the applicants do not have a lawyer,

serve it on the applicants, 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: November 2, 2020

Issued by \_\_\_\_\_  
Local registrar

Address of 330 University Avenue  
court office Toronto, Ontario

TO: **See attached service list at “Schedule “A”**

## APPLICATION

1. This amended notice of application is being submitted at the request of the Court in connection with the amendment to the title of proceedings obtained under the Order of Justice Cavanagh dated September 7, 2021. The balance of this amended notice of application reflects the relief initially sought at the initial application returnable December 7, 2020. Please refer to the Receiver's website for court materials ([www.spergelcorporate.ca/engagements](http://www.spergelcorporate.ca/engagements)).

2. The Applicants make application (the “**Application**”) for an Order substantially in the form attached hereto at **TAB 3** to the Application record, among other things, for the following relief:

- (a) abridging the time for service of this Application and the Application Record, and dispensing with service on any person other than those served;
- (b) appointing msi Spergel Inc. as receiver and manager (“**Spergel**” or the “**Receiver**”) of all of the assets, undertakings and properties (collectively, the “**Property**”) of 2503338 Ontario Inc., 4231 Sheppard Avenue East Inc., Abu Seifein Brimley Pharma Inc., Bless Jimmy’s Pharma Inc., Bless Pharma Inc., JG Windsor Inc., Jimmy’s Group Investors Inc., JM Westview Pharma Inc., Jubilee Property Investments Inc., Maple Medi Pharma Inc., Resident Medical Group Inc., River Hill Pharmacy Ltd., S&J Property Investors Inc., SJ Colborne Pharma Inc., SJ East Pharma Inc., St. Mary Cooksville Pharma Inc., St. Mary Theotokos Pharma Inc., Stoney Creek Pharma Inc., Toronto Apothecary Pharma Inc., Toronto Surrey Pharma Inc. and Westway Holdings Inc. (collectively, the “**Debtors**”) acquired for, or used in relation to a business carried on by each of the Debtors, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (Canada) R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended (the “**CJA**”); and
- (c) such further and other relief as this Honourable Court may deem just.

### THE GROUNDS FOR THE MOTION ARE:

#### *Background*

3. CWB Maxium Financial Inc., (“**CWB**”) is a financial institution offering a broad range of financial services to a variety of industries, including pharmacies.
4. CWB holds a service agreement with 1951584 Ontario Inc. (“**195**”), successor of Desante Financial Services Inc. and Maxium Financial Services Inc. by amalgamation (collectively with CWB, the “**Lender**”) such that employees of CWB administer 195’s portfolio;
5. Each of the Debtors owns or operates a pharmacy, or owns the real estate on which a pharmacy is located. The Debtors are collectively indebted (as borrower, guarantor or both) to the Lender in the aggregate amount of \$25,907,513.06 plus interest, costs and fees (the “**Indebtedness**”).
6. The Indebtedness is evidenced by nineteen (19) promissory notes issued over the course of 2015 to 2019 with the Lender, for a total original loan amount of \$ \$25,907,513.06 (the “**Loans**”);
7. John Gerges (“**John Gerges**”), an individual residing in Windsor, Ontario, is either a director, officer, or a sole or significant shareholder of 19 of the twenty-one (21) Debtors. The remaining two Debtors, 2503338 Ontario Inc. and St. Mary Cooksville Pharma Inc., provided unlimited corporate guarantees in respect of certain of the Loans;
8. John Gerges is also a guarantor of all of the Loans except for the promissory note with SJ East Pharma Inc.;
9. As security for the Debtors’ respective obligations to the Lender, each of the Debtors granted a security interest in all of their respective assets, property, and undertaking pursuant to a general security agreement (collectively, the “**General Security Agreements**”);
10. It is a term of each of the General Security Agreements that the Lender is entitled to appoint a receiver upon the occurrence of an event of default thereunder;

11. It is a term of each of the Loans signed by the Debtors that upon the occurrence any of the following events, the Lender is entitled to demand repayment of the indebtedness owing by such Debtor:

- (a) default in making any payment when due under the applicable promissory note or any other agreement between the applicable Debtor and the Lender;
- (b) a default occurs under any agreement under which indebtedness is owing or guaranteed by the Debtor; or
- (c) any circumstance changes or any event occurs which has or could have a material adverse effect on the Debtor's financial condition, business, assets, properties or prospects;

#### **EVENTS OF DEFAULT**

##### ***(A) THE DEBTORS ARE IN DEFAULT UNDER THE LOAN AND SECURITY DOCUMENTS***

12. On or about January 23, 2020, the Lender learned that John Gerges had been charged by the York Regional Police on or about December of 2019 with possession of a Schedule 1 substance (as defined in the federal *Controlled Drugs and Substances Act*) for the purpose of trafficking, and for possession of a forged document (the "**Criminal Charges**"). News reports indicated that the York Regional Police recovered more than \$500,000 in opioid pills, an illegal handgun, and \$200,000 in cash during their investigation of the alleged opioid trafficking ring;

13. Following the Criminal Charges, the counterparty to a material contract with certain of the Debtors under which a pharmacy facilitates direct billing to major insurance providers (the "**Telus Agreements**") terminated such contracts. The Lender is of the view that, in light of the Criminal Charges, the remaining Telus Agreements still in place are at risk without a stay of proceedings.

