Court File No. CV-26-00005377-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

CAISSE DESJARDINS ONTARIO CREDIT UNION INC.

Applicant

and

PHILOVERA HOLDINGS INC., ALBER HANNA and LOURINE BOLOUS

Respondents

APPLICATION UNDER SECTION 243(1) OF *THE BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C.C.43, AS AMENDED

APPLICANT'S FACTUM
(Appointment of Receiver)

July 20, 2026

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TO: THE SERVICE LIST

SERVICE LIST **(as at July 14, 2026)**	
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RESPONDENTS	
PHILOVERA HOLDINGS INC. 120 Traders Boulevard East, Unit 118 Mississauga, ON L4Z 2H7 Attention: Alber Hanna and Lourine Bolous Email: awhanna@philovera.ca Email: lsbolous@yahoo.ca Respondent	**ALBER HANNA** 24 Prince Edward Boulevard Brampton, ON L6P 2N8 120 Traders Boulevard East, Unit 118 Mississauga, ON L4Z 2H7 Email: awhanna@philovera.ca Respondent
LOURINE S. BOLOUS 24 Prince Edward Boulevard Brampton, ON L6P 2N8 120 Traders Boulevard East, Unit 118 Mississauga, ON L4Z 2H7 Email: lsbolous@yahoo.ca Respondent	

PROPOSED RECEIVER	
ALBERT GELMAN INC. 150 Ferrand Drive, Suite 1503 Toronto, ON M3C 3E5 **Bryan A. Gelman**, CIRP, LIT Tel: 416-504-1650 ext 115 Email: bgelman@albertgelman.com **Tom McElroy** Tel: 437-371-2883 Email: tmcelroy@albertgelman.com Proposed Receiver	
SECURED CREDITORS	
CITY OF MISSISSAUGA TAX OFFICE Mississauga Civic Centre 300 City Centre Drive, Floor 11 Mississauga, ON L5B 3C1 Email: tax@mississauga.ca	**GENERAL MOTORS FINANCIAL OF CANADA, LTD** 2001 Sheppard Avenue East, Suite 600 Toronto, ON M2J 4Z8
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ONTARIO MINISTRY OF FINANCE (INSOLVENCY UNIT) Legal Services Branch 33 King Street West, 6th Floor Oshawa, ON L1H 8H5 Email: insolvency.unit@ontario.ca	

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TABLE OF CONTENTS

PART I - OVERVIEW

1. The Applicant, Caisse Desjardins Ontario Credit Union Inc. (the "**Caisse**"), seeks an order (the "**Appointment Order**") appointing Albert Gelman Inc. ("**AGI**") as receiver and manager (in such capacity, the "**Receiver**") pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the "**CJA**") without security, over all of the properties, assets and undertakings of Philovera Holdings Inc. ("**Philovera**" or the "**Borrower**" or the "**Debtor**") acquired for, or used in relation to, the business carried on by the Debtor including all of the Debtor's right, title and interest in and to the real property with respect to 120 Traders Boulevard East, Unit 118, Mississauga, Ontario (the "**Property**").

2. The table below contains a summary of key information:

Applicant	Caisse Desjardins Ontario Credit Union Inc. (the "**Caisse**")
Debtor	Philovera Holdings Inc. ("**Philovera**")
Property	120 Traders Boulevard East, Unit 118, Mississauga, Ontario (the "**Property**")
Security	(a) Charge/Mortgage registered on August 31, 2023 as Instrument No. PR4244207 (the "**Collateral Mortgage**") (b) personal property security in favour of the Caisse registered on September 15, 2022 against Philovera as related to the applicable personal property of Philovera in the provincial registry maintained under the *Personal Property Security Act (Ontario)*, R.S.O. 1990, c P.10 (the "**PPSA**") under File No. 786731049 and Registration No. 20220915 1404 1462 4258.
Outstanding Balance to the Caisse	$869,232.39 as of April 13, 2026
Property Tax Arrears	$3,127.44 as of May 6, 2026 related to the Property

Events of Default	Failure to make prompt payment of the amounts due under the Collateral Mortgage Failure to repay the Loan Agreements Failure to make prompt payment of the amount due for property taxes in respect of the Property
Demand and 244 BIA Notice	Demand Letter issued April 20, 2026 (through Gowlings) for total indebtedness owing as of April 13, 2026, plus interest and legal costs BIA s. 244 Notice of Intention to Enforce Security issued April 20, 2026 Payment deadline: May 1, 2026 Statutory notice period has expired without repayment
Proposed Receiver	Article 38 of the Caisse's Standard Charge Terms filed as number 201909 at Exhibit S of the Application Record provides for the appointment of a Receiver Article 4.1(l)(i) to (v) of the GSA at Exhibit G of the Application Record provides for the appointment of a Receiver AGI is qualified to act under s. 243(4) of the BIA and has consented to act per Consent at Tab 2 Exhibit T of Application Record.
Jurisdiction generally	Jurisdiction for receivership application derives from s. 243(5) of the BIA and the definition of "locality of the debtor" in s. 2 of the BIA Rule 13.1.01(2) of the *Rules of Civil Procedure* (effective February 1, 2026) requires that proceedings be commenced in a court location with which there is a rational connection and the Superior Court of Justice at Brampton has a rational connection as Philovera's registered office and the Property are located in Mississauga.
Basis for Brampton Jurisdiction	The Debtor carries out business which is located in Mississauga, Ontario and within the jurisdiction of the Superior Court of Justice at Brampton. The Debtor holds the Property, which is located in Mississauga, Ontario and within the jurisdiction of the Superior Court of Justice at Brampton. The locality of the Debtor is Brampton, Ontario, as required under s.

