

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

BETWEEN:

2615333 ONTARIO INC.

Applicant

- and -

**CENTRAL PARK AJAX DEVELOPMENTS PHASE 1 INC., 9654488 CANADA INC.,
9654461 CANADA INC., 9654372 CANADA INC., 9617680 CANADA INC. and
9654445 CANADA 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

**MOTION RECORD
(Motion for directions and other relief returnable March 4, 2024)
(Vol. 3 of 3)**

February 5, 2024

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RSM Canada Limited

**TO: THIS HONOURABLE COURT
AND TO: THE SERVICE LIST**

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N :

2615333 ONTARIO INC.

Applicant

- and -

**CENTRAL PARK AJAX DEVELOPMENTS PHASE 1 INC., 9654488 CANADA INC.,
9654461 CANADA INC., 9654372 CANADA INC., 9617680 CANADA INC. AND
9654445 CANADA INC.**

Respondents

THIRD REPORT OF THE RECEIVER
December 8, 2023

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I. INTRODUCTION

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 15, 2021 (the “**Appointment Order**”), RSM Canada Limited was appointed as receiver (the “**Receiver**”), without security, of certain lands and premises owned by the Respondents, identified in Schedule “A” hereto (the “**Harwood Properties**”), and all of the assets, undertakings and properties of the Respondents acquired for, or used in relation to such lands and premises, including all proceeds thereof (collectively, the “**Property**”). A copy of the Appointment Order is attached as **Appendix “A”**.
2. The purpose of this Third Report is to provide information related to the Receiver’s motion for an order subordinating the 261 Certificate to the Hillmount Certificates (as such terms are defined below) and postponing the repayment of the indebtedness secured by the 261 Certificate to the indebtedness secured by the Hillmount Certificates.

II. TERMS OF REFERENCE

3. In preparing this Third Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the “**Information**”). Certain of the information contained in this Third Report may refer to, or is based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards

pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

4. Unless otherwise stated, all monetary amounts contained in this Third Report are expressed in Canadian dollars.

III. BACKGROUND

5. The Harwood Properties are real property located in Ajax, Ontario.
6. Pursuant to the Appointment Order, the Receiver was authorized to borrow funds pursuant to Receiver's Certificates.
7. The Receiver borrowed \$500,000 from the Applicant pursuant to a Receiver's Certificate dated April 14, 2022 (the "**261 Certificate**"). A copy of the 261 Certificate is attached at **Appendix "B"**.
8. The Receiver required further funding. By order dated June 1, 2023 (the "**June 1 Order**"), Justice Kimmel authorized the Receiver to borrow up to a maximum of \$1,500,000. A copy of the June 1 Order is attached at **Appendix "C"**.
9. On May 29, 2023, counsel to 261 advised that 261 would not be able to fund the additional borrowings by the Receiver.
10. Between June 1, 2023 and August 15, 2023, the Receiver approached two other lenders to request funding pursuant to a Receiver's certificate, and both lenders declined.
11. Eventually, after 261 and two other lenders declined to provide the Receiver with further funding, the Receiver entered into discussions with Hillmount Capital Inc. ("**Hillmount**")

for the purpose of obtaining additional financing and was advised that it would be a term of Hillmount entering into any agreement for additional financing that 261 agree to postpone and subordinate the 261 Certificate to the indebtedness owing pursuant to any Receiver's Certificates issued in favour of Hillmount (the "**Hillmount Certificates**").

