



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

(Court Seal)

**2046245 ONTARIO INC., 2222228 ONTARIO INC., 2473560 ONTARIO INC. and 2473441
ONTARIO INC.**

Applicants

- and -

2244039 ONTARIO INC. and 1526400 ONTARIO INC.

Respondents

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

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a judge presiding over the Commercial List via video conference on December 1, 2022 at 12:00 p.m.

at the following location:

330 University Avenue, 9th Floor, Toronto ON M5G 1R7

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date November 15th 2022.....

Issued by Rajesh Ramkalawan
Digitally signed by Rajesh Ramkalawan
Date: 2022.11.21 10:02:57 -05'00'

Local registrar

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Joe Albert

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Proposed Receiver

AND TO: **1526400 ONTARIO INC.**
42 Pinecone Dr.
Toronto, ON, M9W 7B64

AND TO: **2244039 ONTARIO INC.**
42 Pinecone Dr.
Toronto, ON, M9W 7B64

AND TO: **TENANT(S)**
35 Cherrycrest Dr.
Brampton, ON, L6P 3W4

AND TO: **TENANT(S)**
12016 Airport Rd
Caledon, ON L7C 2W1

APPLICATION

1. The Applicants, 2046245 Ontario Inc., 2222228 Ontario Inc., 2473560 Ontario Inc. and 2473441 Ontario Inc. (individually “**204**”, “**222**”, “**560**” and “**441**”, and, together the “**Lenders**”) make an application for:
 - a. An order appointing Albert Gelman Inc. as receiver, without security, of certain assets, undertakings and properties of the Respondents 2244039 Ontario Inc. and 1526400 Ontario Inc. (individually “**224**” and “**152**”, and, together the “**Debtors**”);
 - b. costs of this application; and
 - c. such further and other relief as counsel may request and this Honourable Court may deem just.

GROUND FOR THE APPLICATION ARE:

The Parties

1. 204 is a corporation incorporated pursuant to the laws of the Province of Ontario with its registered head office located in City of Brampton, in the Province of Ontario.
2. 222 is a corporation incorporated pursuant to the laws of the Province of Ontario with its registered head office located in City of Brampton, in the Province of Ontario.
3. 560 is a corporation incorporated pursuant to the laws of the Province of Ontario with its registered head office located in City of Brampton, in the Province of Ontario.
4. 441 is a corporation incorporated pursuant to the laws of the Province of Ontario with its registered head office located in City of Brampton, in the Province of Ontario.
5. The Lenders operate private lending services and other financial services including commercial mortgages and loans to individuals and corporations in Ontario.

6. 224 is corporation incorporated pursuant to the laws of the Province of Ontario with its registered head office located in Toronto, Ontario.
7. 152 is corporation incorporated pursuant to the laws of the Province of Ontario with its registered head office located in Toronto, Ontario.
8. The Debtors are related as they share common ownership and common directors;

The Debtors' operations

9. Each of the Debtors owns and operates a gas station together with ancillary services and quick service restaurants thereon in the Brampton/Caledon area.
10. 224 operates a gas station located at 35 Cherrycrest Drive, Brampton, ("**35 Cherrycrest**"). 35 Cherrycrest comprises of an Esso gas station, convenience store, car wash, KFC/Taco Bell and Tim Hortons restaurants.
11. 224 is also the registered owner of 35 Cherrycrest.
12. 152 operates a gas station located at 12016 Airport Rd, Caledon, Ontario ("**12016 Airport**"). 12016 comprises of a Shell Canada gas station, commercial building and Tim Hortons restaurant.
13. 152 is also the registered owner of 12016 Airport.

The financing provided by the Lenders

14. The Lenders provided financing, via two credit facilities, in the amounts of \$10,750,000.00 and \$3,800,000.00 totalling \$14,550,000.00 to the Debtors.
15. The financing provided by Lenders to the Debtors is secured by mortgages against properties owned by each of the Debtors, general security agreements, and various other agreements, as set out below.

