

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

B E T W E E N:

**WINDSOR PRIVATE CAPITAL LIMITED PARTNERSHIP
and WINDSOR II LIMITED PARTNERSHIP**

Applicants

- and -

2352107 ONTARIO INC.

Respondent

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

FACTUM OF THE APPLICANT
(Application Returnable January 16, 2026)

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TO: THE SERVICE LIST

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FACTUM OF THE APPLICANT

1. This factum is filed by Windsor Private Capital Limited Partnership (“**Windsor I**”) and Windsor II Limited Partnership (“**Windsor II**”) and together with Windsor I, “**Windsor**”) in support of its application for the appointment of Albert Gelman Inc. (“**AGI**”) as receiver (in such capacity, the “**Receiver**”) of the property municipally located at 175 Melvin Robson Avenue, Aurora, Ontario (the “**Real Property**”), together with all assets, properties and undertakings of 2352107 Ontario Inc. (the “**Debtor**”) situate on, arising from, used in connection with or otherwise relating to the Real Property (collectively, the “**Property**”).

PART I - FACTS

The Parties and the Project

2. Windsor are private investment funds established as limited partnerships that are managed by Windsor Private Capital, a Toronto-based private asset management firm.¹

3. The Debtor is the registered owner of the Real Property, is in the process of being developed as part of a multi-phased mixed-use commercial development project known as ‘Aurora Mills Business Park’ (the “**Project**”).²

4. The first phase of the Project consists of Block 1, which is being developed as a retail plaza, and Blocks 5 and 6, which are being developed to comprise a total of 24 industrial condominium units (collectively, “**Phase 1**”). Blocks 2, 3, 4 and 7 of the Project (collectively, the “**Future Phases**”) is vacant land.³

5. The Debtor holds legal title to the Real Property as nominee for 2374563 Ontario Limited and 2372754 Ontario Limited (collectively, the “**Beneficial Owners**”), each as to a 50% beneficial interest in the Real Property.⁴

6. Haven Property Services Corp. (“**Haven Services**”) is the development manager of the Project and is a related entity to the Debtor.

¹ Application Record of the Applicants, Tab 2, Affidavit of Jordan Kupinsky sworn January 9, 2026 (the “**Kupinsky Affidavit**”) at paras 1 and 3.

² Kupinsky Affidavit at para. 5.

³ Kupinsky Affidavit at paras. 5-8.

⁴ Kupinsky Affidavit at para. 9-11; Exhibits “B”, “C” and “D” to the Kupinsky Affidavit.

The Windsor I Loans

7. Pursuant to loan agreements dated August 11, 2017, as amended, and July 13, 2018, Windsor I advanced loans to the Debtor in the aggregate principal amount of \$25 million (the “**Windsor Loans**”) to partially repay indebtedness owing to existing mortgagees and provide capital to finance zoning, development and planning applications and related soft costs associated with the Project.⁵

8. The Windsor Loans are secured by a charge in the principal amount of \$25 million registered against title to the Real Property (the “**Windsor Charge**”).⁶

9. The Windsor Loans matured in 2019 and remain unpaid.⁷

10. Other than a payment in the amount of approximately \$7.76 million received in 2022 from an advance made by National Bank of Canada (“**NBC**”) under the NBC Credit Facilities (as defined below), no further payments of principal or interest have been received in respect of the Windsor Loans.⁸

11. Following maturity of the Windsor Loans, Windsor voluntarily forbore from demanding payment and exercising its rights and remedies under the Windsor Charge on the expectation that the Windsor Loans would be partially repaid from the eventual sale of the Phase 1 retail plaza and the industrial condominium units, together with the fact that the Windsor Loans were also secured by the Future Phases of the Real Property.⁹

⁵ Kupinsky Affidavit at paras. 13, 15, 16; Exhibit “F” to the Kupinsky Affidavit.

⁶ Kupinsky Affidavit at paras. 14, 17; Exhibit “G” to the Kupinsky Affidavit.

⁷ Kupinsky Affidavit at para. 18.

⁸ Kupinsky Affidavit at para. 19.

⁹ Kupinsky Affidavit at para. 20.