12. By email dated October 5, 2023, real estate / corporate counsel to 261 confirmed that 261 "is agreeable to a postponement of its \$500,000 mortgage to the new mortgage of up to \$1,000,000.00". A copy of this email is attached at **Appendix "D"**.
13. The Receiver entered into a term sheet with Hillmount dated November 16, 2023 (the "**Term Sheet**"), for the purpose of obtaining further financing.
14. The Term Sheet provides that, as a condition of financing, the amount owing under the 261 Certificate would be subordinated and postponed to any amount advanced by Hillmount pursuant to the Hillmount Certificates.
15. Hillmount prepared a form of subordination agreement. The Receiver sent a copy of this agreement to counsel to 261 on November 21, 2023, and asked that they comment on the draft and finalize it.
16. By emails dated November 23, 27, and 29, 2023, counsel to the Receiver followed up with counsel to 261. Despite confirming that they received the draft and were reviewing it, the subordination agreement has not been finalized, nor has 261 provided any comments. A copy of the email thread containing the November 21, 23, 27 and 29, 2023, emails is attached at **Appendix "E"**.

17. The Receiver urgently requires funding. Professionals have gone unpaid for the better part of a year. The Receiver's property manager has threatened to cease activity in respect of the Property, and there are ongoing repairs and maintenance costs that the Receiver is unable to address due to a lack of funds. The Receiver's ability to carry out its mandate is being threatened by 261 not engaging on terms of a subordination agreement satisfactory to Hillmount. A copy of the Receiver's Interim Receipts and Disbursements for the period April 15, 2021 to November 30, 2023 is attached at **Appendix "F"**.

IV. CONCLUSIONS

18. Given the foregoing, the Receiver respectfully requests that this Court make the requested order and subordinate the 261 Certificate to the Hillmount Certificates and postpone the repayment of all amounts owing pursuant to the 261 Certificate to the amounts that may become owing pursuant to the Hillmount Certificates.

All of which is respectfully submitted to this Court as of this 8th day of December, 2023.

RSM Canada Limited, in its capacity as Court-appointed Receiver of the Property listed on Schedule "A" hereto, and not in its personal or corporate capacity

Per:



Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President

Schedule "A"

PIN:26459-0050(LT) -PT LT 3, PL 488 AJAX AS IN CO78427; AJAX- 134 HARWOOD

PIN: 26459-0046(LT)- LT 6 PL 488 AJAX; AJAX - 148 HARWOOD

PIN: 26459-0045(LT)- LT 7 PL 488 AJAX; LT 8 PL 488 AJAX; AJAX – 152 HARWOOD

PIN: 26456-0108- PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX-184/188 HARWOOD

PIN: 26459-0037(LT)-LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847; AJAX-214 HARWOOD

PIN: 26459-0036(LT)-TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX- 224 HARWOOD

PIN: 26459-0035(LT)- PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T AN EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS; AJAX- 226 HARWOOD

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

2615333 ONTARIO INC.

- and -

CENTRAL PARK AJAX DEVELOPMENTS PHASE 1 INC. *et al*

Applicant

Respondents

Court File No.: CV-20-00651299-00CL

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

Proceedings commenced at Toronto, Ontario

**THIRD REPORT OF THE RECEIVER
December 8, 2023**

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Lawyers for the Court-appointed Receiver

TAB 4

Court File No.: CV-20-00651299-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N :

2615333 ONTARIO INC.

Applicant

- and -

**CENTRAL PARK AJAX DEVELOPMENTS PHASE 1 INC., 9654488 CANADA INC.,
9654461 CANADA INC., 9654372 CANADA INC., 9617680 CANADA INC. AND
9654445 CANADA INC.**

Respondents

SECOND REPORT OF THE RECEIVER
May 2, 2023

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Appendix “E” – Listing Agreement (without schedule)

Appendix “F” – Interim R&D

CONFIDENTIAL APPENDICES (to be provided to the Court subject to a request for sealing order)

Confidential Appendix “1” – Summary of salient points of each of the listing proposals received

