

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**B E T W E E N :**

**CANADIAN EQUIPMENT FINANCE AND LEASING INC.**

Applicant

- and -

**THE HYPOINT COMPANY LIMITED, 2618905 ONTARIO LIMITED,  
2618909 ONTARIO LIMITED, BEVERLEY ROCKLIFFE, and CHANTAL BOCK**

Respondents

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**APPLICANT'S FACTUM  
(Receivership order, judgment against guarantors)  
(returnable May 20, 2022)**

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May 16, 2022

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**I. NATURE OF THIS APPLICATION**

1. This is an application for:

- a. a receivership order, of which a draft in accordance with the Commercial List model receivership order is provided at tab 3 (page 189) of the application record, pursuant to sections 243 of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and 101 of the *Courts of Justice Act* (Ontario) (the “**CJA**”) appointing Albert Gelman Inc. (“**AGI**”) as receiver and manager (in such capacities, the “**Receiver**”), without security, of all of the assets, undertakings and properties of the Respondents The Hypoint Company Limited (“**Hypoint**”) and 2618909 Ontario Limited (“**909 Ltd.**”) acquired for, or used in relation to a business carried on by any or both of them (collectively, the “**Property**”), including without limitation the “**Collateral**” as defined in a loan and security agreement #141-06-2020-01 made as of the 1<sup>st</sup> day of June, 2020, between Hypoint and the Applicant (together with all attendant signed documentation, the “**Loan and Security Agreement**”).
- b. a judgment, of which a draft is provided at tab 5 (page 224) of the application record, against all the other Respondents (being 2618905 Ontario Limited (“**905 Ltd.**”), Beverley Rockliffe and Chantal Bock, collectively the “**Guarantors**”), jointly and severally, for:
  - i. \$676,252.29 in outstanding principal and interest owed as of March 11, 2022 on account of the Loan and Security Agreement through respective guarantee and postponement of claim agreements dated June 1<sup>st</sup>, 2020 (together with all attendant signed documentation, the “**Guarantees**”; the Guarantees and the Loan and Security Agreement are collectively referred to as the “**Debt Instruments**”).

- ii. pre-judgment and post-judgment interest at the rate of 19.56% per annum in accordance with the Debt Instruments.
- c. an order against all the Respondents, jointly and severally, for the Applicant's costs incurred in respect of this application, on a full indemnity basis in accordance with the Debt Instruments.

## II. FACTS

### A. The parties<sup>1</sup>

2. The Respondent companies' business is, or was, marijuana production (the "**Business**") predominantly out of premises located at 59 Roy Boulevard in Brantford, Ontario (the "**Premises**").<sup>2</sup> Hypoint is the main operating company.
3. The Premises are owned by '909 Ltd. and subject to a lease between '909 Ltd. and Hypoint.
4. Hypoint's chief executive offices are at 25 Morrow Avenue, Toronto.
5. The principals of the Business include Thomas Bock, William Halkiw and Roman Rockcliffe. Mr. Bock and Mr. Halkiw are among the directors and officers of '905 Ltd., and Mr. Halkiw is the sole director and officer of '909 Ltd. Hypoint is related to '905 Ltd. and '909 Ltd. through shareholding.<sup>3</sup>
6. The Respondents Chantal Bock and Beverley Rockcliffe are the spouse of Mr. Bock and mother of Mr. Rockcliffe, respectively.<sup>4</sup>

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<sup>1</sup> Affidavit of Brent Keenan sworn March 21, 2022, tab 2 (page 14) of the application record (the "**Keenan Affidavit**"), paras. 3-6.

<sup>2</sup> A copy of the parcel register for the Premises is tab 2A (page 25) of the application record.

<sup>3</sup> Corporation profile reports for the corporate Respondents are tabs 2B, 2C and 2D (pages 31, 40 and 49) of the application record.

<sup>4</sup> Supplementary Affidavit of Brent Keenan sworn May 16, 2022 para 3., tab 1 (page 2) of the supplementary application record (the "**Keenan Supplementary Affidavit**").

