

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

**ROYAL BANK OF CANADA**

Applicant

- and -

**8570442 CANADA INC., 3M MORTGAGE SERVICES CORP., 10352799 CANADA INC., 10503452  
CANADA INC., 13715159 CANADA INC., 13320197 CANADA INC., BABALAR INC., GUSEL  
INVESTMENT INC. and ESMA INVESTMENT INC.**

Respondents

APPLICATION UNDER SUBSECTION 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  
(Receivership Appointment)**

September 25, 2025

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TO: **THE SERVICE LIST**

## I. OVERVIEW

1. This Factum is filed in support of an Application by Royal Bank of Canada ("**RBC**") for an Order (the "**Appointment Order**") appointing msi Spergel Inc. ("**Spergel**") as receiver and manager (in such capacity, the "**Receiver**"), without security of, (a) all of the assets, undertakings and properties of the Respondents (the "**Debtors**") other than 10503452 Canada Inc. ("**105**") and 8570442 Canada Inc. ("**857**") including the lands and premises municipally known as 818 Sheppard Avenue West, Toronto, Ontario ("**818 Sheppard**"), the lands and premises municipally known as 5835 Progress Steet, Niagara Falls, Ontario ("**5835 Progress**"), and the lands and premises municipally known as 88 Dunlop Street West, Barrie, Ontario ("**88 Dunlop**"); (b) the lands and premises municipally known as 940 Danforth Avenue, Toronto, Ontario ("**940 Danforth**") owned by 105 and all lease thereof; (c) the lands and premises municipally known as 816 Sheppard Avenue West, Toronto, Ontario ("**816 Sheppard**" together with 940 Danforth, 818 Sheppard, 5835 Progress and 88 Dunlop, the "**Mortgaged Properties**") owned by 857, all lease thereof, and any personal property located on or which may arise out of, from or in connection with the ownership, use or disposition of 816 Sheppard; and (d) all proceeds of the foregoing, pursuant to section 243 of the *Bankruptcy and Insolvency Act* (Canada)<sup>1</sup> (the "**BIA**") and section 101 of the *Courts of Justice Act* (Ontario).<sup>2</sup>

## II. FACTS

2. The facts with respect to this Application are only briefly recited herein, and are set out in more detail in the Affidavit of Jason Gagnon sworn September 17, 2025<sup>3</sup> (the "**Gagnon Affidavit**"). Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Gagnon Affidavit.

### **BACKGROUND AND DESCRIPTION OF THE PARTIES**

3. The Respondents, being 857, 3M Mortgage Services Corp. ("**3M**"), 10352799 Canada Inc. ("**103**"),

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<sup>1</sup> *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3 [the "**BIA**"]

<sup>2</sup> *Courts of Justice Act*, RSO 1990, c C43 [the "**CJA**"]

<sup>3</sup> Affidavit of Jason Gagnon sworn September 17, 2025, Application Record of Royal Bank of Canada dated September 17, 2025 [the "**Application Record**"], Tab 2 [the "**Gagnon Affidavit**"]

105, 13715159 Canada Inc. ("**137**"), 13320197 Canada Inc. ("**133**"), Babalar Inc. ("**Babalar**"), Gusel Investment Inc. ("**Gusel**") and Esma Investment Inc. ("**Esma**"), are a mix of real estate holding companies and operating companies.

4. Each of the Respondents are privately held companies incorporated under the federal *Canada Business Corporations Act*.

5. The Debtors hold registered title to certain lands and premises municipally described as follows:

- a) 857 owns 816 Sheppard, a one storey commercial building currently occupied by a Mexican restaurant;
- b) 103 owns 818 Sheppard, a one storey commercial building, currently occupied by a Mexican restaurant;
- c) 105 owns 940 Danforth as well as the lands and premises municipally known as 740-748 Sheppard Avenue West, Toronto, Ontario (the "**DUCA Lands**"). On the application of DUCA Financial Services Credit Union Ltd. ("**DUCA**") Spergel was appointed as receiver over the DUCA Lands and all of 105's personal property, assets and undertakings (collectively, the "**DUCA Receivership Property**") by Order of Justice Conway dated as of May 14, 2024 (the "**DUCA Receivership Order**"). The DUCA Receivership Property does not include 940 Danforth. A two storey building is located at 940 Danforth Avenue, that contains a Turkish restaurant on the ground floor, and four apartments located on the second floor.
- d) 133 owns 5835 Progress, a one storey approximately eight thousand square foot warehouse; and
- e) 137 owns 88 Dunlop, a one storey commercial building which is currently occupied by a Greek restaurant.<sup>4</sup>

