

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**TANDIA FINANCIAL CREDIT UNION LIMITED**

Applicant

- and -

**9259929 CANADA INC.**

Respondent

**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**

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**FACTUM OF THE APPLICANT**

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September 23, 2025

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*Lawyers for Tandia Financial Credit Union Limited*

## PART I – OVERVIEW

1. 9259929 Canada Inc. (the “**Debtor**”) has been in default of its various reporting and payment obligations under its loan arrangement with Tandia Financial Credit Union (“**Tandia**”) since January 2025.<sup>1</sup> Notwithstanding certain registrations under the *Personal Property Security Act* (Ontario) (the “**PPSA**”), Tandia holds first-ranking security over all personal property and the subject real property of the Debtor.<sup>2</sup>
2. On April 8, 2025, Tandia made formal demand for repayment (the “**Demand**”) on the Debtor and delivered a Notice of Intention to Enforce Security pursuant to s. 244 of the *Bankruptcy and Insolvency Act* (the “**BIA**”). The ten-day statutory period under subsection 244(1) of the BIA has expired.<sup>3</sup>
3. On or about July 21, 2025, Tandia and the Debtor entered into a forbearance agreement (the “**Forbearance Agreement**”), pursuant to which Tandia agreed to forbear from taking further action to enforce its security until the earlier of: (i) September 5, 2025; or (ii) the occurrence of an Intervening Event (as defined in the Forbearance Agreement), pursuant to the terms and conditions of the Forbearance Agreement. The forbearance period expired on September 5, 2025, without the Debtor repaying its indebtedness to Tandia.
4. As of June 23, 2025, a total of \$3,441,397.60 (exclusive of legal fees, disbursements and accruing interest) was owing by the Debtor to Tandia (the “**Indebtedness**”).<sup>4</sup>

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<sup>1</sup> Affidavit of Dawood Khan sworn June 4, 2025 at para 12, Motion Record of Tandia Financial Credit Union at Tab 2 [“**Khan Affidavit**”]; Exhibit L to the Khan Affidavit.

<sup>2</sup> Khan Affidavit at paras 9, 12.

<sup>3</sup> Khan Affidavit at para 19.

<sup>4</sup> Supplementary Affidavit of Dawood Khan sworn September 11, 2025 at Exhibit A, Article 2.2(a) [“**Supplementary Khan Affidavit**”].

5. The Debtor has failed or refused to repay the Indebtedness or enter into any arrangements acceptable to Tandia for repayment of same.<sup>5</sup> Accordingly, Tandia is contractually entitled to move to enforce its security and appoint msi Spergel Inc. (“**Spergel**”) as receiver (in such capacity, the “**Receiver**”) of the Debtor’s assets, properties and undertakings, including, without limitation, the real properties municipally known as (i) 1203-1215 Cannon Street East, Hamilton, Ontario and legally described in PIN 17246-0356 (LT) (the “**Cannon Property**”) and (ii) 32 Barton Street East, Hamilton, Ontario and legally described in PIN 17161-0044 (LT) (the “**Barton Property**” and together with the Cannon Property, the “**Real Properties**”).

## **PART II – FACTS**

6. The Debtor is directly indebted to Tandia with respect to certain credit facilities (collectively, the “**Credit Facilities**”) made available by Tandia to the Debtor pursuant to and under the terms of a Commitment Letter dated September 20, 2021, as supplemented by (i) a Promissory Note dated October 4, 2021 in the principal amount of \$1,600,000, and (ii) a Promissory Note dated October 4, 2021 in the principal amount of \$1,825,000 (as the same may have been amended, replaced, restated or supplemented from time to time, and collectively, the “**Credit Agreement**”).<sup>6</sup>

7. As security for the Debtor’s obligations to Tandia, including, without limitation, under the Credit Agreement, the Debtor provided:

- (a) a general security agreement dated October 4, 2021 (the “**GSA**”), which grants in favour of Tandia, among other things, a security interest in any and all of the property, assets and undertakings of the Debtor, registration in respect of which was duly made pursuant to the Personal Property Security Act (Ontario) (the “**PPSA**”);
- (b) a collateral charge/mortgage in favour of Tandia, in the amount of \$1,825,000.00, in respect of the Cannon Property (the “**Cannon Charge**”), which was registered on

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<sup>5</sup> Khan Affidavit at para 2.