The NBC Credit Facilities

12. Pursuant to a Credit Agreement dated July 29, 2022, as amended, restated, supplemented or replaced from time to time (the “**NBC Credit Agreement**”), NBC made available to the Debtor certain demand credit facilities (collectively, the “**NBC Credit Facilities**”), including a non-revolving term construction loan (the “**Term Facility**”), to fund the construction and development of the Project and to support Project-specific obligations.¹⁰

13. Under the NBC Credit Agreement, the Debtor was required to provide regular financial and Project reporting to NBC, including monthly project status reports, disclosure of project costs and cost overruns, aged accounts payable, cash flow information, and prompt notice of any material adverse developments affecting the Project.¹¹

14. The NBC Credit Facilities are secured by a comprehensive security package (collectively, the “**Security**”), including, among other things:¹²

- (a) a first-ranking Charge/Mortgage of Land in the principal amount of \$110,000,000 granted by the Debtor and registered on title to the Real Property (the “**Charge**”);
and
- (b) a site-specific general security agreement granted by the Debtor, creating a security interest in all present and after-acquired personal property of the Debtor used in connection with or relating to the Real Property (the “**GSA**”).

¹⁰ Kupinsky Affidavit at para. 22; Exhibit “H” to the Kupinsky Affidavit.

¹¹ Kupinsky Affidavit at para. 25.

¹² Kupinsky Affidavit at para. 26; Exhibits “I” and “J” to the Kupinsky Affidavit.

15. In connection with the NBC Credit Facilities, the Beneficial Owners executed a Beneficial Owners' Agreement, pursuant to which the Beneficial Owners irrevocably authorized and directed the Debtor, as nominee and trustee, to grant the Security in favour of NBC, and granted, mortgaged, charged and assigned to NBC their entire beneficial right, title and interest in and to the Real Property and all proceed thereof, as security for the obligations owing under the NBC Credit Agreement.¹³

Reporting Failures and Liquidity Issues

16. In December 2024, Haven Services provided financial reporting to Windsor, which indicated that, on completion of the sale of Phase 1, approximately \$13.7 million of proceeds was expected following the repayment of the NBC Credit Facilities to partially pay down the Windsor Loans.¹⁴

17. Following such partial repayment, Windsor would remain as the senior secured creditor over the Future Phases with further construction financing provided by NBC or another construction lender.¹⁵

18. After repeated requests, updated financial reporting was provided in July 2025. For the first time, Haven disclosed construction cost overruns of approximately \$3.1 million, and subdivision letter of credit costs of approximately \$3.4 million, both of which materially reduced projected Phase 1 proceeds from \$13.7 million to approximately \$5 million.¹⁶

¹³ Kupinsky Affidavit at para. 27; Exhibit "Q" to the Kupinsky Affidavit.

¹⁴ Kupinsky Affidavit at para. 33; Exhibit "I" to the Kupinsky Affidavit.

¹⁵ Kupinsky Affidavit at para. 34.

¹⁶ Kupinsky Affidavit at para. 35; Exhibit "U" to the Kupinsky Affidavit.

19. Further updated projections were provided in August 2025, which reported accounts payable of approximately \$8.5 million, substantial additional cash collateral requirements, and a reduction of projected Phase 1 sale proceeds to approximately \$2.4 million.¹⁷

20. Based on current reporting, NBC is not expected to be repaid in full from the sale proceeds of Phase 1 with a shortfall of approximately \$5 million.¹⁸

Windsor II's Participation in the NBC Credit Facilities

21. In or around February 2025, the Debtor entered into an agreement of purchase and sale for the retail plaza on Block 1 of the Project.¹⁹

22. In 2022, the Debtor entered into agreements of purchase and sale for 20 of the 24 industrial condominium units located on Blocks 5 and 6 of the Project, with an additional agreement of purchase and sale for 1 industrial condominium unit entered into in November 2025.²⁰

23. Between December 2024 and September 2025, 13 construction liens totaling approximately \$6.3 million were registered against the Real Property.²¹

24. As the Debtor had run out of liquidity, additional funding was required to discharge the liens and pay outstanding accounts payable relating to Phase 1. However, NBC was not prepared to advance further funds beyond its existing commitments.²²

¹⁷ Kupinsky Affidavit at para. 37; Exhibit "V" to the Kupinsky Affidavit.

¹⁸ Kupinsky Affidavit at para. 66.

¹⁹ Kupinsky Affidavit at para. 40; Exhibit "X" to the Kupinsky Affidavit.

