

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

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

SUPPLEMENTARY APPLICATION RECORD

May 16, 2022

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Lawyers for the Applicant

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Tab 1

ONTARIO
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**THE HYPOINT COMPANY LIMITED, 2618905 ONTARIO LIMITED,
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Respondents

SUPPLEMENTARY AFFIDAVIT OF BRENT KEENAN
(sworn May 16, 2022)

I, Brent Keenan, of the City of Guelph, in the Province of Ontario, **MAKE OATH**
AND SAY:

1. I am the Applicant's President & Managing Partner and have been since 2009. As such I have personal knowledge of the facts and matters deposed in this affidavit save where the same are stated to be based upon information or belief, and where so stated I verily believe the same to be true.
2. I make this supplementary affidavit to update on developments since my initial affidavit sworn March 21, 2022 in support of this application. Capitalized terms not otherwise defined herein have the meaning I gave to them in my March 21 affidavit.

I. CORRECTION TO MY EARLIER AFFIDAVIT

3. First, in my prior affidavit I said minor inaccuracies I wish to correct. I referred to one of the principals of the Business as Wayne Rockliffe but his name is Roman Rockliffe. Also, the Respondent Beverley Rockliffe is not the spouse of Mr. Rockliffe as I had said, but his mother.

II. SERVICE ON CHANTAL BOCK

4. I am advised by Brendan Bissell, one of the counsel for the Applicant, that all of the Respondents other than Chantal Bock have been served personally.
5. Mr. Bissell advises that his process server encountered difficulty with serving Ms. Bock at her residence despite several attempts.
6. Mr. Bissell further advises that he raised this issue with a representative of the corporate Respondents, Mr. William Halkiw (who is a lawyer but does not act as such on behalf of any Respondent) in email discussions, which resulted in Thomas Bock, who is Chantal Bock's husband, confirming that this Application has come to her attention. A copy of Mr. Bock's email in that regard is attached as **Supplementary Exhibit "A"**.

III. RESPONDENTS' REQUEST FOR MORE TIME BEFORE THE HEARING OF THIS APPLICATION

7. On April 13, 2022, the Applicant, a representative of the Receiver, Mr. Bryan Gelman, and Mr. Halkiw, attended before the court for a scheduling hearing. The court set the matter down for hearing on May 20, 2022 at 9:30 am in an endorsement, a copy of which I attach as **Supplementary Exhibit "B"**. As more fully appears from that endorsement:
- a. Mr. Halkiw asked for and obtained a 5-week adjournment to pursue a sale of the Premises or Business.

- b. Given the length of the adjournment, the Receiver asked to access the Premises to take photos and videos, and the court endorsed the same.

IV. EVENTS SINCE THE APRIL 13, 2022 SCHEDULING HEARING

8. The following happened after that scheduling hearing:
 - a. Bryan Gelman, as an officer of the proposed Receiver, and I, attended the Premises and confirmed that there is no activity at the Premises and that electricity has been cut off, which Mr. Halkiw confirmed is because it has not been paid for a long time.
 - b. Mr. Bissell advises that Mr. Halkiw again asked the Applicant to defer the application in order to pursue a sale, as apparently, 5 more weeks was not enough. When pressed for details by the Applicant's counsel regarding the transaction pursued, interested parties, status of sale efforts, etc., Mr. Halkiw simply did not respond. A copy of Mr. Bissell's emails with Mr. Halkiw in that regard are attached as **Supplementary Exhibit "C"**. The Applicant therefore has no information and was given no information on this supposed new transaction. Based on that I believe there is no meaningful, if any, progress towards a viable transaction.
 - c. The Applicant's counsel and Maureen Garratt of the Applicant asked Mr. Halkiw numerous times for proof of insurance on the Premises. None was provided. This is also in the emails attached at as Supplementary Exhibit "C" noted above. This is a further event of default under the Loan and Security Documents.
9. 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, or whatever else.

10. The Applicant now also has no confidence in the Respondents' ability to properly sell or refinance the Respondents' assets in order to repay CEFL or the other creditors. I have been told repeatedly since January of this year of one or more transactions that are supposedly just about to come together but none of them ever have.

