

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**CMLS FINANCIAL LTD.**

Applicant

and

**BRONTE LAKESIDE LTD. and BRONTE LIMITED PARTNERSHIP**

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**

**ABRIDGED REPLY FACTUM OF CMLS FINANCIAL LTD.**

**Dated:** November 28<sup>th</sup>, 2025

**BLANEY MCMURTRY LLP**  
Barristers & Solicitors  
2 Queen Street East, Suite 1500  
Toronto, ON, M5C 3G5

**Timothy R. Dunn (LSO #342491)**  
Tel: (416) 597-4880  
Email: [tdunn@blaney.com](mailto:tdunn@blaney.com)

**Stephen Gaudreau (LSO #65895M)**  
Tel: (416) 596-4285  
Email: [sgaudreau@blaney.com](mailto:sgaudreau@blaney.com)

Lawyers for the Applicant

**To:** The Service List

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**CMLS FINANCIAL LTD.**

Applicant

and

**BRONTE LAKESIDE LTD. and BRONTE LIMITED PARTNERSHIP**

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**

**INDEX**

<b>Section</b>	<b>Title</b>	<b>Page</b>
Part I	Overview	1
Part II	Facts	1
	The Debtor Has No Evidence of That it Can Repay the Indebtedness	1
	The Unauthorized Second Mortgage	2
Part III	Issue	3
Part IV	Law and Argument	3
	There is No Legitimate Plan for Payment	3
	Additional Reasons for Just or Convenience to Appoint a Receiver	5
Schedule "A"	List of Authorities	6

## **PART I – OVERVIEW**

1. The Debtor’s focus to only pay the Construction Liens and the municipal tax arrears, which is only a fraction of the Debtor’s debt, is misguided. It also offers no plan to finance the ongoing operations of the Project. The more pressing and substantial issue is the Debtor’s failure to pay, let alone offer any plan whatsoever on how to pay, the Indebtedness, which totals over \$18.5 million dollars, and regardless, which Loan matures on January 1, 2026.

2. In addition, CMLS has discovered that the Respondents have made additional defaults under the Loan by granting a second mortgage and failing to disclose litigation against the Beneficial Owner related to the second mortgage.

3. In the circumstances, it is both just and convenient to appoint a Receiver over the Property of the Debtor.

4. Unless otherwise stated, the defined terms in this Supplementary Factum are ascribed the same meaning as in CMLS’ factum dated November 10, 2025 (“**CMLS Factum**”).

## **PART II – FACTS**

### **The Debtor Has No Evidence That it Can Repay the Indebtedness**

5. The Debtor has offered vague and unsubstantiated evidence that it has entered into protracted negotiations with a potential new investor for an investment “sufficient to discharge the outstanding construction liens and pay the municipal taxes which are in arrears”.<sup>1</sup>

---

<sup>1</sup> The Affidavit of Sarmad Ganni sworn November 24, 2025 (“**Ganni Affidavit**”), at paras 13 and 14.

6. The evidence offered in the Ganni Affidavit is of no value and should be given no weight to oppose the receivership it is devoid of any details of how the Debtor intends to, or will be able to, pay the Indebtedness.

### **The Unauthorized Second Mortgage**

7. On November 20, 2025, CMLS discovered for the first time, through counsel for 2604956 Ontario Inc. ("**260 Ontario Inc.**"), that the Beneficial Owner entered into a promissory note ("**Promissory Note**") and commitment letter ("**Commitment Letter**") with 260 Ontario Inc. in around April and May 2025, whereby 260 Ontario Inc. advanced \$590,997.95 (the "**260 Ontario Loan**") to the Beneficial Owner who granted a second mortgage against the Bronte Property as security (the "**Second Mortgage**"). 260 Ontario has commenced litigation over the second mortgage.<sup>2</sup>

8. In its Statement of Defence and in the Ganni Affidavit, the Respondents admit that they granted the Second Mortgage to 260 Ontario Inc. They take the erroneous position that because the Second Mortgage was not registered to title of the Bronte Property that it is not considered a breach of the Mortgage or Commitment Letter.<sup>3</sup>

9. Sections 31, 62(2)(e), and 22 of the Mortgage terms are clear that the granting of the Second Mortgage and the failure to disclose the Litigation are additional Events of Default (which also

---

<sup>2</sup> Reply Application Record of CMLS dated November 26, 2025 ("**Reply AR**"), the Reply Affidavit of Jeffrey Burt sworn November 26, 2025 ("**Burt Reply Affidavit**"), at para 5; Reply AR, Burt Reply Affidavit, at para 6 and Exhibit "B", statement of claim.

<sup>3</sup> Reply AR, Burt Reply Affidavit, at para 9 and Exhibit "E", statement of defence para 10; Ganni Affidavit, at para 22.

entitle CMLS to accelerate the debt). CMLS did not provide its written consent to the Second Mortgage, and the Respondents did not disclose the Litigation.<sup>4</sup>

### **PART III – ISSUE**

10. The sole issue to be addressed is whether a Receiver ought to be appointed.

### **PART IV – LAW AND ARGUMENT**

11. For the purposes of this Reply Factum, CMLS will assume that the Debtor will pay the Construction Liens and the property taxes by the return of the application. If they do not, then CMLS' position is that it is another strong reason to appoint a Receiver. If they do, it is largely irrelevant as the entire Indebtedness is owing and the Debtor has offered no plan to repay it.

