

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

BUSINESS DEVELOPMENT BANK OF CANADA

Applicant

- and -

1391 ONTARIO ST. INC.

Respondent

APPLICATION UNDER SECTION 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

**FACTUM OF THE APPLICANT
(Appointment of Receiver)**

MILLER THOMSON LLP
One London Place
255 Queens Avenue, Suite 2010
London, ON Canada N6A 5R8

Tony Van Klink LSO#: 29008M
Tel: 519.931.3509
Fax: 519.858.8511
Email: tvanklink@millerthomson.com

**Lawyers for the Applicant,
Business Development Bank of Canada**

PART I - NATURE OF APPLICATION

1. This is an application by Business Development Bank of Canada (“**BDC**”) for an order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (“**BIA**”) and section 101 of the *Courts of Justice Act* appointing msi Spergel Inc. (“**RGI**”) as receiver and manager, without security, of the real property located at 1391 Ontario Street, Burlington (the “**Real Property**”) owned by the respondent, 1391 Ontario St. Inc. (the “**Debtor**”).
2. The Debtor has not delivered a notice of appearance or responded to the application despite being properly served.¹

PART II - THE FACTS

3. The Debtor is an Ontario corporation with its registered head office in Cornwall, Ontario.²
4. The Debtor is the owner of the Real Property. The Real Property is an office building, approximately 4,900 square feet in size.³
5. The principal of the Debtor is Thomas Dylan Suitor (“**Suitor**”). Suitor is a real estate agent and investor and has personally guaranteed payment of the Debtor’s indebtedness to BDC.⁴
6. BDC made a loan (the “**Loan**”) to the Debtor to finance the Real Property. As of May 1, 2025, \$2,459,804.12, plus accruing interest and costs, was outstanding on the Loan.⁵

¹ Affidavits of Service of Norman Quenneville sworn May 16, 2025 and Julie Franchini sworn May 6, 2025

² Affidavit of Gianna Torrelli sworn May 5, 2025 (“**Torrelli Affidavit**”), paragraph 3

³ Torrelli Affidavit, paragraph 5

⁴ Torrelli Affidavit, paragraph 4

⁵ Torrelli Affidavit, paragraph 6

7. As security for the amounts owing to it, BDC has a mortgage over the Real Property (the “**Mortgage**”).⁶
8. Other than property taxes, the Mortgage is in a first ranking security position.⁷
9. On October 7, 2024, an interim receivership order (the “**Interim Receivership Order**”) was made in the bankruptcy proceeding affecting Suitor. The Interim Receivership Order has been registered on title to the Real Property.⁸
10. The interim receiver has provided its consent to the enforcement by BDC of the Mortgage.⁹
11. A construction lien has also been registered on title to the Real Property.¹⁰
12. The Loan fell into default in November, 2024 when the Debtor stopped making the monthly payments on the Loan. On February 24, 2025, BDC demanded payment of the Loan and began enforcement steps under the Mortgage. No payments have been made on the Loan since BDC demanded payment.¹¹
13. As of April 30, 2025, there are unpaid taxes of \$44,180.14 owing on the Real Property.¹²
14. The following claims are being made against the Real Property:
 - (a) BDC, as first mortgagee;

⁶ Torrelli Affidavit, paragraph 14

⁷ Torrelli Affidavit, paragraph 17

⁸ Torrelli Affidavit, paragraphs 19 and 24

⁹ Torrelli Affidavit, paragraph 28

¹⁰ Torrelli Affidavit, paragraph 20

¹¹ Torrelli Affidavit, paragraphs 30-33

¹² Torrelli Affidavit, paragraph 35

- (b) The construction lien claimant; and
- (c) The interim receiver.

15. The Loan and Mortgage are in default. BDC has lost confidence in the Debtor and Suitor and their ability or willingness to repay the Loan.¹³

16. The Mortgage provides that upon default BDC may realize the security constituted thereby by the appointment of a receiver or commencing proceedings for the appointment of a receiver.¹⁴

17. Given the ongoing interim receivership and bankruptcy proceeding affecting Suitor and the Real Property, the registration of the Interim Receivership Order on title to the Real Property and construction lien affecting the Real Property, the Bank seeks to enforce the Mortgage by the appointment of a receiver by the court.¹⁵

18. A receivership conducted under the court's supervision will,

- (a) facilitate the realization of the Real Property in a stabilized environment under the supervision of the court;
- (b) give prospective purchasers confidence that they will obtain clear title via a vesting order from the court which will aid in maximizing the realization from the Real Property; and

¹³ Torrelli Affidavit, paragraphs 38 and 39

¹⁴ Torrelli Affidavit, paragraph 39

¹⁵ Torrelli Affidavit, paragraph 41

(c) ensure that the Real Property are realized upon and administered in accordance with the rights of BDC and other stakeholders.¹⁶