	243(5) of the BIA and the analysis of "locality of the debtor" under s. 2 of the BIA.
Reasons for Appointment	Debtor is unable to pay the Indebtedness. Debtor cannot fund ongoing mortgage payments, eroding the Caisse’s security position through continued accrual of unpaid amounts. Ongoing property tax arrears form a priority charge on the Property, diluting the Caisse’s secured position. The Caisse has suffered and will continue to suffer substantial prejudice from the Debtor's failure to repay. Appointment is necessary to preserve the value of the Property and the Caisse’s collateral. Receiver will assess Philovera and determine a recovery strategy for the benefit of all stakeholders. This is a standard commercial debtor-creditor relationship in which there is default, demand for payment, requisite notices have been served, notice periods have expired, and defaults remain uncured. The Caisse is not required to establish irreparable harm or urgency; evidence that a creditor's attempts to privately enforce its security will be delayed or otherwise fail can warrant receivership appointment. While the appointment of a receiver is normally “an extraordinary remedy”, in a case such as this where the secured creditor is seeking the appointment of a receiver and its credit documents specifically afford it the right to appoint a receiver, the appointment of a receiver is not an “extraordinary remedy”.

PART II – FACTS

I. <u>THE PARTIES</u>

3. The Caisse is a credit union established under the *Credit Unions and Caisses*

Populaires Act, 1994, S.O. 1994, c. 11.[1]

4. Philovera is a company incorporated pursuant to the laws of the Province of Ontario, with a registered office in Mississauga, Ontario.[2]

5. Lourine Bolous **("Bolous")** is the managing director of Philovera. Bolous provided a personal guarantee of certain loans for an unlimited amount, described below (a "**Guarantor**"), issued by the Caisse to Philovera.[3]

6. Alber Hanna ("**Hanna**") is a director of Philovera, holding the positions of chief executive officer and chief financial officer. Hanna provided a personal guarantee of certain loans for an unlimited amount, described below (a "**Guarantor**"), issued by the Caisse to Philovera. [4]

7. Bolous and Hanna are named in the Application to facilitate co-operation with the Receiver, once appointed. [5]

II. LOAN NO. 725523-PR-1

8. The Caisse (as lender), Philovera (as borrower), Bolous and Hanna (as guarantors) entered into a Loan Agreement on October 30, 2023 (the **"PR-1 Loan Agreement**").[6]

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[1] Affidavit of Noémie Harvey-Lagacé affirmed July 17, 2026, Application Record, Tab 2 ("**Harvey-Lagacé Affidavit**"), para 3
[2] **Harvey-Lagacé Affidavit**, para 4; **Corporate Profile Report,** Exhibit A
[3] **Harvey-Lagacé Affidavit**, para 5
[4] **Harvey-Lagacé Affidavit**, para 6
[5] **Harvey-Lagacé Affidavit**, para 7
[6] **Harvey-Lagacé Affidavit**, para 8; **PR-1 Loan Agreement**, Exhibit B

9. Pursuant to the PR-1 Loan Agreement, the Caisse advanced a loan in the total principal amount of $100,000.00, for a term of twelve (12) months, from the date of disbursement together with interest at the Caisse's prime rate increased by 3.000% per annum and calculated monthly and not in advance. The loan was disbursed on March 19, 2024.[7]

10. The PR-1 Loan Agreement was renewed effective December 30, 2024, extending the term to December 30, 2025, at which time any outstanding principal, interest, fees, and costs became due and payable. [8]

11. On April 21, 2025, the Caisse issued a Notice of Non-Renewal for the PR-1 Loan, advising that, due to the repayment history, the loan would not be renewed, and the full balance would become due and payable on December 30, 2025. [9]

12. The PR-1 Loan matured on December 30, 2025. [10]

Security

13. The Caisse holds security against the Debtor as follows:

(a) personal property security in favour of the Caisse that was registered on September 15, 2022 against Philovera as related to the applicable personal property of Philovera in the provincial registry maintained under the

[7] **Harvey-Lagacé Affidavit**, para 9
[8] **Harvey-Lagacé Affidavit**, para 10; **Renewal Agreement**, Exhibit C
[9] **Harvey-Lagacé Affidavit**, para 11; **Notice of non-renewal**, Exhibit D
[10] **Harvey-Lagacé Affidavit**, para 12

Personal Property Security Act (Ontario), R.S.O. 1990, c P.10 (the "**PPSA**") under File No. 786731049 and Registration No. 20220915 1404 1462 4258.[11]

The Guarantee

14. Bolous and Hanna each provided a personal guarantee in favour of the Caisse dated August 24, 2023, in an unlimited amount, plus interest, costs and expenses in respect of all indebtedness, liabilities and obligations of Philovera (the "**General Guarantee**").[12]

15. The Debtor executed a General Security Agreement ("**GSA**") dated September 6, 2022. [13]

III. LOAN NO. 725523-PR-2

16. The Caisse (as lender), Philovera (as borrower), Bolous and Hanna (as guarantors) entered into a Loan Agreement on August 24, 2023 (the "**PR-2 Loan Agreement**").[14]

17. Pursuant to the PR-2 Loan Agreement, the Caisse advanced a loan in the total principal amount of $600,000.00, for a term of twelve (12) months, from the date of

[11] **Harvey-Lagacé Affidavit**, para 13(a); **PPSA**, Exhibit E
[12] **Harvey-Lagacé Affidavit,** para 14; **General Guarantee**, Exhibit F
[13] **Harvey-Lagacé Affidavit,** para 15; **General Security Agreement**, Exhibit G
[14] **Harvey-Lagacé Affidavit**, para 16; **PR-2 Loan Agreement**, Exhibit H

disbursement together with interest at the Caisse's prime rate per annum. The loan was disbursed on February 18, 2024.[15]