**B. The security, Collateral and Property, and immediate risk thereto**

**i. Generally<sup>5</sup>**

7. The Applicant financed Hypoint's purchase of the Collateral, primarily comprised of HVAC (heating, ventilation and air conditioning) equipment, under the Loan and Security Agreement.<sup>6</sup>
8. Under the Loan and Security Agreement:
  - a. all Hypoint's obligations to the Applicant are secured by a security interest in the Collateral and proceeds thereof (the "Security") (see s. 2 of attached terms and conditions ("T&Cs")).
  - b. the Security constitutes a purchase-money security interest (PMSI) within the meaning of the Ontario *Personal Property Security Act* (the "PPSA") (T&Cs, s. 2(c)).
  - c. the Security has attached (T&Cs, s. 12(o)).
9. The Security was properly registered under the PPSA in file number 762167673 on May 27, 2020, as amended on June 22, 2020 to correct minor mismatches in the collateral description (including serial numbers), and as reamended on June 24, 2020 to add '905 Ltd. and '909 Ltd. as debtors.<sup>7</sup>
10. The Collateral was installed on the Premises and used for the Business, as contemplated under the Loan and Security Agreement.

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<sup>5</sup> Keenan Affidavit, paras. 7-11.

<sup>6</sup> A copy of the Loan and Security Agreement is tab 2E (page 58) of the application record.

<sup>7</sup> Only Hypoint has signed a formal security agreement with the Applicant, although the Guarantees include *inter alia* trust and substitution provisions for which PPSA registrations were done.

11. The Property is primarily comprised of the Collateral, the Premises, and all things necessary and attendant to the Business.

**ii. Immediate risk<sup>8</sup>**

12. An officer of the Receiver attended the Premises. There is no activity. The electricity has been cut off because it has not been paid in a long time, as confirmed by the principal of the corporate Respondents.

13. The Applicant asked numerous times for proof of insurance and was provided none.

14. Those are further events of default under the Loan and Security Agreement.

15. The Applicant is very concerned. Without electricity and insurance, the Premises, the Collateral and the rights of stakeholders in the Premises and the Collateral (including the Applicant and all PPSA and land registrants) are in danger of immediate and potentially irreparable damage. The Premises could be vandalized, catch fire, be infested by pests, etc. The Applicant respectfully has no confidence in any Respondent's ability or willingness to address these concerns as would be expected of good faith, reasonable debtors and businesspeople.

**C. The defaults and the Indebtedness<sup>9</sup>**

16. Under the Loan and Security Agreement:

a. the loan thereunder is for the principal sum of \$779,070 repayable in 20 consecutive quarterly payments of \$47,814.75 in principal and interest commencing on July 1<sup>st</sup>, 2020.

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<sup>8</sup> Keenan Supplementary Affidavit, paras. 7-9.

<sup>9</sup> Keenan Affidavit, paras. 12-15.

- b. the interest rate is an annual fixed rate, pre-computed for the entire term, of 8.75% per annum (absent any defaults).
  - c. the total of principal and interest due over the term of the Loan and Security Agreement (excluding interest charged on amounts past due) is \$956,295.
17. Hypoint is in arrears of \$49,095.94 as of February 17, 2022. Under the Loan and Security Agreement:
- a. this constitutes an event of default (T&Cs, s. 10(a)).
  - b. the Applicant is entitled, *inter alia* and whether alternatively or cumulatively, to:
    - i. declare the owing balance immediately due and payable, which, as of March 11, 2022, was \$676,252.29 (the “**Indebtedness**”),
    - ii. appoint a receiver or receiver and manager, and
    - iii. repossess and sell the Collateral,in addition to any other remedy that the Applicant has at law, including without limitation under the PPSA, the BIA or the CJA (T&Cs, s. 11 and 12).
  - c. Hypoint is liable for all costs, charges and expenses reasonably incurred by the Applicant or any receiver appointed by it in enforcing the Loan and Security Agreement (the “**Enforcement Costs**”) (T&Cs, s. 12 (f)).
  - d. the Indebtedness (post-default) and the Enforcement Costs amounts bear interest at the rate of 1.5% per month (19.56% per annum) (T&Cs, s. 13(e)).

18. The Guarantees all contain the same terms.<sup>10</sup> Under the Guarantees:
- a. the Guarantors guarantee all Hypoint's obligations to the Applicant, including the Indebtedness and the Enforcement Costs (s. 1).
  - b. the Applicant is granted the right to seek immediate and full repayment of the same from the Guarantors as is done herein, without any condition, restriction or requirement other than Hypoint being in default (see primarily s. 5 and 6).

**D. Other registrants<sup>11</sup>**

19. All the below registrants have been served with the application record for this application at the addresses disclosed in the PPSA or land registries.