First ranking financing facility provided to 224 and 152

16.224 and 152 entered into the following loan and security agreements (together the “**The First 224 and 152 Loan and Security Documents**”):

- a. A mortgage loan commitment dated April 13, 2022, pursuant to which 224 and 152 acknowledged themselves indebted to and promised to pay to 204, 222 and 560 the principal amount of \$10,750,000.00 (the “**First Commitment**”);
- b. A Charge/Mortgage registered as PR4034965 in the Peel Land Registry Office (No. 43) against title to 35 Cherrycrest on April 04, 2022 (the “**First 224 Mortgage**”);
- c. A General Assignment of Leases and Rents executed by 224 on April 17, 2022 in favour of 204, 222 and 560 and registered as PR4034991 against title to 35 Cherrycrest on April 04, 2022 (the “**First 224 Assignment**”);
- d. A Charge/Mortgage registered as PR4035001 in the Peel Land Registry Office (No. 43) against title to 12016 Airport on April 04, 2022 (the “**First 152 Mortgage**”);
- e. A General Assignment of Leases and Rents executed by 152 on April 17, 2022 in favour of 204, 222 and 560 and registered as PR4035005 against title to 12016 Airport on April 04, 2022 (the “**First 152 Assignment**”);
- f. 204, 222 and 560 registered notice of its security interest in the property of 224 and 152 pursuant to the *Personal Property Security Act* (Ontario) (the “**PPSA**”) as Registration No. 20220420 1318 1590 8387 in File No. 782176878, 20220420 1316 1590 8385 in File No. 782176455, 20220420 1317 1590 8386 in File No. 782176662 and 20220420 1315 1590 8384 in File No. 782176275 against the collateral descriptions “Inventory”, “Equipment”, “Accounts”, “Other” and “Motor Vehicle”.
- g. A General Security Agreement executed by 224 in favour of 204, 222, 560 dated

April 14, 2022 (the “**First 224 GSA**”), containing therein the right to appoint a receiver at clause 13(a) thereof and a General Security Agreement executed by 152 in favour of 204, 222, 560 dated April 14, 2022 (the “**First 152 GSA**”), containing therein the right to appoint a receiver at clause 13(a) thereof.

17. The First Commitment requires to make monthly payments in the amount of \$80,625.00 each and every month for a term of 2 months commencing on April 13, 2022.

18. Pursuant to the terms of The First 224 and 152 Loan and Security Documents:

- a. 224 and 152 granted to 204, 222 and 560 a security interest in all of its real and personal property and assets, including after acquired property;
- b. each of The First 224 and 152 Loan and Security Documents secures all obligations, debts and liabilities of 224 and 152 to 204, 222 and 560;
- c. it was an event of default, among others:
 - i. if 204, 222 and 560 makes a written demand for payment and payment in full is not received by 204, 222 and 560; and
 - ii. if 224 and 152 fails to make any of the payments due pursuant to the First Commitment;

19. *Second ranking financing facility provided to, amongst others, 224 and 152*

20. 224 and 152 entered into the following loan and security agreements (together the “**The Second 224 and 152 Loan and Security Documents**”):

- a. A mortgage loan commitment dated March 3, 2022, pursuant to which 224 and 152, amongst others, acknowledged themselves indebted to and promised to pay to 204, 222 and 441 the principal amount of \$3,800,000.00 (the “**Second Commitment**”);
- b. A Charge/Mortgage registered as PR4009527 in the Peel Land Registry Office (No. 43) against title to 35 Cherrycrest on March 09, 2022 (the “**Second 224**”).

