

Court File No: CV-21-0066512800CL

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

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

**BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT INC., and
CIM BAYVIEW CREEK INC.**

Respondents

**MOTION RECORD
(Motion Returnable August 1, 2023)**

July 31, 2023

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Lawyer for the Respondent,
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TO: THE SERVICE LIST

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

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

**BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT INC., and
CIM BAYVIEW CREEK INC.**

Respondents

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TAB 1

Court File No: CV-21-0066512800CL

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

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

**BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT INC., and
CIM BAYVIEW CREEK INC.**

Respondents

**AFFIDAVIT OF VASILIOS PANAGIOTAKOPOULOS SWORN JULY 31,
2023**

I, Vasilios Panagiotakopoulos, of the City of Oakville, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the President of Cardinal Advisory Limited, the DIP Lender in connection with the Proposal Proceeding, as that term is defined herein, and, as such, have knowledge of the matters contained in this Affidavit.

Procedural History

2. In November, 2020, Cardinal Advisory Limited (“**Cardinal**”), as the DIP lender, made available a credit facility in the amount of \$200,000.00 (the “**Credit Facility**”), in connection with a proposal proceeding (the “**Proposal Proceeding**”) brought by CIM Bayview Creek Inc. (the

“**Debtor**”) under Section 50.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the “**BIA**”).

3. A DIP lender’s charge in the amount of \$200,000.00 (the “**DIP Charge**”) was established pursuant to paragraphs 8-10 of the Order of Cavanagh J. dated November 27, 2020 (the “**November 27 Order**”). A copy of the November 27 Order is attached hereto as Exhibit “**A**”.

4. The Credit Facility was subject to the court approved terms and conditions set forth in the DIP Term Sheet dated November 23, 2020.¹ A copy of the DIP Term Sheet is attached as Exhibit “**B**”.

5. Pursuant to paragraph 11 of the November 27 Order, the DIP Charge was granted first priority as against all existing encumbrances over the assets of the Borrower, including property municipally known as 10747 Bayview Avenue, Richmond Hill, ON (the “**Property**”).

6. The Purpose of the DIP Charge was to provide certain administrative professionals, including Miller Thomson LLP (“**Miller Thomson**”), as counsel to the Debtor, Grant Thornton Limited, as the proposal trustee (the “**Proposal Trustee**”) and its counsel, Cassels Brock & Blackwell LLP (the “**Proposal Trustee’s Counsel**”) along with Cardinal’s counsel (collectively, the “**Administration Professionals**”) with some security that the fees they were incurring in connection with the Proposal Proceeding would be paid, at least in part.

7. It is my understanding that the Administration Professionals along with Cardinal and its advisors relied on the DIP Charge to secure their fees and disbursements incurred in connection with the Proposal Proceeding and otherwise.²

¹ See November 27 Order at para 8.

² November 27 Order at paras 5-14.

8. On December 21, 2021, the Proposal Trustee and its counsel obtained an Order of this Court approving fees and disbursements in connection with the Proposal Proceeding that exceeded the Credit Facility limit (the “**Fee Approval Order**”).

9. Pursuant to the Fee Approval Order, Justice Cavanagh approved the Proposal Trustee’s fees of \$56,500 and disbursements of \$96.39 (both inclusive of HST) and Proposal Trustee’s Counsel’s fees of \$158,200 and disbursements of \$4,475.03 (both inclusive of HST) (collectively, the “**Proposal Trustee Fees**”). Copies of the Fee Approval Order and the endorsement of Cavanagh J. both dated December 21, 2021 are attached as Exhibit “C”.

10. In addition to the Proposal Trustee Fees, I am advised by my counsel that Miller Thomson, as counsel to the Debtor, incurred fees in the amount of approximately \$289,673.28 (the “**MT Fees**”) during the period between October 15, 2020 to December 21, 2020 (the “**MT Fee Period**”).

11. Miller Thomson received approximately \$121,616.73 in connection with the MT Fees. As such, I am advised by my counsel that as of the date of the swearing of this affidavit, MT is still owed approximately \$168,056.55 (the “**Net MT Fees**”) for fees it incurred during the MT Fee Period.

12. In addition to the Proposal Trustee Fees and the Net MT Fees, Cardinal is also owed all amounts it earned under the DIP Term Sheet along with the costs it incurred in respect of its own counsel.

13. The Proposal Proceeding terminated on February 8, 2021.

The Receivership Application

14. On August 11, 2021, Bryton Capital Corp. GP Ltd and Bayview Creek Residences (collectively, “**Bryton**”), the predecessors in interest to Fengate Redevelopment Fund GP Inc. (“**Fengate**”) brought an application (the “**Bryton Application**”) seeking the following relief, in part:

- (a) An order directing and approving the sale of a property in Richmond Hill (the “Property”) by RSM Canada Limited, in its capacity as the privately appointed receiver over the property of CIM Bayview Creek Inc. (“CIM Bayview”), Bayview Creek (CIM) LP, 10502715 Canada Inc. (collectively, the “Debtors”) as contemplated by the terms of Bryton Capital Corp. GP Ltd.’s mortgage registered on title to the Property and the agreement of purchase and sale between the Debtors and Bayview Creek Residences Inc.; and
- (b) An order vesting title to the Property free and clear of all encumbrances.

15. At the same time the Bryton Application was heard, Duca Financial Services Credit Union Limited (“**DUCA**”) brought an application (the “**Receivership Application**”) seeking to appoint MSI Spergel Inc. (the “**Receiver**”) as the receiver in respect of the assets of the Debtor, including the Property.

16. On March 2, 2022, the Bryton Application was dismissed and the Receivership Application was granted.³ Copies of the endorsement and Order of Cavanagh J. dated March 2, 2022 in respect of the Bryton Application are attached as Exhibit “**D**”.

³ See paragraph 4 of the Endorsement of Cavanagh J. dated March 2, 2022.

17. The Order dated March 2, 2022, issued in connection with the Receivership Application is attached as Exhibit “E” (the “**Receivership Order**”).

18. The Receivership Order preserved the DIP Charge in all respects and was consented to by all parties. I am advised by my counsel that pursuant to the Receivership Order, the DIP Charge has priority over all other charges on the Property including the Receiver’s Charge, as that term is defined in the Receivership Order.⁴

The Sale Transaction

19. The Receiver is seeking approval of a transaction to sell the Property which is subject to the DIP Charge. The Receiver has requested that Cardinal provide a payout statement in advance of the Court hearing to approve the Transaction. A copy of the payout statement dated July 31, 2023 is attached as Exhibit “F”.

20. Cardinal is seeking a payout of \$200,000 upon the closing of the Transaction, as that term is defined in the materials provided by the Receiver in connection with this motion.

21. Upon receipt of the \$200,000.00 all obligations owed to Cardinal in respect of the DIP Charge will be satisfied.

22. The payout to Cardinal in respect of the DIP Charge shall be made to Cardinal’s counsel, Rory McGovern PC, in trust.

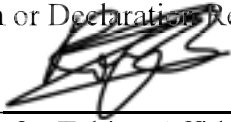
23. Cardinal has confirmed with all of the Administration Professionals that they have an agreement as to how the DIP Amount shall be distributed by Cardinal after the funds in respect of

⁴ DUCA Application Order at para 17.

same are received. A copy of the correspondence among the Administration Professionals confirming this agreement is attached as Exhibit "G".

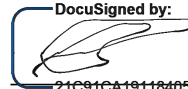
24. I swear this Affidavit in support of the Receiver's motion to pay out the DIP Charge upon the closing of the Transaction.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on July 31, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

RORY MCGOVERN

DocuSigned by:


21C91CA19118405
VASILIOS PANAGIOTAKOPOULOS

RCP-E 4D (February 1, 2021)

This is Exhibit "A" referred to in the Affidavit of Cardinal Advisory Limited sworn by Vasilios Panagiotakopoulos of the Town of Oakville, in the Regional Municipality of Halton, before me at the City of Toronto, in the Province of Ontario, on July 31, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

RORY MCGOVERN

District of Ontario
Division No. 09-Toronto
Court File No. 31-2684629
Estate File No. 31-2684629

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

THE HONOURABLE MR JUSTICE) FRIDAY, THE
CAVANAGH)
) 27th DAY OF NOVEMBER , 2020

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
CIM BAYVIEW CREEK INC.

ORDER

THIS MOTION made by CIM Bayview Creek Inc. ("**CIM Bayview**") for an Order: (i) if necessary, abridging the time for service and filing of this notice of motion and the motion record and dispensing with further service thereof; (ii) approving the sales procedure substantially in the form attached hereto this Order as Appendix "A" and the sales process described therein ("**Sales Process**") and in the first report of Grant Thornton Limited in its capacity as proposal trustee to CIM Bayview ("**Proposal Trustee**") dated November 23, 2020 (the "**First Report**"); (iii) approving a first priority administration charge in the aggregate maximum amount of \$250,000; (iv) approving a debtor-in-possession loan and the authority to borrow the aggregate maximum amount of \$400,000 including the granting of a priority charge over the Property (as defined herein); (v) approving the First Report and the conduct and activities of the Proposal Trustee as described within; (vi) sealing certain appraisals and offers to purchase the Property presented as Confidential Exhibit "A", "B", "C" and "D" to the Affidavit of Jiubin Feng, sworn November 23, 2020; and (vii) extending the time to file a proposal from November 28, 2020 to January 12, 2021, among other relief, was heard this day via ZOOM video-conference.

