

Court File No. CV-24-00732200-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

BANK OF MONTREAL

Applicant

-and-

MARIO'S CATERING SERVICE LTD. o/a MICHELANGELO BANQUET
CENTRE, 2150386 ONTARIO INC., 9440763 CANADA INC. o/a THE
GRAND OLYMPIA HOSPITALITY & CONVENTION CENTRE, 13225585
CANADA INC., AFTAB ELAHI, EMILIA MANSOOR aka EMILIA ELAHI,
KAMRAN ELAHI aka MANSOOR KAMRAN ELAHI aka MANSOOR ELAHI
and RAFFET ELAHI

Respondents

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S. C. 1985 c-B-3,
s.101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, and Rules 14.05(2), (3) (d), (g) and (h) of
the *Rules of Civil Procedure*

FACTUM OF THE APPLICANT, BANK OF MONTREAL
(Application Returnable January 14, 2025)

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TO: **THE SERVICE LIST**

**ONTARIO
SUPERIOR COURT OF JUSTICE
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**FACTUM OF THE APPLICANT
BANK OF MONTREAL**

PART I – INTRODUCTION

1. The Applicant, Bank of Montreal (the “**Bank**”), seeks the appointment of msi Spergel Inc. (“**Spergel**”) as receiver (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings and properties of the Respondents Mario’s Catering Service Ltd. O/A Michelangelo Banquet Centre, 2150386 Ontario Inc., 9440763 Canada Inc. O/A The Grand Olympia Hospitality & Convention Centre , and 13225585 Canada Inc. (collectively, the “**Corporate Respondents**”).

2. The Corporate Respondents are related businesses which are owned and operated by members of the Elahi family and operate in association with banquet hall/catering services facilities in the greater Hamilton area.
3. The Corporate Respondents are in default of their obligations to the Bank and have, *inter alia*, allowed the accumulation of tax arrears and realty taxes to erode the value of the Bank's principal collateral. Despite issuance of demands and Notice of Intention to Enforce Security, no payments have been made by the Corporate Respondents on account of the outstanding indebtedness, nor have any satisfactory alternative arrangements been made with the Bank.
4. The Bank's agreements with the Corporate Respondents permit the appointment of a receiver over the assets and property of the Corporate Respondents upon default.
5. It is just and convenient that a Receiver be appointed in respect of the Corporate Respondents.

PART II - FACTS

Parties and Background

6. The Bank of Montreal was at all material times the senior secured lender to each of Mario's Catering Services Ltd., 9440763 Canada Inc. and 2150386 Ontario Inc. (collectively the "**Borrower Respondents**")¹. The remaining Corporate Respondent, 13225585 Canada Inc., is a guarantor of the obligations of the Borrower Respondents, but is not directly indebted to the Bank as a borrower.

¹ Affidavit of Eugene Chow sworn November 20, 2024 at paragraph 2 [A27]

7. The Borrower Respondent Mario's Catering Services Ltd. o/a Michelangelo Banquet Hall ("**Michelangelo**") was incorporated pursuant to the laws of the Province of Ontario on April 5, 1977². Michelangelo operates as a banquet hall/catering service with a registered head office located at 33 Blue Bonnett Drive, Brampton, Ontario (the "**Blue Bonnet Property**")³. Michelangelo operates under the registered business name "Michelangelo Banquet Centre" and its business is principally conducted at premises located at 1555 Upper Ottawa St, Hamilton (the "**Ottawa St. Property**")⁴. Michelangelo is the owner registered on title in respect of the Ottawa Street Property. Aftab Elahi is the sole officer and director of Michelangelo⁵.

8. The Borrower Respondent 9440763 Canada Inc. o/a The Grand Olympia Hospitality & Convention Centre ("**Grand Olympia**") is a federal corporation incorporated on September 10, 2021⁶. Grand Olympia operates as a banquet hall/catering service with a registered head office located at 43 Floradale Drive, Mississauga, Ontario (the "**Floradale Property**")⁷. Expired business names for Grand Olympia include "Grand Olympia Convention Centre", "The Grand Olympia" and "Centre Electric". The banquet hall / catering business of Grand Olympia is principally conducted from premises located at 660 Barton Street, Stoney Creek, Ontario (the "**Barton Property**")⁸. By reference to the website <https://grandolympia.ca/> it would appear that such business continues to operate at that location under the name "The Grand Olympia Hospitality & Banquet Centre", despite no corresponding business name being formally registered⁹.

