

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

**CHOICE WHOLESALE MEATS LTD. operating as CHOICE WHOLESALE
MEATS, PAUL RAPANARO also known as PAOLO RAPANARO, ANTONIO
RAPANARO also known as TONY RAPANARO, MARIO RAPANARO and
STEFANIA RAPANARO**

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

**FACTUM OF THE APPLICANT,
THE TORONTO-DOMINION BANK**
(Returnable June 15, 2026)

June 4, 2026

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AND TO:	STEFANIA RAPANARO 42 Sunview Drive Woodbridge, ON L4H 1Y4
AND TO:	CANADA REVENUE AGENCY c/o Department of Justice Ontario Regional Office 120 Adelaide St. W., Suite 400 Toronto, ON M5H 1T1 Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca
AND TO:	INSOLVENCY UNIT Ontario Ministry of Finance 33 King Street West Oshawa, ON L1H 8H5 Email: insolvency.unit@ontario.ca

AND TO:	<p>HIS MAJESTY THE KING IN RIGHT OF ONTARIO as represented by the Ministry of Finance Legal Services Branch 33 King Street, 6th Floor Oshawa, ON L1H 8H5</p> <p>Attention: Steven Groeneveld Email: steven.groeneveld@ontario.ca Tel: 905-440-2470</p> <p>Senior Counsel, Ministry of Finance</p>
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AND TO:	<p>DANIEL & PARTNERS LLP 300B Fourth Avenue St. Catharines, ON L2S 0E6</p> <p>Sarah J. Draper Email: drapers@niagaralaw.ca Tel: 905-688-9411</p> <p>Lawyers for the Secured Creditor, William Baranick</p> <p>Execution No. 25-0006634</p>

AND TO:	<p>AGUECI AND CALABRETTA Barristers & Solicitors 5700 Yonge Street, Suite 1110 Toronto, ON M2M 4K2</p> <p>Attention: Cristina Internicola Email: Cristina.Internicola@ACLaw.ca Tel: 416-250-5700 ext. 203</p> <p>Lawyers for the Secured Creditor, Canadian Imperial Bank of Commerce</p> <p>Execution No. 26-0000791</p>
AND TO:	<p>ALBERT GELMAN INC. 150 Ferrand Drive, Suite 1503, North York, ON M3C 3E5</p> <p>Bryan Gelman Email: bgelman@albertgelman.com Tel: 416-504-1650, ext. 115</p> <p>Proposed Receiver</p>

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**FACTUM OF THE APPLICANT,
THE TORONTO-DOMINION BANK**

PART I – OVERVIEW

1. The Applicant, The Toronto-Dominion Bank (“**TD**”), makes an application for an Order appointing Albert Gelman Inc. (“**AGI**”) as receiver (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings, and properties (the “**Property**”) of the Respondent, Choice Wholesale Meats Ltd. operating as Choice Wholesale Meats (the “**Debtor**”), including the real property municipally known as 2877 Dufferin Street, Toronto, Ontario, legally described in PIN 10226-0202 (LT) (the “**Dufferin Property**”), pursuant to Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985,

c. B-3 as amended (the “**BIA**”) and Section 101 of the *Courts of Justice Act*, R.S.O 1990
c. C.43, as amended (the “**CJA**”).

2. TD is also seeking judgment against the respondents.

3. The facts underlying this application are more fully set out in the affidavit of Muhammad Ahsan Ashraf sworn May 19, 2026 (the “**Ashraf Affidavit**”). Unless otherwise specified, capitalized terms used but not defined have the meanings ascribed to such terms in the Ashraf Affidavit.

PART II – FACTS

4. The Debtor, a retailer and wholesaler of quality meats, is incorporated pursuant to the laws of the Province of Ontario. Its operations and registered head office are located at the Dufferin Property.¹

5. Tony and Paul are the registered owners of the Dufferin Property.²

6. Pursuant to the Credit Agreement between the Debtor, Tony and Paul, TD advanced: (a) to the Debtor, a \$300,000 Operating Facility, together with a Visa facility with total limit of \$20,000.00; and (b) to Tony and Paul, an \$800,000 Term Facility.³

7. The Operating Facility and the Visa are repayable on demand.⁴

8. Loan payment delinquencies for the Term Facility have been recurring since August, 2025.⁵

¹ Ashraf Affidavit at para 5.

² Ashraf Affidavit at para 7.

³ Ashraf Affidavit at para 9-10.

⁴ Ashraf Affidavit at para 12.

⁵ Ashraf Affidavit at para 25.

9. As security for their obligations under the Credit Agreement,
- (a) the Debtor granted in favour of TD a General Security Agreement dated April 11, 2025 (the “**GSA**”).⁶
 - (b) Tony and Paul granted in favour of TD the Mortgage Security, consisting of a collateral mortgage including TD Standard Charge Terms 8520 and a general assignment of rents and leases, as registered on title of the Dufferin Property.