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<sup>4</sup> Gagnon Affidavit, para 7

**THE CREDIT AGREEMENT AND SECURITY**

6. RBC and the Debtors are party to various credit agreements (the "**Credit Agreements**"), pursuant to which RBC provided credit facilities to specific Debtors. These Credit Agreements are further described below:

- a) 857 and the Bank are party to a credit agreement dated as of February 9, 2018, as amended by an amendment dated as of August 28, 2020 (collectively, the "**857 Credit Agreement**"), pursuant to which the Bank established a mortgage loan in the maximum principal amount of \$900,000.<sup>5</sup>
- b) 3M and the Bank are party to a credit agreement dated as of February 28, 2022, as amended by an amendment dated as of September 4, 2024 (collectively, the "**3M Credit Agreement**"), pursuant to which the Bank established a non revolving HASCAP term facility in the maximum principal amount of \$1,000,000.<sup>6</sup>
- c) 103 and the Bank are party to a credit agreement dated as February 4, 2022 as amended by an amendment dated as of November 25, 2024 (collectively, the "**103 Credit Agreement**") pursuant to which the Bank established a term loan in the maximum principal amount of \$339,684.00.<sup>7</sup>
- d) 105 and the Bank are party to a credit agreement dated as of February 1, 2019, as amended by amendments dated as of August 28, 2020, October 17, 2022, August 29, 2023, and August 8, 2024 (collectively, the "**105 Credit Agreement**"), pursuant to which the Bank established a mortgage loan in the maximum principal amount of \$1,850,000.<sup>8</sup>
- e) 133 and the Bank are party to a credit agreement dated October 19, 2021, as amended by amendments dated as of July 17, 2023, March 18, 2024, December 3, 2024, and February 13, 2025 (the "**133 Credit Agreement**"), pursuant to which the Bank established a mortgage loan in the

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<sup>5</sup> Gagnon Affidavit, para 9

<sup>6</sup> Gagnon Affidavit, para 10

<sup>7</sup> Gagnon Affidavit, para 11

<sup>8</sup> Gagnon Affidavit, para 12

maximum principal amount of \$1,062,166.81 and a credit card facility in the principal amount of \$25,000.<sup>9</sup>

- f) 137 and the Bank are party to a credit agreement dated as of July 17, 2023 (the "**137 Credit Agreement**"), pursuant to which the Bank established a non-revolving term loan in the amount of \$1,162,500.<sup>10</sup>

7. As security for its indebtedness and liability to RBC under the Credit Agreements, among other things, the Debtors provided RBC with the following guarantees and security:

- a) **133 Credit Agreement Guarantees:** In connection with the 133 Credit Agreement, (a) Esma provided a guarantee of the obligations, liabilities and indebtedness of 137; (b) Babalar provided an unlimited guarantee of the obligations, liabilities and indebtedness of 137; and (c) Gusel provided a guarantee of the obligations, liabilities and indebtedness of 137 limited to the principal amount of \$1,388,344.<sup>11</sup>
- b) **137 Credit Agreement Guarantee:** In connection with the 137 Credit Agreement, Esma provided a guarantee of the obligations, liabilities and indebtedness of 137 limited to the principal amount of \$1,162,500.00.<sup>12</sup>
- c) **General Security Agreements:** In connection with specific Credit Agreements, the Debtors executed general security agreements in favour of the Bank (the "**GSAs**"), each of which granted the Bank a security interest over all of the personal property of the underlying Debtor.<sup>13</sup>
- d) **Mortgages:** In connection with specific Credit Agreements, first Charge/ Mortgage were granted against:

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<sup>9</sup> **Gagnon Affidavit**, para 13