Confidential Appendix “2” – Schedule “A” to the Listing Agreement

I. INTRODUCTION

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 15, 2021 (the “**Appointment Order**”), RSM Canada Limited was appointed as receiver (the “**Receiver**”), without security, of certain lands and premises owned by the Respondents, identified in Schedule “A” hereto (the “**Harwood Properties**”), and all of the assets, undertakings and properties of the Respondents acquired for, or used in relation to such lands and premises, including all proceeds thereof (collectively, the “**Property**”). A copy of the Appointment Order is attached as **Appendix “A”**.
2. Capitalized terms used in this report (the “**Second Report**”) and not defined herein are as defined in the Appointment Order or in the first report of the Receiver dated May 14, 2021 (the “**First Report**”).
3. The purpose of this Second Report is to:
 - (a) report to the Court on the activities of the Receiver from February 2022 to the date of this Second Report, including the Receiver’s negotiations with the Town of Ajax (the “**Town**”) regarding a New Development Agreement (as defined below);
 - (b) seek approval of a sale procedure in respect of the Property (the “**Sale Procedure**”), a copy of which is attached at **Appendix “B”**;
 - (c) authorizing the Receiver to enter into an agreement with Avison-Young Commercial Real Estate Services, LP (“**Avison Young**”) for the purpose of listing the Property for sale (the “**Listing Agreement**”); and

- (d) seek an order: (i) approving of the Receiver's activities and conduct as set out in the First Report and in this Second Report; (ii) increasing the Receiver's Borrowings Charge limit from \$500,000.00 to \$1,500,000.00; (iii) sealing the Receiver's summary of salient points of each of the listing proposals received by the Receiver, and Schedule "A" to the Listing Agreement; and (iv) approving the Interim R&D (as defined herein).

II. TERMS OF REFERENCE

4. In preparing this Second Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the "**Information**"). Certain of the information contained in this Second Report may refer to, or is based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
5. Unless otherwise stated, all monetary amounts contained in this Second Report are expressed in Canadian dollars.

III. BACKGROUND

The Harwood Properties

6. The Harwood Properties are parcels of real property located in Ajax, Ontario, across the street from the Town City Hall. The Harwood Properties consist of part of a strip mall and parking lot. The Respondents own the Harwood Properties.

7. The Harwood Properties are not identically encumbered. Set out below, listed in order of registration,¹ is a summary of the charges registered on title to the Harwood Properties by the Applicant 2615333 Ontario Inc. (“**261**”), the Town of Ajax (the “**Town**”), My Capital Club Inc. (“**MCC**”), Scougall Management (1987) Limited (“**Scougall**”), Lawco Limited (“**Lawco**”, which took an assignment of the mortgage held by Ajax Master Holdings Inc. (“**AMHI**”)) and Investecs Developments Inc. (“**Investecs**”):

Harwood Properties by municipal address on Harwood Ave South						
134	148	152	184-188	214	224	116
261 (\$2.05MM)	261 (\$2.05MM)	261 (\$2.05MM)	Town (\$1.422MM)	261 (\$2.05MM)	261 (\$2.05MM)	261 (\$0.5MM)
261 (\$5MM)	261 (\$5MM)	261 (\$5MM)	261 (\$5MM)	261 (\$5MM)	261 (\$5MM)	MCC (\$1.3MM)
MCC (\$1.3MM)	MCC (\$1.3MM)	MCC (\$1.3MM)	MCC (\$1.3MM)	MCC (\$1.3MM)	MCC (\$1.3MM)	Lawco, formerly AMHI (\$18.5MM)
Scougall (\$2MM)	Scougall (\$2MM)	Scougall (\$2MM)	Lawco (\$18.5MM)	Lawco (\$18.5MM)	Lawco (\$18.5MM)	261 (\$4MM)
			261 (\$4MM)	261 (\$4MM)	261 (\$4MM)	Scougall (\$2MM)
			Scougall (\$2MM)	Scougall (\$2MM)	Scougall (\$2MM)	Investecs (\$1MM)
			Investecs (\$1MM)	Investecs (\$1MM)	Investecs (\$1MM)	

¹ For greater certainty, this summary does not include any construction lien or other encumbrance registered on title to the Harwood Properties, or execution registered in the appropriate Land Registry Office against the Respondent that owns the applicable Harwood Property.

