Court File No. CL-26-00000025-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

BUSINESS DEVELOPMENT BANK OF CANADA

Applicant

\- and -

1000144453 ONTARIO LIMITED, ANN & AMM GROUP LTD.,
2496017 ONTARIO INC. and 2663840 ONTARIO INC.

Respondents

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

(Application to Appoint Receiver –
Returnable February 17, 2026 before Justice Dunphy)

SIMPSONWIGLE LAW LLP
1006 Skyview Drive, Suite 103
Burlington, ON L7P 0V1

Rosemary A. Fisher
LSO No. 32238T
E: fisherr@simpsonwigle.com

Trung Nguyen
LSO No. 49386C
E: trung@simpsonwigle.com

Tel: (905) 639-1052

Lawyers for the Applicant,
Business Development Bank of Canada

TABLE OF CONTENTS

PART I – OVERVIEW

1. This factum is filed by the applicant, Business Development Bank of Canada ("**BDC**"), for an Order appointing msi Spergel inc. ("**Spergel**") as receiver (the "**Receiver**"), without security, over all of the assets, undertakings and properties of the respondents, 1000144453 Ontario Limited (the "**Borrower**"), Ann & Amm Group Ltd. ("**A&A**"), 2496017 Ontario Inc. ("**249**") and 2663840 Ontario Inc. ("**266**") (collectively, the "**Respondents**" or "**Debtors**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (the "**BIA**") and section 101 of the *Courts of Justice Act* (the "**CJA**").

2. As of October 27, 2025, the Respondents were indebted to BDC the principal amount of $2,002,643.43, with interest continuing to accrue daily (the "**Indebtedness**"). The Respondents are in default because they have (a) ceased making monthly loan payments on their loan obligations to BDC and (b) failed to pay realty taxes on a commercial plaza municipally known as 303 Hillside Avenue, Oshawa, Ontario (the "**Property**"), which Property was acquired with a $2.1 million loan advanced by BDC.[1]

3. BDC has made reasonable efforts to work with the Respondents in good faith, including by agreeing to a standstill agreement dated July 31, 2023 (the "**Standstill Agreement**").

4. As part of its security, BDC holds a first priority charge over the Property.[2] There are no other encumbrances currently on the Property.[3] However, given the realty tax arrears and pending tax lien, along with the Respondents' chronic defaults, cessation of payments, and the breach of the Standstill Agreement, the appointment of a Receiver is not only just and

---

[1] Loan Agreement between BDC and 1000144453 Ontario Limited accepted October 24, 2022 ("**Loan Agreement**"), Exhibit "A", Application Record, **Tab 2A**.

[2] Exhibit "O", Application Record, **Tab 2O.**

[3] Parcel Register, Exhibit "E", Application Record, **Tab 2E**.

convenient, but necessary to protect and monetize BDC's security.

PART II – THE FACTS

A. The Parties

6. The applicant, BDC, is a federal financial institution and a secured creditor of the Respondents.[4]

7. The Respondents are (a) the Borrower, 1000144453 Ontario Limited, is an Ontario corporation and the registered owner of the Real Property; and (b) A&A, 249, and 266, Ontario corporations carrying on business as pharmacies and guarantors of the Borrower's indebtedness (collectively the "**Guarantors**").

B. The Loan Agreement and Security

9. Pursuant to a Letter of Offer dated October 11, 2022, BDC offered to loan the principal amount of $2,100,000.00 to the Borrower in to fund the purchase of the Property. The Respondents accepted the offer on October 24, 2022 (the "**Loan Agreement**").[5]

10. As security for the Loan Agreement, the Respondents granted BDC the following:

(a) **Mortgage:** A first Charge/Mortgage in the principal amount of $2,100,000, registered against the Property on December 19, 2022.[6]

(b) **Assignment of Rents:** Registered on December 19, 2022.[7]

(c) **General Security Agreements ("GSAs"):** Executed by the Borrower and each of the Guarantors on December 14, 2022, granting BDC a

[4] Affidavit of Andy Cheema, sworn February 9, 2026 ("**Cheema Affidavit**") at para 3, Application Record, **Tab 2**.

[5] Loan Agreement, **Exhibit "A",** Application Record, **Tab 2A**.