18. The PR-2 Loan Agreement was renewed effective August 30, 2024, extending the term to August 30, 2025, at which time any outstanding principal, interest, fees, and costs became due and payable.[16]

19. On April 21, 2025, the Caisse issued a Notice of Non-Renewal for the PR-2 Loan, advising that, due to the repayment history, the loan would not be renewed, and the full balance would become due and payable on August 30, 2025.[17]

20. The PR-2 Loan matured on August 30, 2025.[18]

Security

21. The Caisse holds security against the Debtor as follows:

(a) a Charge/Mortgage registered on August 31, 2023 as Instrument No. PR4244207 over lands municipally known as 120 Traders Boulevard East, Unit 118, Mississauga, Ontario (the "**Collateral Mortgage**").

(b) personal property security in favour of the Caisse that was registered on September 15, 2022 against Philovera as related to the applicable personal property of Philovera in the provincial registry maintained under the

[15] **Harvey-Lagacé Affidavit**, para 17
[16] **Harvey-Lagacé Affidavit**, para 18; **Renewal Agreement**, Exhibit I
[17] **Harvey-Lagacé Affidavit**, para19; **Notice of non-renewal**, Exhibit J
[18] **Harvey-Lagacé Affidavit**, para 20

Personal Property Security Act (Ontario), R.S.O. 1990, c P.10 (the "**PPSA**") under File No. 786731049 and Registration No. 20220915 1404 1462 4258.[19]

The Guarantee

22. Bolous and Hanna each provided a personal guarantee in favour of the Caisse dated August 24, 2023, in an unlimited amount, plus interest, costs and expenses in respect of all indebtedness, liabilities and obligations of Philovera (the "**General Guarantee**").[20]

23. The Debtor executed a General Security Agreement ("**GSA**") dated September 6, 2022. [21]

IV. <u>LOAN NO. 725523-PR-3</u>

24. The Caisse (as lender), Philovera (as borrower), Bolous and Hanna (as guarantors) entered into a Variable Credit Contract on August 24, 2023 (the "**PR-3 Loan Agreement**").[22]

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[19] **Harvey-Lagacé Affidavit**, para 21(a) (b); **Acknowledgement and Direction,** Exhibit K**; Collateral Mortgage, and Parcel Register,** Exhibit L; **PPSA,** Exhibit E
[20] **Harvey-Lagacé Affidavit,** para 22; **General Guarantee**, Exhibit F
[21] **Harvey-Lagacé Affidavit,** para 23; **General Security Agreement**, Exhibit G
[22] **Harvey-Lagacé Affidavit**, para 24; **PR-3 Loan Agreement**, Exhibit M

25. Pursuant to the PR-3 Loan Agreement, the Caisse advanced a variable credit in the total principal amount of $275,000.00 with interest at the Caisse's prime rate per annum. The loan was disbursed on February 18, 2024.[23]

26. On April 21, 2025, the Caisse issued a Notice of Discontinuance of Advances and Demand for Payment to the Debtor and the Guarantors. The Caisse advised that advances would cease immediately and demanded repayment of the PR-3 Loan within 30 days of receipt of the letter. [24]

Security

27. The Caisse holds security against the Debtor as follows:

(a) personal property security in favour of the Caisse that was registered on September 15, 2022 against Philovera as related to the applicable personal property of Philovera in the provincial registry maintained under the *Personal Property Security Act (Ontario)*, R.S.O. 1990, c P.10 (the "**PPSA**") under File No. 786731049 and Registration No. 20220915 1404 1462 4258.[25]

The Guarantee

28. Bolous and Hanna each provided a personal guarantee in favour of the Caisse dated August 24, 2023, in an unlimited amount, plus interest, costs and expenses in

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[23] **Harvey-Lagacé Affidavit**, para 25
[24] **Harvey-Lagacé Affidavit**, para 26; **Notice of Discontinuance,** Exhibit N
[25] **Harvey-Lagacé Affidavit**, para 27(a); **PPSA**, Exhibit E

respect of all indebtedness, liabilities and obligations of Philovera (the “**General Guarantee**”).[26]

29. The Debtor executed a General Security Agreement (“**GSA**”) dated September 6, 2022.[27]

V. DEFAULTS, DEMANDS, AND NOTICE OF INTENTION TO ENFORCE

30. Numerous events of default have occurred under the Collateral Mortgage and the PR-1, PR-2 and PR-3 Loan Agreements.[28]

31. The Debtor’s defaults are existing and continuing including but not limited to the defaults described below:

(a) Philovera has failed to make prompt payment of the amounts due under the Collateral Mortgage;

(b) Philovera has failed to repay the PR-1, PR-2 and PR-3 Loans; and

(c) Philovera has failed to make prompt payment of the amount due for property taxes for 120 Traders Boulevard East, Unit 118, Mississauga, Ontario. As of May 6, 2026, the amount of $3,127.44 was outstanding.[29]

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[26] **Harvey-Lagacé Affidavit,** para 28; **General Guarantee**, Exhibit F
[27] **Harvey-Lagacé Affidavit,** para 29; **General Security Agreement**, Exhibit G
[28] **Harvey-Lagacé Affidavit**, para 30
[29] **Harvey-Lagacé Affidavit**, para 31; **Tax Certificate**, Exhibit O