14. Since the Criminal Charges, the Lender became aware that certain of the Debtors are operating without any liability insurance (the "**Insurance Defaults**");



15. Since the Criminal Charges, 14 out of the 19 Loans are in default for a failure to make payments when due and payable.

16. The Lender has demanded repayment of all of the Loans and has issued Notices of Intention to Enforce Security under s. 244 of the BIA to each of the Debtors (the “**BIA Notices**”).

***(B) ATTEMPTS TO CONSENSUALLY RESOLVE DISPUTE***

17. As detailed in the Hopkinson Affidavit (as defined below), the Lender spent months attempting to work with the Debtors to consensually resolve the defaults.

18. During that time, the Lender experienced a pattern of behavior where representations or proposals are made by John Gerges on behalf of the Debtors only to later be told that such proposal is no longer available.

19. Despite months of efforts, no significant progress toward a viable arrangement was made.

*Appointment of a Receiver*

20. The Lender has lost confidence in the Debtors’ management.

21. It is just and convenient that the Court grant the relief sought herein;

22. The Applicants propose that Spergel be appointed as Receiver of the Property;

23. Spergel is a licensed trustee in bankruptcy and has consented to act as Receiver should the Court so appoint it;

24. The *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, including section 243;

25. The *Courts of Justice Act*, R.S.O. 1990, c. C.43, including section 101;

26. Rule 2.03, 14, and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg.194, as amended;

27. Such further and other grounds as the lawyers may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

28. The Affidavit of Edward Hopkinson sworn October 29, 2020 (the “**Hopkinson Affidavit**”);
29. The consent of Spergel to act as Receiver; and
30. Such further evidence as the lawyers may advise and this Honourable Court may permit.

November 2, 2020

**MILLER THOMSON LLP**  
Scotia Plaza  
40 King Street West, Suite 5800  
P.O. Box 1011  
Toronto, ON Canada M5H 3S1

**Asim Iqbal LSO#: 61884B**  
416.595.8596  
Email: [aiqbal@millerthomson.com](mailto:aiqbal@millerthomson.com)

**Gavin H Finlayson, LSO#: 44126D**  
Tel: 416.595.8619 / Fax: 416.595.8695  
Email: [gfinlayson@millerthomson.com](mailto:gfinlayson@millerthomson.com)

Lawyers for the Applicant

**TO: The Service List Attached hereto as Schedule “A”**

**CWB MAXIUM FINANCIAL  
INC.** Applicant

and **4231 SHEPPARD AVENUE EAST INC.** et al.  
Respondents

Court File No: CV-20-006650853-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at [Toronto](#)

**AMENDED AMENDED NOTICE OF  
APPLICATION**

**MILLER THOMSON LLP**

Scotia Plaza  
40 King Street West, Suite 5800  
Toronto, ON Canada M5H 3S1

**Asim Iqbal LSO#: 61884B**

416.595.8596  
Email: [aiqbal@millerthomson.com](mailto:aiqbal@millerthomson.com)

**Gavin H Finlayson, LSO#: 44126D**

Tel: 416.595.8619 / Fax: 416.595.8695  
Email: [gfinlayson@millerthomson.com](mailto:gfinlayson@millerthomson.com)

Lawyers for the Applicant

**CWB MAXIUM FINANCIAL INC.** –and– **4231 SHEPPARD AVENUE EAST INC., et al.**  
Applicant Respondents

Court File No: CV-20-00650853-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**ORDER  
(REMOVING RESPONDENT)**

**MILLER THOMSON LLP**

Scotia Plaza  
40 King Street West, Suite 5800  
Toronto, ON Canada M5H 3S1

**Asim Iqbal LSO#: 61884B**

Tel: 416.595.8596 / Fax: 416.595.8695  
Email: aiqbal@millerthomson.com

**Gavin H Finlayson, LSO#: 44126D**

Tel: 416.595.8619 / Fax: 416.595.8695  
Email: gfinlayson@millerthomson.com

Lawyers for the Applicant