**i. PPSA<sup>12</sup>**

20. The PPSA registrants against Hypoint other than the Applicant are Mr. Bock and Add Capital Corp.
21. There is no PPSA registrant against '905 Ltd. other than the Applicant.
22. The other PPSA registrants against '909 Ltd. are Delrin Investments Inc., Samuel Stern, Harvey Kessler and Richard Goldberg ("**Delrin *et als.***").
23. It cannot be determined with certainty, based on a review of the PPSA registry, whether the PPSA registrations other than the Applicant's purport to charge the Collateral, but if so, this would constitute a further event of default under the Loan and Security Agreement (see T&Cs, s. 10(d)), and the Applicant's security interest would rank first on the Collateral both by virtue of being priorly registered and by virtue of being a PMSI.

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<sup>10</sup> Copies of the Guarantees are tabs 2G, 2H, and 2I (pages 134, 143 and 150) of the application record.

<sup>11</sup> Keenan Affidavit, paras. 16-21.

<sup>12</sup> PPSA search reports are tab 2F (page 75) of the application record.

**ii. Land registry**

24. The Premises are encumbered by:
- a. a \$4,000,000 charge registered on June 18, 2020 in favour of Delrin *et als.*
  - b. a \$1,300,000 charge registered on June 18, 2020 in favour of Bruce Lebelsky, with a postponement of the Delrin *et als.* charge in favour of Mr. Lubelsky registered on the same day.
  - c. a \$779,070 notice of security interest registered on June 23, 2020 in favour of the Applicant
  - d. a \$166,000 notice of security interest registered on January 27, 2022 in favour of Mr. Bock and Covi Inc.<sup>13</sup>
25. Pursuant to mortgage waiver and consent agreements entered into as of June 1, 2020 with the Applicant (the “**Mortgage Waivers and Consents**”),<sup>14</sup> each of Delrin *et als.*:
- a. acknowledge that the Collateral is financed and will be installed on the Premises.
  - b. consent to the Applicant’s security interest in the Collateral.
  - c. disclaim any present or future interest in the Collateral, regardless of whether it is affixed to the Premises.
  - d. waive all right to take security enforcement proceedings against the Collateral or to levy or distrain, at any time, upon the Collateral.
  - e. agreed to allow the Applicant or any agent on its behalf, upon reasonable notice, to enforce its security interest on the Collateral, including the removal thereof from

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<sup>13</sup> A copy of the parcel register for the Premises is tab 2A (page 25) of the application record.

<sup>14</sup> Copies of the Mortgage Waivers and Consents are tab 2J (page 160) of the application record.



the Premises, provided that the Applicant is liable for the reasonable costs of repairing any resulting damage to the Premises.

26. For the record and while not necessary for purposes of this application, the Applicant submits that it has the right to rely on the Mortgage Waivers and Consents notwithstanding the purported June 18 postponement, and denies that any security interest in the Collateral takes priority to the Security.

**E. No response to demand and s. 244 notices; alleged but unsubstantiated Respondent efforts to sell<sup>15</sup>**

27. On February 9, 2022, the Applicant sent the Respondents a demand letter by registered mail. The demand letter sets out the defaults as well as the Indebtedness and Enforcement Costs amounts to date and demands repayment by February 17, 2022. A notice under BIA s. 244 was enclosed with the demand letter.
28. None of the Respondents responded to the demand letter or cured the defaults.
29. Before the Applicant made demand on the Respondents, the Applicant had been in touch with the principals of the Business concerning the arrears. The principals asked that the Applicant defer taking any steps notwithstanding the defaults. However, they were not prepared to offer any consideration for such deferral, such as additional guarantees.
30. To the Applicant's knowledge, the Respondents have been attempting to sell the Premises at least since January 2022, including by listings on MLS. The Respondents had stated that the intent of the sale was to generate value sufficient to repay the Applicant. However, the Respondents either not been able or willing to effect a sale.

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<sup>15</sup> Keenan Affidavit, paras. 22-24; Keenan Supplementary Affidavit, paras. 8 and 10. A copy of the demand letter is tab 2L (page 174) of the application record.