The Development Agreement

8. In 2013, the Town entered into a development agreement with a developer regarding the Harwood Property municipally known as 184-188 Harwood Ave South.² The developer's interest in that development agreement (as amended, the "**Development Agreement**") was later assigned to Lemine Real Estate Consulting Inc. ("**Lemine**"). Lemine is an affiliate of the Respondents. A copy of the Development Agreement and its amendments are collectively attached as **Appendix "C"**.
9. One feature of the Development Agreement was that, if Lemine defaulted under the Development Agreement, the Town would have the right to repurchase the Harwood Properties at a price determined pursuant to the terms and conditions of the Development Agreement (the "**Town Repurchase Price**").

Litigation Prior to the Appointment Order

10. Prior to this proceeding, the Town commenced an action and alleged that Lemine defaulted under the Development Agreement. The Town was successful in obtaining a finding that Lemine breached the Development Agreement.³ That result was upheld by the Ontario Court of Appeal.⁴
11. Following the Court of Appeal's decision, the Town commenced another proceeding for a determination of the Town Repurchase Price, which was disputed in that proceeding.

² The development agreement does refer to other Harwood Properties which were acquired by the developer and/or its assignee after the development agreement was entered into.

³ *Central Park Ajax Developments Phase 1 Inc v Ajax (Town)*, 2018 ONSC 5769.

⁴ *Central Park Ajax Developments Phase 1 Inc v Ajax (Town)*, 2019 ONCA 793.

The Appointment Order

12. The Respondents had also defaulted under their obligations to 261 in respect of 261's charges over the Harwood Properties. 261 therefore commenced this application for an order appointing the Receiver. The application was heard on February 11, 2021 (the "**Hearing Date**"). The Appointment Order was made with the consent of the Town over the objections of the Respondents.

13. The Appointment Order provides, among other things, that the Receiver may:
 - (a) market and negotiate the terms and conditions of sale of the Property, provided that such terms and conditions are satisfactory to the Town, unless otherwise ordered by the Court; and
 - (b) sell, convey, transfer, lease or assign the Property with the approval of the Court, in consultation with the Town.

14. The Appointment Order also provides that, unless otherwise agreed to by the Town and the applicable purchaser or transferee, none of the Harwood Properties subject to the Development Agreement could be sold, conveyed, transferred, leased or assigned by the Receiver without the Prospective Purchaser agreeing to enter into a development agreement (a "**New Development Agreement**") with the Town, on mutually agreeable terms, including a "Right of Repurchase" in favour of the Town. Such right was to be "substantively similar to such right provided for in the Development Agreement".

15. There was no provision in the Appointment Order that the New Development Agreement would be on the *same* terms as the Development Agreement, or that the business terms of the New Development Agreement were to be the same or similar.

16. Rather, the New Development Agreement must be on mutually agreeable terms between the Town and the applicable purchaser. The Town has confirmed to the Receiver that it will not enter into a New Development Agreement on the same terms as the Development Agreement.

State of the Harwood Properties upon the Receiver's Appointment

17. As described in the First Report, as at the Hearing Date the Receiver understood that the Harwood Properties were all vacant. That was not the case. After the Appointment Order was made, the Receiver attended at the Property and discovered that, while some units were vacant, there were several tenanted commercial units at the Harwood Properties. As further detailed in the First Report, the Vacant Units were dilapidated and showed signs of damage. They were not properly secured and showed signs of having been attended by unknown persons for the purpose of seeking shelter or to vandalize the vacant units. A copy of the First Report (without appendices) is attached hereto as **Appendix "D"**.

IV. APPEAL OF THE RECEIVERSHIP ORDER

18. On April 26, 2021, the Respondents served a Notice of Appeal pursuant to which they sought to appeal the Appointment Order.
19. In May 2021, the Receiver and 261 jointly brought a motion to this Court for an order permitting the Receiver to take certain conservatory measures (eg. to obtain adequate insurance and to secure the Vacant Units and prevent unauthorized access to them) given the state of the Harwood Properties. That motion was dismissed.

