

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Plaintiff

and

**2644833 ONTARIO INC. and AMINULLAH NAWROZADA, also known
as AMIN QU**

Defendants

SUPPLEMENTARY MOTION RECORD
(returnable February 6, 2024)

February 5, 2024

FOGLER, RUBINOFF LLP

Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Rachel Moses (LSO# 42081V)

rmoses@foglers.com

Tel: 416.864.7627

Carol Liu (LSO# 84938G)

rmoses@foglers.com

Tel: 416.849.4150

Lawyers for the Plaintiff

TO: **THE SERVICE LIST**

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Court File No. CV-23-00001810-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Plaintiff

and

**2644833 ONTARIO INC. and AMINULLAH NAWROZADA, also known
as AMIN QU**

Defendants

SUPPLEMENTARY AFFIDAVIT OF CAROL LIU

I, Carol Liu, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND
SAY:**

1. I am a lawyer with the law firm of Fogler, Rubinoff LLP, lawyers for the plaintiff, Duca Financial Services Credit Union Ltd. ("**Duca**") and, as such, have knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge, I have stated the source of my information and believe it to be true.
2. Duca served (on January 8, 2024) and filed its notice of change of lawyer with the Court on January 11, 2024 appointing Fogler, Rubinoff LLP as its lawyer.
3. I am advised by Rachel Moses of Fogler, Rubinoff LLP, counsel to Duca, and believe that she exchanged the following emails with Shawn Tock of Tock Dispute Resolution, counsel to the defendants:

- 2 -

- (a) On January 12, 2024, Mr. Tock advised Ms. Moses that the terms of the proposed Order require some revisions, one reason being that the transaction in which his clients will sell the Property (as defined in the Affidavit of Ivan Bogdanovich sworn October 20, 2023) to a buyer is expected to close on January 31, 2024 (the "**Transaction**"). A copy of this email is attached hereto as **Exhibit "A"**;
- (b) On January 15, 2024, Mr. Tock further advised Ms. Moses that his clients confirmed that the buyer of the Property (as defined in the Affidavit of Ivan Bogdanovich sworn October 20, 2023) waived the due diligence conditions. A copy of this email is attached hereto as **Exhibit "B"**;
- (c) On January 16, 2024, Ms. Moses advised Mr. Tock that Duca is agreeable to consent to the receivership on the terms discussed with Mr. Tock. Ms. Moses proposed sending a joint email to the Court, setting out how the February 6, 2024 motion is expected to proceed depending on the outcome of the expected closing of the Transaction. A copy of this email is attached hereto as **Exhibit "C"**;
- (d) On January 23, 2024, on agreement from Mr. Tock, Ms. Moses sent the joint email to the Court describing the particulars of the consent that the parties have reached ("**January 23 Email**"). A copy of this email is attached hereto as **Exhibit "D"**;
- (e) On January 29, 2024, after submitting the Confirmation of Motion for the February 6, 2024 motion, Ms. Moses followed up with Mr. Tock inquiring

- 3 -

about the status of the Transaction. A copy of this email is attached hereto as **Exhibit "E"**;

- (f) On February 1, 2024 and again on February 2, 2024, Ms. Moses wrote two more emails to Mr. Tock and left him voice messages, including on February 5, 2024, inquiring if the Transaction closed on January 31, 2024 as no communications have been received since January 15, 2024. Copies of the emails dated February 1, 2024 and February 2, 2024 are attached hereto as **Exhibit "F"**.

4. I am advised by Ms. Moses and believe that, as of February 5, 2024, the day before the receivership motion scheduled on February 6, 2024, she has not heard from Mr. Tock regarding her inquiries on January 29, February 1, February 2, and February 5, 2024.

5. I swear this affidavit in support of Duca's motion for an Order to appoint a receiver, and for no other or improper purpose.

SWORN by Carol Liu at the City of Toronto, in the Province of Ontario, before me on February 5, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)



CAROL LIU

This is **Exhibit "A"** referred to
in the Supplementary Affidavit of Carol Liu
Sworn this 5th
day of February, 2024.

A handwritten signature in blue ink, appearing to be "K. Liu", written over the text "February, 2024".