ON READING the Affidavit of Jiubin Feng sworn November 23, 2020 (the "**Feng Affidavit**"), the Notice of Motion of CIM Bayview dated November 21, 2020, the Notice of Motion of Bayview Creek Residences Inc. and Bryton Capital Corp. GP Ltd. (collectively, "**Bryton**") dated November 24, 2020, the Affidavit of Bryan McWatt sworn November 24, 2020, the Affidavit of Bryan McWatt sworn November 25, 2020, the Supplementary Affidavit of Bryan McWatt sworn November 26, 2020, the Affidavit of Carmen Yuen sworn November 25, 2020, the First Report, and the Supplement to the First Report dated November 25, 2020, and the Facta filed by CIM Bayview and Bryton, and on hearing the submissions of the counsel for CIM Bayview, counsel for the Proposal Trustee, counsel for the Debenture Holders (as defined in the Feng Affidavit), counsel for DUCA Financial Services Credit Union Ltd. and counsel for Bryton, and those other parties appearing as indicated by the counsel slip, no one else appearing although duly served according to the Affidavit of Service of Tamie Dolny, sworn November 25, 2020;

SERVICE

1. THIS COURT ORDERS that the time for service of the notice of motion and the motion record (including service of the First Report) is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

BRYTON OPTION MOTION

2. THIS COURT ORDERS that the motion brought by Bryton in relation to its option agreement ("**Bryton Option**") by notices of motion dated November 24, 2020 and November 25, 2020, is scheduled for a full day hearing on Monday, December 21, 2020 ("**Bryton Option Motion**").

BRYTON OPTION EXTENSIONS

3. THIS COURT ORDERS that the timeline for the exercise of the Bryton Option shall be extended from December 31, 2020, to January 19, 2021, on consent of CIM Bayview.

4. THIS COURT ORDERS that the Closing Date with respect to the Agreement of Purchase and Sale pursuant to the Bryton Option shall be extended from January 15, 2021, to February 19, 2021, on consent of CIM Bayview.

ADMINISTRATION PROFESSIONALS

5. THIS COURT ORDERS that, subject to paragraph 6, 7 and 8 of this order, the Proposal Trustee, counsel to the Proposal Trustee and counsel to CIM Bayview (the "**Administration Professionals**") shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by CIM Bayview unless otherwise ordered by the Court on the passing of accounts, as part of the costs of these proceedings.

6. THIS COURT ORDERS that the Administration Professionals shall pass their accounts from time to time, and for this purpose these accounts are referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

7. THIS COURT ORDERS that prior to the passing of accounts referenced above, CIM Bayview shall be at liberty from time to time to pay reasonable amounts on account of the accounts of the Administration Professionals and such amounts shall constitute advances against fees and disbursements when and as approved by this Court.

DIP FINANCING

8. THIS COURT ORDERS that CIM Bayview is hereby authorized and empowered to obtain and borrow up to a maximum amount of \$200,000 under a credit facility from Cardinal Advisory Limited (the "**DIP Lender**") for the purpose of funding the reasonable fees and disbursements of CIM Bayview's counsel until the return of the Bryton Option Motion and of the Proposal Trustee and its counsel for activities which are necessary for the trustee to fulfill its statutory obligations, bearing in mind that the Sales Process was not approved.

9. THIS COURT ORDERS that, subject to the terms of this Order, such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between CIM Bayview and the DIP Lender (the "**DIP Term Sheet**"), as annexed as Exhibit "J" to the Feng Affidavit.

10. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property to the extent of \$200,000.00.

11. THIS COURT ORDERS that the DIP Lender's Charge shall have first priority over the Property against all existing Encumbrances.

12. THIS COURT ORDERS that the DIP Lender's Charge is valid and effective to secure all of the obligations of CIM Bayview to the DIP Lender under the DIP Term Sheet, and so the filing, registration or perfection of the DIP Lender's Charge shall not be required. The DIP Lender's Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the DIP Lender's Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

13. THIS COURT ORDERS that the granting of the DIP Lender's Charge and all other documents executed and delivered to the DIP Lender as contemplated in the DIP Term Sheet, including, without limitation, all actions taken to perfect, record and register the DIP Lender's Charge, do not constitute conduct meriting an oppression remedy, settlement, fraudulent preference, fraudulent conveyance or other challengeable or reviewable transaction under any applicable federal or provincial legislation.

14. THIS COURT ORDERS that CIM Bayview shall not grant any further encumbrances over any of the Property that ranks in priority to or *pari passu* with the DIP Lender's Charge, unless CIM Bayview obtains further Order of this Court.

SEALING ORDER

15. THIS COURT ORDERS that Confidential Exhibits "A", "B", "C" and "D" to the Feng Affidavit are hereby sealed and shall not form part of the public record, but rather shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further order of the Court.

EXTENSION OF TIME TO MAKE A PROPOSAL

16. THIS COURT ORDERS that the time to make a proposal is extended to December 22, 2020.

COSTS

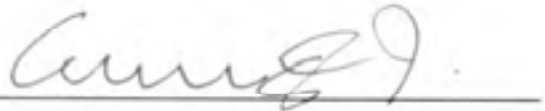
17. THIS COURT ORDERS that cost submissions relating to this motion be reserved to the December 21, 2020 hearing date.

SERVICE AND NOTICE

18. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.granthornton.ca/service/advisory/creditor-updates/#CIM-Bayview-Creek-Inc>.

19. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, CIM Bayview is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the applicable creditors of CIM Bayview or other interested parties at their respective addresses as last shown on the records of CIM Bayview and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

18. THIS COURT ORDERS that this Order is effective from today's date and it is not required to be entered.



IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF CIM BAYVIEW CREEK INC.

District of Ontario
Division No. 09-Toronto
Court File No. 31-2684629
Estate File No. 31-2684629

ONTARIO

Proceeding commenced at TORONTO

SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

ORDER

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Tel: 416.597.6076 Fax:
416.595.8695
tdolny@millerthomson.com
Lawyers for CIM Bayview Creek Inc.

This is Exhibit “B” referred to in the Affidavit of Cardinal Advisory Limited sworn by Vasilios Panagiotakopoulos of the Town of Oakville, in the Regional Municipality of Halton, before me at the City of Toronto, in the Province of Ontario, on July 31, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

RORY MCGOVERN

November 23, 2020

CIM Bayview Creek Inc.

502-55 Commerce Valley Drive West
Markham, ON L3T 7V9

Attention: Jiubin Feng, President and Chief Executive Officer

Re: Debtor-in-Possession financing of CIM Bayview Creek Inc.

WHEREAS CIM Bayview Creek Inc. (the “**Borrower**”) filed a Notice of Intention to Make a Proposal (the “**NOI**”) pursuant to s. 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 C.B-3, as amended (the “**BIA**”) on October 29, 2020. Grant Thornton Limited was appointed as proposal trustee (the “**Proposal Trustee**”) in the proceedings initiated by the filing of the NOI (the “**Proposal Proceeding**”).

AND WHEREAS the Borrower, in consultation with the Proposal Trustee, intends to undertake a marketing and sales process (the “**Sales Process**”) to facilitate the sale of the property municipally known as 10747 Bayview Avenue, Richmond Hill (the “**Property**”) in order to fund a proposal to the Borrower’s creditors.

AND WHEREAS the Borrower requires immediate funding to manage the Proposal Proceeding and the Sales Process.

AND WHEREAS for the purposes of financing the Borrower’s short-term liquidity requirements and other general corporate purposes throughout the Proposal Proceeding, Cardinal Advisory Limited (the “**DIP Lender**”) has agreed to advance to the Borrower a DIP loan advance in the amount of CAD \$400,000.

NOW THEREFORE in consideration of the foregoing and the mutual covenants and agreements set forth below, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

SUMMARY OF TERMS FOR DIP FACILITY

- 1. Borrower:** CIM Bayview Creek Inc.
- 2. Lender:** Cardinal Advisory Limited
- 3. DIP Facility:** The principal amount of CAD \$400,000 (the “**DIP Facility**”).
- 4. Fees:** The Borrower shall pay a commitment fee in the amount of CAD \$15,000 on the date of execution of this Term Sheet, which shall be fully earned and non-refundable whether or not the financing closes.

5. Funding Conditions and Release:

The DIP Facility will be available to the Borrower, subject to all other terms and conditions of this Term Sheet, immediately after the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issues an order (the “**DIP Order**”), in form and substance acceptable to the DIP Lender, approving the terms of this DIP Facility and authorizing the Borrower to enter into this Term Sheet.

Forthwith after execution and Court approval of this Term Sheet, the DIP Facility shall be advanced by the DIP Lender to the Proposal Trustee (in trust), as needed, in installments of not less than \$50,000, as approved by the Proposal Trustee.

6. Purpose of DIP Facility:

The Borrower shall use the proceeds of the DIP Facility to fund the costs associated with the Proposal Proceeding and the administration of the Sales Process.

For greater certainty, the Borrower may not use the proceeds of the DIP Facility to pay any pre-filing obligations of the Borrower without the prior written consent of the DIP Lender and the Proposal Trustee.

7. Term and Repayment:

The DIP Facility shall terminate and all amounts outstanding under the DIP Facility shall be immediately due and payable on the earliest to occur of (the “**DIP Termination Date**”):

- (a) March 31, 2021, or such other date as may be agreed to by the DIP Lender, the Proposal Trustee and the Borrower, in writing;
- (b) the closing of any transaction for the purchase and sale of the Property; and
- (c) the termination, expiration or conversion of the Proposal Proceeding.

8. Interest:

Interest shall be payable on all amounts outstanding under the DIP Facility at a rate of fourteen percent (14%) per annum. Interest shall accrue monthly and shall be paid, in full, on the DIP Termination Date.

9. DIP Security:

All present and future obligations of the Loan Parties under or in connection with the DIP Facility and this Term Sheet will be secured by a charge on the Property of the Borrower pursuant to a Court ordered charge in the Proposal Proceeding, ranking in priority to all other security interests, encumbrances and charges save and except for the administration charge against the property in the amount of \$250,000 (the “**DIP Lender’s Charge**”).