32. On April 20, 2026, Gowling WLG (Canada) LLP (**"Gowlings"**) acting on behalf of the Caisse issued the following to Philovera and Bolous and Hanna as the Guarantors:

(a) a demand for payment (the "**Demand Letter**") of the total indebtedness owing as of April 13, 2026 plus interest and legal costs to the Caisse as set out in Schedule "B" to the Demand Letter by the deadline of May 1, 2026; and

(b) a Notice of Intention to Enforce Security on the property of Philovera pursuant to section 244(1) of the BIA (the "**BIA 244 Notice**").[30]

VI. CORRESPONDENCE WITH DEBTOR AND GUARANTOR

33. Between July 2025 and January 2026, Hanna was in contact with the Caisse and advised that Philovera was working on refinancing its indebtedness to the Caisse.[31]

34. On February 24, 2026, Hanna advised the Caisse that he had received a refinancing offer from Business Development Bank of Canada ("**BDC**"). He further advised that he had accepted the offer, paid the associated processing fees, and was awaiting final approval from BDC's credit department. On March 9, 2026, the Caisse followed up with Hanna to request the final details and a proposed closing date. The Caisse did not receive a response.[32]

[30] **Harvey-Lagacé Affidavit**, para 32; **Demand Letter and BIA 244 Notice**, Exhibit P
[31] **Harvey-Lagacé Affidavit,** para 33
[32] **Harvey-Lagacé Affidavit,** para 34; **February 24 to March 9, 2026 Email Chain**, Exhibit Q

VII. NEED FOR A RECEIVER

35. As of April 13, 2026, the aggregate indebtedness of Philovera due and owing to the Caisse was $869,232.39 in addition to ongoing accrual of interest as set out in the Loan Agreement excluding professional fees, disbursements and HST (the "**Indebtedness**").[33]

36. As indicated above, certain events of default have occurred under the Collateral Mortgage, which are ongoing and outstanding.[34]

37. The Debtor is not able to pay the Indebtedness owing. The statutory notice period provided for under the Demand Letter and BIA 244 Notice has expired.[35]

38. The Caisse has lost confidence in the management of Philovera for all of the reasons detailed in the affidavit.[36]

39. The Debtor does not have the ability to fund ongoing mortgage or property tax payments, and this is eroding the value of the Caisse's security position due to the accrual of the Indebtedness without meaningful repayment of the loan.[37]

40. The Caisse has suffered and is expected to continue to suffer substantial prejudice as a result of Philovera's defaults. The appointment of the Receiver is necessary to

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[33] **Harvey-Lagacé Affidavit,** para 35
[34] **Harvey-Lagacé Affidavit,** para 36
[35] **Harvey-Lagacé Affidavit**, para 37 and 38; **Demand Letter and BIA 244 Notice**, Exhibit P
[36] **Harvey-Lagacé Affidavit**, para 39
[37] **Harvey-Lagacé Affidavit**, para 40

preserve the value of the Property and the Caisse's collateral.[38]

41. Upon appointment, the Receiver will assess the state of Philovera and determine a strategy for recovery of the assets for the benefit of all stakeholders, including communicating directly with all affected parties.[39]

42. The Loan Agreements at Articles 12 and 14 state[40]:

If the Borrower is in default, the Financial Institution may, subject to its other rights and remedies, demand full and immediate repayment of the amounts loaned, interest accrued and any other amount payable by the Borrower hereunder and by virtue of any credit contract signed with the Financial Institution. Failure by the Financial Institution to avail itself of any of these rights will not be interpreted as a waiver of such rights.

43. Article 4.1(l)(i) to (v) of the GSA provides for the appointment of the Receiver[41]:

(l) appoint, by an instrument in writing delivered to the Borrower, a Receiver of the Collateral, and remove any Receiver so appointed and appoint another or others in its stead, or institute proceedings in any court of competent jurisdiction for the appointment of a Receiver, it being understood and agreed that:

(i) the Financial Institution may appoint any person, firm or corporation as Receiver;

(ii) such appointment may be made at any time either before or after the Financial Institution shall have taken possession of the Collateral;

(iii) the Financial Institution may from time to time fix the reasonable remuneration of the Receiver and direct the payment thereof out of the Collateral or any proceeds derived from a sale or other disposition or dealing thereof or therewith; and

(iv) the Receiver shall be deemed to be the agent of the Borrower for all purposes and, for greater certainty, the Financial Institution shall not be in any way responsible for any actions, whether wilful, negligent or otherwise, of any Receiver or for any tax liabilities arising from the use, sale or other disposition of the Collateral by the Receiver (unless all rights of ownership in the Collateral have been transferred to and vested in the Financial Institution prior to the use, sale or other disposition thereof by the Receiver), and the Borrower hereby agrees to indemnify and save harmless the Financial Institution from and against any and all claims, demands, actions, costs, damages, expenses or payments which the Financial Institution may hereafter suffer, incur or be required to pay as a result of, in whole or in part, any action taken by the Receiver or any failure of the Receiver to do any act or thing; and

(v) the Receiver so appointed shall have the power to take possession of the Collateral or any part thereof and to carry on the business of the Borrower, and to borrow money required for the maintenance, preservation or protection of the Collateral or any part thereof or the carrying on of the business of the Borrower, and to further charge the Collateral in priority to the security constituted by this Agreement as security for the money so borrowed, and to sell, lease, or otherwise dispose of the whole or any part of the Collateral on such terms and conditions and in such manner as the Receiver shall determine;