19. Spergel is a licensed trustee in bankruptcy and is prepared to act as receiver and manager if so appointed.¹⁷

PART III - LAW AND ARGUMENT

The Test – Just and Convenient

20. Section 243(1) of BIA provides that on an application by a secured creditor, a court may, where the court considers it just and convenient to do so, appoint a receiver to take possession of the accounts, inventory and other property of an insolvent person and exercise control over that person's property and business.¹⁸

21. Section 101 of the *Courts of Justice Act*, RSO 1990, c C.43 (the “CJA”) provides that the Ontario Superior Court of Justice may grant an interlocutory order appointing a receiver and manager where it appears to a judge to be just or convenient to do so.¹⁹

22. In determining whether it is “just or convenient” to appoint a receiver, 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. These include the rights of the secured creditor pursuant to its security.²⁰

¹⁶ Torrelli Affidavit, paragraph 42

¹⁷ Torrelli Affidavit, paragraph 43

¹⁸ *Bankruptcy and Insolvency Act, R.S.C. 1985 c. B-3, Section 243; Courts of Justice Act, R.S.O. 1990, c. C-43, Section 10; Bank of Montreal v. Carnival National Leasing Limited, 2011 ONSC 1007 (CanLII), paragraph 23.*

¹⁹ *Courts of Justice Act, RSO 1990, c C.43, section 101.*

²⁰ *Bank of Nova Scotia v. Freure Village on Clair Creek, 1996 CanLII 8258 (ON SC), paragraph 10.*

23. While the appointment of a receiver is generally an extraordinary equitable remedy, the Courts do not regard the remedy as extraordinary where the relevant security document permits the appointment and as a result, the applicant is merely seeking to enforce a term of an agreement already made by both parties.²¹
24. The appointment of a receiver becomes even less extraordinary when dealing with a default under a mortgage.²²
25. If the security held by the secured creditor seeking the appointment of a receiver by the Court provides for the appointment of a receiver, the issue is essentially whether it is preferable to have a court-appointed receiver rather than a privately appointed receiver.²³

Proof of irreparable harm or risk of dissipation is not required

26. To obtain the appointment of a receiver and manager, there is no requirement that the secured creditor demonstrate irreparable harm or that there is an actual and immediate danger of assets being dissipated.²⁴

The appointment of a receiver is just and convenient

27. For the following reasons it is just and convenient for a receiver to be appointed by the court:
 - (a) No payments have been made on the Loan since the November, 2024. As each day passes, BDC's indebtedness increases;

²¹ *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 (CanLII), paragraph 27; *Bank of Montreal v. Sherco Properties Inc.*, 2013 ONSC 7023 (CanLII), paragraph 42

²² *BCIMI Construction Fund Corporation et al v. The Clover on Yonge Inc.*, 2020 ONSC 1953 at paras. 43-44.

²³ *Bank of Montreal v. Carnival National Leasing Limited*, *supra*, paragraph 36

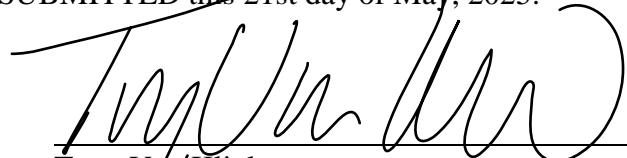
²⁴ *Bank of Montreal v. Carnival National Leasing Limited*, *supra*, paragraphs 25 and 28-29

- (b) There are multiple claims and disputes affecting the Real Property. A receivership conducted under the supervision of the Court will instill confidence in prospective purchasers that they will receive good title to the Real Property via a vesting order despite any claims and disputes that may exist and help maximize the recovery from the Real Property for the benefit for all stakeholders;
- (c) The receivership proceeding will provide a forum for resolving any priority disputes that may exist regarding the sale proceeds from the Real Property;
- (d) the stay of proceedings will permit the Real Property to be realized in an orderly manner in a stabilized environment;
- (e) the Mortgage grants BDC the right to appoint a receiver upon default; and
- (f) BDC has lost confidence in the Debtor and Suitor.

PART IV - ORDER REQUESTED

- 28. BDC respectfully requests an order appointing Spergel as receiver and manager of the Real Property.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of May, 2025.



Tony Van Klink
MILLER THOMSON LLP

Lawyer for the Applicant,
Business Development Bank of Canada

SCHEDULE “A”
LIST OF AUTHORITIES

1. *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CanLII 8258 (ON SC).
2. *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 (CanLII).
3. *Bank of Montreal v. Carnival National Leasing Limited* (2001), ONSC 1007 (CanLII).
4. *Bank of Montreal v. Sherco Properties Inc.*, 2013 ONSC 7023 (CanLII).
5. *BCIMI Construction Fund Corporation et al v. The Clover on Yonge Inc.*, 2020 ONSC 1953

SCHEDULE “B”
RELEVANT STATUTES

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

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.

...

Courts of Justice Act, R.S.O. 1990, c. C-43, Section 101.

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.

Terms

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

BUSINESS DEVELOPMENT
BANK OF CANADA
Applicant

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1391 ONTARIO ST. INC.
Respondent

Court File No.: CV-25-00090112-0000

***ONTARIO*
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at HAMILTON

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