[6] Mortgage, **Exhibit "O",** Application Record, **Tab 2O**.

[7] Assignment of Rents, **Exhibit "P",** Application Record, **Tab 2P.**

security interest in all present and after-acquired personal property.[8]

(d) **Guarantees:** Corporate guarantees from A&A, 249, and 266, and limited personal guarantees from the principals, Noman Ahmed Qureshi and Muneera Qureshi.[9]

11. BDC perfected its security interest in the personal property of the Respondents by registrations under the *Personal Property Security Act* (Ontario).[10]

C. Defaults and Forbearance

12. Starting in 2023, the Respondents began defaulting on payment of realty taxes on the Property. This constituted an event of default under the Loan Agreement[11] and Mortgage[12].

13. On July 31, 2023, the parties entered into the Standstill Agreement, pursuant to which the Respondents explicitly acknowledged:

(a) They were indebted to BDC in the amount of $2,100,000.00 plus interest and fees;[13]

(b) They were in default of the Loan Agreement;[14]

(c) They had no defence or objection to the enforcement of BDC's security[15]; and

(d) A breach of the Standstill Agreement would constitute an immediate Event of Default.[16]

14. Despite the Standstill Agreement, the Respondents continue to default on their

---

[8] GSAs, **Exhibits "G"-"J",** Application Record **Tab 2G-J**.

[9] Guarantees, **Exhibits "K"-"N",** Application Record, **Tab 2K-N**.

[10] PPSA, **Exhibits "Q"-"T"**, Application Record, **Tab 2Q-T**.

[11] Loan Agreement, Schedule "A", page 5, para 8, **Exhibit "A",** Application Record, **Tab 2A**.

[12] Standard Charge Terms 20011 at section 5.2, Mortgage, **Exhibit "O"**, Application Record, **Tab 2O**.

[13] Standstill Agreement, para 1(a), page 2, **Exhibit "W"**, Application Record, **Tab 2W**.

[14] Standstill Agreement, recital B, page 1, **Exhibit "W",** Application Record, **Tab 2W**.

[15] Standstill Agreement, para 19, page 7-8, **Exhibit "W",** Application Record, **Tab 2W**.

[16] Standstill Agreement, para 8, page 4, **Exhibit "W",** Application Record, **Tab 2W**.

obligations. Since July 1, 2025, the Respondents have (a) failed to pay any payments as required under the terms of the Loan Agreement and (b) continue to default on the payment of realty taxes on the Property.[17]

15. As of March 6, 2025, the realty tax arrears on the Real Property totaled $47,679.63. The City of Oshawa has issued a Tax Certificate indicating that "Tax Sale proceedings are pending". This creates an immediate risk to BDC's security position.[18]

D. Continuing Default, Further Demands and NITES

16. On October 27, 2025, BDC issued formal demands for payment and served Notices of Intention to Enforce Security ("**NITES**") pursuant to section 244 of the BIA on each of the Borrower and Guarantors.[19]

17. The 10-day notice period under the NITES has expired. The Respondents have failed to repay the indebtedness.

18. As of October 27, 2025, the total amount owing is **$2,002,643.43**, plus accruing interest.

19. BDC has lost confidence in the management of the Respondents and their ability to repay the loans.

20. msi Spergel inc. has consented to act as Receiver.

---

[17] Cheema Affidavit at para 15, Application Record, **Tab 2**.

[18] Tax Certificate, City of Oshawa, **Exhibit "U"**, Application Record, **Tab 2U**.

[19] Demand Letter dated Oct 29, 2025, **Exhibit "X",** Application Record, **Tab 2X**.
NITES served Oct 29, 2025, **Exhibit "Y"**, Application Record, **Tab 2Y**.

PART III – ISSUES

21. The sole issue on this application is whether it is just or convenient to appoint Spergel as Receiver of the Respondents' assets, undertakings, and properties pursuant to section 243(1) of the *BIA* and section 101 of the *CJA*.