44. Article 38 of the Caisse's Standard Charge Terms filed as number 201909 provides

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[38] **Harvey-Lagacé Affidavit**, para 41
[39] **Harvey-Lagacé Affidavit**, para 42
[40] **Harvey-Lagacé Affidavit**, para 43; **PR-1 Loan Agreement**, Exhibit B; **PR-2 Loan Agreement,** Exhibit H; **PR-3 Loan Agreement**, Exhibit M;
[41] **Harvey-Lagacé Affidavit**, para 44; **GSA**, Exhibit G

for the appointment of a Receiver.[42]

38. RECEIVERSHIP OF MEMBER

Notwithstanding anything in this Charge, upon default of any of these provisions, the Financial Institution may, with or without entry into possession of the Lands, by instrument in writing appoint any person, whether an officer or an employee of the Financial Institution or not, to be a receiver of the Lands, and of the rents and profits with or without security, and may by similar writing remove any receiver and appoint another in its place and in making any such appointment or removal, the Financial Institution shall be deemed to be acting as the agent or attorney for the Member, but no such appointment shall be revocable by the Member. Upon the appointment of any such receiver the following provisions shall apply:

(a) Every such receiver shall have unlimited access to the Lands as agent and attorney for the Member (which right of access shall not be revocable by the Member) and shall have full power and unlimited authority to:
   (i) collect the rents and profits from tenancies or operation of the Lands whether created before or after the Charge;
   (ii) rent or operate any portion of the Lands which may become vacant on such terms and conditions as the receiver considers advisable and enter into and execute leases, accept surrenders and terminate leases;
   (iii) complete the construction of any building or other erections or improvements on the Lands left by the Member in an unfinished state or award the same to others to complete and purchase, repair and/or maintain any personal property including, without limitation, appliances and equipment necessary or desirable to render the premises operable or rentable, and take possession of and use or permit others to use all or any part of the Member's materials, supplies, plans, tools, appliances, equipment and property of every kind and description;
   (iv) manage, operate, repair, alter or extend the Lands or any part thereof.

   The Member undertakes to ratify and confirm whatever any such receiver or agent may do.

(b) The Financial Institution may in its sole discretion vest the receiver with all or any of the rights and powers of the Financial Institution.

(c) The Financial Institution may fix the reasonable remuneration of the receiver who shall be entitled to deduct same out of the revenue or the sale proceeds of the Lands.

(d) Every such receiver shall be deemed the agent or attorney of the Member and not, in any event, the agent of the Financial Institution. The Financial Institution shall not be responsible for the receiver's acts or omissions.

(e) The appointment of any such receiver by the Financial Institution shall not result in or create any liability or obligation on the part of the Financial Institution to the receiver or to the Member or to any other person, and no appointment or removal of a receiver and no actions of a receiver shall constitute the Financial Institution a chargee in possession of the Lands.

(f) No such receiver shall be liable to the Member to account for monies other than monies actually received by him in respect of the Lands, or any part thereof, and out of such monies so received every such receiver shall, in the following order, pay:
   (i) the receiver's remuneration as aforesaid;
   (ii) all costs and expenses of every nature and kind incurred by the receiver in connection with the exercise of his or her remedies, rights and powers available at law and authority hereby conferred;
   (iii) interest, Principal and other money which may be or become Charged upon the Lands in priority to the Charge, including taxes;
   (iv) to the Financial Institution all interest, Principal and other amounts due under the Charge to be paid in such order as the Financial Institution in its sole discretion shall determine;

   Thereafter, every such receiver shall be accountable to the Member for any surplus.

   The remuneration and expenses of the receiver shall be paid by the Member on demand and shall be a charge on the Lands and shall bear interest from the date of demand at the same Rate as applies to the Principal Amount secured by this Charge.

(g) Save as to claims for accounting under sub-paragraph (f) of this paragraph, the Member hereby releases and discharges any such receiver from every claim of every nature, whether sounding in damages or not which arise or be caused to the Member or any person claiming through or under him or her by reason or as a result of anything done by such receiver unless such claim be the direct and proximate result of dishonesty or fraud.

(h) The Financial Institution may, at any time, terminate any such receivership by notice in writing to the Member and to any such receiver.

(i) The statutory declaration of an officer of the Financial Institution as to default under the provisions of the Charge and as to the due appointment of the receiver pursuant to the terms of this Charge shall be sufficient proof, as regards to such default and appointment.

(j) The rights and powers conferred in respect of the receiver are supplemental to and not in substitution of any other remedies, rights and powers available at law which the Financial Institution may have.

45. If this Honourable Court sees fits to make such an appointment, AGI has consented to act as Receiver. AGI is a licensed insolvency trustee and has significant experience in mandates of this nature.[43]

[42] **Harvey-Lagacé Affidavit**, para 45; **Standard Charge Terms**, Exhibit R (Article 38);
[43] **Harvey-Lagacé Affidavit**, para 46; **Consent to Act**, Exhibit S

PART III – ISSUES

46. Is it just and convenient to appoint AGI as Receiver over the Property?

PART IV - THE LAW AND ANALYSIS

A. Jurisdiction and Forum Shopping

47. Rule 13.1.01(2) of the *Rules of Civil Procedure* effective as of February 1, 2026 replaces the existing freedom that plaintiffs and applicants have to choose a court location (unless a statute or rule provides otherwise) with a new requirement for the plaintiff or applicant to commence their proceeding in a court location with which there is a rational connection, on the basis of factors set out in existing Rule 13.1.02(2)(b).

48. Recent case law addressing forum shopping demonstrates that courts in London, Hamilton, Toronto and Milton have been strictly enforcing the requirement that a proceeding must have some connection to the issuing court.