10. The GSA and the Mortgage Security are collectively the “**Security**”.⁷ The Security entitles TD to appoint a receiver upon default, pursuant to sections 11 and 12 of the GSA and section 8 of the TD Standard Charge Terms No. 8520.⁸

11. Pursuant to the Guarantees, Tony, Paul, Mario and Stefania each personally guaranteed for an unlimited amount the debts of the Debtor, and the Debtor guaranteed the debts of Tony and Paul in connection with the Dufferin Property.⁹ The terms of the Guarantees entitle TD to judgment against the respondents as guarantors.

Defaults and Demands

12. Since August 2025, TD has been concerned with the Debtor’s financial position due to recurring account overdrafts, loan payment delinquencies, and failures to observe the reporting covenants of the Credit Agreement (the “**Recurring Defaults**”).¹⁰

⁶ Ashraf Affidavit at para 17.

⁷ Ashraf Affidavit at para 17 a) and b).

⁸ Ashraf Affidavit at para 20.

⁹ Ashraf Affidavit at para 8.

¹⁰ Ashraf Affidavit at para 25.

13. On December 11, 2025, Mario advised TD that a proposed sale of the Dufferin Property is underway and will generate sufficient proceeds for repayment to TD.¹¹

14. On March 5, 2026, the Debtor, Tony and Paul's accounts were transferred to TD's Financial Restructuring Group.¹²

15. To date, the Operating Facility remains overdrawn, Visa accounts overlimit, and the Term Facility in arrears.¹³ Litigation searches obtained by TD's counsel indicated numerous writs of execution and enforcement proceedings against Tony, Paul and Stefania dated in 2025.¹⁴

16. On April 16, 2026, TD issued to the respondents the payment demands together with Notices of Intention to Enforce Security pursuant to section 244 of the BIA ("**Section 244 Notices**") as applicable. The payment demands and Section 244 Notices expired without repayment.¹⁵

17. Pursuant to the Credit Agreement, the Debtor, Tony and Paul are directly indebted to TD as of May 12, 2026 in the amount of \$1,142,059.91, plus accrued interest and costs, which remains outstanding.¹⁶

¹¹ Ashraf Affidavit at para 27.

¹² Ashraf Affidavit at para 28 and 29.

¹³ Ashraf Affidavit at para 30.

¹⁴ Ashraf Affidavit at paras 31 and 32.

¹⁵ Ashraf Affidavit at para 33 and 34.

¹⁶ Ashraf Affidavit at para 36.

PART III – LAW AND ARGUMENT

Requirements to Appoint a Receiver are Satisfied

18. Section 243 of the BIA authorizes the Court to appoint a receiver on an application by a secured creditor over the property of an insolvent person.¹⁷ Subsection 243(1.1) of the BIA requires that a notice of intention to enforce security as provided for in section 244 of the BIA is delivered to the insolvent person prior to such application.¹⁸

19. TD is a secured creditor of the Debtor and a mortgagee of the Dufferin Property owned by Tony and Paul. Payment demands and Section 244 Notices delivered to the Debtor, Tony and Paul expired on April 27, 2026.

It is Just, Convenient and Appropriate to Appoint a Receiver

20. Pursuant to section 243 of the BIA and section 101 of the CJA, the Court has the power to appoint a receiver where it is “just or convenient” to do so.¹⁹ In making its determination, the Court must have regard to all of the circumstances of the case, including the nature of the property and the rights and interests of all parties in relation to the property. These include the rights of a secured creditor pursuant to its security.²⁰

21. Where a debtor has expressly agreed to the appointment of a receiver in the event of a default, the Court should not ordinarily interfere with the contract between the parties.²¹

¹⁷ [Bankruptcy and Insolvency Act, RSC 1985, c B-3](#) as amended, [s.243](#) (“BIA”)

¹⁸ BIA, [ss 243\(1.1\)](#) and [244](#).

¹⁹ BIA, [s 243\(1\)](#); [Courts of Justice Act](#), R.S.O. 1990, c C.43, as amended, [s 101\(1\)](#).

²⁰ *KEB Hana Bank as Trustee et al v Mizrahi Commercial (The One) LP et al*, [2023 ONSC 5881](#) (“KEB Hana”) at [para 36](#).

²¹ *United Savings Credit Union v F & R Brokers Inc*, [2003 BCSC 640](#) at [paras 16-17](#)

22. Where the security documents provide for the appointment of a receiver upon the occurrence of an event of default, as the Security granted by the Debtor, Tony and Paul do, the extraordinary nature of a receivership is significantly reduced. TD is merely seeking to enforce a term of the Security granted by the Debtor.²²

23. The discretionary factors when determining whether it is appropriate to appoint a receiver were referred to by Justice Osborne of this Court in *KeB Hana Bank as Trustee et al v Mizrahi Commercial (The One) LP et al*, and include, among others:²³

- (a) whether irreparable harm might be caused if no order were made (although it is not essential to establish irreparable harm where there is a contractual right to the appointment of a receiver);
- (b) the nature of the property;
- (c) the balance of convenience to the parties;
- (d) the fact that the creditor has the right to appoint a receiver under the loan documentation;
- (e) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently; and
- (f) the conduct of the parties.