<sup>6</sup> Khan Affidavit at para 5.

title to the Cannon Property on October 5, 2021 pursuant to instrument number WE1551412;

- (c) a General Assignments of Rents dated September 4, 2021, granted by the Debtor in respect of the Cannon Property, which was registered on title to the Cannon Property on October 5, 2021 pursuant to instrument number WE1551413 and under the PPSA;
- (d) a collateral charge/mortgage in favour of Tandia, in the amount of \$1,600,000.00, in respect of the Barton Property (the “**Barton Charge**”), which was registered on title to the Barton Property on October 5, 2021 pursuant to instrument number WE1551414; and
- (e) a General Assignments of Rents dated September 4, 2021, granted by the Debtor in respect of the Barton Property, which was registered on title to the Barton Property on October 5, 2021 pursuant to instrument number WE1551415 and under the PPSA, (collectively, the “**Security**”).<sup>7</sup>

8. Pursuant to the Credit Agreement, the Debtor is obligated to make blended monthly payments in respect of the two Credit Facilities, consisting of principal and interest, in the amount of \$8,634.56 and \$9,848.00, respectively.<sup>8</sup>

9. The obligations of the Debtor under the Credit Agreement are due and payable at the option of Tandia upon the occurrence of an event of default. There have been one or more defaults by the Debtor under the Credit Agreement, including monetary defaults.<sup>9</sup> Specifically, the Debtor has failed to make the requisite payments of principal and interest as they become due on a monthly basis<sup>10</sup>.

10. Following the defaults under the Credit Agreement, Tandia issued an exit letter on January 30, 2025, advising that it was no longer prepared to continue its lending relationship with the Debtor nor provide any other financial accommodations and, accordingly, requested that the Debtor arrange

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<sup>7</sup> Khan Affidavit at para 7.

<sup>8</sup> Khan Affidavit, Exhibit B, pp. 47, 50.

<sup>9</sup> Khan Affidavit at para 11.

<sup>10</sup> Khan Affidavit, Exhibit B, p. 41.

to repay Tandia in full by no later than March 17, 2025.<sup>11</sup> In the face of persisting defaults, including ongoing monetary defaults, Tandia issued the Demand on April 8, 2025.

11. The within application to appoint Spergel as the Receiver of the Debtor was originally scheduled to be heard on June 24, 2025.<sup>12</sup>

12. Prior to the scheduled hearing of the application, the Debtor advised Tandia that it expected to close a refinancing transaction in approximately three weeks and would use the proceeds to fully repay the Indebtedness owing to Tandia.<sup>13</sup> On that basis, Tandia agreed to adjourn its application to permit the parties to finalize a forbearance agreement.

13. Following weeks of negotiation, Tandia and the Debtor entered into the Forbearance Agreement on or around July 21, 2025.<sup>14</sup> As a condition for the parties entering into the Forbearance Agreement, the Debtor executed a Consent to Receivership, consenting to the appointment of a receiver in the event that the forbearance period lapsed or terminated.<sup>15</sup>

14. As the forbearance period has expired, the provisions of the Security granted by the Debtor and the provisions of the Forbearance Agreement allow Tandia to appoint a receiver over the Debtor's Property.<sup>16</sup>

### **PART III – ISSUES**

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<sup>11</sup> Khan Affidavit at para 12; Exhibit L of Khan Affidavit.

<sup>12</sup> Supplementary Khan Affidavit at para 4.

<sup>13</sup> Supplementary Khan Affidavit at para 5.

<sup>14</sup> Supplementary Khan Affidavit at para 6.

<sup>15</sup> Supplementary Khan Affidavit at para 7.

<sup>16</sup> Khan Affidavit at para 20.

15. The legal issue to be determined on this Application is whether to appoint a receiver under s. 243(1) of the BIA or s. 101 of the CJA over the Property of the Debtor.

## **PART IV- LAW & LEGAL AUTHORITIES**

**A. Spergel should be appointed as the receiver of the Property:**

*(i) The test for the appointment of a receiver under s. 243(1) of the BIA and s. 101 of the CJA*

16. Subsection 243(1) of the *Bankruptcy and Insolvency Act* provides that, on application by a secured creditor, a court may appoint a receiver to, *inter alia*, take possession over the assets of an insolvent person and exercise any control that the court deems advisable over that property and over the insolvent person's business, in circumstances where it is "just or convenient" to do so.<sup>17</sup> Similarly, the CJA enables the court to appoint a receiver where such appointment is "just or convenient".<sup>18</sup>

17. In determining whether it is "just or convenient" to appoint a receiver under either the BIA or the CJA, Ontario courts have applied the decision of Blair J. (as he then was) in *Bank of Nova Scotia v. Freure Village on Claire Creek*.<sup>19</sup> Blair J. held that the court "must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto," which includes the rights of the secured creditor under its security.<sup>20</sup>

18. In *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, citing *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd. and Bennett on Receivership*, this Court

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<sup>17</sup> Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, s. 243.