10. The DIP Order: The DIP Order shall be in form and substance satisfactory to the DIP Lender, acting reasonably, and shall include:

- (a) provisions approving this Term Sheet and the DIP Facility;
- (b) provisions granting the DIP Lender's Charge in favour of the DIP Lender;
- (c) provisions authorizing the DIP Lender to effect registrations, filings and recordings wherever in its discretion it deems appropriate regarding the DIP Lender's Charge;
- (d) provisions providing that the DIP Lender's Charge shall be valid and effective to secure all of the obligations of the Borrower to the DIP Lender hereunder, without the necessity of the making of any registrations or filings and whether or not any other documents have been executed by the Borrower;
- (e) provisions declaring that the granting of the DIP Lender's Charge and all other documents executed and delivered to the DIP Lender as contemplated herein, including, without limitation, all actions taken to perfect, record and register the DIP Lender's Charge, do not constitute conduct meriting an oppression remedy, settlement, fraudulent preference, fraudulent conveyance or other challengeable or reviewable transaction under any applicable federal or provincial legislation; and
- (f) provisions restricting the granting of any additional liens or encumbrances on the assets of the Borrower, including the Property, other than as permitted herein and in the DIP Order.

11. Covenants: Until the DIP Termination Date, the Borrower will:

- (a) promptly on the receipt by the Borrower of the same, give the DIP Lender a copy of any Notice of Motion or Application to vary, supplement, revoke, terminate or discharge the DIP Order, including (without limitation) any application to the Court for the granting of new security that will or may have priority over the DIP Lender's Charge, or otherwise for the variation of the priority of the DIP Lender's Charge;
- (b) cause the Proposal Trustee to provide the DIP Lender with any additional financial information reasonably requested by the DIP Lender, to the extent that it is readily available; and

(c) not, without the prior written consent of the DIP Lender, incur any borrowings or other secured indebtedness, obligations or liabilities, other than the DIP Facility, or create or grant any security (other than the DIP Lender's Charge) over any of the Property, whether ranking in priority to or subordinate to the DIP Lender's Charge.

12. Costs

The Borrower shall pay, on demand, all reasonable fees, costs and expenses of the DIP Lender incurred in connection with the preparation, due diligence, negotiation, execution, amendment, administration, and enforcement of the DIP Facility, this Term Sheet and with respect to the Proposal Proceeding (including, without limitation, all reasonable legal fees, disbursements and other charges). The DIP Lender shall be entitled to credit such fees incurred from any un-advanced funds, upon written notice to the Borrower and the Proposal Trustee.

**13. Further
Assurances:**

The Borrower will, at its own expense and promptly on demand by the DIP Lender at any time, do such acts and things and execute and deliver such deeds and documents as the DIP Lender may request to give effect to any other provisions set out hereunder.

14. Assignment:

Neither the DIP Lender nor the Borrower shall assign the benefit of any of the provisions set out herein.

15. Governing Law:

The DIP Facility and the provisions set out herein shall be governed and construed in all respects in accordance with the laws of Ontario and the laws of Canada applicable therein.

16. Acceptance:

The DIP Facility shall not become available to the Borrower until and unless the Borrower returns a copy of this Term Sheet to the DIP Lender (by electronic transmission or personal delivery), countersigned by the Borrower pursuant to the authority granted to the Borrower by the DIP Order.

Dated this 23rd day of November, 2020.

CARDINAL ADVISORY LIMITED

By: _____

Name: Bill Panagiotakopoulos

Title: President

I have authority to bind the corporation

ACCEPTANCE

TO: CARDINAL ADVISORY LIMITED

For good and valuable consideration received, CIM Bayview Creek Inc. accepts and agrees to comply with the provisions of the Term Sheet set out above.

Dated this ____ day of November, 2020.

CIM BAYVIEW CREEK INC.

By: _____

Name: Jiubin Feng

Title: President and CEO

I have authority to bind the corporation.

This is Exhibit “C” referred to in the Affidavit of Cardinal Advisory Limited sworn by Vasilios Panagiotakopoulos of the Town of Oakville, in the Regional Municipality of Halton, before me at the City of Toronto, in the Province of Ontario, on July 31, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

RORY MCGOVERN

Court File Number: 31-2684629

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
CIM BAYVIEW CREEK INC.**

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Email/Facsimile No:
John Birch for Proposal Trustee		
Robert Choi for Bryton Capital Corp. GP Ltd. and Bayview Creek Residences Inc.		
Jonathan Barr for debenture holders		
Adam Slavens for debenture holders		
Lawrence Hansen for DUCA Financial service Credit Union Ltd.		

- Order Direction for Registrar **(No formal order need be taken out)**
 Above action transferred to the Commercial List at Toronto **(No formal order need be taken out)**

- Adjourned to: _____
 Time Table approved (as follows): _____
-

Date Heard: May 25, 2021

Endorsement

- [1] Grant Thornton Limited in his capacity as proposal trustee (the "Trustee") of CIM Bayview Creek Inc. (CIM Bayview") brings this motion for an order approving the fees and disbursements of the Trustee from October 7, 2020 to February 5, 2021, inclusive, and approving the fees and disbursements of the Trustee's counsel for the period from November 16, 2020 to February 5, 2021, inclusive.
- [2] Bryton Capital Corp. GP Ltd. and Bayview Creek Residences Inc. (the "Bryton Group") oppose the Trustee's motion and ask that approval of the Trustee's fees and disbursements and those of its counsel be disallowed entirely.
- [3] The Trustee seeks approval of fees totalling \$57,358.50, excluding HST, and disbursements totalling 96.39. The total amount claimed, inclusive of HST, is \$64,924.03. The fees are based on 124.8 hours of time at an average rate of \$459.60.
- [4] The Trustee seeks approval of fees of its counsel totalling \$256,645, exclusive of HST, and disbursements incurred by its counsel of \$4,475.03 inclusive of HST. The fee is based on 481.4 hours at an average hourly rate of \$533.12. Senior counsel charged 24% of the time and second counsel charged 52% of the time. Other time was spent by articling students.
- [5] The total amount claimed for the Trustee's counsel, inclusive of HST, is \$294,483.88.
- [6] CIM Bayview is the bare trustee of real property in Richmond Hill. The property is a 9.21 acre medium density residential development site (the "Property").
- [7] On October 29, 2020 CIM Bayview filed a Notice of Intention to Make a Proposal pursuant to section 50.4 (1) of the BIA. Grant Thornton Limited consented to act as proposal trustee. On November 26, 2020, CIM Bayview brought a motion for an order extending the time to file a proposal and, in addition, for other relief including approving the sales procedures and sales process described in the notice of motion. The motion was opposed by secured lenders to CIM Bayview, including DUCA, the first mortgagee, and the Bryton Group.
- [8] In my endorsement released November 27, 2020, I held that a threshold question in relation to these proceedings is whether Bryton Creek Residences Inc. has a valid and enforceable option to purchase the Property. I granted an extension of the date for CIM Bayview to file a proposal in order for it to have an adjudication of the motion to be brought by the Bryton Group for relief in relation to the option agreement. I also authorized CIM Bayview to borrow up to \$200,000 for the purpose of funding the reasonable fees and disbursements of its counsel until the return of the motion with respect to the option agreement, and for the purpose of funding the reasonable fees and disbursements of the Trustee and its counsel for activities "which are necessary for the trustee to fulfil its statutory obligations, bearing in mind that the Sales Process was not approved."
- [9] The proposal proceedings were highly contentious. There were multiple hearings during November and December 2020 and a further hearing on February 5, 2021. Two extensions were granted to file a proposal. The Trustee filed several reports to the Court. The Trustee assisted CIM Bayview with respect to filing a proposal, although one was not filed.

[10] I heard the motions in relation to the validity and enforceability of the option agreement on December 21, 2020 and I released my decision on January 12, 2021 in which I held that Bryton Creek is at liberty to exercise its rights under the option agreement.

[11] In *Confederation Financial Services (Canada) Ltd. v. Confederation Treasury Services Ltd.*, 2003 CarswellOnt 1104, Farley J. set out the factors that the court will consider when dealing with the quantum of the trustee's fees. In his decision, Farley J. quoted the following passage from *West Toronto Stereo Centre Ltd., Re* (1975), 19 C.B.R. (N.S.) 306 where Houlden J. stated:

In fixing the trustee's remuneration, the Court should have regard to such matters as the work done by the trustee, the responsibility imposed on the trustee; the time spent in doing the work; the reasonableness of the time expended; the necessity of doing the work; and the results obtained. I do not intend that the list which I have given should be exhaustive of the matters to be considered, but in my judgment they are the more important items to be taken into account.

[12] In *Hess, Re*, 1977 CarswellOnt 68, Henry J. identified certain items that should *prima facie* be disallowed. These items included charges for services not authorized by law; irresponsible decisions producing no positive results; and services based on errors in judgment, not based on the consent of the inspectors.

[13] In *Nottawasaga Bay Holdings Ltd., Re* (1999), 15 CBR (4th) 242, at para. 9, Registrar Ferron described the Court's role in determining a proposal trustee's fees:

In deciding the question of the quantum of the trustee's fees the court's function is narrow. Specifically, it is limited to a determination whether the remuneration requested by the trustee is justified by the services rendered. Certain criteria are used in this determination, for example, the time expended, the hourly rate, whether the work done was necessary to a successful administration, the skill of the trustee exhibited and meet it (sic) and the results obtained. In my opinion, the court's only role in determining the appropriateness of the trustee's remuneration is whether the value of the services rendered by a trustee is in balance with the fees requested.

[14] The Trustee submits that the fees and disbursements claimed are fair and reasonable in light of the activities completed by the Trustee and its counsel and should be approved. The work done by the Trustee and its counsel includes (a) preparing reports to the court, (b) working with the debtor to seek extensions of the time to file a proposal, (c) consideration of making a proposal even though one could not ultimately be filed, (d) preparing for and attending the hearings and case conferences on November 26, November 28, December 3, 2020 and February 5, 2021, and (e) working with Bryton and DUCA to settle the November 27 and December 3 orders.

[15] The Bryton Group submits that the request of the Trustee should be disallowed for the following reasons:

- a. the Trustee and its counsel were negligent in supporting a bare trustee's NOI proceeding when there could be no property for distribution. The Bryton Group submits that the

Trustee failed to recognize that the property in dispute was not the property of the bankrupt and could not be the subject of any proposal distribution.