.....
A Commissioner for Taking Affidavits

From: Shawn Tock <shawn@tockdr.com>
Sent: Friday, January 12, 2024 10:54 AM
To: Moses, Rachel <rmoses@foglers.com>
Subject: Re: DUCA: Endorsement and Order: ROYAL BANK OF CANADA v. 2668144 ONTARIO INC. et al. | CV-23-00702043-00CL

Without Prejudice-

Rachel:

The terms of the proposed Order need to be revised somewhat, as certain triggering dates referred to in the original version of the Order (date for waiver of conditions, etc), have already passed. For example, under the APS, the purchaser was to waive the conditions within "25 banking days from the date of acceptance", which was November 13, 2023. That deadline passed on December 18, 2023.

As such, I have revised the relevant paragraphs as follows:

THIS COURT ORDERS that, notwithstanding any other provision of this Order, the appointment of the Receiver under this Order shall not take effect until the earlier of the following:

*(a) **February 6, 2024 [i.e. the date of the receivership motion]**, unless the sale of the real property at **1525 Hwy 11 North, Shanty Bay, Ontario, L0R 1B3** has closed on **January 31, 2024**, or the closing date has been extended with the prior written approval of the Plaintiff, acting reasonably; or*

(b) The date of termination of the Agreement of Purchase and Sale, dated November 10, 2023, between the purchaser and the Debtor.

Sincerely,

Shawn Tock

----- Forwarded message -----

From: **Rachel Moses** <RMoses@mindengross.com>

Date: Thu, 14 Dec 2023 at 13:03

Subject: DUCA: Endorsement and Order: ROYAL BANK OF CANADA v. 2668144 ONTARIO INC. et al. | CV-23-00702043-00CL

To: Shawn Tock <shawn@tockdr.com>

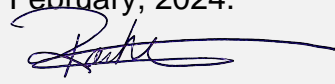
Hi Shawn,

FYI here is the endorsement and order, I was referring to.

Rachel Moses | T: 416.369.4115 | F: 416.864.9223 | www.mindengross.com



This is **Exhibit "B"** referred to
in the Supplementary Affidavit of Carol Liu
Sworn this 5th
day of February, 2024.

A handwritten signature in blue ink, appearing to read "Katie", written over a horizontal line.

.....
A Commissioner for Taking Affidavits

From: Shawn Tock <shawn@tockdr.com>
Sent: Monday, January 15, 2024 9:13 AM
To: Moses, Rachel <rmoses@foglers.com>

Subject: Re: DUCA: Endorsement and Order: ROYAL BANK OF CANADA v. 2668144 ONTARIO INC. et al. | CV-23-00702043-00CL

Rachel-

My clients confirmed that the buyer waived the due diligence conditions.

Regards,

Shawn

On Fri, 12 Jan 2024 at 11:03, Moses, Rachel <rmoses@foglers.com> wrote:

Shawn,

Did the purchaser waive conditions?



Rachel Moses
Partner
Fogler, Rubinoff LLP
Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8
Direct: 416.864.7627
Main: 416.864.9700
Toll Free: 1.866.861.9700
Fax: 416.941.8852
Email: rmoses@foglers.com
foglers.com

From: Shawn Tock <shawn@tockdr.com>

Sent: Friday, January 12, 2024 10:54 AM

To: Moses, Rachel <rmoses@foglers.com>

Subject: Re: DUCA: Endorsement and Order: ROYAL BANK OF CANADA v. 2668144 ONTARIO INC. et al. | CV-23-00702043-00CL

Without Prejudice-

Rachel:

The terms of the proposed Order need to be revised somewhat, as certain triggering dates referred to in the original version of the Order (date for waiver of conditions, etc), have already passed. For example, under the APS, the purchaser was to waive the conditions within "25 banking days from the date of acceptance", which was November 13, 2023. That deadline passed on December 18, 2023.

As such, I have revised the relevant paragraphs as follows:

THIS COURT ORDERS that, notwithstanding any other provision of this Order, the appointment of the Receiver under this Order shall not take effect until the earlier of the following:

*(a) **February 6, 2024 [i.e. the date of the receivership motion]**, unless the sale of the real property at **1525 Hwy 11 North, Shanty Bay, Ontario, L0R 1B3** has closed on **January 31, 2024**, or the closing date has been extended with the prior written approval of the Plaintiff, acting reasonably; or*

(b) The date of termination of the Agreement of Purchase and Sale, dated November 10, 2023, between the purchaser and the Debtor.