²⁰ Kupinsky Affidavit at para. 41.

²¹ Kupinsky Affidavit at para. 42.

²² Kupinsky Affidavit at para. 43.

25. While Windsor was prepared to provide additional financing, funds advanced under its existing security would have been subordinate to other registered encumbrances on title.²³

26. As a result, Windsor and NBC entered into discussions regarding Windsor's participation as a lender in the NBC Credit Facilities to permit Windsor to advance funds to complete the sale of the retail plaza and industrial condominium units.²⁴

27. Those discussions culminated in NBC and Windsor II entering into an assignment and assumption agreement (the "**Assignment and Assumption Agreement**") and a related amending agreement to the NBC Credit Agreement, pursuant to which NBC assigned to Windsor II a \$3,000,000 participation in the Term Facility and Windsor II's participation as a lender under the NBC Credit Agreement.²⁵

28. Windsor II advanced \$3 million to discharge registered construction liens and clear other accounts payable in connection with the Project.²⁶

29. Under the Assignment and Assumption Agreement, Windsor II assumed NBC's rights and obligations as a lender, to the extent of the assigned portion of the Term Facility, together with the benefit of related loan and security documents.²⁷

²³ Kupinsky Affidavit at para. 44.

²⁴ Kupinsky Affidavit at para. 45.

²⁵ Kupinsky Affidavit at paras. 46 and 49; Exhibits "Y" and "Z" to the Kupinsky Affidavit.

²⁶ Kupinsky Affidavit at para. 47.

²⁷ Kupinsky Affidavit at para. 48.

Current Status of Phase I

30. The retail plaza (Block 1) is currently contracted for sale with a target closing date of January 15, 2026. The 21 industrial condominium units (Blocks 5 and 6), currently subject to agreements of purchase and sale, have various target closing dates in January 2026.²⁸

31. Immediately after the existing construction liens were cleared through Windsor II's participation in the NBC Credit Facilities, the Debtor disclosed approximately \$700,000 in additional trade payables.²⁹

32. This disclosure further increased the Debtor's outstanding obligations and confirmed that the financial reporting provided by the Debtor and Haven had been incomplete and unreliable.³⁰

33. As of January 2, 2026, additional construction liens have been registered against the Project.³¹

34. Furthermore, the industrial condominium units are affected by material construction deficiencies, including unapproved substituted materials, roof leaks, mould issues, non-functional heating systems, and design defects.³²

35. As a result, certain purchasers have advised that they will not close on their units until such deficiencies are remedied, while others have indicated that they may refuse to close altogether.³³

²⁸ Kupinsky Affidavit at para. 57.

²⁹ Kupinsky Affidavit at para. 58.

³⁰ Kupinsky Affidavit at para. 59.

³¹ Kupinsky Affidavit at para. 60.

³² Kupinsky Affidavit at para. 61.

³³ Kupinsky Affidavit at paras. 62-65.

36. Due to a lack of available liquidity, the Debtor is unable to remediate these deficiencies and/or discharge the additional construction liens, impairing the Debtor's ability to complete the sale of the retail plaza and industrial condominium units.³⁴

Demands and NITES

37. By letters dated December 29, 2025 and January 6, 2026, NBC demanded repayment of all amounts owing by the Debtor under the NBC Credit Facilities, and delivered Notices of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act*, as amended (the "BIA") to the Debtor and the Beneficial Owners.³⁵

38. By letters dated January 6, 2026, Windsor demanded repayment of all amounts owing by the Debtor to Windsor under the Windsor Loans and as a participant in the NBC Credit Facilities, and delivered Notices of Intention to Enforce Security pursuant to section 244 of the BIA to the Debtor and the Beneficial Owners.³⁶

PART II - ISSUE

39. The sole issue on this application is whether it is just and convenient for the Court to appoint a receiver over the Property, including the Real Property.

³⁴ Kupinsky Affidavit at para. 67.

³⁵ Kupinsky Affidavit at paras. 68-70; Exhibits "CC" and "DD" to the Kupinsky Affidavit.

³⁶ Kupinsky Affidavit at para. 71; Exhibit "EE" to the Kupinsky Affidavit.