31. On April 13, 2022, the Applicant, the Receiver and the principal of the corporate Respondents, Mr. Halkiw, attended before the court for a scheduling hearing. Mr. Halkiw asked for and obtained a 5-week adjournment to pursue a sale of the Premises or Business.
32. During that period, Mr. Halkiw again asked the Applicant to defer the application in order to pursue a sale. When asked for details regarding the transaction pursued, interested parties, status of sale efforts, etc., Mr. Halkiw simply did not respond. The Applicant therefore has no reason to believe that the Respondents have made meaningful, if any, progress towards a viable transaction. The Applicant has also been told about several such pending transactions since January, none of which have materialized.

### **III. ISSUES AND LAW**

33. The issues are whether the court should **(A)** make the receivership order sought, and **(B)** grant the judgment sought.

#### **A. Receivership order<sup>16</sup>**

##### **i. Appointment is just or convenient**

34. The test for the appointment of a receiver under CJA s. 101 and BIA s. 243 is that it be “just or convenient to do so”. The test is often described as the “just and convenient test”; nothing turns on this specifically, but the Acts say “just or convenient”.
35. In deciding whether or not to appoint a receiver, the courts will “have regard to all circumstances”. Typically considered in the caselaw are the nature of the property involved, the rights and interests of affected parties, the right of the applicant to appoint a receiver under an agreement, whether court appointment would enable the receiver to carry out its duty more efficiently, potential costs, the relationship between the debtor and the

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<sup>16</sup> Keenan Affidavit, paras. 25-29.

creditors, the maximization of the return on the subject property, and the preservation of the subject property. The applicant is not required to prove irreparable harm. It is also regularly said, though in different words, that when a contract provides for the right to appoint a private receiver, the applicant's burden of proof is in effect substantially reduced. Some cases say that court appointment in such cases "is not extraordinary"; some others say the agreement is "a strong factor in support of the imposition of a receiver"; some still say that in such circumstances "the court should not interfere with the contract between the parties."<sup>17</sup>

36. In this case, it is just or convenient, considering the principles above, to appoint the Receiver, including in consideration of the following:
- a. Hypoint and '909 Ltd. are related parties operating the same Business, and the receivership order is only sought against the Property, which is all things acquired for, or used in relation to the Business, including the Collateral and the Premises, on which the Collateral is installed.
  - b. Hypoint is in default under the Loan and Security Agreement for the substantial amount of \$676,252.29 (i.e. the Indebtedness) as of March 11, 2022, which is 87% of the \$779,070 principal loan amount and 71% of the total amount of \$956,295 that would have been payable over the entire term.
  - c. all Hypoint's obligations to the Applicant are secured by the Security, which is a PMSI in the Collateral and proceeds thereof. By virtue both of being a PMSI and

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<sup>17</sup> See, *inter alia*, *Bank of Nova Scotia v Freure Village of Clair Creek*, [1996 CanLII 8258 \(ON SC\)](#); *1529599 Ontario Limited v Dalcour Inc.*, [2012 ONSC 5707](#), paras. 40-42; *Bank of Montreal v Carnival National Leasing Limited*, [2011 ONSC 1007](#), paras 23-30; *Bank of Montreal v Sherco Properties Inc.*, [2013 ONSC 7023](#), paras. 38-53; and *Potentia Renewables Inc. v Deltro Electric Ltd.*, [2018 ONSC 3437](#), paras. 45-50.

being priorly registered, the Security ranks first on the Collateral.<sup>18</sup> The Security has attached and has been properly registered under the PPSA.<sup>19</sup>

- d. there is no activity, nor has there been electricity at the Premises for a long time. The Applicant was not provided proof of insurance. It is respectfully submitted that the court may not have great confidence in the Respondents regarding those facts and the lack of information provided. The appointment of a receiver is appropriate to ensure the preservation of the Premises and Collateral and the rights of stakeholders therein (including the Applicant and all PPSA and land registrants).
  - e. AGI consents to its appointment as Receiver on the terms of the order sought.<sup>20</sup>
37. Further, it is unfair that the Applicant be asked to essentially wait and be unpaid while the Respondents are in default and are unwilling or unable to sell the Premises in order to pay what is owing.
38. Finally, subject to the Receiver's assessment of the most proper way to proceed, the Applicant believes that a sale of the Premises, including the Collateral, is appropriate to ensure that the value of the Collateral and the Premises – which is intrinsically linked – is preserved and obtained for the benefit of all stakeholders, considering among other things that:
- a. the Collateral has been installed on the Premises, and removing it would incur wasteful expense and cause damage to the Premises and the Collateral.