Sincerely,

Shawn Tock

----- Forwarded message -----

From: **Rachel Moses** <RMoses@mindengross.com>

Date: Thu, 14 Dec 2023 at 13:03

Subject: DUCA: Endorsement and Order: ROYAL BANK OF CANADA v. 2668144 ONTARIO INC. et al. | CV-23-00702043-00CL

To: Shawn Tock <shawn@tockdr.com>

Hi Shawn,

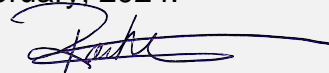
FYI here is the endorsement and order, I was referring to.

Rachel Moses | T: 416.369.4115 | F: 416.864.9223 | www.mindengross.com



MERITAS LAW FIRMS WORLDWIDE

This is **Exhibit "C"** referred to
in the Supplementary Affidavit of Carol Liu
Sworn this 5th
day of February, 2024.



.....
A Commissioner for Taking Affidavits

From: Moses, Rachel
Sent: Tuesday, January 16, 2024 10:12 AM
To: Shawn Tock <shawn@tockdr.com>
Cc: ibogdanovich@duca.com
Subject: RE: DUCA: Endorsement and Order: ROYAL BANK OF CANADA v. 2668144 ONTARIO INC. et al. | CV-23-00702043-00CL

Hi Shawn,

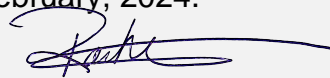
Duca is agreeable to the consent of the receivership on the terms we discussed. I propose to write a joint email to the Court advising of the consent so the requirement for factums is waived and the time estimate is reduced. To be clear, on **February 6, 2024:**

- the motion to appoint a receiver will proceed by consent (if Duca is not paid out prior to February 6, 2024 or if Duca has not consented to the extension of the closing of the transaction) or
- if Duca is repaid in full on or before February 6, 2024, Duca will seek the dismissal of the action on a without costs basis on February 6, 2024.



Rachel Moses
Partner
Fogler, Rubinoff LLP
Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8
Direct: 416.864.7627
Main: 416.864.9700
Toll Free: 1.866.861.9700
Fax: 416.941.8852
Email: rmoses@foglers.com
foglers.com

This is **Exhibit "D"** referred to
in the Supplementary Affidavit of Carol Liu
Sworn this 5th
day of February, 2024.

A handwritten signature in black ink, appearing to be 'K. Liu', written over a horizontal line.

.....
A Commissioner for Taking Affidavits

From: Moses, Rachel
Sent: Tuesday, January 23, 2024 3:08 PM
To: barrie.scj.courts@ontario.ca
Cc: shawn@tockdr.com
Subject: CV-23-1810 DUCA FINANCIAL SERVICES CREDIT UNION LTD VS 2644833 ONTARIO INC. et al

Hello,

We are the lawyers for Duca Financial Services Credit Union Ltd. in respect of the above noted matter. I am writing with the consent of the defendants and their lawyer, Mr. Tock, is copied on this email.

The last attendance was before Justice Speyer whose endorsement is attached. Please be advised that the parties have **consented** to the matter proceeding as follows:

The receivership motion is returnable on **February 6, 2024 - time estimate is now reduced to 10 minutes, given the hearing is proceeding on consent.**

- The Debtor is consenting to the receivership order if i) the sale transaction is not completed by February 5, 2024, resulting in the payout of all indebtedness owing to Duca or ii) Duca has not consented to the extension of the closing of the sale transaction beyond February 6, 2024;
- In the event the sale transaction closes on or prior to February 5, 2024, and all indebtedness has been repaid to Duca, Duca will seek the dismissal of the action on a without costs basis and withdraw the receivership motion on February 6, 2024.

As a result of the matter proceeding on Consent, **is it possible to schedule a 10 minute matter before a Judge prior to February 6, 2024 to take out the Consent to Receivership based on the triggers identified above?** Note, the parties will not be filing factums in light of the Consent.



Rachel Moses
Partner
Fogler, Rubinoff LLP
Lawyers
77 King Street West
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TD Centre North Tower
Toronto, ON M5K 1G8
Direct: 416.864.7627
Main: 416.864.9700
Toll Free: 1.866.861.9700
Fax: 416.941.8852
Email: rmoses@foglers.com
foglers.com

From: JUS-G-MAG-CSD-Barrie-SCJ-Court <Barrie.SCJ.courts@ontario.ca>

Sent: Wednesday, November 15, 2023 2:35 PM

To: Rachel Moses <RMoses@mindengross.com>; 'shawn@tockdr.com' <shawn@tockdr.com>

Subject: CV-23-1810 DUCA FINANCIAL SERVICES CREDIT UNION LTD VS 2644833 ONTARIO INC. et al

[EXTERNAL]

Please find attached the endorsement of The Honourable Justice J. Speyer.