49. This case law in part originates from Justice Firestone's endorsement in *The Other End* [44] with the issue initially raised by Justice Leach in the same case.[45]

50. Decisions have been reported in Milton and London. In Milton, Justice Kurz rendered two decisions: one in *Getz*[46] and one in *Gill*.[47] Justice Mills addressed the same

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[44] ***Toronto-Dominion Bank v The Other End Inc. et al.***, 2025 ONSC 85, ["***The Other End***"]
[45] ***Toronto-Dominion Bank v The Other End Inc*.,** 2024 ONSC 5377
[46] ***BFT Mortgage Services Inc. v Getz***, 2025 ONSC 2908, ["***Getz***"]
[47] ***RBC v Gill*,** 2025 ONSC 3095, ["***Gill***"]

issue in *Ang*.[48] In London, Justice Leach issued companion decisions in *Leasing Inc.*[49] and *Iknight Entertaiment.*[50] Justice Bordin has commented on the issue in *Old Green Inc*.[51] in Hamilton.

51. This case law applies to all creditor-led proceedings. However, receivership applications have their own analysis of jurisdiction. Justice Kershman's decision on a bankruptcy application in *Nuvoola*[52] contains a relevant analysis to receivership applications where jurisdiction is specified under section 243(5) of the BIA[53] and the same type of analysis as in a bankruptcy applications must be done as it relates to evaluating the "locality of the debtor".

52. The term "locality of the debtor" is defined in section 2 of the BIA[54].

53. Courts have consistently interpreted the "locality of the debtor" within its statutory meaning under section 2 of the BIA. In this section, the locality of the debtor means the principal place:

(a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,

(b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or

(c) in cases not coming within paragraph (a) or (b), where the greater portion

[48] ***Business Development Bank of Canada v Ang***, 2025 ONSC 1752, ["***Ang***"]
[49] ***Canadian Equipment Finance & Leasing Inc. v 8777691 Canada Inc. et al.***, 2025 ONSC 4514 ["***Leasing Inc***"]
[50] ***BMW Group Financial Services Canada v Iknight Entertainment Inc. et al***., 2025 ONSC 4494 ["***Iknight Entertainment"***]
[51] ***The Bank of Nova Scotia v Old Green Inc.***, 2025 ONSC 6191 ["***Old Green Inc.***"]
[52] ***Re Nuvoola Inc***., 2025 ONSC 1257 ["***Nuvoola***"]
[53] BIA, Section 243(5)
[54] BIA. Section 2

of the property of the debtor is situated.

54. The locality of the debtor is established by providing factual evidence of one of the three criteria listed above.[55]

55. Evidence can include, but is not limited to, the debtor company's address, the location of the debtor company's internal accounting records, addresses listed on the debtor company's letterhead, and where the debtor signed security or loan documents.[56]

56. Bankruptcy courts have the flexibility to assess businesses which may span multiple jurisdictions.[57]

57. The BIA's national framework ensures that orders made in one province are enforceable across Canada.[58]

B. The Court's Authority to Appoint a Receiver

58. Courts can appoint a receiver over a debtor upon application by a secured creditor pursuant to subsection 243(1) of the BIA[59] and/or subsection 101 of the CJA.[60] In the case of the BIA, the secured creditor must bring an application under section 243 of the BIA, and satisfy certain conditions, including:

(a) issuing a notice of intention to enforce security and allowing the 10 day statutory notice period to expire before obtaining an order to appoint a receiver pursuant to section 243(1.1) of the BIA;

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55 ***Sam Lévy & Associés Inc. v Azco Mining Inc.***, 2001 SCC 92 ["***Azco***"] at para. 76
56 ***Nuvoola*** at para 26
57 ***Azco*** at paras 27-28; ***Solid Holdings Ltd. v Grant Thornton Limited***, 2019 BCCA 231 at para 22
58 *Azco* at para 25
59 **BIA**, Section 243(1)
60 **CJA,** Section 101(1)

(b) putting forward a qualified person to act as a receiver and providing evidence that the qualified person has consented to act in that capacity (s. 243(4) of the BIA); and

(c) satisfying the court that the locality of the debtor against whom the receivership order is being sought is Ontario (s. 243(5) of the BIA).

59. In the case of both the BIA and CJA, the court may grant an order appointing a receiver when it is “just and convenient” to do so.

C. The Technical Requirements to Appoint a Receiver Under the BIA Have Been Met

60. As of April 13, 2026, the aggregate indebtedness of Philovera due and owing to the Caisse was $869,232.39 in addition to ongoing accrual of interest as set out in the Loan Agreement excluding professional fees, disbursements and HST.[61]

61. The Caisse has satisfied the technical requirements for the appointment of a receiver under the BIA. The Caisse is a secured creditor of the Debtor in respect of the Property and is therefore entitled to bring the Application under s. 243 of the BIA. As required under s. 243(1.1) of the BIA, the Caisse issued the BIA 244 Notice and the notice period has expired without repayment of the Indebtedness.[62]

62. AGI is qualified to act as Receiver in accordance with the requirements of s. 243(4) of the BIA and has consented to serving as Receiver in these proceedings.[63]

63. The Debtor is a company incorporated pursuant to the laws of Ontario, with a

[61] **Harvey-Lagacé Affidavit**, para 35
[62] **BIA**, Section 244; **Harvey-Lagacé Affidavit**, para 32; **BIA 244 Notice**, Exhibit P
[63] **BIA**, Section 243(4); **Harvey-Lagacé Affidavit**, para 46; **AGI's Consent to Act**, Exhibit S

registered office in Mississauga, Ontario.[64]

64. The Property that the Debtor holds and is subject of the proposed receivership is located in Mississauga, Ontario.[65]