PART IV – LAW AND ARGUMENT

A. The Test to Appoint a Court-Appointed Receiver

22. Section 101(1) of the *CJA* provides that a receiver may be appointed by an interlocutory order where it appears to a judge of the court to be "just or convenient" to do so.[20]

23. Section 243(1) of the *BIA* provides that the court may appoint a receiver to take possession of and exercise control over all or substantially all of the property or business of an insolvent person if it considers it to be "just or convenient" to do so.[21]

24. In determining whether it is "just or convenient" to appoint a receiver, the Court should have regard to all of the circumstances, including the nature of the property and the rights and interests of all parties in relation to the property, including:

(a) the nature of the property;

(b) whether the security instrument empowers the secured creditor to appoint a receiver;

(c) the risk to the security holder (jeopardy to assets);

(d) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently; and

[20] *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 101(1).

[21] *Bankruptcy and Insolvency Act,* R.S.C. 1985, c. B-3, s. 243(1), 243(1.1) and 244(2).

(e) the conduct of the parties.[22]

B. Contractual Right to Appoint a Receiver

25. While the appointment of a receiver is an equitable remedy, where a security agreement expressly provides for the appointment of a receiver (as is the case here under the GSAs and Mortgage), the applicant has a *prima facie* right to the appointment, particularly where it is also a mortgagee.[23]

26. Where a debtor has expressly agreed to the appointment of a receiver in the event of default (such as the case here in the Security and Standstill Agreement), the Court should not ordinarily interference with the contract between the parties.[24]

27. That principle becomes even stronger when dealing with a default under a mortgage.[25]

C. Jurisdiction of Commercial List

28. The Commercial List has jurisdiction to hear this application because the parties explicitly agreed that the Loan Agreement and Security would be governed and construed by the laws of the Province of Ontario, in the jurisdiction of the business centre of BDC granting the loan, being 100 Sheppard Avenue East, Suite 300A, North York, ON.[26]

---

[22] *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 ONSC 8258 at paras 10-12.

KEB Hana Bank as Trustee et al. v. Mizrahi Commercial (The One) LP et al., 2023 ONSC 5881 at para 38.

[23] *United Savings Credit Union v. F & R Brokers Inc.,* 2003 BCSC 640 at para 17.

[24] *United Savings Credit Union v. F & R Brokers Inc.,* 2003 BCSC 640 (CanLII), at para 16,

[25] *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.,* 2020 ONSC 1953 at paras 43-44.

[26] Loan Agreement, **Exhibit "F",** page 1, "Lender" and page 9, "Governing Law", Application Record, **Tab 2F.**

29. Similar language can be found in the GSAs[27] and Guarantees[28].

C. Respondents' Other Secured Creditors

30. BDC is the sole secured creditor of three of four of the Respondents: the Borrower and guarantors, 249 and 266. BDC has perfected its security against each of these respondents.[29]

31. The remaining respondent, Ann & Amm, has additional secured creditors, each of whom have perfected security interests over specific collateral:

- **Mercedez-Benz,** over two vehicles – a 2023 MB CLS450 and a 2023 EQS540 SUV;
- **McKesson Canada Corporation,** over consumer goods, inventory, equipment, accounts and other; and
- **Caisse Desjardins Ontario Credit Union Inc.,** over Inventory, Equipment, Accounts Other and Proceeds thereof located at Unit 8, 27 Ruth Avenue Brampton, ON L6Z 4R2.[30]

32. Most importantly, BDC is the senior secured creditor of the Borrower, the registered title holder of the Property, secured by a first charge on title to the Property.[31]

D. Risk to Security

27. The appointment of a receiver is particularly appropriate where the security is at risk of erosion. In this case, the Property is subject to significant tax arrears ($47,679.63) and pending tax sale proceedings. Unpaid realty taxes form a lien on the property in priority to BDC's

---

[27] GSAs, **Exhibits "G"-"J",** para 29.1(b) and 29.5, Application Record, **Tab 2G-J**.

[28] Guarantees, **Exhibits "K"-"N",** para 11, Application Record, **Tab 2K-N**.

[29] PPSAs, **Exhibits "Q"-"S",** Application Record, **Tab 2Q-S**.

[30] PPSA, **Exhibit "T",** Application Record, **Tab 2T**.

[31] Mortgage, **Exhibit "O",** Application Record, **Tab 2O.**

mortgage. This directly erodes BDC's security position and necessitates the intervention of a court-appointed officer to stabilize and realize upon the asset.