PART III – LAW AND ARGUMENT

Test for the Appointment of a Receiver

40. Pursuant to section 243 of the BIA and section 101 of the *Courts of Justice Act* (Ontario), the Court has the power to appoint a receiver where it is “just or convenient” to do so.³⁷

41. In determining whether it is “just or convenient” to appoint a receiver, the Court must have regard to all of the circumstances, including the nature of the Debtor’s property and the rights and interests of all parties in relation to the property.³⁸

42. Where a secured creditor is seeking the appointment of a receiver and the Debtor has explicitly granted to the creditor the right to seek such appointment in the loan documents, the appointment of a receiver does not constitute an “extraordinary remedy”. In such circumstances, as Justice Morawetz (as he then was) stated in *Sherco Properties*, “the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties”.³⁹

43. The appointment of a receiver becomes even less extraordinary when dealing with a default under a mortgage.⁴⁰

³⁷ [Bankruptcy and Insolvency Act](#), R.S.C. 1985, c. B-3, as amended, ss. 243(1); [Courts of Justice Act](#), R.S.O. 1990, c. C.43, as amended, ss. 101(1).

³⁸ [Bank of Montreal v Carnival National Leasing Limited](#), 2011 ONSC 1007 at para 27; [Bank of Nova Scotia v Freure Village of Clair Creek](#) (1996), 40 CBR (3d) 274 at para 10 (ONSC); [Bank of Montreal v Sherco Properties Inc](#), 2013 ONSC 7023 at para 41 [*Sherco Properties*].

³⁹ [Sherco Properties](#), *supra* note 38 at para 42; [Elleway Acquisitions Limited v The Cruise Professionals Limited](#), 2013 ONSC 6866 at para 27.

⁴⁰ [BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc](#), 2020 ONSC 1953 at paras 43-44.

It is Just and Convenient to Appoint the Receiver

44. The appointment of a Receiver over the Property, including the Real Property, is just and convenient and appropriate as:⁴¹

- (a) the Windsor Loans matured in 2019 and remain unpaid. As of January 5, 2026, Windsor is owed approximately \$49.5 million for principal and interest plus costs, while NBC is owed approximately \$30 million for principal and interest plus costs;
- (b) the Debtor has repeatedly failed to provide accurate, complete and timely financial information, leaving Windsor without reliable visibility into the Debtor's business and financial affairs;
- (c) the Debtor has no or insufficient liquidity to satisfy trade obligations, remediate construction deficiencies, discharge registered construction liens and complete the existing agreements of purchase and sale for the benefit of their stakeholders;
- (d) Windsor has lost confidence in the Debtor's ability to complete the agreements of purchase and sale for the retail plaza and industrial condominium units and to complete the remaining balance of the Project;
- (e) the terms of the Security allow for the appointment of a receiver upon default;
- (f) in the circumstances, it is just and convenient that a receiver be appointed to take possession of, preserve, and realize upon the Property, including the Real Property, through a transparent, orderly and court-supervised process that permits the

⁴¹ Kupinsky Affidavit at paras. 72-76.

completion and sale of the existing agreements of purchase with a vesting order and sale and to market and sell the balance of the Real Property, for the benefit of Windsor and all other stakeholders.

45. AGI has consented to act as Receiver.⁴²

PART IV – RELIEF SOUGHT

46. For the reasons set out above, Windsor respectfully submits that this Court should grant an order appointing AGI as Receiver of the Property, including the Real Property.

I certify the authenticity of every authority cited in this factum.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of January, 2026.



CHAITONS LLP

Lawyers for the Applicants

⁴² Kupinsky Affidavit at para. 77; Exhibit “FF” to the Kupinsky Affidavit.

SCHEDULE "A"

AUTHORITIES

Tab	Title	Pinpoints
1	<u><i>Bank of Montreal v Carnival National Leasing Limited</i>, 2011 ONSC 1007</u>	27
2	<u><i>Bank of Nova Scotia v Freure Village of Clair Creek</i>, [1996] OJ No 5088 (Ct J Gen Div)</u>	10
3	<u><i>Bank of Montreal v Sherco Properties Inc</i>, 2013 ONSC 7023</u>	41-42
4	<u><i>Elleway Acquisitions Limited v The Cruise Professionals Limited</i>, 2013 ONSC 6866</u>	27
5	<u><i>BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc</i>, 2020 ONSC 1953</u>	43-44

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

PART XI

Secured Creditors and Receivers

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.

Courts of Justice Act, R.S.O. 1990, c C.43, as amended

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. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

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