² Corporate profile report for Mario's, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit A [A44]

³ Parcel register for the Blue Bonnet Property, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit B [A54]

⁴ Parcel register for the Ottawa St Property, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit C [A60]

⁵ Affidavit of Eugene Chow sworn November 20, 2024 at paragraph 3 [A27]

⁶ Federal and Ontario provincial corporate profile reports for 944, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit D [A64]

⁷ Parcel register for the Floradale Property, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit E [A71]

⁸ Parcel register for the Barton Property, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit F [A77]

⁹ Affidavit of Eugene Chow sworn November 20, 2024 at paragraph 4 [A27]

9. The Borrower Respondent 2150386 Ontario Inc. (“**Grand Olympia Realco**”) was incorporated pursuant to the laws of the Province of Ontario on October 4, 2007¹⁰, and is the owner registered on title to the Barton Property which is also its registered head office. Aftab Elahi is the sole officer and director of Grand Olympia Realco¹¹

10. As indicated, the Borrower Respondents are related businesses which are owned and operated by members of the Elahi family. Elahi family members who have executed agreements with the Bank in relation to the loans extended by the Bank, including guarantees of the Borrower Respondents’ obligations to the Bank, include:

- (a) Aftab Elahi (“**Aftab**”), an individual resident in city of Mississauga, in the Province of Ontario. Aftab is the sole officer and director of Grand Olympia Realco. I believe, but am not certain, that Aftab is the spouse of Emilia Mansoor;
- (b) Emilia Mansoor aka Emilia Elahi (“**Emilia**”), an individual resident in city of Mississauga, in the Province of Ontario, believed to be the spouse of Aftab. On all Bank documentation, Emilia is named as “Emilia Mansoor” but, Emilia holds title to the Floradale Drive Property, believed to be the residential property of both Aftab and Emilia, in the name of “Emilia Elahi”. The Floradale Property was formerly held by Aftab, and was transferred to Emilia for nominal consideration in December 2021;
- (c) Mansoor Elahi aka Kamran Elahi aka Mansoor Kamran Elahi¹² (“**Mansoor**”) is an individual resident in the Province of Ontario. Mansoor is the sole officer and

¹⁰ Corporate profile report of 215, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit [G \[A87\]](#)

¹¹ Affidavit of Eugene Chow sworn November 20, 2024 at paragraph 5 [\[A28\]](#)

¹² Declaration by Mansoor that he and “Mansoor Kamran Elahi” are one and the same, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit [H \[A95\]](#)

director of Grand Olympia and is believed to be the son of Aftab and Emilia. The Floradale Property is listed on the corporation profile for Grand Plypia as the address for service for Raffet; and

- (d) Raffet Elahi (“**Raffet**”) is an individual resident in the City of Brampton, in the Province of Ontario. Raffet is the owner of the Blue Bonnet Property¹³.

11. 13225585 Canada Inc. (“**132**”) is a federal corporation incorporated on July 30, 2021, having a registered head office at 43 Floradale Drive, Mississauga.¹⁴ The Bank is unaware of any operating business on the part of 132, and believes that it was intended as an operating company for the “Grand Olympia” business, but never came to be used for this purpose. Mansoor is the sole officer and director of 132.

The Borrower Respondents: Agreements And Indebtedness

Grand Olympia: Loan Facilities / Indebtedness

12. Pursuant to a Letter of Agreement (the “**Grand Olympia LOA**”) between Grand Olympia and the Bank executed on December 9, 2019¹⁵, the Bank extended the following credit facilities to Grand Olympia:

- (a) An overdraft lending facility with a credit limit of \$100,000, with per annum interest payable thereon at a rate equal to the Bank of Montreal prime rate of interest in effect from time to time plus 2%; and

¹³ Affidavit of Eugene Chow sworn November 20, 2024 art paragraph 6 [A28]

¹⁴ Corporate profile report of 132, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit OO [A370]

¹⁵ The 944 LOA, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit I [A97]

- (b) A corporate MasterCard facility with a credit limit of \$25,000

(collectively, the “**Grand Olympia Facilities**”)

13. As of the October 2, 2024 the balance outstanding by Grand Olympia on account of the Grand Olympia Facilities was, in the aggregate, equal to \$115,189.20¹⁶.