E. Continued Default and Risk to Security

28. The Respondents have demonstrated an inability to manage their financial obligations. They acknowledged their default in the Standstill Agreement in July 2023 but failed to adhere to the forbearance terms. They have ceased all payments to BDC since July 2025.

29. As Newbould J. found in *Bank of Montreal v Carnival National Leasing Limited*, on a 3demand loan, a debtor is allowed a reasonable time to raise the necessary funds to atisfy the demand. Reasonable time will generally be of a short duration, not than a few days and not encompassing anything approaching 30 days.[32]

F. Conclusion

30. A court-appointed receiver is just and convenient and appropriate in the circumstances because:

(a) the Respondents are hopelessly insolvent.

(b) the Respondents are in default of the Loan Agreement, the Security, and the Standstill Agreement;

(c) tax sale proceedings are imminent, unless a receiver is appointed;

(d) a tax sale by the municipality would not optimize the proceeds of sale of the Property, as the municipality would have not be as incentivized as the receiver to obtain the highest sale price possible;

(e) BDC has made formal demand, served the requisite NITES and waited for the 10-day period to expire;

(f) the Respondents have been provided with ample opportunity to cure their default, but have failed to do so;

(g) the Respondents conduct has caused BDC to lose confidence in the

[32] *Bank of Montreal v Carnival National Leasing Limited*, 2011 ONSC 1007 (CanLII), at para 13.

Respondents' management and financial affairs; and

(h) the appointment of a receiver is necessary to preserve BDC's security and maximize the recovery for all creditors, in an orderly and court-supervised manner.

31. In these circumstances, it is more than appropriate, just and convenient to grant the receivership order BDC is entitled to under the terms of the Loan Agreement, Security and Mortgage.

PART V – RELIEF SOUGHT

32. BDC respectfully requests an Order in the amended form of the Commercial List Model Order appointing msi Spergel inc. as Receiver of the assets, undertakings, and properties of the Respondents.[33]

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of February, 2026.

SIMPSONWIGLE LAW LLP

Digitally signed by Trung Nguyen
DN: cn=Trung Nguyen, c=CA,
o=SimpsonWigle Law LLP,
email=trungn@simpsonwigle.com
Reason: I attest to the accuracy and integrity of this document
Location: Burlington
Date: 2026.02.10 19:26:35 -05'00'

Rosemary A. Fisher and Trung Nguyen

Lawyers for the Applicant,
Business Development Bank of Canada

[33] Clear Initial Appointment Order, Application Record, Tab 3.
Blacklined Initial Appointment Order, Application Record, Tab 4.

SCHEDULE "A" – CASE LAW

1. *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 ONSC 8258
2. *United Savings Credit Union v. F & R Brokers Inc.*, 2003 BCSC 640
3. *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, 2020 ONSC 1953
4. *Bank of Montreal v Carnival National Leasing Limited*, 2011 ONSC 1007

CERTIFICATION OF AUTHENTICITY

I certify that I have satisfied myself with the authenticity of the authorities cited herein,

Digitally signed by Trung Nguyen
DN: cn=Trung Nguyen, c=CA,
o=SimpsonWigle Law LLP,
email=trungn@simpsonwigle.com
Reason: I attest to the accuracy and integrity of this document
Location: Burlington
Date: 2026.02.10 19:27:13 -05'00'

Trung Nguyen
Lawyers for the Applicant,
Business Development Bank of Canada

SCHEDULE "B" – STATUTES

1. *Courts of Justice Act*, R.S.O. 1990, c. C.43

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.

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

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.

Restriction on appointment of receiver

(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.

Definition of receiver

(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.

Advance notice

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.

Period of notice

(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.

Court File No. CL-26-00000025-0000

BUSINESS DEVELOPMENT BANK OF CANADA -and- **1000144453 ONTARIO LIMITED, et al.**
Plaintiff Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

FACTUM
(Application to Appoint Receiver –
Returnable February 17, 2026)

SimpsonWigle LAW LLP
1006 Skyview Drive, Suite 103
Burlington, ON L7P 0V1

Rosemary A. Fisher
LSO No. 32238T
E: fisherr@simpsonwigle.com

Trung Nguyen
LSO No. 49386C
E: trung@simpsonwigle.com

Tel: (905) 639-1052

Lawyers for the Applicant

#4562571.8