#### **There is No Legitimate Plan for Payment**

12. On similar Receivership Applications, the case law supports that for a Debtor to oppose the appointment of a Receiver that it needs to come to Court with a binding, unconditional, and detailed refinancing (or a sales agreement) that sets out a clear path on how and when the entire indebtedness will be satisfied. Otherwise, there is no practical or commercial reason to deny or delay a lender from exercising its contractual right to appoint a Receiver. That is the exact scenario we are dealing with in this case.

13. For example, in *Macquarie Equipment Finance Limited v. Validus Power Corp. et al.*, 2023 ONSC 4772 (“*Validus*”), Justice Osborne refused to delay the appointment of a receiver despite

---

<sup>4</sup> AR, Burt Affidavit, Exhibit G, Mortgage at section 31 (No Act to Encumber), section 1 definition of “Lien” and “Permitted Encumbrances” (Interpretation), section 62(e) (Covenants with respect to Indebtedness; Leases; Operations and Fundamental Changes of Chargor), Mortgage at section 22 (Litigation), Exhibit C, ADC at term 7.

the debtor in that case being in possession of a financing commitment to purportedly repay the applicant.<sup>5</sup>

14. In the result, Justice Osborne held as follows:

If that funding commitment closed relatively quickly, it follows that the cost of the Receivership would be minimized. However, in the interim, stability will be maximized and the Receiver could pursue this possible commitment together with, and in addition to, any possible alternative commitments such as might be revealed through a court supervised sales process.<sup>6</sup>

15. In *Canada ICI Capital Corporation v. ECRE Smart Living Hinton Inc.*, the Respondents objected to the appointment of a receiver based largely on a letter of intent to purchase the property that was the subject matter of that application. However, the letter of intent was vague, uncertain, and at an early stage. Justice Flaherty rejected the Respondents' argument and appointed a Receiver.<sup>7</sup>

16. In this case, the Debtor is in an even worse off position to payout the Indebtedness than the debtors in *Hinton* and *Validus*.

17. Based on the Debtor's own evidence, they have been unable to offer any plan whatsoever to pay the Indebtedness. Instead, they have only offered a plan (that may or may not materialize), that has taken them months to negotiate, to simply attempt to payout other creditor debts in the amount of roughly \$1,500,000.

18. Even more concerning is that after "several months of negotiations", the amount they have attempted to raise is a mere fraction of the Indebtedness owing and there is no indication

---

<sup>5</sup> *Macquarie Equipment Finance Limited v. Validus Power Corp. et al.*, [2023 ONSC 4772](#) (Ont. S.C.J. – Comm List), at [paras 42-44](#).

<sup>6</sup> *Ibid.*, at [para 55](#).

<sup>7</sup> *Canada ICI Capital Corporation v. Ecre Smart Living Hinton Inc et al.*, [2024 ONSC 5529](#), at paras [14 to 15](#).

whatsoever that this purported new investor will (or even can) inject additional much needed funds (either for repayment of the Indebtedness or continued operations to develop the Project).<sup>8</sup>

19. To put it simply, the Construction Liens and property taxes are only relatively small problems in the face of much larger looming debts and issues with the Project for which there is no solution offered.

### **Additional Reasons for Just or Convenience to Appoint a Receiver**

20. To summarize, the following are further reasons to why it is just or convenient to appoint a Receiver that are in addition to the reasons set out at paragraph 35 of CMLS' Factum:

- (a) The Litigation and Second Mortgage breaches have further eroded the trust and confidence CMLS has in the management of the Respondents, including any hopes for refinancing or funding to complete the Project;
- (b) The lack of funding and increasing debts of the Debtor signals that the Project will continue to stall;
- (c) The Debtor's failure to have a plan to pay the Indebtedness (or obtain any additional operational funds) erodes confidence in the management of the Debtor; and,
- (d) Contrary to the Debtor's position, interest has not been prepaid to January 1, 2026. Pursuant to the terms of the Commitment Letter, the remaining Interest Reserve was already credited to the Indebtedness thereby reducing the Debtor's debt from roughly \$19,100,00 to \$18,500,000. Interest is accruing at approximately \$130,000 per month, and therefore, CMLS' security is eroding.<sup>9</sup>

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 28<sup>th</sup> day of November 2025.

Stephen Gaudreau 

<sup>8</sup> Ganni Affidavit, at paras 10, 13 to 15.

<sup>9</sup> AR, Burt Affidavit, Exhibit "F", Commitment Letter at "Interest Reserve Holdback" terms and Exhibit "U", Payout Statement.

**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. *Macquarie Equipment Finance Limited v. Validus Power Corp. et al.*, [2023 ONSC 4772](#)  
(Ont. S.C.J. – Comm List)
2. *Canada Ici Capital Corporation v. Ecre Smart Living Hinton Inc et al.*, [2024 ONSC 5529](#)

**CMLS FINANCIAL LTD.**

-and-

**BRONTE LAKESIDE LTD. and BRONTE LIMITED  
PARTNERSHIP**

Applicant

Respondents

Email addresses for recipients: See Service List

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
PROCEEDING COMMENCED AT TORONTO**

**ABRIDGED REPLY FACTUM OF CMLS  
FINANCIAL LTD.**

**BLANEY MCMURTRY LLP**  
Barristers & Solicitors  
2 Queen Street East, Suite 1500  
Toronto, ON, M5C 3G5

**Timothy R. Dunn (LSO #34249I)**  
Tel: (416) 597-4880  
Email: [tdunn@blaney.com](mailto:tdunn@blaney.com)

**Stephen Gaudreau (LSO #65895M)**  
Tel: (416) 596-4285  
Email: [sgaudreau@blaney.com](mailto:sgaudreau@blaney.com)

Lawyers for the Applicant