CAD LOAN NO:	PRIME +	RATE	PRINCIPAL	TOTAL INT	TOTAL	PER DIEM
Revolving line that fluctuates daily OVERDRAFT LENDING C/A LIM \$100,000 0006-1985-413 Bal 114,246.18	2.0000%	8.4500%	\$100,000.00	\$31.07	\$100,031.07	\$23.09
CAD Corporate M/C ID 8039713 LIMIT 25,000.00 # 5264550000217053	N/A	N/A	\$15,158.15	NA	\$15,158.15	N/A

Grand Olympia: Security Granted in Favour of the Bank by Grand Olympia

14. As security for the Grand Olympia Obligations, Grand Olympia granted in favour of the Bank the following security:

- (a) A General Security Agreement (“**GSA**”) executed by Grand Olympia dated March 6, 2020¹⁷, perfected by registration under the Ontario *Personal Property Security Act*, R.S.O. 1990, c. P.10 (“**PPSA**”) registry system as registration no. 2020 0408 1538 1590 1221.

¹⁶ Affidavit of Eugene Chow, paragraph 9 (NOTE: Total is inclusive of interest accrued up to the October 2, 2024, but non-inclusive of Additional Charges, and not inclusive of interest or Additional Charges which have accrued and as may further accrue from the October 1, 2024 (all, the “**Grand Olympia Obligations**”)).

¹⁷ 944 GSA, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit J [A109]

15. The Bank is the senior ranking secured creditor of Grand Olympia, as reflected by a PPSA registry search conducted in respect of Grand Olympia, but its corporate name “9440763 Canada Inc.”¹⁸

Grand Olympia: Guarantees of the Grand Olympia Indebtedness

16. Pursuant to the terms of a limited guarantee in the amount of \$125,000 executed in favour of the Bank and dated March 6, 2020, the following parties have guaranteed payment of the Grand Olympia Obligations to the Bank (the “**Grand Olympia Guarantee**”)¹⁹, on a joint and several basis, with interest payable at a rate equal to the Bank of Montreal prime rate of interest in effect from time to time plus 3% from the date upon which demand for payment is made:

- (a) Raffet;
- (b) Mansoor;
- (c) Emilia;
- (d) Aftab; and
- (e) Grand Olympia Realco.

¹⁸ PPSA Registry search respecting 944, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit K [A120]

¹⁹ 944 Guarantee, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit L [A128]

Grand Olympia Realco: The Grand Olympia Realco Loan Facilities / Indebtedness

17. Pursuant to a Letter of Agreement (the “**Grand Olympia Realco LOA**”) between Grand Olympia Realco and the Bank executed on December 9, 2019²⁰, the Bank established the following credit facilities with Grand Olympia Realco:

- (a) A fixed rate term loan in the amount of \$7,800,000 with a term of 5 years, bearing interest at a rate of 4.9% per annum.

18. As of October 1, 2024 the balance outstanding on account of the Grand Olympia Realco Facilities was, in the aggregate, equal to \$6,033, 470.65²¹.

CAD LOAN NO:	PRIME +	RATE	PRINCIPAL	TOTAL INT	TOTAL	PER DIEM
FIXED RATE TERM LOAN 371460830001	FIXED	4.50%	\$6,031,987.37	\$1,483.28	\$6,033,470.65	\$741.64

Grand Olympia Realco. Security Granted in Favour of the Bank by Grand Olympia Realco

19. As security for the Grand Olympia Realco Obligations, Grand Olympia Realco granted in favour of the Bank the following security:

²⁰ 215 LOA, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit [M \[A132\]](#)

²¹ Affidavit of Eugene Chow, paragraph 14 (NOTE: Total is inclusive of interest accrued up to the Currency Date, but non-inclusive of any administrative fees, legal fees/costs, including those incurred in enforcement, other costs payable under the loan terms, and related security or under the of letter of agreement with the borrower (collectively, “**Additional Charges**”), and is not inclusive of interest or Additional Charges which have accrued and as may further accrue from the October 1, 2024 (all, the “**Grand Olympia Realco Obligations**”)).