<sup>10</sup> **Gagnon Affidavit**, para 15

<sup>11</sup> **Gagnon Affidavit**, para 14; Exhibit H "Babalar 133 Guarantee" and Exhibit I "Gusel 133 Guarantee"

<sup>12</sup> **Gagnon Affidavit**, para 16; Exhibit K "Esma 137 Guarantee"

<sup>13</sup> **Gagnon Affidavit**, para 17; Exhibits L- T. "the GSAs"

- i. 816 Sheppard in the principal amount of \$900,000;
- ii. 818 Sheppard in the principal amount of \$400,000;
- iii. 940 Danforth in the principal amount of \$1,850,000;
- iv. 5835 Progress in the principal amount of \$1,150,000; and
- v. 88 Dunlop in the principal amount of \$1,162,500.<sup>14</sup>

#### **DEFAULTS AND DEMANDS UNDER THE CREDIT AGREEMENTS**

8. A number of defaults have occurred under the Credit Agreements. The defaults that have occurred in respect of each Credit Agreement that the Bank is aware of are set out below:<sup>15</sup>

Credit Agreements	Defaults
The 857 Credit Agreement:	<ul style="list-style-type: none"><li>• 857 failed to pay outstanding properties taxes for 816 Sheppard in the amount of \$19,877.25 when (with missed payments dating as far back as 2024);</li><li>• The mortgaged established under the 857 Credit Agreement matured without extension on May 1, 2025; and</li><li>• The Orkhan 816 Sheppard Interest has been registered against 816 Sheppard without the Bank's consent;</li></ul>

<sup>14</sup> **Gagnon Affidavit**, para 18; Exhibit U-Y "RBC Mortgages"

<sup>15</sup> **Gagnon Affidavit**, para 23.

Credit Agreements	Defaults
3M Credit Agreement	<ul style="list-style-type: none"><li>• 3M failed to make a monthly payment when due to the Bank under the 3M Credit Agreement; and</li><li>• 3M failed to make a payment when due to RBC under an equipment condition sales contract;</li></ul>
103 Credit Agreement	<ul style="list-style-type: none"><li>• 103 failed to pay outstanding properties taxes for 818 Sheppard in the amount of \$14,365.51 when due (with missed payments dating as far back as 2023);</li></ul>
105 Credit Agreement	<ul style="list-style-type: none"><li>• 105 failed to pay outstanding property taxes for 940 Danforth in the amount of \$70,200.58 when due (with missed payments dating as far back as 2024);</li><li>• 105 failed to make certain credit card payments when due to the Bank;</li><li>• The Orkhan Danforth Interest has been registered against 816 Sheppard without the Bank's consent;</li><li>• As noted above, Spergel was appointed as Receiver over the DUCA Receivership Property pursuant to the DUCA Receivership Order. The DUCA Receivership Order includes personal property of 105 that is subject to RBC's GSA from 105; and</li></ul>

Credit Agreements	Defaults
	<ul style="list-style-type: none"><li>• The Dibratto Danforth Mortgage was granted without the Bank's consent;</li></ul>
133 Credit Agreement	<ul style="list-style-type: none"><li>• 133 failed to pay outstanding property taxes for 5835 Progress in the amount of \$48,320.75 when due (with missed payments dating as far back as 2023); and</li><li>• 133 failed to make certain credit card payments when due to the Bank;</li></ul>
137 Credit Agreement	<ul style="list-style-type: none"><li>• 137 has an unauthorized overdraft of \$9,797.63 in one of its bank accounts with RBC;</li><li>• The mortgage loan established under the 137 Credit Agreement matured without extension on July 28, 2025;</li><li>• 137 failed to pay outstanding property taxes for 88 Dunlop in the amount of \$90,666.07 when due (with missed payments dating as far back as 2023); and</li><li>• a second mortgage was granted against 88 Dunlop without the Bank's consent;</li></ul>

9. The events of default above are material. These defaults which include loans with RBC maturing without repayment, missed scheduled payments to RBC, missed property tax payments, a receiver having been



appointed over 105's personal property, and subordinate mortgages being granted without the Bank's consent, appear to be reflecting of significant cash flow issues.<sup>16</sup>