65. Section 243(5) of the BIA as it relates to “the judicial district of the locality of the debtor” as that phrase is defined in s. 2 of the BIA is Brampton, Ontario in that Philovera’s registered office and property is within the territorial jurisdiction of this specific location of the Superior Court of Justice.[66]

D. Considerations in Respect of the Appointment of a Receiver & Application to the Facts

66. In *Freure Village*, Justice Blair (as he then was) stated that, in deciding if the appointment of a receiver is just or convenient, the Court must have regard to, *inter alia*, the nature of the property and the rights and interest of all parties in relation thereto, which includes a secured creditor under its security.[67]

67. Among other things, the following is a list of factors which Courts have historically considered in determining whether or not it is just or convenient to appoint a receiver:

(a) whether irreparable harm might be caused if no order is made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;

[64] **Harvey-Lagacé Affidavit**, para 4, **Corporate Profile Report**, Exhibit A
[65] **Harvey-Lagacé Affidavit**, para 21(a); **Parcel Register**, Exhibit L
[66] **Harvey-Lagacé Affidavit,** para 4, **Corporate Profile Report**, Exhibit A; para 21(a) **Parcel Register**, Exhibit L
[67] ***Metropolitan Partners Group Administration, LLC v International Credit Experts Inc.***, 2024 ONSC 4601 at para 21 [“***Metropolitan Partners***”]; ***Bank of Nova Scotia v Freure Village on Clair Creek***, 1996 CanLII 8258 (Commercial List), paras 12-13 [“***Freure Village***”]

(b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;

(c) the nature of the property;

(d) the apprehended or actual waste of the debtor's assets;

(e) the preservation and protection of the property pending judicial resolution;

(f) the balance of convenience to the parties;

(g) the fact that the creditor has a right to appointment under the loan documentation;

(h) the enforcement of rights under a security instrument where the security security-holder encounters or expects to encounter difficulties with the debtor;

(i) the principle that the appointment of a receiver should be granted cautiously;

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

(k) the effect of the order upon the parties;

(l) the length of time that a receiver may be in place;

(m) the cost to the parties;

(n) the likelihood of maximizing return to the parties; and

(o) the goal of facilitating the duties of the receiver.[68]

68. While the appointment of a receiver is normally "an extraordinary remedy", in a case such as this where the secured creditor is seeking the appointment of a receiver and its credit documents specifically afford it the right to appoint a receiver, the appointment of a receiver is not an "extraordinary remedy". The rationale for this relaxed

[68] ***Canadian Equipment Finance and Leasing Inc. v The Hypoint Company Limited***, 2022 ONSC 6186 at para 25; ***Maple Trade Finance Inc. v CY Oriental Holdings Ltd***., 2009 BCSC 1527 at para 25

standard is that, in such circumstances, as Justice Morawetz (as he then was) remarked in *Elleway*: “the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties”.[69]

69. Commercial certainty requires that parties should expect courts to hold them to their agreements. More recently, in *JBT Transport*, the Court held that this expectation particularly arises where a creditor has allowed the debtor the opportunity to explore other options.[70]

70. The Caisse is also not required to establish that it will suffer irreparable harm or that a situation is urgent. Instead, evidence suggesting that a creditor’s attempts to privately enforce its security will be delayed or otherwise fail can warrant receivership appointment.[71]

71. The appointment of the Receiver will also allow any assets of the Debtor to be preserved and placed under the stewardship of a court-appointed officer while the parties’ rights are being determined.[72]

72. In accordance with the test and factors outlined above, it is both just and convenient to appoint AGI as Receiver because:

(a) The Caisse has lost confidence in Philovera’s management regarding the

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[69] ***Elleway Acquisitions Limited v The Cruise Professionals Limited***, 2013 ONSC 6866 (Commercial List), para 27 [“***Elleway***”]; ***Metropolitan Partners***, at para 22
[70] ***Re JBT Transport Inc***, 2025 ONSC 1436 at para 53-54 [“***JBT Transport***”]; ***ATB Financial v Mayfield Investments Ltd.***, 2024 ABKB 635 at para 40 [**“*ATB Financial*”**]
[71] ***Business Development Bank of Canada v 170 Willowdale Investments Corp***., 2023 ONSC 3230 at para 53; ***Bank of Montreal v Carnival National Leasing Ltd***., 2011 ONSC 1007 at paras 24, 28-29
[72] **Harvey-Lagacé Affidavit**, para 41

Property, and it is apparent that the Debtor will not be able to repay the Indebtedness owing to it. Accordingly, the Caisse bears an economic interest in the Debtor's insolvency.[73]

(b) The Debtor has no ability to fund ongoing mortgage payments and property taxes and this is eroding the value of Caisse's security position due to the accrual of the Indebtedness without meaningful repayment of the Loan Agreements.[74]

(c) The Caisse has suffered and is expected to continue to suffer substantial prejudice as a result of the Debtor's failure to repay the Indebtedness.

(d) The appointment of the Receiver is necessary to preserve the value of the Property and the Caisse's collateral.[75]

73. Upon appointment, the Receiver will assess the state of Philovera and determine a strategy for recovery of the assets for the benefit of all stakeholders, including communicating directly with all affected parties.[76]

PART V - RELIEF SOUGHT

74. The Caisse requests that the Court grant the Appointment Order substantially in the form included at Tab 3 of the Application Record.

75. A version that is tracked to the Commercial List Model Receivership Order is included at Tab 4 of the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20th day of July, 2026.