- (a) A General Security Agreement (“**GSA**”) executed by Grand Olympia Realco in favour of the Bank dated March 6, 2020²², perfected by registration under the Ontario *Personal Property Security Act* (“**PPSA**”) registry system as registration no. 20200408 1538 1590 1222;
- (b) A demand collateral first mortgage in the amount of \$8,000,000 registered as Instrument No. WE1424765 on title to the Barton Property, on April 8, 2020 (the “**Barton Mortgage**”) ²³;
- (c) An Assignment of Rents²⁴ granted in favour of the Bank by Grand Olympia Realco in respect of the Barton Property, registered on title to the Barton Property as Instrument No. WE1424766 on April 8, 2020²⁵;
- (d) An Assignment, Postponement and Subordination²⁶ granted by Aftab in favour of the Bank dated March 6, 2020, whereby Aftab subordinated to the Bank his right to be repaid any amounts owed to him by Grand Olympia Realco while the Grand Olympia Realco Obligations to the Bank remained outstanding.

20. The Bank is the senior ranking secured creditor of Grand Olympia Realco, as reflected by a PPSA registry search conducted in respect of Grand Olympia Realco, by its corporate name “2150386 Ontario Inc.”²⁷

²² 215 GSA, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit [N \[A146\]](#)

²³ Charge/Mortgage in favour of the Bank registered on title to the Barton Property, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit [O \[A152\]](#)

²⁴ Assignment of Rents granted respecting the Barton Property, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit [P \[A155\]](#)

²⁵ Notice of Assignment of Rents registered as Instrument No. WE1424766 on title to the Barton Property, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit [Q \[A163\]](#)

²⁶ Assignment, Postponement and Subordination granted by Aftab in favour of the Bank respecting the obligations of 215, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit [R \[A166\]](#)

²⁷ PPSA registry search result for 215, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit [S \[A170\]](#)

Grand Olympia Realco: Guarantees of the Grand Olympia Realco Indebtedness

21. Pursuant to the terms of a limited guarantee in the amount of \$7,800,000 executed in favour of the Bank and dated March 6, 2020, the following parties have guaranteed payment of the Grand Olympia Realco Obligations to the Bank (the “**Grand Olympia Realco Guarantee**”)²⁸, on a joint and several basis, with interest payable at a rate equal to the Bank of Montreal prime rate of interest in effect from time to time plus 5% from the date upon which demand for payment is made:

- (a) Grand Olympia;
- (b) Aftab;
- (c) Emilia;
- (d) Mansoor; and
- (e) Raffet.

Michelangelo: Loan Facilities / Indebtedness

22. Pursuant to a Letter of Agreement (the “**Michelangelo LOA**”) between Michelangelo and the Bank executed by the parties on December 6, 2022²⁹, the Bank extended the following credit facilities to Michelangelo:

- (a) An overdraft lending facility with maximum credit availability of \$100,000, with per annum interest payable on any outstanding balance at a rate equal to the Bank of Montreal prime rate of interest in effect from time to time plus 1.5%;

²⁸ 215 Guarantee, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit T [A173]

²⁹ Michaelangelo LOA, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit U [A177]

(b) A fixed rate term loan in the amount of \$8,250,000, with a term of 5 years, bearing interest at a rate of 6.76% per annum;

(c) A corporate MasterCard facility with maximum credit availability of \$25,000.

(collectively, the “**Michelangelo Facilities**”)

23. As of the October 1, 2024 the balance outstanding on the Michelangelo Facilities was equal to \$8,112,906.43³⁰.

CAD LOAN NO:	PRIME +	RATE	PRINCIPAL	TOTAL INT	TOTAL	PER DIEM
Revolving line that fluctuates daily OVERDRAFT LENDING C/A LIM \$100,000 0430-1979-062	1.5000%	7.9500%	\$97,719.73	\$21.23	\$97,740.96	\$21.23
FIXED RATE TERM LOAN 375383590001	FIXED	6.76%	\$7,986,760.87	\$2,950.30	\$7,989,711.17	\$1,475.15
CAD Corporate M/C ID 8057250 LIMIT 25,000.00 # 5264550000314884	N/A	N/A	\$25,454.30	NA	\$25,454.30	N/A