10. On August 6, 2025 the Bank through counsel, sent demand letters to each of the Debtors (the "**August 6 Demand Letters**"). The August 6 Demand Letters enclosed notices of intention to enforce security (the "**August 6 NITES**") pursuant to section 244 of the *BIA*.<sup>17</sup>

11. On August 20, 2025, a further demand letter (the "**Additional 3M Demand Letter**") and notice of intention to enforce security (the "**Additional 3M NITES**", together with the August 6 NITES, the "**NITES**") was issued to 3M in connection with the 3M Credit Agreement.<sup>18</sup>

12. In total over \$5.5 million dollars is owed in connection with the Credit Agreements not including legal fees.<sup>19</sup>

13. The statutory notice period provided for under the *BIA* and outlined in the Demand Letters and the NITES have expired.

### **PART III. ISSUES**

14. The issue to be determined by the Court in respect of this Application is whether it is just or convenient for the Court to appoint Spergel as Receiver?

### **PART IV. THE LAW**

#### **Technical Requirements to Appoint a Receiver Have Been Met**

15. RBC submits that the technical requirements for the appointment of a receiver under both the *BIA* and

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<sup>16</sup> **Gagnon Affidavit**, para 24; Exhibit NN "Demand Letters"

<sup>17</sup> **Gagnon Affidavit**, para 26

<sup>18</sup> **Gagnon Affidavit**, para 27

<sup>19</sup> **Gagnon Affidavit**, para 30

CJA have been met.

16. RBC is a secured creditor of the Debtors and, and is therefore entitled to bring an application under section 243 of the BIA.<sup>20</sup> As required under sub-section 243(1.1) of the BIA, RBC issued the NITES.<sup>21</sup> The notice period under the NITES has expired.<sup>22</sup>

17. Spergel is qualified to act as Receiver in accordance with the requirements of sub-section 243(4) of the BIA and has consented to serving as Receiver in these proceedings.<sup>23</sup>

18. The Debtors' head offices are all located in the Greater Toronto Area, Ontario.<sup>24</sup> The Mortgaged Properties subject to the proposed receivership are located in Ontario.<sup>25</sup> This application is properly brought before the Court, as the locality of the Debtors, the Guarantors and the Mortgaged Properties is Ontario, as required under sub-section 243(5) of the BIA.<sup>26</sup>

### **It Is Just and Convenient To Appoint the Receiver**

19. Pursuant to sub-section 243(1) of the BIA, the Court may, on application by a secured creditor, appoint a receiver where it considers it to be just or convenient to do so:

#### **Court may appoint a 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

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<sup>20</sup> [BIA](#), *supra* note 2, [s 243\(1\)](#)

<sup>21</sup> [BIA](#), *supra* note 2, [s 243\(1.1\)](#); **Mintz Affidavit**, para 35, Exhibit "R": Demand Letter and NITES issued September 26, 2024

<sup>22</sup> **Gagnon Affidavit**, para 33

<sup>23</sup> [BIA](#), *supra* note 2, [s 243\(4\)](#); **Mintz Affidavit**, para 35, Exhibit "U": TDB Restructuring Limited Consent to Act as Receiver

<sup>24</sup> **Gagnon Affidavit**, para 6

<sup>25</sup> **Gagnon Affidavit**, para 7

<sup>26</sup> [BIA](#), *supra* note 2, [s 243\(5\)](#)

business; or

(c) take any other action that the court considers advisable.<sup>27</sup>

20. Sub-section 101(1) of the CJA similarly provides for the appointment of a receiver by interlocutory order where the appointment is "just and convenient":

### **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.<sup>28</sup>

21. In *Freure Village*, Justice Blair (as he was then), found that, in deciding if the appointment of a receiver is just or convenient, the Court must have regard to *inter alia* the nature of the property and the rights and interest of all parties in relation thereto, which includes a secured creditor under its security.<sup>29</sup>

22. Among other things, the following may be considered by a Court in determining whether or not it is just or convenient to appoint a receiver:

(a) the relationship between the debtor and the creditor; and

(b) the best way of facilitating the work and duties of the receiver.<sup>30</sup>