<sup>18</sup> Courts of Justice Act, R.S.O. 1990, c. C.43, s. 101.

<sup>19</sup> Bank of Nova Scotia v. Freure Village on Clair Creek, 1996 CanLII 8258 (ONSC).

<sup>20</sup> Bank of Nova Scotia v. Freure Village on Clair Creek, 1996 CanLII 8258 at para 11 (ONSC).

listed numerous factors which have been historically taken into account in the determination of whether it is appropriate to appoint a receiver:

- (a) Whether irreparable harm might be caused if no order is made, although as stated above, where the appointment is authorized by the security documentation, it is not essential for a creditor to establish that it will suffer irreparable harm if a receiver is not appointed;
- (b) The risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;
- (c) The nature of the property;
- (d) The apprehended or actual waste of the debtor's assets;
- (e) The preservation and protection of the property pending judicial resolution;
- (f) The balance of convenience to the parties;
- (g) The fact that the creditor has a right to appointment under the loan documentation;
- (h) The enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
- (i) The principle that the appointment of a receiver should be granted cautiously;
- (j) The consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;

- (k) The effect of the order upon the parties;
- (l) The conduct of the parties;
- (m) The length of time that a receiver may be in place;
- (n) The cost to the parties;
- (o) The likelihood of maximizing return to the parties; and
- (p) The goal of facilitating the duties of the receiver.<sup>21</sup>

19. These factors are not a checklist, but a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient.<sup>22</sup>

20. Where the enumerated rights of the secured creditor under its security include the right to seek the appointment of a receiver, the burden on the applicant is significantly relaxed. As stated by Morawetz J. (as he then was) in *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*:

*... where the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. That is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties.<sup>23</sup>*

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<sup>21</sup> [Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited](#), 2022 ONSC 6186 at [para 25](#), citing [Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.](#), 2009 BCSC 1527 at [para 25](#).

<sup>22</sup> [RBC v. 2531961 Ontario Inc. et al.](#), 2024 ONSC 1272 at [para 13](#).

<sup>23</sup> [Elleway Acquisitions Ltd. v. The Cruise Professionals Ltd.](#), 2013 ONSC 6866 at [para 27](#).

21. This principle was further affirmed more recently by Osborne J. in *iSpan Systems LP*:

*Where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: while the appointment of a receiver is generally an extraordinary equitable remedy, the courts do not so regard the nature of the remedy where the relevant security permits the appointment and as a result, the applicant is merely seeking to enforce a term of an agreement already made by both parties [citations omitted].*<sup>24</sup>

22. It is not essential that the moving party establish, prior to the appointment of a receiver, that:

- (a) it will suffer irreparable harm; or
- (b) that the situation is urgent.<sup>25</sup>

23. Where the history and evidence of the behaviour of a debtor indicate that a creditor's attempts to privately enforce its security will be delayed or otherwise fail, a court-appointed receiver is warranted.<sup>26</sup>

***(ii) The application of the test for the appointment of a receiver***

24. Tandia respectfully submits that the test for the appointment of a receiver pursuant to s. 243 of the BIA is met. Pursuant to the GSA granted by the Debtor to Tandia, Tandia is entitled to have a receiver appointed over the Debtor upon any default under the Credit Agreement or pursuant to any failure by the Debtor to repay the Indebtedness owing to Tandia on demand. Accordingly, the appointment of a receiver in this case is not an extraordinary measure; it is simply the result of enforcing the contractual terms assented to by the Debtor.

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<sup>24</sup> *iSpan Systems LP*, 2023 ONSC 6912 at [para. 31](#).

<sup>25</sup> *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007 at [paras 28-29](#).

<sup>26</sup> *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CanLII 8258 at [para 13](#) (ONSC).

25. In addition to Tandia's contractual entitlement to seek the appointment of the Receiver, the Debtor delivered to Tandia a signed Consent to Receivership, which Tandia is entitled to rely upon. It is highly relevant that the Debtor has consented to such Order being sought, notwithstanding that the appointment of a receiver in such circumstances is not necessarily automatic.<sup>27</sup>

26. Tandia issued its Demand on April 8, 2025. On a demand loan, a debtor must be allowed a reasonable time to raise the necessary funds to satisfy the demand. Reasonable time will generally be of a short duration, not more than a few days and not encompassing anything approaching 30 days.<sup>28</sup> By the time Tandia's receivership application is heard, nearly six months will have passed since the issuance of the Demand, without the Indebtedness being repaid. The monetary defaults persist and the payment arrears remain outstanding.