Michelangelo: Security Granted in Favour of the Bank by Michelangelo

24. As security for the Michelangelo Obligations, Michelangelo granted in favour of the Bank the following security:

(a) a GSA granted by Michelangelo in favour of the Bank³¹ perfected by registration pursuant to the PPSA on January 12, 2023 as registration number 20230112 1101 1590 6510³²;

³⁰ Affidavit of Eugene Chow, paragraph 19 (NOTE: Total is inclusive of interest accrued up to the Currency Date, but non-inclusive of Additional Charges, and not inclusive of interest or Additional Charges which have accrued and as may further accrue from the October 1, 2024 (all, the “**Michelangelo Obligations**”)).

³¹ Mario’s GSA, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit V [\[A205\]](#)

³² PPSA Registry Search respecting Mario’s, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit [W \[A214\]](#)

- (b) A demand collateral mortgage in the amount of \$8,375,000.00 registered as Instrument No. WE1655741 on title to the Ottawa Street Property, on January 12, 2023³³;
- (c) An Assignment of Rents³⁴ with respect to the Ottawa St. Property was registered on title to the Ottawa St. Property on January 12, 2023 as instrument number WE1655742 and registered pursuant to the PPSA on January 12, 2023 as registration number 20230112 1049 1590 6480;
- (d) An Assignment, Postponement and Subordination granted by Aftab in favour of the Bank whereby Aftab subordinated to the Bank his right to be repaid any amounts to him by Michelangelo while the Michelangelo Obligations to the Bank remained outstanding³⁵.

25. The Bank is the senior ranking secured creditor of Michelangelo, as reflected by a PPSA registry search conducted in respect of Michelangelo³⁶.

Michelangelo: Guarantees of the Michelangelo Indebtedness

26. The following guarantees have been granted in respect of the Michelangelo Obligations to the Bank (the “**Michelangelo Guarantees**”), in each case bearing interest payable at a rate equal

³³ Collateral Charge registered as Instrument No. WE1655741 on title to the Ottawa Street Property, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit X [A220]

³⁴ Assignment of Rents respecting the Ottawa St. Property, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit Y [A222]

³⁵ Assignment, Postponement and Subordination by Aftab respecting debts owed to him by Mario's, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit Z [A228]

³⁶ PPSA Registry Search respecting Mario's, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit W [A214]

to the Bank of Montreal prime rate of interest in effect from time to time plus 5% from the date upon which demand for payment is made:

- (a) A guarantee limited in the amount of \$8,375,0000 granted in favour of the Bank by 132 and dated January 9, 2023. As security for their guarantee 132 executed and delivered a GSA in favour of the Bank, registered pursuant to the PPSA on January 12, 2023 as registration number 20230112 1106 1590³⁷;
- (b) A guarantee limited in the amount of \$8,375,0000 granted in favour of the Bank by Grand Olympia Realco, dated January 9, 2023³⁸;
- (c) A guarantee limited in the amount of \$8,375,0000 granted in favour of the Bank by Grand Olympia, dated January 9, 2023³⁹;
- (d) A personal guarantee limited in the amount of \$8,375,0000 granted in favour of the Bank by Aftab, dated January 9, 2023⁴⁰.

Default And Demands

27. For a considerable period of time, the Borrower Respondents' accounts with the Bank have been under the supervision and management of the SAMU department at the Bank, owing to the

³⁷ 132 Guarantee of Mario's Indebtedness, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit [AA \[A232\]](#)

³⁸ 215 Guarantee of Mario's Indebtedness, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit [BB \[A235\]](#)

³⁹ 944 Guarantee of Mario's Indebtedness, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit [CC \[A238\]](#)

⁴⁰ Aftab Guarantee of Mario's Indebtedness, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit [DD \[A241\]](#)

Bank's concerns about the financial health of the underlying businesses and the performance of the Borrower Respondents' credit facilities⁴¹.

28. As a result of such concerns, together with various defaults on the part of the Borrower Respondents under terms of their agreements with the Bank, the Bank determined that it no longer wished to continue the banking relationship with the Borrower Respondents⁴².