V. CONTACT WITH THE MORTGAGEES

11. I am advised by Joel Turgeon, another of the Applicant's counsel, that he was contacted by Jeff Frymer, who described himself as a lawyer retained to act for the mortgagees. Mr. Turgeon further advises that Mr. Frymer voiced concern on behalf of his clients about whether a receivership is really necessary in this matter and whether the Applicant could not just remove its collateral from the building.
12. In my view, it is impractical to consider removing the collateral that is subject to the Applicant's security from the building. The collateral has been extensively attached to the interior and exterior of the building. There are many exterior heating and cooling units that have been attached to the side and top of the building and with cabling and mechanical connections into the building. There are also extensive interior components of the Applicant's collateral, such as piping and electrical and computer wiring for what are literally dozens of panels. This is best demonstrated through the photographs that I am attaching collectively at **Supplementary Exhibit "D"**, and which were taken during the visit that Mr. Gelman and I made to the property as noted above (some of which are still shots from a video also taken then).

13. I am concerned that the cost to remove all of the Applicant's collateral from the exterior and interior of the building will be extensive. I am also concerned that the process of removal may well damage one or more pieces of that collateral, much of which is sensitive mechanical and electrical equipment for precise climate control operations. I am further concerned that the effect of removal of all of that collateral from the building is likely to leave the rest of the building much worse off as well.

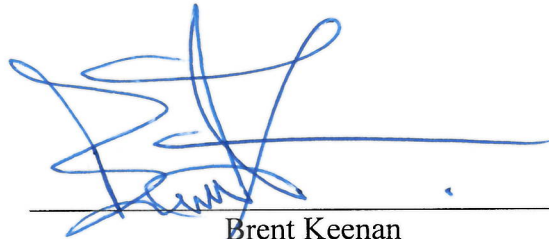
14. It is my firm belief that the Applicant's collateral and the rest of the building are much better off being sold together than attempting to remove the one from the other.

SWORN BEFORE ME via Zoom at the City of Toronto, in the Province of Ontario, this 16th day of May, 2022 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*



Commissioner for taking affidavits
(present at Toronto at the time of swearing)

R. S. Bissell



Brent Keenan
(present at ~~Guelph~~ at the time of swearing)

Breslau
JK.
295

This is **Supplementary Exhibit “A”** to the affidavit of Brent Keenan sworn before me via Zoom this 16th day of May, 2022 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*

A handwritten signature in blue ink, appearing to be 'R. B. R.', is written in the center of the box.

A Commissioner, etc.

Brendan Bissell

From: Tom Bock <tom@thehypoint.com>
Sent: Wednesday, April 06, 2022 4:49 PM
To: Brendan Bissell
Cc: William Halkiw
Subject: Re: Court File No. CV-22-00678808-00CL - CEFL v. The Hypoint Company Limited et al
Attachments: image001.jpg

Confirmed

On Wed., Apr. 6, 2022, 4:42 p.m. Brendan Bissell, <bissell@gsnh.com> wrote:

Thanks, Bill.

Tom, if you could perhaps confirm that the court proceeding has come to Chantal's attention, that would suffice for my purposes and I can then avoid some costs that would otherwise have to be incurred (and tacked on to CEFL's amounts owing).

Regards,

Brendan

From: William Halkiw <william@thehypoint.com>
Sent: Wednesday, April 06, 2022 4:27 PM
To: Brendan Bissell <bissell@gsnh.com>
Cc: Tom Bock <tom@thehypoint.com>
Subject: Re: Court File No. CV-22-00678808-00CL - CEFL v. The Hypoint Company Limited et al

Thank you for your email Brendan as well as the cautionary clarification.

I am copying Tom Bock on this response to confirm acceptance of service without my acting on Chantal's behalf.

As indicated to you, and as you have acknowledged in your email, we are doing everything we can to resolve this matter by way of payment ASAP to CEFL and avoiding (with respect) any and all costs that do not have to be incurred.

Thanks again...

Bill

Sent from my iPhone

On Apr 6, 2022, at 3:28 PM, Brendan Bissell <bissell@gsnh.com> wrote:

Hi Bill: Thanks for your email below. On a technical level, if you are not acting for Chantal (which you aren't), sending the materials to you isn't proper service. If things get to a hearing on this matter, I will have to rely on this email for a request that service on Chantal be validated on the basis of what you say below. I imagine that's ok based on what you say, but I do want to be clear. Please let me know if you are not comfortable with that. Note that no aspect of this is to say you are acting for Chantal in any way (I don't want to put you in that position when you have been quite clear about what you are - and are not - doing), just that it will be evidence that the proceeding has come to her attention.

I do also appreciate that the intent is to try to just pay out CEFF. I was in touch with an insolvency law practitioner who appears to have been brought into things by True North, which in my view makes a payout more realistic, so hopefully that happens as it would be the most efficient way out of this.