Bart Sarsh
GOWLING WLG (CANADA) LLP
Lawyers for the Applicant

[73] **Harvey-Lagacé Affidavit**, para 37 and para 39; ***Rose-Isli Corp. v Smith***, 2023 ONCA 548 at para 9
[74] **Harvey-Lagacé Affidavit**, para 40
[75] **Harvey-Lagacé Affidavit**, para 41
[76] **Harvey-Lagacé Affidavit**, para 42

SCHEDULE “A”

LIST OF AUTHORITIES

1. *Toronto-Dominion Bank v The Other End Inc. et al.,* 2025 ONSC 85
2. 2024 ONSC 5377
3. *BFT Mortgage Services Inc. v Getz*, 2025 ONSC 2908
4. *RBC v Gill*, 2025 ONSC 3095
5. *Business Development Bank of Canada v Ang*, 2025 ONSC 1752
6. *Canadian Equipment Finance & Leasing Inc. v 8777691 Canada Inc. et al.,* 2025 ONSC 4514
7. *BMW Group Financial Services Canada v Iknight Entertainment Inc. et al*., 2025 ONSC 4494
8. *Re Nuvoola Inc*., 2025 ONSC 1257
9. *The Bank of Nova Scotia v Old Green Inc. et al.,* 2025 ONSC 6191
10. *Sam Lévy & Associés Inc. v Azco Mining Inc. 2001 SCC 92* 2001 SCC 92
11. *Solid Holdings Ltd. v Grant Thornton Limited,* 2019 BCCA 231
12. *ATB Financial v Mayfield Investments Ltd.*, 2024 ABKB 635
13. *Bank of Montreal v Carnival National Leasing Ltd.*, 2011 ONSC 1007
14. *Bank of Nova Scotia v Freure Village on Clair Creek et al*, 1996 CanLII 8258 (Commercial List)
15. *Business Development Bank of Canada v 170 Willowdale Investments Corp*., 2023 ONSC 3230
16. *Canadian Equipment Finance and Leasing Inc. v The Hypoint Company Limited*, 2022 ONSC 6186
17. *Elleway Acquisitions Ltd. v The Cruise Professionals Ltd*., 2013 ONSC 6866 (Commercial List)
18. *Metropolitan Partners Group Administration, LLC v International Credit Experts Inc.,* 2024 ONSC 4601 (Commercial List)
19. *Re JBT Transport Inc*, 2025 ONSC 1436

20. *Rose-Isli Corp. v Smith*, 2023 ONCA 548

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date July 20, 2026

Bart Sarsh

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Rules of Civil Procedure

Place of Commencement

Statute or Rule Governing Place of Commencement, Trial or Hearing

13.1.01(1) If a statute or rule requires a proceeding to be commenced, brought, tried or heard in a particular county, the proceeding shall be commenced at a court office in that county and the county shall be named in the originating process.

If No Statute or Rule

(2) If subrule (1) does not apply, the proceeding shall be commenced at a court office in a county with which there is a rational connection, as determined on the basis of the factors listed in clause 13.1.02 (2) (b), and that county shall be named in the originating process.

Transfer

Motion to Transfer to Another County

13.1.02 (1) If subrule 13.1.01 (1) applies to a proceeding but a plaintiff or applicant commences it in another place, the court may, on its own initiative or on any party’s motion, order that the proceeding be transferred to the county where it should have been commenced.

(2) If subrule (1) does not apply, the court may, on any party’s motion, make an order to transfer the proceeding to a county other than the one where it was commenced, if the court is satisfied,

> (a) that it is likely that a fair hearing cannot be held in the county where the proceeding was commenced; or
>
> (b) that a transfer is desirable in the interest of justice, having regard to,
>
> > (i) where a substantial part of the events or omissions that gave rise to the claim occurred,
> >
> > (ii) where a substantial part of the damages were sustained,
> >
> > (iii) where the subject-matter of the proceeding is or was located,
> >
> > (iv) any local community’s interest in the subject-matter of the proceeding,

(v) the convenience of the parties, the witnesses and the court,

(vi) whether there are counterclaims, crossclaims, or third or subsequent party claims,

(vii) any advantages or disadvantages of a particular place with respect to securing the just, most expeditious and least expensive determination of the proceeding on its merits,

(viii) whether judges and court facilities are available at the other county, and

(ix) any other relevant matter.

(3) If an order has previously been made under subrule (2), any party may make a further motion, and in that case subrule (2) applies with necessary modifications.

<u>Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3</u>

Interpretation

Definitions

2 In this Act,

locality of a debtor means the principal place

(a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,

(b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or

(c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated; (localité)

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or

(c) take any other action that the court considers advisable.

Restriction on appointment of receiver

243 (1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

(a) the insolvent person consents to an earlier enforcement under subsection 244(2); or

(b) the court considers it appropriate to appoint a receiver before then.

Definition of receiver

243 (2) Subject to subsections (3) and (4), in this Part, receiver means a person who

(a) is appointed under subsection (1); or

(b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under

(i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of receiver — subsection 248(2)

243 (3) For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

243 (4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

243 (5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

243(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of disbursements

243 (7) In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

Advance notice

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

(a) the inventory,

(b) the accounts receivable, or

(c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

No advance consent

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

Exception

(3) This section does not apply, or ceases to apply, in respect of a secured creditor

(a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or

(b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

Idem

(4) This section does not apply where there is a receiver in respect of the insolvent person.

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

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

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

Court File No. CV-26-00005377-0000

CAISSE DESJARDINS ONTARIO CREDIT UNION INC. - and - PHILOVERA HOLDINGS INC., et al.

Applicant | Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
BRAMPTON

APPLICANT'S FACTUM
(Appointment of Receiver)

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