29. Specific defaults include, without limitation⁴³:

- (a) Michelangelo is currently in arrears on payments due under the terms of the Michelangelo Facilities, with an overdue balance of \$163,451.27 presently outstanding;
- (b) Michelangelo's corporate MasterCard is drawn in excess, with a charge recently returned in the amount of \$7,062.60, and is as such now delinquent;
- (c) Financial reporting for Michelangelo for its financial year end January 31, 2024, has not been received;
- (d) Financial reporting for Grand Olympia Realco for its financial year end December 31, 2023, has not been received;
- (e) Financial reporting for Grand Olympia for its financial year end December 31, 2023, has not been received;

⁴¹ Affidavit of Eugene Chow sworn November 20, 2024 at paragraph 23 [A38]

⁴² Affidavit of Eugene Chow sworn November 20, 2024 at paragraph 24 [A38]

⁴³ Affidavit of Eugene Chow sworn November 20, 2024 at paragraph 25 [A38]

(f) Tax liens have been registered against both the Barton Property and the Ottawa St. Property, which real properties together stand as the valuable collateral held by the Bank as security for repayment of the obligations owed by the Borrower Respondents. Liens registered on title to these properties presently include:

(i) For the Barton Property:

(A) A Lien registered as WE1681362 on June 16, 2023 by His Majesty The King in Right of Canada as Represented by the Minister Of National Revenue in the amount of \$27,897.39⁴⁴;

(B) A Lien registered as WE1681398 on June 16, 2023 by His Majesty The King in Right of Canada as Represented by the Minister Of National Revenue in the amount of \$ 639,761.36⁴⁵;

(ii) For the Ottawa St. Property:

(A) A Lien registered as WE1730637 on April 8, 2024 by His Majesty The King in Right of Canada as Represented by the Minister Of National Revenue in the amount of \$156,236⁴⁶;

(B) A Lien registered as WE1730642 on April 8, 2024 by His Majesty The King in Right of Canada as Represented by the Minister of National Revenue in the amount of \$402,400⁴⁷;

⁴⁴ Lien registered as WE1681362, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit [EE \[A244\]](#)

⁴⁵ Lien registered as WE1681398, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit [FF \[A247\]](#)

⁴⁶ Lien registered as WE1730637, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit [GG \[A250\]](#)

⁴⁷ Lien registered as WE1730642, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit [HH \[A254\]](#)

- (g) The Bank has received a third party Requirement to Pay from the CRA respecting tax arrears owed by Michelangelo, in the amount of \$155,510.80, which is dated as having been issued on August 28, 2024;

30. On October 7, 2024, the Bank issued demand for payment on Michelangelo, together with Notice of Intention to Enforce Security (“NITES”) pursuant to s.244 of the *Bankruptcy and Insolvency Act*.⁴⁸ On the same date, demands were also issued upon each of the guarantors pursuant to the Michelangelo Guarantees⁴⁹, save and except for 132, upon whom guarantor demand and NITES were issued on November 18, 2024⁵⁰.

31. On October 7, 2024, the Bank issued demand for payment on Grand Olympia Realco, together with NITES. On the same date, demands were also issued upon each of the guarantors under the Grand Olympia Realco Guarantee⁵¹.

32. On October 7, 2024, the Bank issued demand for payment on Grand Olympia, together with NITES. On the same date, demands were also issued upon each of the guarantors under the Grand Olympia Guarantee⁵².

33. Since the issuance and delivery of demands, there has been no repayment of the obligations owed by the Borrower Respondents, nor any payments made on such account by any guarantors of Borrower Respondents.