²² *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc*, [2020 ONSC 1953](#) at [para 43](#).

²³ *KEB Hana* at [para 38](#).

24. This is not a checklist, but rather a “collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient”.²⁴

25. A court-appointed receivership is just and convenient and appropriate in the circumstances as:

- (a) TD has the right to appoint a receiver under the Security granted by the Debtor, Tony and Paul;
- (b) TD has lost confidence in the Debtor, Tony and Paul to repay the indebtedness;
- (c) the respondents have had sufficient time to repay the Indebtedness;
- (d) AGI has consented to act as the Receiver over the Property, should the Court so appoint it.

26. In these circumstances, it is more than appropriate, just and convenient to grant the Order approving AGI as Receiver of the Property.

The Terms of the Order are Appropriate

27. The proposed form Order is based on the Commercial List Model Receivership Order, and the modifications to same are indicated in the blacklined copy provided.

²⁴ KEB Hana at [para 39](#).

Judgment against the Guarantors

28. A proceeding can be commenced by application where it is unlikely that there will be any material facts in dispute requiring a trial.²⁵

29. The Debtor, Tony and Paul are obligated to repay all indebtedness to TD under the Credit Agreement.

30. The respondents guaranteed the debts of the Debtor, Tony and Paul, as applicable, pursuant to the unlimited Guarantees.

31. TD's standard form guarantee is an "all accounts" "continuing" guarantee and provides as follows:

"5. Continuing Guarantee

The obligations of the Guarantor hereunder will constitute and be continuing obligations and will apply to and secure any ultimate balance due or remaining due to the Bank and will not be considered as wholly or partially satisfied by the payment or liquidation at any time of any sum of money for the time being due or remaining unpaid to the Bank. This Guarantee will continue to be effective even if at any time any payment of any of the Obligations is rendered unenforceable or is rescinded or must otherwise be returned by the Bank as a result of the occurrence of any action or event, including the insolvency, bankruptcy or reorganization of the Customer or the Guarantor, all as though such payment had not been made. ...

11. Exhausting Recourse

The Bank is not required to take any proceedings, exhaust its recourse against the Customer or any other Guarantor or person or under any security the Bank may from time to time hold, or take any other action, before being entitled to demand payment from the Guarantor under this Guarantee, and the Guarantor waives all benefits of discussion and division."

²⁵ Rule 14.05(3)(h) of the *Rules of Civil Procedure*.

32. In *Toronto-Dominion Bank v. Konga*, the Court interpreted TD's form of Guarantee on a motion for summary judgment and held that TD was not required to realize on its security before obtaining judgment. TD was therefor granted judgment on the guarantee. The Court of Appeal upheld this decision.²⁶

PART IV – RELIEF REQUESTED

33. TD respectfully requests that this Court should grant the Order appointing AGI as Receiver over the Property and grant judgment against the respondents.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of June, 2026.



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²⁶ [Toronto-Dominion Bank v. Konga, 2016 ONSC 1628 \(CanLII\)](#); [Toronto-Dominion Bank v. Konga, 2016 ONCA 976 \(CanLII\)](#)

SCHEDULE "A"

LIST OF AUTHORITIES

1. *KEB Hana Bank as Trustee et al v Mizrahi Commercial (The One) LP et al*, [2023 ONSC 5881](#)
2. *United Savings Credit Union v F & R Brokers Inc*, [2003 BCSC 640](#)
3. *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc*, [2020 ONSC 1953](#)
4. [Toronto-Dominion Bank v. Konga, 2016 ONSC 1628 \(CanLII\)](#);
5. [Toronto-Dominion Bank v. Konga, 2016 ONCA 976 \(CanLII\)](#)

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

[Bankruptcy and Insolvency Act, RSC 1985, c B-3](#)

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.

Restriction on appointment of receiver

(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*

(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)

(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

(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

(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

(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

(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.

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

[Courts of Justice Act, R.S.O. 1990, c C.43](#)

Interlocutory Orders

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

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

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

Application under Rules

14.05 (3) A proceeding may be brought by application where these rules authorize the commencement of a proceeding by application or where the relief claimed is,

...

(h) in respect of any matter where it is unlikely that there will be any material facts in dispute requiring a trial.

THE TORONTO-DOMINION BANK
Applicant

-and- **CHOICE WHOLESALE MEATS LTD. et al.**
Respondents

Court File No. CL-26-00000201-0000

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