- b. the Trustee and its counsel were wholly unsuccessful and realized nothing for the unsecured creditors;
- c. the Trustee and its counsel incurred unnecessary costs for a sale process that was never approved and activities that were not authorized by the court.
- d. Pursuant to s. 39(2) of the BIA, the Trustee's remuneration is not to exceed 7.5% of the realization, unless the court orders otherwise pursuant to s. 39(5) of the BIA.

[16] I do not agree that the Trustee's fees and disbursements should not be approved because the Trustee was negligent in supporting CIM Bayview's NOI proceeding. On the motion heard on December 21, 2020, the Bryton Group made submissions that CIM Bayview, as a bare trustee, lacked status to bring its motion. Counsel for CIM Bayview made submissions in response, as did counsel for the Trustee. In my January 12, 2021 endorsement, at para. 111, I concluded that it was not necessary for me to decide whether CIM Bayview, as a bare trustee, lacked status to bring its motion. I do not agree that it would be proper for me to rule on this issue on this fee approval motion when I decided that it was not necessary for me to decide this question on the motion.

[17] The fact that CIM Bayview was unsuccessful on the motions heard on December 21, 2020 does not mean that the Trustee's services and those of its counsel were not authorized by law, irresponsible, or performed based on negligence or errors of judgment. I do not agree that approval of all of the Trustee's fees and disbursements, and those of its counsel, should be denied entirely, as the Bryton Group requests.

[18] I do not agree that the Trustee's fees are limited to 7.5% of the realization unless the court orders otherwise. In *Unified Technologies Inc. Re* (1995), 32 CBR (3d) 182, at para. 12, Registrar Ferron confirmed that an application for increased fees over 7 ½ per cent is not insisted upon in Ontario.

[19] In my endorsement dated February 15, 2021 with respect to costs claimed by the Bryton Group, I declined to award costs against the Trustee, as requested by the Bryton Group, except with respect to the Trustee's claims under ss. 95 and 96 of the BIA (in respect of which I had held that the Trustee did not have statutory authority to seek such relief). I declined to make a finding that the Trustee took positions that were in contravention of duties to the court and its obligation to act honestly and impartially. I noted that other services performed by the Trustee were within the powers of a proposal trustee under the BIA.

[20] The services performed by the Trustee in relation to the issues related to alleged transfers at undervalue amount to 15.6 hours (12.5% of the hours charged by the Trustee). Counsel for the Trustee spent 170 hours on the transfer at undervalue issues, or approximately one-third of the hours charged.

[21] I have decided that the Trustee did not have statutory authority to seek these remedies. This time was not reasonably spent by the Trustee or its counsel and fees for these services are not approved. Based on the time spent by the Trustee and its counsel on the issues related to alleged transfers at undervalue and the average hourly rates charged, , the fees claimed by the Trustee

should be reduced by \$7,169.76 and the fees charged by the Trustee's counsel should be reduced by \$90,630.40.

[22] In addition to the hours expended and the rates applied, and the deductions for time spent in respect of issues related to alleged transfers at undervalue, I consider the necessity of the work done, the skill the Trustee exhibited, and the results obtained. When I do so, I take into account that counsel for the Trustee spent a considerable amount of time in respect of the motions by CIM Bayview and by the Bryton Group that were heard on December 21, 2020. The Trustee was not a moving party or a responding party on these motions and took no position on the issue of whether the option to purchase the property was unenforceable, as CIM Bayview had asserted.

[23] Although the Trustee provided helpful information to the Court (including, for example, by providing reports with information concerning interest rate calculations), the amount of time spent by the Trustee's counsel in respect of this motion was not all reasonably necessary. I additionally reduce the fees claimed by the Trustee's counsel by approximately 15% to reflect my assessment (based on my review of the time entries) of time spent by the Trustee's counsel that was not necessary and was spent unnecessarily. I do not reduce the balance of fees claimed by the Trustee because I do not regard these services as described in the accounts to have been unreasonable or unnecessary.

[24] For these reasons:

- a. I approve the Trustee's fees for the period from October 7, 2020 to February 5, 2021 in the amount of \$50,000 (excluding HST). The Trustee's fees, inclusive of HST, are approved in the amount of \$56,500. I approve the Trustee's disbursements in the amount of \$96.39.
- b. I approve the fees of the Trustee's counsel for the period from November 16, 2020 to February 5, 2021 in the amount of \$140,000 (excluding HST). The fees of the Trustee's counsel, inclusive of HST, are approved in the amount of \$158,200. I approve the disbursements of the Trustee's counsel in the amount of \$4,475.03 (inclusive of HST).

[25] I ask counsel to provide me with an approved form of order reflecting this endorsement.

Cavanagh J.

December 21, 2021

District of Ontario
Division No. 09-Toronto
Court File No. 31-2684629
Estate File No. 31-2684629

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

THE HONOURABLE) TUESDAY, THE 21ST
)
)
JUSTICE CAVANAGH) DAY OF DECEMBER, 2021

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
CIM BAYVIEW CREEK INC.**

**ORDER
(APPROVAL OF PROPOSAL TRUSTEE’S FEES)**

THIS MOTION, made by Grant Thornton Limited in its capacity as proposal trustee (“Trustee”) of CIM Bayview Creek Inc. (“**CIM Bayview**”) for approval of its fees and those of its counsel for the period up to February 5, 2021, was heard on May 25, 2021 by judicial videoconference using Zoom due to the COVID-19 crisis, with judgment having been reserved to this day.

ON READING the Notice of Motion, the Affidavit of Jeremy Bornstein, sworn April 23, 2021 (the “**Bornstein Affidavit**”), the Affidavit of Daniel Wootton, sworn April 23, 2021 (the “**Wootton Affidavit**”), the endorsement of this Court dated November 27, 2020, the transcript of the cross-examination of Daniel Wootton dated March 15, 2021, the submissions of the Trustee dated May 22, 2021, the submissions of Bryton Capital Corp. GP Ltd and Bayview Creek Residences Inc. (collectively, “**Bryton**”) dated May 20, 2021, and upon hearing the submissions of counsel for the Trustee and of counsel for Bryton, and upon the parties listed on the counsel slip also attending, no one else on the

service list appearing although properly served with the motion record and submissions of the Trustee, as evidenced by the Affidavits of Service of Ana Maciel, sworn April 23, 2021 and of Jeremy Bornstein, sworn May 25, 2021,

1. THIS COURT ORDERS that for the period from October 7, 2020 to February 5, 2021, the fees of the Trustee are hereby approved in the amount of \$56,500 (inclusive of HST) and the disbursements of the Trustee are approved in the amount of \$96.39.

2. THIS COURT ORDERS that for the period from November 16, 2020 to February 5, 2021, the fees of Cassels Brock & Blackwell LLP as counsel to the Trustee are approved in the amount of \$158,200 (inclusive of HST) and the disbursements of Cassels Brock & Blackwell LLP are approved in the amount of \$4,475.03 (inclusive of HST).

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
CIM BAYVIEW CREEK INC.**

Court File No. District of Ontario
Division No. 09-Toronto
Court File No. 31-2684629
Estate File No. 31-2684629

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)**

**PROCEEDING COMMENCED AT
TORONTO**

**ORDER
(APPROVAL OF PROPOSAL TRUSTEE'S FEES)**

CASSELS BROCK & BLACKWELL LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

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Lawyers for Grant Thornton Limited, in its capacity as
Proposal Trustee of CIM Bayview Creek Inc.

This is Exhibit “D” referred to in the Affidavit of Cardinal Advisory Limited sworn by Vasilios Panagiotakopoulos of the Town of Oakville, in the Regional Municipality of Halton, before me at the City of Toronto, in the Province of Ontario, on July 31, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

RORY MCGOVERN

Court File Number: CV-21-00662099-00CL
CV-21-00665128-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

BRYTON CAPITAL CORP. GP LTD. and BAYVIEW CREEK RESIDENCES INC.
(formerly known as BRYTON CREEK RESIDENCES INC.)

Applicants

AND

**CIM BAYVIEW CREEK INC., GRANT THORNTON LIMITED IN ITS CAPACITY AS
THE BANKRUPTCY TRUSTEE OF CIM BAYVIEW CREEK INC., BAYVIEW CREEK
(CIM) LP, 10502715 CANADA INC., MNP LTD. IN ITS CAPACITY AS THE
BANKRUPTCY TRUSTEE OF BAYVIEW CREEK (CIM) LP AND 10502715
CANADA INC., GR (CAN) INVESTMENT CO., LTD., MONEST FINANCIAL INC.,
TRACY HUI, JOJO HUI, CARDINAL ADVISORY LTD., and THE CORPORATION
OF THE CITY OF RICHMOND HILL**

Respondents

-and-

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

AND

**BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT INC., and CIM
BAYVIEW CREEK INC.**

Respondents

Case Management Yes No by Judge:

Counsel	Telephone No:	Email/Facsimile No:
Robert Choi, Adam Beyhum and Aram Keyvani for Bryton Capital Corp. GP Ltd.		
John Russo for RSM Canada Inc. in its capacity as privately appointed receiver of CIM Bayview Creek Inc., Bayview Creek (CIM) LP and 10502715 Canada Inc.		
Adam Slavens, Jonathan Silver and Mike Noel for The Enforcement Committee of the Debenture Holders		
E. Patrick Shea for GR (Can) Investments Co. Ltd. and Monest Financial inc.		
John N. Birch for Grant Thornton Limited in its former capacity as proposal trustee and current capacity as trustee in bankruptcy of CIM Bayview Creek Inc.		
Rory McGovern for Cardinal Advisory Limited		

Order Direction for Registrar (**No formal order need be taken out**)
 Above action transferred to the Commercial List at Toronto (**No formal order need be taken out**)

Adjourned to: _____
 Time Table approved (as follows): _____

DATE OF HEARING: August 11, 2021

ENDORSEMENT

Introduction

[1] Two applications were heard together.