Mortgage”);

- c. A General Assignment of Leases and Rents executed by 224 on March 08, 2022 in favour of 204, 222 and 441 and registered as PR4009528 against title to 35 Cherrycrest on March 09, 2022 (the “**Second 224 Assignment**”);
- d. A Charge/Mortgage registered as PR4009538 in the Peel Land Registry Office (No. 43) against title to 12016 Airport on March 09, 2022 (the “**Second 152 Mortgage**”);
- e. A General Assignment of Leases and Rents executed by 152 on March 08, 2022 in favour of 204, 222 and 441 and registered as PR4009539 against title to 12016 Airport on April 04, 2022 (the “**Second 152 Assignment**”);
- f. 204, 222 and 441 registered notice of its security interest in the property of 224 and 152 pursuant to the *Personal Property Security Act* (Ontario) (the “**PPSA**”) as Registration No. 20220309 1153 1590 1790 in File No. 780964704, 20220309 1154 1590 1792 in File No. 780964758, 20220309 1152 1590 1789 in File No. 780964677 and 20220309 1153 1590 1791 in File No. 780964731 against the collateral descriptions “Inventory”, “Equipment”, “Accounts”, “Other” and “Motor Vehicle”.
- g. A General Security Agreement executed by 224 in favour of 204, 222, 560 dated March 7, 2022 (the “**Second 224 GSA**”), containing therein the right to appoint a receiver at clause 13(a) thereof and a General Security Agreement executed by 152 in favour of 204, 222, 560 dated March 7, 2022 (the “**Second 152 GSA**”), containing therein the right to appoint a receiver at clause 13(a) thereof.

21. The Second Commitment requires to make monthly payments in the amount of \$57,000.00 each and every month for a term of 2 months commencing on March 08, 2022.

22. Pursuant to the terms of The Second 224 and 152 Loan and Security Documents:

- a. 224 and 152 granted to 204, 222 and 441 a security interest in all of its real and personal property and assets, including after acquired property;
- b. each of The Second 224 and 152 Loan and Security Documents secures all obligations, debts and liabilities of 224 and 152 to 204, 222 and 441;
- c. it was an event of default, among others:
 - i. if 204, 222 and 441 makes a written demand for payment and payment in full is not received by 204, 222 and 441; and
 - ii. if 224 and 152 fails to make any of the payments due pursuant to the Second Commitment;

The Debtors' defaults

23. Each of the Debtors defaulted on its obligations to the Lenders and the defaults continue.

224 and 152's defaults

24. Both 224 and 152 upon the expiration of the term as set out in the First Commitment and Second Commitment defaulted in their obligations pursuant to First Commitment and Second Commitment failed to repay the loans in full in accordance with First Commitment and Second Commitment and has not made any further payments.

25. 224 and 152 are in default of their obligations under The Second 224 and 152 Loan and Security Documents and The Second 224 and 152 Loan and Security Documents, which default is continuing.

26. As of October 21, 2022, each of the Debtors owed the following amounts to Lenders:

(a) Pursuant to the First Commitment \$11,112,165.85; and

(b) Pursuant to the Second Commitment \$4,171,915.35.

Demands and Notices of Intention to Enforce Security

27. On July 22, 2022, in relation to the Second Commitment and on August 19, 2022 in relation to the First Commitment, the Lenders served each of the Debtors with Notices of Intention to Enforce Security (“**NITES**”) pursuant to the *Bankruptcy and Insolvency Act*.
28. Despite the NITES, the Debtors have not issued any payment in response to the NITES.
29. The Lenders offered the Debtors numerous opportunities and sufficient time to pay out the debts due under the First Commitment and Second Commitment.
30. The Debtors have been unable or unwilling to fulfill their obligations to the Lenders

Appointment of a Receiver

31. In light of the nature of the Debtors’ business (gas stations) it is just and equitable for a receiver to be appointed. The Lenders have the right to appoint a receiver pursuant to the First 224 GSA, the First 152 GSA, the Second 224 GSA and the Second 152 GSA.
32. The appointment sought by the Lenders is not limited in scope but will give the owners of the Debtors the ability to attempt to re-finance;
33. Section 243 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;
34. Rules 1.04(1), 1.05, 2.01, 2.03, 3.02 and 38 of the *Rules of Civil Procedure*;

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:

1. The Affidavit of Jaskunwar Gill sworn October 25, 2022 and Exhibits thereto; and

2. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

November 7, 2022

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2046245 ONTARIO INC. et al.
Applicants

-and- **2244039 ONTARIO INC. et al.**
Respondents

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPLICATION

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