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<sup>18</sup> PPSA, s. 33.

<sup>19</sup> PPSA, s. 11 and 20(3).

<sup>20</sup> A copy of the executed consent is tab 2M (page 184) of the application record.

- b. the Premises likely have more value with the Collateral installed, and the Collateral likely has more value when installed than if removed and sold as used equipment.
  - c. the Receiver will be able to run a proper marketing and sale process and locate an acceptable transaction for the Premises in accordance with the highest standards expected of an officer of this court.
  - d. the Receiver will be able to independently resolve, as an officer of the court, possible competing priorities or complexities arising from the fact that the Collateral is personal property that has been affixed to the Premises, the fact that the respective creditor rights are at the intersection of personal and real property security law, and the possibility that the Applicant's security ranks first on the Collateral while other security interests may rank first on the Premises.
  - e. throughout, the Receiver will report to the court and all stakeholders to ensure transparency and orderliness.
39. A court appointment is more efficient than a private appointment because the Receiver and/or the Applicant will possibly require the assistance of the court in respect of a sale process, an approval and vesting order, and advice and directions as to priorities.
40. For those reasons, the Applicant believes that the appointment of the Receiver is likely to bring a better result for all stakeholders than any other enforcement mechanism.
41. Therefore, the appointment of the Receiver is just or convenient.
- ii. The sought receivership order terms are just or convenient**
42. The terms of the receivership order sought are also just or convenient.
43. The receivership order sought is per the Commercial List model order. The only substantive change is that the language in para. 7 relative to a landlord's dispute of the

Receiver's entitlement to remove any fixtures was removed because the only likely relevant landlord is '909 Ltd. 909' Ltd. is the owner of the Premises which form part of the Property over which the receivership order is sought, and one of the entities against which the receivership order is sought. Moreover, '909 Ltd. executed a consent and postponement of landlord agreement in favour of the Applicant on June 1, 2020, subordinating all of its rights and interests to those of the Applicant.<sup>21</sup> Finally, '909 Ltd is one of the Guarantors, a related party, and a Respondent. This change of language is therefore appropriate.

44. The threshold for dispositions of Property without court order is set at \$50,000, which is to ensure that any likely sale of the Collateral or Premises will require prior court approval.
45. The receivership order sought only provides for priority charges as to the "Receiver's Charge" and the "Receiver's Borrowings Charge", both of which form part of the model order. The "Receiver's Charge" is for the Receiver and its counsel's reasonable fees and disbursements as approved at a passing of accounts, and is not in favour of the Applicant or its counsel (whose costs are secured by the Security under the Loan and Security Agreement). The Receiver's Borrowings Charge, to the extent that it is necessary, is limited at \$100,000, which is a reasonably low amount considering the amounts at play (the Indebtedness, likely value of the Premises, value of the Collateral, etc.).
46. For those reasons, the terms of the receivership order sought are just or convenient.

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<sup>21</sup> A copy of this agreement is tab 2K (page 167) of the application record.

**B. Judgment and costs**

47. The judgment sought is for:
  - a. as against the Guarantors, the amount of the Indebtedness, with pre-judgment interest at the rate of 19.56% per annum in accordance with the Debt Instruments.
  - b. as against all the Respondents, the Enforcement Costs.
  - c. on the above, post-judgment interest at the rate of 19.56% per annum in accordance with the Debt Instruments.
  
48. As seen above, the Indebtedness, the Enforcement Costs and the interest thereon are due by Hypoint and the Guarantors on account of the Loan and Security Agreement under the Guarantees, which all provide that the Guarantors guarantee all Hypoint's obligations to the Applicant, including the Indebtedness, the Enforcement Costs and the interest thereon, and that the Applicant may seek immediate and full repayment of the same from the Guarantors as is done herein, without any condition, restriction or requirement other than Hypoint being in default.
  
49. By the terms of the Guarantees, each of the Guarantors is liable for the totality of the Indebtedness. There is no apportionment of liability. It is therefore appropriate for the judgment to be against the Guarantors jointly and severally.
  
50. On the record before the Court, there are clear and uncontested facts as to the documents signed by the Guarantors and their responsibility thereunder. Rules 14.05(3)(d) and (h) of the *Rules of Civil Procedure* give the court the jurisdiction to make the judgment sought.
  