[2] In the first application, the Applicants Bryton Capital Corp. GP Ltd. (“Bryton Capital”) and Bayview Creek Residences Inc. (formerly known as Bryton Creek Residences Inc.) (“Bryton Creek”) (together, “Bryton”) apply for an order:

- a. directing and approving the sale of a property in Richmond Hill (the “Property”) by RSM Canada Limited, in its capacity as the privately appointed receiver over the property of CIM Bayview Creek Inc. (“CIM Bayview”), Bayview Creek (CIM) LP, 10502715 Canada Inc. (collectively, the “Debtors”) as contemplated by the terms of Bryton Capital Corp. GP Ltd.’s mortgage registered on title to the Property and the agreement of purchase and sale between the Debtors and Bayview Creek Residences Inc.;
- b. vesting title to the Property free and clear of all encumbrances;
- c. declaring that any proceedings commenced after December 21, 2020 relating to the validity of the Option (as defined herein) are barred by the principles of *res judicata* and abuse of process;
- d. in the alternative to the relief sought in c., above, declaring that no relief may be granted to, among other things, set aside the Option pursuant to the *Fraudulent Conveyances Act*, RSO 1990, c. A.33, *Assignments and Preferences Act*, RSO 1990, c. A.33, or the oppression remedy pursuant to section 241 of the *Canada Business Corporations Act*, RSC, 1985, c. C-44;
- e. an order declaring that any claims brought under, among other things, ss. 95 and 96 of the *Bankruptcy and Insolvency Act* relating to the Option shall have no effect on the validity or enforceability of the Option, together with an order dismissing those claims.

[3] The second application is brought by DUCA Financial Services Credit Union Limited (“DUCA”), the first ranking mortgagee of the property, seeking appointment of msi Spergel Inc., a licensed trustee, as receiver of the assets, properties and undertakings of the Debtors, including the Property.

[4] For the following reasons, the application by Bryton is dismissed and the application by DUCA is granted.

Factual Background

[5] This application concerns the Property which is a residential development property located in Richmond Hill, Ontario.

Parties

[6] Bryton Capital is a real estate developer and holds a second ranking mortgage on the Property. Bryton Creek is the optionee under an option to purchase the Property (the “Option”).

[7] The Option was assigned by Bryton Creek to itself and 10747 Bayview Mortgage Corp. on June 16, 2021, as permitted by the terms of the Option.

[8] CIM Bayview, as bare trustee for Bayview LP, holds title to the Property. The general partner for Bayview LP is 10502715 Canada Inc. ("105 Canada").

[9] CIM Bayview, Bayview LP and 105 Canada ("Vendors") were the Vendors under the Option and the related agreement of purchase and sale ("APS"). All of the Vendors are now bankrupt. Jiubin Feng is the director of the Vendors.

[10] Grant Thornton Limited is the Trustee in Bankruptcy for CIM Bayview.

[11] MNP Ltd. is the Trustee in Bankruptcy for Bayview LP and 105 Canada.

[12] DUCA holds a first-ranking mortgage registered on title to the Property securing repayment of \$20,720,000.

[13] GR (Can) Investment Co. Ltd., together with Monest Financial Inc. (the "Third Mortgagees") registered a third mortgage against the Property.

[14] Jojo Hui and Tracy Hui are members of the Enforcement Committee of the Debenture Holders (the "Debentureholders") who, in 2018, enter into a Subscription Agreement and received three year term secured redeemable debentures under which they advanced \$7,630,000 to CIM International Group Inc. ("CIM International") to develop the Property. In a separate action, they obtained leave to issue a Certificate of Pending Litigation which was registered against the Property.

[15] RSM Canada Limited is the private receiver appointed by Bryton Capital pursuant to the terms of Bryton Capital's Mortgage and General Security Agreement.

Factual background

[16] Some of the factual background to these applications is set out in my earlier decision in these proceedings reported at 2021 ONSC 220, at paras. 12-33.

[17] The applications relate to an Option Agreement dated June 3, 2019 under which the CIM Group granted to Bryton Creek in an irrevocable option to purchase the Property pursuant to an agreement of purchase and sale dated as of June 3, 2019. The Option was amended on July 1, 2020.

[18] On October 29, 2020, CIM Bayview filed a Notice of Intention to make a Proposal ("NOI") under the *Bankruptcy and Insolvency Act*. Grant Thornton Limited was appointed as the proposal trustee for CIM Bayview.

[19] In the NOI proceeding, CIM Bayview sought an order approving a sales process for the sale of the property. Bryton opposed this order on the ground that it had a valid and enforceable option to purchase the Property. On November 27, 2020, I made an order extending the date for filing a proposal under the BIA and extending the dates for the exercise of the Option and for completion of a purchase of the Property under the Option.

[20] I ordered that the motion brought by Bryton in relation to the Option be scheduled for hearing on December 21, 2020.

[21] CIM Bayview brought a motion for an order (i) declaring that its notice to disclaim in the Option is valid and effective; (ii) declaring that the Option be vested out in furtherance of a sales process in the NOI insolvency proceeding; (iii) declaring that the Option violated federal law because it constitutes a criminal rate of interest and provided for an increase charge on amounts in arrears under a mortgage loan made by CIM Bayview to Bryton Capital.

[22] Bryton Capital and Bryton Creek brought a motion for an order (i) that the Option is not to be disclaimed or resiliated, (ii) declaring that Bryton Creek not be restrained from exercising the Option or, alternatively, permitting it to exercise the Option; and (iii) directing the Debtors to comply with the terms of the Option and complete the sale of the Property to Bryton Creek.

[23] Grant Thornton, as NOI trustee, did not bring a motion on December 21, 2020 but, in its factum, requested an order declaring that (a) the Option was void as against it as a transfer at undervalue; and (b) payments made by CIM Bayview to Bryton Capital as a break fee when the Option was amended were void as a preference.

[24] I released my decision on this motion on January 12, 2021. The motion by CIM Bayview was dismissed. The motion by Bryton Capital and Bryton Creek was substantially successful, and a declaration was made that Bryton Creek is at liberty to exercise its rights under the Option.

[25] Bryton Creek exercised the Option on January 14, 2021 and requested that the Debtors complete the APS. The Debtors declined to close, citing an appeal from the January 12, 2021 decision.

[26] Cim Bayview filed a Notice of Appeal of the January 12, 2021 decision. The appeal was dismissed for delay on April 14, 2021.

[27] Bryton Creek exercised the Option on January 14, 2021.

[28] On February 8, 2021, CIM Bayview was deemed to have made an assignment for the benefit of creditors and Grant Thornton became trustee of the bankrupt estate.

[29] On May 4, 2021, Bayview Creek LP and 10502715 Canada Inc. made assignments for the benefit of creditors pursuant to the BIA naming MNP Limited ("MNP") as trustee of their bankrupt estates.

[30] Bryton Capital appointed RSM Capital Limited as receiver pursuant to its mortgage and general security agreement.

[31] On May 20, 2021, the trustees in bankruptcy for the Vendors announced that they were disclaiming their interest in the Property.

[32] On June 1, 2021, Bryton Capital took possession of the Property.

[33] On June 2, 2021, GR (Can) Investment Co. Ltd. on its own behalf and on behalf of other creditors of CIM Bayview Creek Inc., 10502715 Canada Inc. and Bayview Creek (CIM) LP issued a Notice of Application against Bryton Creek as respondent.

[34] In its application, GR seeks remedies under s. 241 of the *Canada Business Corporations Act*, the *Assignments and Preferences Act* (“APA”) and the *Fraudulent Conveyances Act* (“FCA”).

[35] The Subordinate Secured Creditors have also brought motions pursuant to s. 38 of the BIA seeking to have the rights of Grant Thornton in its capacity as trustee of the bankrupt estates of CIM Bayview to pursue remedies against Bryton and/or the purchasers of the Property under, among other things, ss. 95 and 96 of the BIA assigned to the participating creditors.

Analysis

A. Application by Bryton Applicants

[36] The following issues arise on Bryton’s application:

- a. Should a vesting order be granted so that title to the Property can be conveyed free and clear of all creditors’ claims pursuant to the Option?
- b. Are the Bryton Applicants entitled to a declaratory order that proceedings relating to the validity of the Option are barred?
- c. Is the Creditors’ application to challenge the Option barred by the December 3, 2020 Order and the principles of *res judicata*?

Should a vesting order be granted?

[37] Bryton brings the application for a vesting order pursuant to s. 100 of the *Courts of Justice Act* (“CJA”). Section 100 of the CJA provides that a court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

[38] Bryton submits that although RSM as privately appointed receiver has the power to convey title to the Property under its security documentation, it requires the assistance of the Court to discharge certain encumbrances and, therefore, a vesting order is necessary in the circumstances.

[39] Under the proposed vesting order, the first and second mortgages would be discharged, and the third mortgage and Certificate of Pending Litigation would also be discharged. The DIP Charge made pursuant to my November 27, 2020 order would also be discharged if the requested vesting order were to be made.

[40] Bryton’s application is opposed by the Third Mortgagees and by the Debentureholders.

[41] Bryton cites *Third Eye Capital Corporation v. Dianor Resources Inc.*, 2019 ONCA 508 in support of their application for a vesting order by which title to the Property would vest in the purchaser, Bryton Residences, on a “free and clear” basis. Bryton submits that there is a proper basis to grant such an order both conveying title and extinguishing claims against the Property pursuant to principles of equity, as explained in *Third Eye*.

[42] In *Third Eye*, the Court of Appeal considered the jurisdiction of the Court to extinguish an interest in land, using a vesting order, under s. 100 of the CJA and s. 243 of the BIA. The Court, at para. 25, described the effect of a vesting order as one that effects the transfer of purchased assets to a purchaser

on a free and clear basis, while preserving the relative priority of competing claims against the debtor / vendor with respect to the proceeds generated by the sale transaction.

[43] Bryton does not seek a vesting order under both s. 100 of the *CJA* and s. 243 of the *BIA*. Bryton seeks this order only under s. 100 of the *CJA*. In *Third Eye*, the Court of Appeal addressed whether, absent an independent basis for jurisdiction, s. 100 of the *CJA* may be the sole basis on which to grant a vesting order. The Court of Appeal cited the statement by Lang J.A. in *Trick v. Trick* (2006), 81 O.R. (3d) 241 (C.A.), at para. 19, in *obiter*, that s. 100 of the *CJA* “does not provide a free standing right to property simply because the court considers that result equitable” and described this statement as supporting the conclusion that “absent an independent basis for jurisdiction, the *CJA* could not be the sole basis on which to grant a vesting order”.