Regards,

Brendan

From: William Halkiw <william@thehypoint.com>
Sent: Tuesday, April 05, 2022 8:11 AM
To: Brendan Bissell <bissell@gsnh.com>
Subject: Re: Court File No. CV-22-00678808-00CL - CEFL v. The Hypoint Company Limited et al

Good morning Brendan...

I acknowledge receipt of your email from yesterday.

I am advised that Chantal Bock was away, but the service of the materials at my offices are sufficient to constitute service so no need to pursue same on your part.

As indicated to you, our intention is to make good on the obligation to CEFL as soon as possible and we will keep you apprised of our progress in that regard.

Thanks

Bill

Sent from my iPhone

On Apr 4, 2022, at 6:13 PM, Brendan Bissell <bissell@gsnh.com> wrote:

Bill: Thank you for your email and your call, but CEFL has reconfirmed that the amounts indicated on the payout statement I provided are correct pursuant to the agreements among the parties.

I also need to point out that actions among the borrower group are continuing to cause CEFL to incur costs and expenses that might not normally be necessary. In particular, Ms. Bock and others at her residence appear to be doggedly avoiding dealing with my process server. Extra expenses will now be incurred in that regard and will be added to the payout if the borrower group is in a position to proceed with that.

Regards,

R. Brendan Bissell



Suite 1600 | 480 University Avenue | Toronto ON | M5G 1V2

Direct [416 597 6489](tel:4165976489) | Fax [416 597 3370](tel:4165973370) | Mobile: [416 992 4979](tel:4169924979) | www.gsnh.com

Assistant | Karen Jones | [416 597 9922 ext. 101](tel:4165979922) | jones@gsnh.com

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From: William Halkiw <william@thehypoint.com>

Sent: April 4, 2022 10:02 AM

To: Brendan Bissell <bissell@gsnh.com>

Subject: Fwd: Court File No. CV-22-00678808-00CL - CEFL v. The Hypoint Company Limited et al

See amortization schedule.

Will call you in 5 minutes.

Thanks

Bill

Sent from my iPhone

Begin forwarded message:

From: warren@newcap.net

Date: April 4, 2022 at 8:47:07 AM EDT

To: William Halkiw <william@thehypoint.com>

Subject: RE: Court File No. CV-22-00678808-00CL - CEFL v. The Hypoint Company Limited et al

Hi Bill,

Sorry I forgot to send this out to you.

This is **Supplementary Exhibit “B”** to the affidavit of Brent Keenan sworn before me via Zoom this 16th day of May, 2022 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*

A handwritten signature in blue ink, appearing to be 'R. G. R.', is written in the center of the box.

A Commissioner, etc.

COUNSEL SLIP

COURT FILE

NO.: CV-22-00678808-00CL

DATE: April 13, 2022

NO. ON LIST 1

TITLE OF
PROCEEDING

CANADIAN EQUIPMENT FINANCE AND LEASING INC. v. THE HYPOINT
COMPANY LIMITED et al

COUNSEL FOR:

PLAINTIFF(S)

PHONE _____

APPLICANT(S)

COUNSEL

Brendan BISSELL;
Joel TURGEON

PETITIONER(S)

EMAIL

bissell@gsnh.com
turgeon@gsnh.com

PARTY FOR:

DEFENDANT(S)

PHONE _____

RESPONDENT(S) – THE HYPOINT COMPANY LIMITED

PARTY

William HALKIW

EMAIL

William@thehypoint.com

JUDICIAL ENDORSEMENT:

Mr. Halkiw is the principal of the Respondent corporation. He seeks an adjournment of five weeks in order to pursue a further sale opportunity for the business. While the adjournment was not on consent, it was unopposed but was significantly more time than the two weeks originally sought by the Applicant.

Mr. Gelman is the proposed Receiver. Given the length of the adjournment requested, he seeks to photograph and video the interior and exterior of the building on the property. Mr. Halkiw confirmed that this could be arranged.

Accordingly, I make the following orders:

1. The matter will return for a 30-minute hearing on **May 20, 2022 at 9:30 a.m.**
2. Mr. Halkiw will arrange for Mr. Gelman to access the subject property for the purpose of a video and photographs of the interior and exterior by no later than April 22, 2022.

April 13, 2022



Justice C. Gilmore

This is **Supplementary Exhibit “C”** to the affidavit of Brent Keenan sworn before me via Zoom this 16th day of May, 2022 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*

A handwritten signature in blue ink, appearing to be 'R. G. R.', is written in the center of the box.