51. Under CJA s. 131, costs are always in the discretion of the court. The traditional maxim is that "costs follow the event". Costs are sought against all Respondents jointly and severally, on a full indemnity basis in accordance with the Debt Instruments.

52. Sections 128, 129 and 130 of the *Courts of Justice Act*<sup>22</sup> (the “CJA”) provide that subject to the court’s discretion, an order for the payment of money bears pre- and post-judgment interest. Post-judgment interest can apply to an award of costs. This is what is sought.

#### **IV. NATURE OF THE RELIEF SOUGHT**

53. Considering the above, the Applicant is entitled to the relief sought, being:

- a. a receivership order, of which a draft in accordance with the Commercial List model receivership order is provided at tab 3 (page 189) of the application record, appointing AGI as Receiver, pursuant to BIA s. 243 and CJA s. 101, without security, of all of the Property of the Respondents Hypoint and ‘909 Ltd. including without limitation the Collateral.
- b. a judgment, of which a draft is provided at tab 5 (page 224) of the application record, against all the other Respondents (being ‘905 Ltd, Beverley Rockcliffe and Chantal Bock), jointly and severally, for:
  - i. \$676,252.29 in outstanding capital and interests owed as of March 11, 2022 on account of the Debt Instruments.
  - ii. pre-judgment and post-judgment interest at the rate of 1.5% per month (19.56% per annum) in accordance with the Debt Instruments.
- c. an order against all the Respondents, jointly and severally, for the Applicant’s costs incurred in respect of this application, on a full indemnity basis in accordance with the Debt Instruments.

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<sup>22</sup> [R.S.O. 1990, c. C.43.](#)



**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 16<sup>th</sup> day of May 2022.

*Brendan Bissell*

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**SCHEDULE A – LIST OF AUTHORITIES**

1. *Bank of Nova Scotia v Freure Village of Clair Creek*, [1996 CanLII 8258 \(ON SC\)](#)
2. *1529599 Ontario Limited v Dalcour Inc.*, [2012 ONSC 5707](#)
3. *Bank of Montreal v Carnival National Leasing Limited*, [2011 ONSC 1007](#)
4. *Bank of Montreal v Sherco Properties Inc.*, [2013 ONSC 7023](#)
5. *Potentia Renewables Inc. v Deltro Electric Ltd.*, [2018 ONSC 3437](#)

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## SCHEDULE B – RELEVANT STATUTES

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

**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.

**(1.1)** In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

**(2)** Subject to subsections (3) and (4), in this Part, *receiver* means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — 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 — under
  - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or
  - (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

**(3)** For the purposes of subsection 248(2), the definition *receiver* in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

**(4)** Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

**(5)** The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

**(6)** If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

**(7)** In subsection (6), *disbursements* does not include payments made in the operation of a business of the insolvent person or bankrupt.

**244 (1)** A secured creditor who intends to enforce a security on all or substantially all of

- (a)** the inventory,
- (b)** the accounts receivable, or
- (c)** the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

**(2)** Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

**(2.1)** For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

**(3)** This section does not apply, or ceases to apply, in respect of a secured creditor

- (a)** whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or
- (b)** in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

**(4)** This section does not apply where there is a receiver in respect of the insolvent person.

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*Courts of Justice Act, [R.S.O. 1990, c. C.43](#)*

**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.

**(2)** An order under subsection (1) may include such terms as are considered just.

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*Rules of Civil Procedure, [R.S.O. 1990, c. C.43](#)*

**14.05 (3)** A proceeding may be brought by application where these rules authorize the commencement of a proceeding by application or where the relief claimed is,

**(d)** the determination of rights that depend on the interpretation of a deed, will, contract or other instrument, or on the interpretation of a statute, order in council, regulation or municipal by-law or resolution;

**(h)** in respect of any matter where it is unlikely that there will be any material facts in dispute requiring a trial.

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**CANADIAN EQUIPMENT FINANCE AND LEASING INC.**

Court File No. CV-22-00678808-00CL

Applicant

- and -

**THE HYPOINT COMPANY LIMITED, 2618905 ONTARIO LIMITED,  
2618909 ONTARIO LIMITED, BEVERLEY ROCKLIFFE, and CHANTAL BOCK**

Respondents

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

**APPLICANT'S FACTUM**  
**(Receivership order, judgment against guarantors)**  
**(returnable May 20, 2022)**

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