[44] The Court of Appeal then cited a passage from an academic paper on vesting orders addressing whether s. 100 of the *CJA* confers jurisdiction to vest title to property on a free and clear basis and held:

This would suggest that provided there is a basis on which to grant an order vesting property in a purchaser, there is a power to vest out interests on a free and clear basis so long as the terms of the order are appropriate and accord with the principles of equity.

[45] The Court of Appeal went on to consider whether jurisdiction exists under s. 243 of the *BIA* to grant a vesting order and concluded, at para. 81, that a receiver has jurisdiction under s. 243 of the *BIA* to convey property “free and clear of any liens or encumbrances”, noting that the use of vesting orders is in essence incidental and ancillary to the power to sell.

[46] The Court of Appeal cautioned, at para. 82, that, while jurisdiction for this aspect of vesting orders stems from s. 243 of the *BIA*, the exercise of that jurisdiction is not unbounded. The Court noted that its conclusion facilitates the maximization of proceeds and realization of the debtor’s assets but “at the same time operates to ensure that third party interests are not inappropriately violated”.

[47] In *Clarkson Co Ltd. v. Credit Franco Canadien*, 1985 CanLII 2651 (SK CA), the Saskatchewan Court of Appeal held, at para. 6, that a vesting order should not be made unless or until the rights of all interested parties have either been relinquished or have been extinguished by due process.

[48] The Option is a private contract and does not provide for extinguishment of claims upon exercise of the Option and completion of the sale provided for thereby. The rights of RSM as a private receiver do not extend beyond the contractual rights of Bryton. These rights do not include the right to convey the Property “free and clear” of third party interests.

[49] In my January 12, 2021 Order, I made an order that Bayview Creek Residences is at liberty to exercise its rights under the Option. I addressed the request made by Grant Thornton as Proposal Trustee for relief under ss. 95 and 96 of the *BIA* and made the following order:

THIS COURT DECLARES that the Proposal Trustee lacks statutory authority to seek orders under s. 95 and 96 of the *BIA* prior to the filing of a proposal or a bankruptcy and that the Proposal Trustee Request may not be pursued until the Debtor makes a proposal or becomes bankrupt and, accordingly, this order does not preclude the bankruptcy trustee or any other person from pursuing relief under s. 95 or 96 of the *BIA*.

[50] Bryton, through RSM as receiver, is able to complete the APS and convey title to the Property to Bayview Residences as purchaser. A vesting order is not needed for this purpose. The vesting order is requested by Bryton to vest out third party claims.

[51] At this stage of the bankruptcy proceedings, the Debentureholders and the Third Mortgagees have not been given a fair opportunity to pursue claims for oppression, under the APA and the FCA, and based on an alleged transfer at undervalue. In these circumstances, it would not be equitable to vest out these claims without adjudication of their merits.

[52] To extinguish the claims for relief under s. 95 or 96 of the *BIA* without adjudication would conflict with the January 12, 2021 Order. To grant the requested vesting order without adjudication of the claims of third parties under s. 241 of the *CBCA*, the *APA* and the *FCA*, and s. 95 or 96 of the *BIA*, would also conflict with the principles set out by the Court of Appeal in *Third Eye* with respect to vesting orders under s. 100 of the *CJA* and would not be appropriate or in accord with the principles of equity.

[53] The motion by Bryton for a vesting order is dismissed.

Is Bryton entitled to a declaratory order that proceedings relating to the validity of the Option are barred?

[54] Bryton seeks an order declaring that any proceedings commenced after December 21, 2020 relating to the validity of the Option are barred by the principles of *res judicata* and abuse of process under s. 97 of the *Courts of Justice Act*. Bryton submits that courts may grant declaratory relief in these circumstances to provide commercial certainty and define the parties' respective rights.

[55] Bryton relies on the decision of the Supreme Court of Canada in *S.A. v. Metro Vancouver Housing Corp.*, 2019 SCC 4 in which the Court held that declaratory relief is granted by the courts on a discretionary basis, and may be appropriate where (a) the court has jurisdiction to hear the issue, (b) the dispute is real and not theoretical, (c) the party raising the issue has a genuine interest in its resolution, and (d) the responding party has an interest in opposing the declaration being sought.

[56] Bryton submits that they meet these requirements because (a) rule 14.05(3)(e) authorizes a proceeding by application where the relief claimed is the settling of the priority of interests or charges; (b) the dispute is real because the Third Mortgagees have issued a Notice of Application to challenge the validity of the Option which will be supported by the Debentureholders; (c) the declaratory relief is necessary to provide commercial certainty to permit financing and development of the Property; and (d) the Third Mortgagees and any creditors aligned with their position have been given notice of this application and are able to make submissions in opposition to the relief sought.

[57] Bryton submits that the Third Mortgagees and the Debentureholders were required to tender any evidence upon which they rely in response to the application for declaratory relief and, like on a motion for summary judgment, put their best foot forward. They submit that in the absence of evidence on the issues involving alleged transfers at undervalue the application for declaratory relief should be granted.

[58] In *S.A.*, the application for declaratory relief was made pursuant to the British Columbia Supreme Court Rules which authorized an application where the sole or principal question at issue is one of construction of an oral or written contract or other document.

[59] The Third Mortgagees and the Debentureholders have not yet commenced proceedings under s. 95 or s. 96 of the BIA. There are no pleadings or evidence before me with respect to the merits of such claims.

[60] The jurisdiction conferred on the court by s. 97 of the *CJA* to make binding declarations of right is not a free-standing provision that allows a judge to do whatever seems fair. It allows the court to confirm legal rights that already exist: *T.T.K.O., S.P.O. G.D.K.* 2011 ONSC 6601, at para. 43.

[61] Bryton seeks an order barring claims that have not been made from being adjudicated on their merits. It is not open to them to do so, simply because they seek declaratory relief in this application. The attempt by Bryton to pre-emptively bar creditors' claims that have not yet been made is, in my view, misconceived.

[62] Bryton's claim for declaratory relief is denied.

Are the claims by creditors to challenge the validity of the Option barred by the doctrine of *res judicata*?

[63] Bryton, in addition to its claim for declaratory relief, seeks, in the alternative, an order that creditors' challenges to the validity of the Option should be barred by operation of the doctrine of *res judicata*.

[64] Bryton relies on an Order dated December 3, 2020 made at a scheduling conference in which the following Order was made:

THIS COURT FURTHER ORDERS that any motions or cross-motions relating to whether the Bryton Option is valid and whether the stay of proceedings in respect of CIM Bayview ("CIM Bayview") should be lifted to allow for the Bryton Option to be enforced at this time shall be heard at the time of hearing the Bryton Option Motion (the "Bryton Option Validity and Enforcement Motions").

[65] All creditors on the service list for the proposal proceeding, including the Third Mortgagees and Debentureholders, were given notice of this Order.

[66] Bryton submits that the creditors' claims to challenge the validity of the Option, including the Third Mortgagees' claims under the *FCA*, *APA*, oppression remedy and as assignees under s. 38 of the BIA are precluded by the doctrine of cause of action estoppel. Bryton submits that the doctrine of cause of action estoppel applies to all causes of action that a party had the opportunity to raise in the prior proceedings and, in all of the circumstances, should have raised. Bryton submits that the January 12, 2021 Order is a final order and that the Third Mortgagees and the Debentureholders were privy to the proposal proceedings in which that Order was made and, as such, they were required to make any claims challenging the Option as part of the motion heard on December 21, 2020.

[67] Bryton submits that the Third Mortgagees, the Debentureholders, and any other creditor with notice of the proposal proceedings were required to file materials and advance their claims in that proceeding. Bryton submits that the causes of action that the Third Mortgagees wish to litigate were already argued in December 2021 and, although the Third Mortgagees now advance claims under different legal theories, any claims seeking to challenge the validity of the Option should have been made and adjudicated at the prior hearing.

[68] At the time that the motions were heard in the proposal proceeding on December 21, 2020, CIM Bayview, Bayview Creek LP, and 10502715 Canada Inc. were not bankrupt. CIM Bayview made an assignment for the benefit of its creditors on February 8, 2021, and Grant Thornton was appointed as trustee of the bankruptcy estate. Bayview Creek LP and 10502715 Canada Inc. made assignments for the benefits of their creditors on May 4, 2021 and MNP was named as trustee of their bankruptcy estates. The causes of action that the Third Mortgagees and other supporting creditors seek to acquire under s. 38 of the BIA could not have been asserted in the proposal proceedings in December 2020. The causes of action that became vested in the trustees in bankruptcy could not have been acquired by creditors until the debtors were bankrupt.

[69] In my January 21, 2021 endorsement, at para. 105, I wrote that “if CIM Bayview is deemed to have made an assignment of all its property for the general benefit of its creditors, ... the trustee in bankruptcy would then have statutory authority to seek orders under s. 95 and s. 96 of the BIA”. Any other causes of action to be acquired from Grant Thornton and MMP under s. 38 of the BIA could not have been pursued until after the debtors became bankrupt. With respect to direct claims by the Third Mortgagees, these claims involve inter-creditor matters that relate to the claims to be obtained by assignment under s. 38 of the BIA. These claims are properly brought by way of an application or action. In the circumstances, I do not agree that it was incumbent on the Third Mortgagees to seek relief by way of a motion in December 2020, particularly in circumstances where the debtors were not bankrupt.

[70] Although Bryton made separate submissions in their factum in relation to their claim for declaratory relief and their submission that creditors’ claims to challenge the validity of the Option are barred by *res judicata*, I regard these submissions to be related. For the reasons I have given, Bryton’s claim for declaratory relief is misconceived and opposition to claims made by the Third Mortgagees or the Debentureholders should be made in proceedings they commence and not by seeking declaratory relief.