⁴⁸ Mario’s demands and NITES, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit II [A258]

⁴⁹ Mario’s Guarantor demands, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit JJ [A264]

⁵⁰ 132 demands and NITES, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit KK [A277]

⁵¹ Grand Olympia Realco demands and NITES, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit LL [A285]

⁵² Grand Olympia demands and NITES, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit MM [A320]

Request For The Appointment Of A Receiver

34. In each case, the terms of the GSA granted by the Borrower Respondents in favour of the Bank includes the following provision:

Upon any default under this Security Agreement, the Bank may declare any or all of the Obligations to be immediately due and payable and may proceed to realize the security hereby constituted and to enforce its rights by entry; or by the appointment by instrument in writing of a receiver or receivers of the subject matter of such security or any part thereof and such receiver or receivers may be any person or persons, whether an officer or officers or employee or employees of the Bank or not, and the Bank may remove any receiver or receivers so appointed and appoint another or others in his or their stead; or by proceedings in any court of competent jurisdiction for the appointment of a receiver or receivers or for sale of the Collateral or any part thereof; or by any other action, suit, remedy or proceeding authorized or permitted hereby or by law or by equity; and may file such proofs of claim and other documents as may be necessary or advisable In order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relative to the Debtor. Any such receiver or receivers so appointed shall have power to take possession of the Collateral or any part thereof and to carry on the business of the Debtor, and to borrow money required for the maintenance, preservation or protection of the Collateral or any part thereof or the carrying on of the business of the Debtor, and to further charge the Collateral in priority to the security constituted by this Security Agreement as security for money so borrowed, and to sell, lease or otherwise dispose of the whole or any part of the Collateral on such terms and conditions and in such manner as he shall determine. In exercising any powers any such receiver or receivers shall act as agent or agents for the Debtor and the Bank shall not be responsible for his or their actions⁵³.

35. The charge/mortgage registered in favour of the Bank on title to the Barton Property and Ottawa St. Property are each payable on demand, and the standard charge terms incorporated by reference in respect of same (Standard Charge Terms 201607)⁵⁴ likewise contemplate the appointment of a receiver upon default:

K. Appointment of a Receiver

(1). Appointment. Upon the occurrence of a Default, in addition to any other remedies available to the Mortgagee, the Mortgagee may by instrument in writing

⁵³ Affidavit of Eugene Chow sworn November 20, 2024 at paragraph 30 [A41]

⁵⁴ Standard Charge Terms 201607, Affidavit of Eugene Chow sworn November 20, 2024, at Exhibit NN [A349]

appoint a Receiver of all or any part of the Mortgaged Land and all rents, incomes, profits and other amounts now or hereafter arising therefrom. The Mortgagee may also apply to any court of competent jurisdiction for the appointment of a Receiver.

36. Demands and NITES have been issued upon each of the Borrower Respondents and the ten-day stay period has elapsed. The corresponding obligations have not been repaid⁵⁵.

37. The Borrower Respondents remain in continuing default and have allowed the accumulation of tax liabilities to erode the value of the Bank's secured collateral.

38. The Bank's security is in jeopardy if the status quo is maintained and a Receiver is not appointed⁵⁶.

PART III - ISSUES AND LAW

39. The issues on this Application are:

- (a) Under what circumstances may a Receiver be appointed by the Court?
- (b) Is it just and convenient that a Receiver be appointed in this case?

(a) Under what circumstances may a Receiver be appointed by the Court?

2. S.243(1) of the *BIA* states that 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:

⁵⁵ Affidavit of Eugene Chow sworn November 20, 2024 at paragraph 32 [A42]

⁵⁶ Affidavit of Eugene Chow sworn November 20, 2024 at paragraph 34 [A42]

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person that was acquired for or used in relation to a business carried on by the insolvent person;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's business; or
- (c) take any other action that the court considers advisable.

Bankruptcy and Insolvency Act, R.S.C. 1985, c.B-3, at s. 243(1)

40. Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended (the "**CJA**"), states:

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.

Courts of Justice Act, R.S.O. 1990, c. C.43 at s.101(1)

41. The fact that the debtor has defaulted under its loans is sufficient justification for the appointment of a Receiver.

Canadian Commercial Bank v. Gemcraft (1985), 3 C.P.C. (2d) 13 (Ont. H.C.J.) (QL), per Montgomery J. at 2.

Royal Bank of Canada v. 605298 Ontario Inc., [1998] O.J. No. 4859 (Gen. Div.) (QL), per Greer J. at para. 9

42. Where a debtor is in default of its secured obligations to a lender and there is evidence that the lender's security is in jeopardy, it is just and convenient that a receiver be appointed over all of the assets of the debtor.