A Commissioner, etc.

Brendan Bissell

From: Brendan Bissell
Sent: Tuesday, May 03, 2022 2:35 PM
To: Chris Clapperton; William Halkiw
Cc: Tom Bock; Bryan Gelman; Joel Turgeon (turgeon@gsnh.com)
Subject: RE: HYPOINT AND CEFL

Christopher & Bill:

Thanks for your emails.

To respond to Bill's email first, I ask that he please provide details about any proposed transaction, including who is the purchaser, the price, the terms and any documentation on all of that. Candidly, CEFL (and I) have been told that a sale was coming before without anything happening. Unless and until CEFL is persuaded that there is an appropriate and imminently executable transaction that will pay out CEFL, the application will be proceeding on May 20.

I also ask that Bill please provide written evidence of the insurance he says is there, including a certificate that CEFL is a loss payee as required by the loan documentation.

To respond to Christopher's email, please note that the application is returnable on May 20 and will seek all the relief noted including judgment against Ms. Rockcliffe. Any steps in connection with a litigation guardian should be completed by that time so that the matter can proceed that day.

On that, I am also going to note something that I have mentioned to Bill before - namely, that if the borrower group is so certain that CEFL has nothing to worry about, then the borrower group (including the guarantors of the CEFL loan) should just pay out CEFL and take an assignment of its loan and security. The lack of anything in that regard is rather telling.

Regards,
Brendan

R. Brendan Bissell

Suite 1600 | 480 University Avenue | Toronto ON | M5G 1V2

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Assistant | Karen Jones | 416 597 9922 ext. 101 | jones@gsnh.com NOTICE OF CONFIDENTIALITY: This email and any attachment contain information which is privileged and confidential. It is intended only for the use of the individual to whom it is addressed. If you are not the intended recipient or the person responsible for delivering this document to the intended recipient, you are hereby advised that any disclosure, reproduction, distribution or other use of this email is strictly forbidden. If you have received this email by error, please notify us immediately by telephone or email and confirm that you have destroyed the original transmission and any copies that have been made. Thank you for your cooperation. Should you not wish to receive commercial electronic messages from GSNH, please unsubscribe.

-----Original Message-----

From: Chris Clapperton <cclapperton@cmlaw.ca>
Sent: May 3, 2022 12:12 PM
To: William Halkiw <william@thehypoint.com>; Bryan Gelman <bgelman@albertgelman.com>; Brendan Bissell <bissell@gsnh.com>
Cc: Tom Bock <tom@thehypoint.com>
Subject: RE: HYPOINT AND CEFL

I have Bill's email from this morning.

The attorneys for property for Beverlie Rockcliffe are proceeding ASAP with the application to appoint a litigation guardian for Ms Rockcliffe, as the attorneys for property otherwise have no standing to deal with the application on her behalf.

Christopher J. Clapperton
Barrister & Solicitor

CLAPPERTON MUNRO LAW
4888 Dundas Street West, Suite 100
Toronto, Ontario M9A 1B5
T: (416) 443-1200
F: (416) 443-1202

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-----Original Message-----

From: William Halkiw [mailto:william@thehypoint.com]

Sent: Tuesday, May 03, 2022 11:54 AM

To: Bryan Gelman <bgelman@albertgelman.com>; Brendan Bissell <bissell@gsnh.com>

Cc: Chris Clapperton <cclapperton@cmlaw.ca>; Tom Bock <tom@thehypoint.com>

Subject: HYPOINT AND CEFL

> Good afternoon gentlemen:

> We are currently engaged in a sale transaction that we hope to close within the next 30 days, which will yield sufficient funds to deal with the CEFL obligation.

>

> Accordingly, we would ask for your indulgence in not taking any further steps or incurring any further costs in the interim.

>

> We will keep you apprised of the progress of the transaction.

>

> We also understand from Mr. Christopher Clapperton, counsel for Beverley Rockliffe, that a Litigation Guardian may have to be appointed for Mrs. Rockliffe if the matter proceeds, and we anticipate that this will not be necessary either.

>

> Please also be advised that the building is insured.

>

> Once again, I am responding as a director and officer of the corporations only, and not as counsel.

>

> We do not have the resources to retain counsel and respectfully deem it unnecessary in any event as the intention is to take care of the obligation.

> Sincerest thanks...