[71] I conclude that the Third Mortgagees and the Debentureholders are not precluded by operation of the doctrine of cause of action estoppel from asserting claims under the FCA, APA, oppression remedy, or as assignees under s. 38 of the BIA.

[72] Bryton submits that the Third Mortgagees and the Debentureholders are bound by findings made in my January 21, 2021 endorsement and that such findings give rise to issue estoppel which has the effect of precluding them from relitigating such findings in a subsequent proceeding.

[73] Bryton, in substance, seeks a declaration that the doctrine of issue estoppel applies to claims by the Third Mortgagees and the Debentureholders that have not yet been made. Until such claims are made, it would not be proper to determine whether the doctrine of issue estoppel applies to preclude relitigation of any issues decided in my January 21, 2021 decision.

[74] The doctrine of issue estoppel is not applicable.

B. DUCA’s application for appointment of a receiver

[75] DUCA brings an application for the appointment of msi Spergel inc. as receiver of the assets, undertakings and properties of Bayview Creek (CIM) LP and CIM Bayview Creek Inc. and CIM Invests Development Inc. including the property at 10747 Bayview Avenue, Richmond Hill, Ontario (the “Property”) pursuant to s. 243 of the BIA and s. 101 of the CJA. The Third Mortgagee supports DUCA’s application.

[76] DUCA has a first ranking \$20,720,000 mortgage charge on the Property. DUCA's mortgage is in default and has matured. There is no forbearance period in effect. DUCA's security provides for the appointment of a receiver.

[77] Spergel is a licenced trustee and qualifies to be appointed as a receiver under s. 243(1) of the *BIA*. See *Colour Box Ltd. (Re)*, 1995 CanLII 7143, at para. 17 *et seq.*

[78] Bryton Capital and Bryton Creek oppose DUCA's application. They submit that there is no need for such an appointment and that the appointment of a receiver by the court would only lead to increased delay and costs.

[79] DUCA's decision not to seek the appointment of a receiver earlier does not weigh against the appointment of a receiver, as Bryton submits. The circumstances have changed, and DUCA is entitled to take the changed circumstances into account in deciding whether to seek the appointment of a receiver.

[80] I am satisfied that, in the circumstances, it would be just and convenient to appoint Spergel as receiver. A court appointed receiver will be able to take possession of the Property, ensure that it is secure and protected, address issues relating to property taxes and, generally, act having regard to the interests of all of the stakeholders. A court appointed receiver will be in a position to deal with any issues relating to disposition of the Property, or any distribution issues. The structure and discipline that will be provided by the appointment of a receiver will assist the parties and the Court in dealing with the contentious issues before the court. Under the proposed receivership order, Spergel will be able to seek advice and directions from the court when appropriate. Notwithstanding the opposition from Bryton, I do not see prejudice to Bryton that will arise from the appointment by the court of a receiver.

[81] I grant DUCA's application.

Disposition

[82] For these reasons,

- a. The application by Bryton Capital and Bryton Creek is dismissed.
- b. The Application by DUCA is granted, and an order is made appointing Spergel as receiver in the form of order requested by DUCA and posted on CaseLines. The Order of Schabas J. dated September 18, 2020 is varies to the extent necessary to permit the Receiver to exercise its powers under the appointment order. I ask counsel for DUCA to provide me with an approved form of order to be issued.

[83] If the parties are unable to resolve costs, I ask that they agree on a timetable for written submissions and provide it to me for approval.

Cavanagh J.

March 2, 2022

Court File No.: CV-21-00662099-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) WEDNESDAY, THE 2nd
)
JUSTICE CAVANAGH) DAY OF MARCH, 2022

B E T W E E N

**BRYTON CAPITAL CORP. GP LTD. and BAYVIEW CREEK RESIDENCES INC.
(formerly known as BRYTON CREEK RESIDENCES INC.)**

Applicants

and

**CIM BAYVIEW CREEK INC., GRANT THORNTON LIMITED IN ITS CAPACITY
AS THE BANKRUPTCY TRUSTEE OF CIM BAYVIEW CREEK INC., BAYVIEW
CREEK (CIM) LP, 10502715 CANADA INC., MNP LTD. IN ITS CAPACITY AS THE
BANKRUPTCY TRUSTEE OF BAYVIEW CREEK (CIM) LP AND 10502715
CANADA INC., GR (CAN) INVESTMENT CO. LTD., MONEST FINANCIAL INC.,
TRACY HUI, JOJO HUI, CARDINAL ADVISORY LTD., and THE CORPORATION
OF THE CITY OF RICHMOND HILL**

Respondents

ORDER

THIS APPLICATION, made by Bryton Capital Corp. GP Ltd. (“**Bryton Capital**”) and Bayview Creek Residences Inc. (“**Bayview Residences**”) (collectively, the “**Bryton Group**”) for the relief set out in the Bryton Group’s Amended Notice of Application and factum, including the following:

- a. an order directing and approving the sale of a property in Richmond Hill (the “**Property**”), by RSM Canada Limited, in its capacity as the privately appointed receiver over the property of CIM Bayview Creek Inc. (“**CIM Bayview**”), Bayview Creek (CIM) LP, 10502715 Canada Inc. (collectively the “**Debtors**”), pursuant to the

terms of Bryton Capital's mortgage registered on title to the Property and the agreement of purchase and sale between the Debtors and Bayview Residences, together with an order vesting title to the Property free and clear of all encumbrances;

- b. an order declaring that any proceedings commenced after December 21, 2020 relating to the validity of the Option are barred by the principles of *res judicata* and abuse of process, or in the alternative, an order declaring that no relief may be granted to set aside the Option pursuant to the *Fraudulent Conveyances Act*, R.S.O. 1990, c. A.33, *Assignments and Preferences Act*, R.S.O. 1990, c. A.33, or the statutory oppression remedy; and
- c. an order declaring that any claims brought under, among other things, ss. 95 and 96 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, relating to the Option shall have no effect on the validity of enforceability of the Option, together with an order dismissing those claims,

was heard on August 11, 2021 by Zoom videoconference at Toronto, Ontario, with judgment having been reserved to this day.

ON READING the Affidavits of Bryan McWatt sworn November 24, 2020, November 25, 2020, November 26, 2020, December 7, 2020, December 11, 2020, May 24, 2021, June 22, 2021, July 5, 2021, July 12, 2021 and July 15, 2021, the Affidavits of Daniel Kim, sworn December 14, 2020 and July 16, 2021, the Affidavit of Feng Shi, sworn July 31, 2021, the Affidavit of Jeremy Bornstein sworn July 12, 2021, the Affidavit of Lawrence Hansen, sworn August 9, 2021; the transcripts of the cross-examinations of Jeremy Bornstein dated July 20, 2021, of Bryan McWatt dated December 16, 2020 and July 23, 2021, of Jiubin Feng dated December 15, 2020 and of Riz Ahmad dated July 23, 2021; the undertaking answers from the cross-examinations of Jeremy Borstein on July 20, 2021 and of Bryan McWatt on July 23, 2021, and on hearing the submissions of counsel for each of the Bryton Group, Grant Thornton Limited in its capacity as bankruptcy trustee and former capacity as proposal trustee, the Enforcement Committee of Debentureholders, the Subordinated Secured Creditors, Cardinal

Advisory Limited in its capacity as DIP Lender, Monest Financial, and RSM Canada Limited in its capacity as private receiver,

1. **THIS COURT ORDERS** that the application is dismissed.
2. **THIS COURT FURTHER ORDERS** that, if the parties are unable to resolve costs, they shall agree on a timetable for cost submissions and file it with the court for approval.

CAVANAGH, J.

BRYTON CAPITAL CORP. GP LTD ET AL. - and- CIM BAYVIEW CREEK INC. ET AL.

Applicants

Respondents

----- Court File No.: CV-21-00662099-00CL -----

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT
TORONTO**

ORDER

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Lawyers for Bryton Capital Corp. GP Ltd et al.

This is Exhibit “E” referred to in the Affidavit of Cardinal Advisory Limited sworn by Vasilios Panagiotakopoulos of the Town of Oakville, in the Regional Municipality of Halton, before me at the City of Toronto, in the Province of Ontario, on July 31, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

RORY MCGOVERN



Court File No. CV-21-0066512800CL

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Electronically issued : 08-Mar-2022
Délivré par voie électronique
Toronto

THE HONOURABLE)
)
JUSTICE CAVANAGH) **WEDNESDAY, THE 2nd**
) **DAY OF MARCH, 2022**

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

**BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT INC., and
CIM BAYVIEW CREEK INC.**

Respondents

**ORDER
(appointing Receiver)**

THIS APPLICATION made by the DUCA Financial Services Credit Union Ltd. (“**DUCA**”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing msi Spergel Inc. as receiver (in such capacities, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Bayview Creek (CIM) LP (“**Bayview LP**”), CIM Invests Development Inc. (“**CIM Invests**”) and CIM Bayview Creek Inc. (“**Bayview Inc.**”) (collectively, the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, was heard on August 11, 2021, by Zoom videoconference due to the COVID-19 pandemic, was taken under reserve at the conclusion of the hearing with the Court’s Endorsement being released today.

ON READING the affidavits of Riz Ahmad sworn July 2 and 15, 2021, and of Bryan McWatt, sworn July 12, 2021, including the Exhibits thereto and on hearing the submissions of

counsel for DUCA and the Debtor, no one else appearing although duly served as appears from the affidavits of service of Carmen Yuen, and on reading the consent of msi Spergel Inc. to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, msi Spergel Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof as well as PT LT 25, CON 2, (MKM), PTS 1 & 2, PL65R31680; TOWN OF RICHMOND HILL, municipally known as 10747 Bayview Avenue, Richmond Hill, Ontario (the "Property").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000.00, provided that the aggregate consideration for all such transactions does not exceed \$500,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and

on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in

that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all

material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless

otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA as well as the DIP Lender's Charge as defined in this Court's order of November 27, 2020 ("DIP Lender's Charge"), which, for greater certainty, shall have priority over the Receiver's Charge.

18. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$200,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the

charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA BIA as well as the DIP Lender's Charge which, for greater certainty, shall have priority over the Receiver's Borrowings Charge.

21. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

23. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

24. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <http://www.spergelcorporate.ca/cimbayviewcreekinc>.

25. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile

transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

26. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

28. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

29. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

30. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

31. THIS COURT ORDERS that the order of Schabas J. dated September 18, 2020, is varied to the extent necessary to permit the Receiver to exercise its powers under this Order.



Digitally signed by
Mr. Justice Cavanagh

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that msi Spergel Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of Bayview Creek (CIM) LP, CIM Invests Development Inc., and CIM Bayview Creek Inc. (collectively, the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof and the PT LT 25, CON 2, (MKM), PTS 1 & 2, PL65R31680; TOWN OF RICHMOND HILL, municipally known as 10747 Bayview Avenue, Richmond Hill, Ontario (the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 2nd day of March, 2022 (the "**Order**") made in an action having Court file number , has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2022.

msi Spergel Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

This is Exhibit "F" referred to in the Affidavit of Cardinal Advisory Limited sworn by Vasilios Panagiotakopoulos of the Town of Oakville, in the Regional Municipality of Halton, before me at the City of Toronto, in the Province of Ontario, on July 31, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

RORY MCGOVERN

PAYOUT STATEMENT OF CARDINAL ADVISORY LIMITED DATED JULY 31, 2023**TO:** MSI SPERGEL INC. (the “**Receiver**”)**AND TO:** ROGER JAIPARGAS and Borden Ladner Gervais LLP, counsel to the Receiver**AND TO:** McCarthy Tetrault LLP, counsel to Fengate Redevelopment Fund GP Inc. and LPF Conversion Fund**FROM:** CARDINAL ADVISORY LIMITED (the “**DIP Lender**”)**RE:** Duca Financial Services Credit Union Ltd. v. Bayview Creek (CIM) LP, CIM Invests Development Inc., and CIM Bayview Creek Inc. CV-21-00665128-00CL (the “**Matter**”) – DIP Charge in the amount of \$200,000 granted pursuant to the Order of Cavanagh J dated November 27, 2020, as preserved in the Order of Cavanagh J. dated March 2, 2022 (the “**DIP Charge**”)

Below please find a payout statement prepared by the DIP Lender in connection with the above noted Matter.

DIP LENDER PAYOUT STATEMENT		
Item	Amount (inclusive of HST)	Basis for Amount Claimed/Notes
Total Payout	\$200,000.00	This is the amount secured by the DIP Charge. Once this is provided to Cardinal’s counsel, in trust, all obligations to Cardinal pursuant to the DIP Charge will be satisfied.

This is Exhibit “G” referred to in the Affidavit of Cardinal Advisory Limited sworn by Vasilios Panagiotakopoulos of the Town of Oakville, in the Regional Municipality of Halton, before me at the City of Toronto, in the Province of Ontario, on July 31, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

RORY MCGOVERN

From: [Rory McGovern](#)
To: [Ellis, Larry](#); [Birch, John](#); [Wootton, Daniel](#); [Ward, David](#)
Subject: RE: Bayview
Date: Monday, July 31, 2023 9:58:00 AM
Attachments: [image001.png](#)

Thanks Larry.

In response to the below:

1. Rory McGovern PC is counsel to Cardinal Advisory Limited in connection with this matter.
2. Upon closing of the Transaction, the \$200,000 secured by the DIP Charge (the “**DIP Amount**”) shall be paid to Rory McGovern PC, in trust.
3. I acknowledge that Cardinal and the professionals have agreed upon terms to share the DIP Amount; and
4. I acknowledge that the court ordered charge can be discharged upon the receiver’s payment of \$200,000 to my firm, in trust.

Yours Truly,

Rory McGovern

RORY MCGOVERN PROFESSIONAL CORPORATION
25 Adelaide St. E, Suite 1910
Toronto, Ontario, M5C 3A1

C 416-938-7679
F 647-559-9694

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From: Ellis, Larry <lellis@millertthomson.com>
Sent: Monday, July 31, 2023 9:53 AM
To: Rory McGovern <rory@rorymcgovernpc.com>; Birch, John <jbirch@cassels.com>; Wootton, Daniel <Dan.Wootton@ca.gt.com>; Ward, David <dward@millertthomson.com>
Subject: Bayview

Gentlemen,

The Receiver of CIM Bayview is in court tomorrow to approve a transaction to sell the

From: [Wootton, Daniel](#)
To: [Ellis, Larry](#); [Rory McGovern](#); [Birch, John](#); [Ward, David](#)
Subject: Bayview Creek
Date: Monday, July 31, 2023 10:02:10 AM

Hi Larry,

I am a professional than can speak on behalf of Grant Thornton Limited as it relates to this matter.

I acknowledge that upon close of the Transaction that the DIP Amount shall be paid to Cardinal.

I acknowledge that Cardinal and the Professionals have agreed upon terms to share the DIP Amount.

I acknowledge that the Court ordered charge can be discharged upon the Receiver's payment of \$200,000 to Cardinal.

Regards,
Dan

Dan Wootton, CIRP, LIT | Partner
Grant Thornton Limited
11th Floor | 200 King Street West | Toronto | ON | M5H 3T4
T +1 416 360 3063 | M +1 416 277 3780 | F +1 416 360 4949

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From: [Birch, John](#)
To: [Ellis, Larry](#)
Cc: [Rory McGovern](#); [Wootton, Daniel](#); [Ward, David](#)
Subject: RE: Bayview [IWOV-LEGAL.054920-00002]
Date: Monday, July 31, 2023 10:04:33 AM
Attachments: [image002.png](#)
[image001.png](#)

Larry,

I confirm the following:

1. I am a professional that can speak on behalf of Cassels Brock & Blackwell LLP, counsel for the Proposal Trustee, as it relates to this matter;
2. I acknowledge that upon close of the Transaction that the DIP Amount shall be paid to Cardinal;
3. I acknowledge that Cardinal and the Professionals have agreed upon terms to share the DIP Amount; and
4. I acknowledge that the court ordered charge can be discharged upon the receiver's payment of \$200,000 to Cardinal.



Cassels Brock & Blackwell LLP | cassels.com
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St.
Toronto, ON M5H 0B4 Canada
Services provided through a professional corporation

From: Ellis, Larry <lellis@millertthomson.com>
Sent: Monday, July 31, 2023 9:53 AM
To: Rory McGovern <rory@rorymcgovernpc.com>; Birch, John <jbirch@cassels.com>; Wootton, Daniel <Dan.Wootton@ca.gt.com>; Ward, David <dward@millertthomson.com>
Subject: Bayview

CAUTION: External Email

Gentlemen,

The Receiver of CIM Bayview is in court tomorrow to approve a transaction to sell the property (the “**Transaction**”). We understand that the transaction is set to close at the end of August.

As part of the Transaction the Receiver has requested a payout statement from Cardinal in connection with Cardinal’s DIP Loan. Cardinal is issuing a payout statement today, to the Receiver, in the amount of \$200,000 (the “**DIP Amount**”).

Cardinal has confirmed to the Receiver that Miller Thomson LLP, Grant Thornton Limited and Cassels, Brock and Blackwell LLP (the “**Professionals**”) have reached an agreement as to the sharing of the DIP Amount.

This email is to provide the Receiver with written confirmation that the Professionals have reached an agreement.

If you would please respond to this email confirming the following:

1. I am a professional that can speak on behalf of (insert your firm name) as it relates to this matter;
2. I acknowledge that upon close of the Transaction that the DIP Amount shall be paid to Cardinal;
3. I acknowledge that Cardinal and the Professionals have agreed upon terms to share the DIP Amount; and
4. I acknowledge that the court ordered charge can be discharged upon the receiver’s payment of \$200,000 to Cardinal.

Please note that your email response will be exhibited in a Cardinal affidavit, which will be filed with the Receiver later today.

For my part:

1. I am a professional that can speak on behalf of Miller Thomson LLP as it relates to this matter;
2. I acknowledge that upon close of the Transaction that the DIP Amount shall be paid to Cardinal;
3. I acknowledge that Cardinal and the Professionals have agreed upon terms to share the DIP Amount; and
4. I acknowledge that the court ordered charge can be discharged upon the receiver’s payment of \$200,000 to Cardinal.

Sincerely,

Larry

LARRY ELLIS

Providing services on behalf of a Professional Corporation

Partner

Leader, Restructuring and Insolvency

Miller Thomson LLP

Scotia Plaza

40 King Street West, Suite 5800

P.O. Box 1011

Toronto, Ontario M5H 3S1

Direct Line: +1 416.595.8639
Cell: +1 416.262.3543
Email: lellis@millerthomson.com
millerthomson.com



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DUCA FINANCIAL SERVICES CREDIT UNION
Applicant

-and-
Respondents

CIM BAYVIEW CREEK INC. et al.

Court File No. Court File No: CV-21-0066512800CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT OF VASILIOS PANAGIOTAKOPOULOS
SWORN JULY 31, 2023**

RORY MCGOVERN PC
Lawyer

25 Adelaide St. East Suite 1910
Toronto, ON, M5C 3A1

Rory McGovern LSO# 65633H
rory@rorymcgovernpc.com
Tel: (416) 938-7679

Lawyer for the DIP Lender,
Cardinal Advisory Limited

Email for parties served:
THE SERVICE LIST

File Number:

RCP-F 4C (September 1, 2020)

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

-and- BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT
INC. and CIM BAYVIEW CREEK INC.
Respondents

CV-21-0066512800CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**MOTION RECORD OF CARDINAL ADVISORY
LIMITED**

RORY MCGOVERN PC

Lawyer

25 Adelaide St. East Suite 1910
Toronto, ON, M5C 3A1

Rory McGovern LSO# 65633H

rory@rorymcgovernpc.com

Tel: (416) 938-7679

Lawyer for the Respondent,
Cardinal Advisory Limited

Email for parties served:
THE SERVICE LIST

File Number:

RCP-F 4C (September 1, 2020)