***Canadian Commercial Bank v. Gemcraft* (1985), 3 C.P.C. (2d) 13 (Ont. H.C.J.) (QL), per Montgomery J. at para. 6**

***Ontario Development Corporation and Roynat Inc. v. Ralph Nicholas Enterprises Ltd.* (1985), 57 C.B.R. (N.S.) 186 (Ont. H.C.J.) (QL), per Gray J. at 3-4**

43. The creditor is not required to prove that irreparable harm would result from the failure to appoint a Receiver.

***Swiss Bank Corp. (Canada) v. Odyssey Industries Inc.* (1995), 30 C.B.R. (3d) 49 (Ont. Gen. Div.) (QL), per Ground J. at para. 28**

44. In situations where the security documentation itself provides for the appointment of a Receiver, the Courts have stated that the extraordinary nature of the remedy sought is less essential to the inquiry. Where the security instrument governing the relationship between the debtor and the secured creditor provides for a right to appoint a Receiver upon default, this has the effect of relaxing the burden on the applicant seeking to have the Receiver appointed. While 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. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties.

***Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 40 C.B.R. (3d) 274 (Ont. Gen. Div.) (QL), per Blair J. at para. 12**

***Bank of Montreal v. Carnival National Leasing Ltd.*, [2011] O.J. No. 671 (Commercial List) (QL) per Newbould J. at para. 27**

***Bank of Montreal v. Sherco Properties Inc.*, [2013] O.J. No. 5500, at para. 42**

(b) It is just and convenient that a Receiver be appointed in this case

45. The Applicant states that it is just and convenient that a Receiver be appointed in respect the Debtors for the reasons that, *inter alia*:

- (a) The Corporate Respondents are each in default under the terms of their agreements with the Bank
- (b) The Borrower Respondents have allowed the accumulation of significant tax and realty arrears to erode the value of the Bank's principal security and have failed to provide financial reporting to the Bank, among other defaults;
- (c) The terms of the Bank's PPSA security and real property security each expressly permit the Bank to seek the appointment of a receiver upon default;
- (d) Demand for repayment and NITES have been delivered to the Corporate Respondents and repayment has not been made;

PART IV – ORDER REQUESTED

46. **FOR ALL OF THE FOREGOING REASONS** the Applicant requests an Order Appointing Spergel as Receiver, without security, of all of the assets, undertakings and properties of the Corporate Respondents pursuant to s. 243(1) of the *BIA* as amended and s. 101 of the *CJA*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of January, 2025.



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SCHEDULE “A”
LIST OF AUTHORITIES

1. [*Bank of Nova Scotia v. Freure Village on Clair Creek* \(1996\), 40 C.B.R. \(3d\) 274 \(Ont. Gen. Div.\)](#)
2. [*Bank of Montreal v. Carnival National Leasing Ltd.*, \[2011\] O.J. No. 671 \(Commercial List\)](#)
3. [*Bank of Montreal v. Sherco Properties Inc.*, \[2013\] O.J. No. 5500 \(Ont. S.C.J. Comm List\)](#)
4. *Canadian Commercial Bank v. Gemcraft* (1985), 3 C.P.C. (2d) 13 (Ont. H.C.J.)
5. *Royal Bank of Canada v. 605298 Ontario Inc.*, [1998] O.J. No. 4859 (Gen. Div.)
6. *Ontario Development Corporation and Roynat Inc. v. Ralph Nicholas Enterprises Ltd.* (1985), 57 C.B.R. (N.S.) 186 (Ont. H.C.J.)
7. *Swiss Bank Corp. (Canada) v. Odyssey Industries Inc.* (1995), 30 C.B.R. (3d) 49 (Ont. Gen. Div.)

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date January 13, 2025



Signature

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Bankruptcy and Insolvency Act, R.S.C. 1985, c.B-3, at s. 243(1)

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.

Courts of Justice Act, R.S.O. 1990, c. C.43 at s.101(1)

101.(1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver and 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.

BANK OF MONTREAL

Applicant

-and- MARIO'S CATERING SERVICE LTD. o/a MICHELANGELO
BANQUET CENTRE et al.
Respondents

Court File No. CV-24-00732200-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**FACTUM OF THE APPLICANT,
BANK OF MONTREAL**
(Application Returnable January 14, 2025)

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RCP-F 4C (September 1, 2020)