Civil/small claims
Filing Office

This is **Exhibit "E"** referred to
in the Supplementary Affidavit of Carol Liu
Sworn this 5th
day of February, 2024.

A handwritten signature in black ink, appearing to be "K. Liu", written over the text "day of February, 2024."

.....
A Commissioner for Taking Affidavits

From: Moses, Rachel
Sent: Monday, January 29, 2024 12:15 PM
To: shawn@tockdr.com
Subject: FW: Confirmation of Motion - Duca Financial Services Credit Union Ltd. v. 2644833 Ontario Inc. et al. - Court File No. CV-23-00001810-0000 - Motion Date: February 6, 2024

Hi Shawn,

What is the status of the sale?



Rachel Moses
Partner
Fogler, Rubinoff LLP
Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8
Direct: 416.864.7627
Main: 416.864.9700
Toll Free: 1.866.861.9700
Fax: 416.941.8852
Email: rmoses@foglers.com
foglers.com

From: JUS-G-MAG-SCJ-Barrie-Trial Coordination <Barrie.SCJ.TC@ontario.ca>
Sent: Monday, January 29, 2024 12:02 PM
To: Morgan, Hayley <hmorgan@foglers.com>
Cc: Moses, Rachel <rmoses@foglers.com>; shawn@tockdr.com; Liu, Carol <cliu@foglers.com>
Subject: RE: Confirmation of Motion - Duca Financial Services Credit Union Ltd. v. 2644833 Ontario Inc. et al. - Court File No. CV-23-00001810-0000 - Motion Date: February 6, 2024

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Thank you,

Civil Trial Coordinator, SCJ

Barrie.SCJ.TC@ontario.ca



Ontario Superior Court of

Justice

75 Mulcaster Street, Room

412

Barrie, Ont L4M 3P2

705-739-6153

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To book your Pre Trial date in Calendly directly visit: <https://calendly.com/ce-civil-pretrials>

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For Long Motions or questions seeking clarification via email to: CErunninglist@ontario.ca

From: Morgan, Hayley <hmorgan@foglers.com>

Sent: January 29, 2024 11:56 AM

To: JUS-G-MAG-SCJ-Barrie-Trial Coordination <Barrie.SCJ.TC@ontario.ca>

Cc: Moses, Rachel <rmoses@foglers.com>; shawn@tockdr.com; Liu, Carol <cliu@foglers.com>

Subject: Confirmation of Motion - Duca Financial Services Credit Union Ltd. v. 2644833 Ontario Inc. et al. - Court File No. CV-23-00001810-0000 - Motion Date: February 6, 2024

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Good morning,

Please find attached the Confirmation of Motion for the motion that is scheduled for February 6, 2024.

Please confirm receipt.

Thank you.



Hayley Morgan

Legal Assistant to Rachel Moses & Carol Liu

Fogler, Rubinoff LLP

Lawyers

77 King Street West

Suite 3000, P.O. Box 95

TD Centre North Tower

Toronto, ON M5K 1G8

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Email: hmorgan@foglers.com

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This is **Exhibit "F"** referred to
in the Supplementary Affidavit of Carol Liu
Sworn this 5th
day of February, 2024.

A handwritten signature in black ink, appearing to be "Kurt", written over a horizontal line.

.....
A Commissioner for Taking Affidavits

From: Moses, Rachel
Sent: Friday, February 2, 2024 12:02 PM
To: shawn@tockdr.com
Subject: FW: DUCA - Draft Order - RE: Superior Court of Justice – CV-23-00001810-0000 - Barrie / Cour supérieure de justice – CV-23-00001810-0000 - Barrie

Shawn,

I sent you two emails and left you a voice message. May I please hear from you or confirm via reply email that the closing did not take place on January 31, 2024 and that the receivership motion is proceeding by consent. Please find attached receivership order.



