

COURT FILE NO.: CL-26-00000005-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

BETWEEN:

WINDSOR PRIVATE CAPITAL LIMITED PARTNERSHIP and

WINDSOR II LIMITED PARTNERSHIP

Applicants

-and-

2352107 ONTARIO INC.,

NICK TSIMIDIS and ANTHONY ABATE

Respondents

FACTUM OF THE RESPONDENTS

(Nick Tsimidis and Anthony Abate)

PART I – OVERVIEW

This is the responding factum of Nick Tsimidis and Anthony Abate (the “Respondents”) in opposition to the Applicants’ motion for the appointment of a receiver pursuant to section 243(1) of the Bankruptcy and Insolvency Act and section 101 of the Courts of Justice Act.

The extraordinary remedy of receivership is not justified on the record before this Court. The Applicants have failed to demonstrate that the appointment of a receiver is necessary, proportionate, or just and convenient, particularly where:

- the subject properties remain occupied and revenue-generating;
- no evidence of asset dissipation exists;
- the Respondents have continued to act in good faith; and
- less intrusive remedies are readily available.

The Applicants’ evidence relies on material omissions, selective disclosure, and speculative assertions, which the Respondents have corrected through sworn evidence.

Appointing a receiver in these circumstances would:

- unnecessarily destabilize ongoing operations;

- impose disproportionate costs;
- prejudice third parties, including tenants and families; and
- provide no corresponding benefit to the Applicants.

The application should therefore be dismissed or, in the alternative, adjourned with directions for a measured and cooperative process short of receivership.

PART II – FACTS

The Respondents rely on the affidavit of Nick Tsimidis and Anthony Abate, sworn [date], and the exhibits attached thereto.

The Respondents are directors and officers of 2352107 Ontario Inc. (the “Corporation”) and have direct operational knowledge of the matters at issue.

The Applicants’ evidence asserts financial distress while failing to disclose:

- ongoing occupancy and rent collection;
- cooperative engagement by the Respondents;
- the absence of waste, diversion, or dissipation of assets; and
- the availability of less intrusive remedies.

At no time have the Respondents:

- concealed assets;
- diverted funds improperly;
- failed to engage with secured parties; or
- acted in a manner warranting court-imposed control.

The Applicants have not demonstrated any imminent risk that would justify removing control from the Corporation or displacing management through receivership.

PART III – ISSUES

The issues before this Court are:

- a. Whether the appointment of a receiver is just and convenient in the circumstances;
- b. Whether the Applicants have met the high threshold required for this extraordinary remedy; and
- c. Whether less intrusive alternatives exist that adequately protect the Applicants’ interests.

PART IV – LAW AND ARGUMENT

A. Receivership Is an Extraordinary Remedy

Courts have repeatedly held that receivership is a drastic and intrusive remedy that should be ordered only where clearly necessary.

The appointment of a receiver is not automatic, even where default exists. The Court must consider proportionality, necessity, and fairness.

The Applicants bear the onus of demonstrating that no lesser remedy would suffice.

B. No Evidence of Asset Dissipation or Mismanagement

There is no evidence that the Respondents have:

- stripped value from the properties;
- interfered with security;
- mismanaged rents; or
- acted dishonestly.

Speculation about risk is not evidence and cannot justify receivership.

Courts have consistently refused receivership where allegations are unsupported and the assets remain intact and income-producing.

C. Less Intrusive Remedies Are Available

Even if the Court finds concerns exist, those concerns can be addressed through:

- reporting obligations;
- restricted accounts;
- consensual monitoring; or
- interim undertakings.

The Applicants have not meaningfully pursued these alternatives.

The failure to explore less intrusive options weighs heavily against appointing a receiver.

D. Disproportionate Harm Would Result

A receiver would impose:

- significant professional fees;
- disruption to tenants and families;
- loss of operational continuity; and
- irreversible harm to value.

This harm is out of proportion to any speculative benefit asserted by the Applicants.

PART V – RELIEF SOUGHT

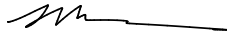
The Respondents respectfully request that this Court:

- a. Dismiss the application for the appointment of a receiver;
- b. In the alternative, adjourn the application and direct the parties to pursue less intrusive remedies;
and
- c. Grant such further and other relief as this Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Vaughan, Ontario

this 20th day of January, 2026

Nick Tsimidis 

Anthony Abate 

Respondents