27. The appointment of a receiver is also appropriate given the chronology of this matter and, particularly, the indulgences and forbearance granted to the Debtor, the premise for which was that a refinancing transaction was imminent. When parties enter into a forbearance agreement on terms, the debtor is ordinarily required to comply strictly with the terms as it is upon those terms that the creditor has agreed to hold off on enforcement of its security for a debt that is already in default.<sup>29</sup> In this case, the Forbearance Agreement has expired, without a refinancing transaction and without repayment of the Indebtedness.

28. The appointment of a receiver is necessary for the protection of the Debtor's estate and the interests of Tandia as a secured creditor. The Indebtedness owing to Tandia is significant (exceeding \$3,300,000), and continues to accrue. This application to appoint a receiver is grounded in Tandia's

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<sup>27</sup> *Central 1 Credit Union v. 2139770 Ontario Inc.*, 2024 ONSC 5988 at [para 14](#).

<sup>28</sup> *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007 at [para 13](#).

<sup>29</sup> *Central 1 Credit Union v. 2139770 Ontario Inc.*, 2024 ONSC 5988 at [para 15](#).

concerns about the mismanagement and dissipation of Tandia's collateral if the Debtor remains in the control of its directing mind, in whom Tandia has lost confidence.

29. Tandia has no visibility on the extent of the liabilities of the Debtor, which liabilities may have statutory priority outside of a bankruptcy. Such liabilities may continue to accumulate without intervention. Tandia is aware of at least \$68,503.95 owing on account of outstanding property taxes for the Cannon Property, and at least \$66,093.02 owing on account of outstanding property taxes for the Barton Property, which only jeopardize Tandia's security position.<sup>30</sup>

30. The appointment of the receiver is necessary for the preservation of the collateral and the diligent supervision and management of same during an anticipated sales process. Tandia is not required to proceed by way of private power of sale proceedings. The appointment of a receiver will provide an effective and appropriate means to realize on the mortgage security by a court-appointed officer who owes duties to all stakeholders.<sup>31</sup>

31. The balance of convenience weighs heavily in favour of Tandia. Given Tandia's efforts to obtain current and accurate financial information from the Debtor and the Debtor's failure to put forward a viable proposal for the repayment of the Indebtedness, Tandia is concerned that it would have difficulty enforcing its rights in the absence of a court-appointed receiver. The Debtor has not repaid the Indebtedness, nor provided any path forward for how it intends to satisfy the obligations owing to Tandia. The Debtor's conduct favours appointment of a receiver.

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<sup>30</sup> Khan Affidavit at para 23.

<sup>31</sup> [KingSett Mortgage Corporation v. 30 Roe Investments Corp.](#), 2022 ONSC 2777 at [para 35](#); aff'd [KingSett Mortgage Corporation v. 30 Roe Investments Corp.](#), 2022 ONCA 479.

32. Tandia bargained for the right to appoint a Receiver by including that provision in its Security, which was accepted by the Debtor. Short of the appointment of a receiver, there are no other remedies available to Tandia that will adequately protect its interests.

33. Accordingly, Tandia respectfully submits that the appointment of Spergel as receiver of the Debtor is appropriate in the circumstances.

#### **PART V – RELIEF SOUGHT**

34. In light of the foregoing, Tandia respectfully requests that this Court grant the aforementioned relief in the form of the draft Order appended at Tab 3 of the Bank's Motion Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 23<sup>rd</sup> day of September 2025.



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Matilda Lici

**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007
2. *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CanLII 8258 (ONSC)
3. *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186
4. *Central 1 Credit Union v. 2139770 Ontario Inc.*, 2024 ONSC 5988
5. *Elleway Acquisitions Ltd. v. The Cruise Professionals Ltd.*, 2013 ONSC 6866
6. *iSpan Systems LP*, 2023 ONSC 6912
7. *KingSett Mortgage Corporation v. 30 Roe Investments Corp.*, 2022 ONSC 2777
8. *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527
9. *RBC v. 2531961 Ontario Inc. et al.*, 2024 ONSC 1272

**SCHEDULE “B”  
RELEVANT STATUTES**

**Bankruptcy and Insolvency Act (R.S.C., 1985, c. B-3)**

**PART XI**

**Secured Creditors and Receivers**

**Marginal note: 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.

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**Courts of Justice Act, RSO 1990, c. C. 43**

**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. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

**TANDIA FINANCIAL CREDIT UNION  
LIMITED**

- and -

**9259929 CANADA INC.**

Court File No. CV-25-00090460-0000

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***ONTARIO*  
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at Hamilton

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**FACTUM OF THE APPLICANT,  
TANDIA FINANCIAL CREDIT UNION LIMITED  
(Application returnable October 2, 2025)**

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