Rachel Moses
Partner
Fogler, Rubinoff LLP
Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8
Direct: 416.864.7627
Main: 416.864.9700
Toll Free: 1.866.861.9700
Fax: 416.941.8852
Email: rmoses@foglers.com
foglers.com

From: Moses, Rachel
Sent: Thursday, February 1, 2024 10:21 PM
To: shawn@tockdr.com
Cc: Ivan Bogdanovich <ibogdanovich@duca.com>
Subject: Re: Confirmation of Motion - Duca Financial Services Credit Union Ltd. v. 2644833 Ontario Inc. et al. - Court File No. CV-23-00001810-0000 - Motion Date: February 6, 2024

Shawn, I have not heard from you. Could you kindly respond.

I take your silence to mean there is no sale and the Receiver will be appointed on consent on February 6, 2024.

Rachel Moses

Partner
Fogler, Rubinoff LLP
Lawyers
Direct: 416-864-7627

On Jan 29, 2024, at 12:15 PM, Moses, Rachel <rmoses@foglers.com> wrote:

Hi Shawn,

What is the status of the sale?



Rachel Moses
Partner
Fogler, Rubinoff LLP
Lawyers
77 King Street West
Suite 3000, P.O. Box 95

TD Centre North Tower
 Toronto, ON M5K 1G8
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 Main: 416.864.9700
 Toll Free: 1.866.861.9700
 Fax: 416.941.8852
 Email: rmoses@foglers.com
foglers.com

From: JUS-G-MAG-SCJ-Barrie-Trial Coordination <Barrie.SCJ.TC@ontario.ca>
Sent: Monday, January 29, 2024 12:02 PM
To: Morgan, Hayley <hmorgan@foglers.com>
Cc: Moses, Rachel <rmoses@foglers.com>; shawn@tockdr.com; Liu, Carol <cliu@foglers.com>
Subject: RE: Confirmation of Motion - Duca Financial Services Credit Union Ltd. v. 2644833 Ontario Inc. et al. - Court File No. CV-23-00001810-0000 - Motion Date: February 6, 2024

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Thank you,

Civil Trial Coordinator, SCJ
Barrie.SCJ.TC@ontario.ca



*Ontario Superior Court of
 Justice
 75 Mulcaster Street, Room
 412
 Barrie, Ont L4M 3P2
 705-739-6153*

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 To book your Pre Trial date in Calendly directly visit: <https://calendly.com/ce-civil-pretrials>
 To File Materials: File civil or Divisional Court documents online | ontario.ca
 For Long Motions or questions seeking clarification via email
 to: CErunninglist@ontario.ca

From: Morgan, Hayley <hmorgan@foglers.com>
Sent: January 29, 2024 11:56 AM
To: JUS-G-MAG-SCJ-Barrie-Trial Coordination <Barrie.SCJ.TC@ontario.ca>
Cc: Moses, Rachel <rmoses@foglers.com>; shawn@tockdr.com; Liu, Carol <cliu@foglers.com>
Subject: Confirmation of Motion - Duca Financial Services Credit Union Ltd. v. 2644833 Ontario Inc. et al.
 - Court File No. CV-23-00001810-0000 - Motion Date: February 6, 2024

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Good morning,

Please find attached the Confirmation of Motion for the motion that is scheduled for February 6, 2024.

Please confirm receipt.

Thank you.



Hayley Morgan

Legal Assistant to Rachel Moses & Carol Liu
Fogler, Rubinoff LLP
Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8
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Toll Free: 1.866.861.9700
Fax: 416.941.8852
Email: hmorgan@foglers.com
foglers.com

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DUCA FINANCIAL SERVICES CREDIT UNION LTD.
Plaintiff

-and- **2644833 ONTARIO INC. et al.**
Defendants

Court File No. CV-23-00001810-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
BARRIE

SUPPLEMENTARY AFFIDAVIT

FOGLER, RUBINOFF LLP

Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Rachel Moses (LSO# 42081V)

rmoses@foglers.com

Tel: 416.864.7627

Carol Liu (LSO# 84938G)

cliu@foglers.com

Tel: 416.849.4150

Lawyers for the Plaintiff

DUCA FINANCIAL SERVICES CREDIT UNION LTD.
Plaintiff

-and- **2644833 ONTARIO INC. et al.**
Defendants

Court File No. CV-23-00001810-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
BARRIE

SUPPLEMENTARY MOTION RECORD

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rmoses@foglers.com

Tel: 416.864.7627

Carol Liu (LSO# 84938G)

rmoses@foglers.com

Tel: 416.849.4150

Lawyers for the Plaintiff