23. Generally speaking, the appointment of a receiver is "an extraordinary remedy". That being said, where a secured creditor is seeking the appointment of a receiver and its credit documents specifically afford it the right to appoint a receiver the appointment of a receiver is not an "extraordinary remedy". The rationale for this relaxed standard is that, in such circumstances, as Justice Morawetz (as he then was), remarked in *Sherco*

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<sup>27</sup> [BIA](#), *supra* note 2, s 243(1)

<sup>28</sup> [CJA](#), *supra* note 3, s 101(1)

<sup>29</sup> [Bank of Nova Scotia v. Freure Village on Clair Creek](#), [1996] OJ No 5088 (QL), 40 CBR (3d) 274 (ONSC (Commercial List)) [*"Freure Village"*], paras 10-12

<sup>30</sup> [Elleway Acquisitions Limited v. The Cruise Professionals Limited](#), 2013 ONSC 6866 (Commercial List)) [*"Elleway"*], paras 28, 30 and 34; [Freure Village](#), *supra* note 49, para 12

*Properties*: "the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties".<sup>31</sup>

24. RBC's credit documents with the Debtors explicitly provide for the appointment of a receiver. To this effect, such a right is specifically included in the the RBC Mortgages<sup>32</sup> and the GSA,<sup>33</sup> each of which were agreed to by the Debtors.

25. In *Atlas Healthcare*, this Court held that where a secured creditor has bargained for the contractual right to have a receiver and manager appointed, there must be a good reason to deprive the creditor of that contractual right.<sup>34</sup>

26. RBC submits that in accordance with the test and factors outlined above, it is both just and convenient to appoint Spergel as receiver, as:

- (a) Significant defaults have occurred under the Credit Agreements, that appear to be indicative of material cash flow issues that have the possibility of effecting ongoing operations without the immediate appointment of a Receiver. These defaults have resulted in a breakdown in the relationship between the Bank and the Debtors;<sup>35</sup>
- (b) A number of the defaults that have occurred are prejudicial to the Bank's recovery including substantial missed property tax payments dating back to 2023 and the granting of subordinate mortgages against certain properties without the Bank's consent. Absent the immediate appointment of a Receiver, management's actions (or inactions) may further prejudice the Bank's recovery;<sup>36</sup>

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<sup>31</sup> *Bank of Montreal v. Sherco Properties Inc.*, 2013 ONSC 7023 (Commercial List), para 42; *Elleway*, supra note 50, para 27

<sup>32</sup> *Gagnon Affidavit*, para 18, Exhibit U- Y RBC Mortgages, section 42

<sup>33</sup> *Gagnon Affidavit*, para 17, Exhibit L- T: GSA, section 13

<sup>34</sup> *Romspen Investment Corporation v. Atlas Healthcare (Richmond Hill) Ltd. et al.*, 2018 ONSC 7382 (Commercial List), para 100

<sup>35</sup> *Gagnon Affidavit*, para 24

<sup>36</sup> *Gagnon Affidavit*, para 23

- (c) The appointment of a Receiver will create a transparent marketing process for the sale of the Property and a clear way forward for the repayment of amounts owed to RBC and other creditors of the Debtors;
- (d) There is no indication that the Debtors have any source of funding available to them sufficient to satisfy the Indebtedness in the near term and, at this juncture, RBC has lost faith in the ability of the Debtors to repay the Indebtedness. The principal of the Debtors has acknowledged that he will not be able to obtain refinancing in the current real estate market;<sup>37</sup> and
- (e) RBC's credit documents specifically provide RBC with the right to seek the appointment of the Receiver.<sup>38</sup>

**PART V. CONCLUSION AND RELIEF SOUGHT**

27. For the reasons set out above, RBC requests that the Court grant the Appointment Order, substantially in the form included at Tab 3 of the Application Record.

**RESPECTFULLY SUBMITTED** this 25 day of September, 2025.



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**Thomas Gertner/ Christina Piccinin**

Lawyers for Royal Bank of Canada

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<sup>37</sup> **Gagnon Affidavit**, para 28

<sup>38</sup> **Gagnon Affidavit**, paras 9-18

ROYAL BANK OF CANADA

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Proceeding commenced at Toronto

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