> William Halkiw

Sent from my iPhone

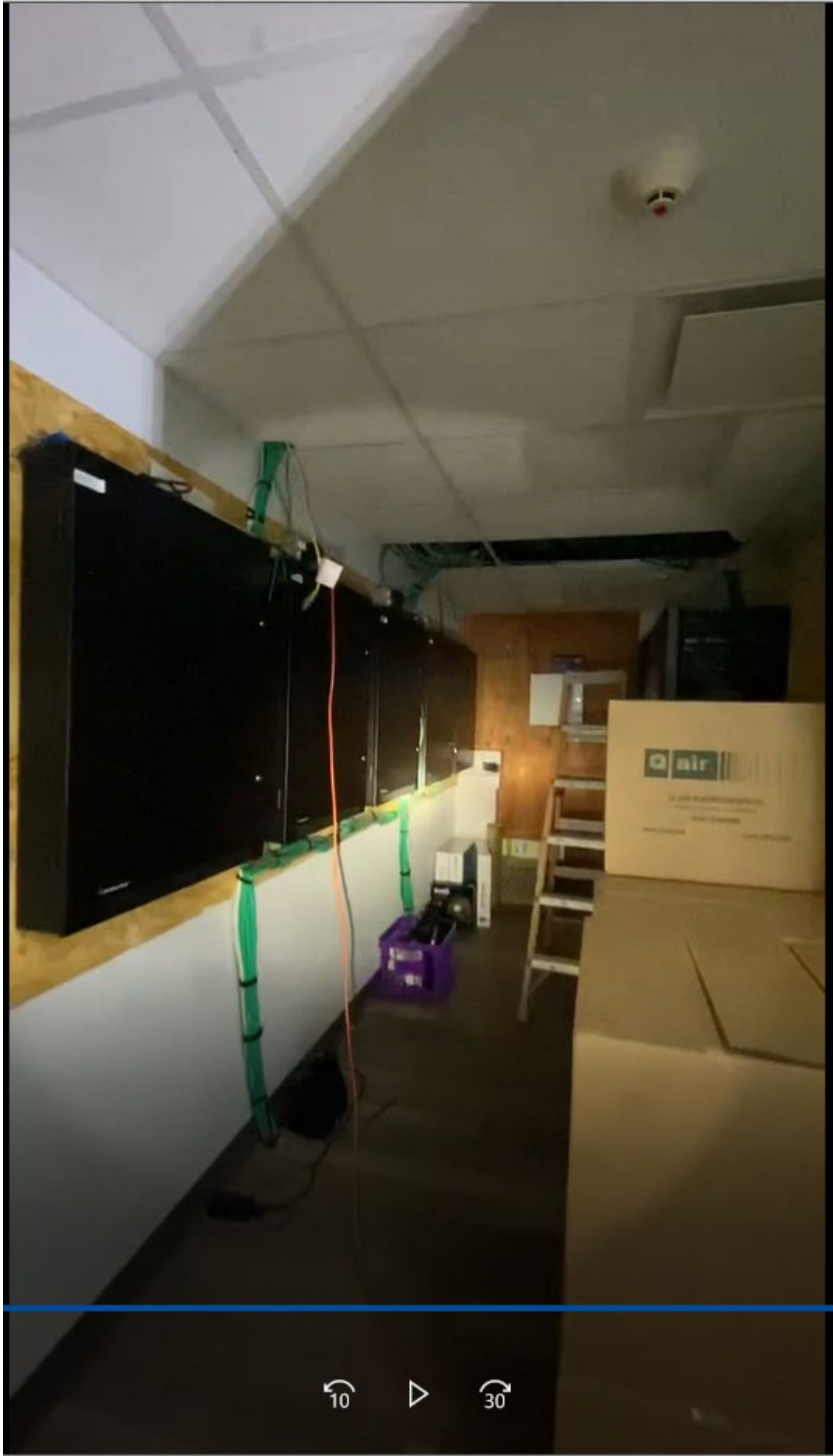
This is **Supplementary Exhibit “D”** to the affidavit of Brent Keenan sworn before me via Zoom this 16th day of May, 2022 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*

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A Commissioner, etc.









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**SUPPLEMENTARY AFFIDAVIT OF BRENT
KEENAN SWORN MAY • , 2022
(Receivership Application)**

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Lawyers for the Applicant

CANADIAN EQUIPMENT FINANCE AND LEASING INC.

-and- THE HYPOINT COMPANY LIMITED et al.

Applicant

Respondents

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

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

PROCEEDING COMMENCED AT
TORONTO

APPLICATION RECORD

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Lawyers for the Applicant