20. The Respondents' appeal was scheduled to be heard by the Court of Appeal on Monday, February 28, 2022. On Thursday, February 24, 2022, the Respondents advised the Court of Appeal that the appeal was settled on a without costs basis.
21. Given the Respondents' appeal, the Receiver took no steps in respect of the Property (other than bringing the motion for an order permitting conservatory measures) between April 26, 2021, and February 23, 2022. On February 24, 2022, the Receiver resumed its activities pursuant to the Appointment Order.

V. ACTIVITIES OF THE RECEIVER

22. When the Receiver resumed its activities, it focussed primarily on: (a) negotiating with the Town regarding a draft New Development Agreement; and (b) securing the Harwood Properties.

Negotiations Regarding a Draft New Development Agreement

23. It is the Receiver's view that too much uncertainty would have resulted if the Receiver had obtained Court approval to market the Harwood Properties for sale without being able to present to the market a draft of a New Development Agreement that was acceptable to the Town (while still being subject to further negotiation between the Town and the applicable purchaser). That uncertainty would have likely depressed the number of bids for the Property and their value. This would have prejudiced the Respondents' secured creditors.
24. The Receiver therefore made efforts to negotiate a draft of a New Development Agreement with the Town. These efforts were significant and time consuming because, among other reasons, the Receiver was attempting to balance two competing interests – those of the Town and those of the Respondents' mortgagees.

Competing Interests of the Town and the Respondents' Creditors

25. The Town's interests include ensuring that it enters into a New Development Agreement with a reputable, capable developer who will re-develop the Harwood Properties. Pursuant to the Appointment Order, the New Development Agreement is to include a "Right of Repurchase" that is "substantively similar to such right provided for in the Development Agreement".
26. The Town Repurchase Price was set pursuant to the Development Agreement, an agreement that was entered into 10 years ago. In the Receiver's view, which is not believed to be controversial, the Town Repurchase Price was an amount significantly below the current market price for the Harwood Properties. Had the Receiver gone to market with a New Development Agreement that contained the same language as the Town's Right of Repurchase, the Town Repurchase Price would have effectively imposed a price ceiling on the Harwood Properties.
27. The interests of the Respondents' creditors include maximizing the value of the Property. The creditors' interests would have been negatively affected by a price ceiling on the Harwood Properties.
28. As described above, the without prejudice negotiation between the Receiver and the Town regarding the draft New Development Agreement was extensive. Several potential development agreement models were considered and rejected by both parties, including after consultation with 261. Given that the Town is a municipality it also took time, sometimes weeks or more, for the Town to review and comment on proposed development agreement terms. For example,

- (a) discussions began in early March 2022. The Town took until early June 2022 before it sent a written draft New Development Agreement, on terms that it would have accepted, to the Receiver for its review;
- (b) as discussed below, the Receiver understands that, in or around July 2022, the Town began prioritizing discussions regarding a draft New Development Agreement with a potential stalking horse bidder, rather than with the Receiver; and
- (c) after such discussions terminated, summer holidays of Town representatives stalled further discussions with the Receiver for a time.

29. Given,

- (a) the requirement in the Appointment Order that a purchaser of the Harwood Properties enter into a New Development Agreement on terms that are mutually agreeable between that purchaser and the Town, and
- (b) the Receiver's view that the uncertainty associated with going to market without including in the Sale Procedure a draft New Development Agreement that the Town has confirmed it would be willing to accept, and the likelihood that the market price for the Harwood Properties would be depressed as a result,

the Receiver was, and remains, of the view that continuing the negotiations with the Town in order to arrive at an acceptable draft New Development Agreement was the most appropriate course of action, despite being time consuming.

The Proposed New Development Agreement Achieves a Balance

30. After this significant negotiation with the Town, and in consultation with stakeholders, the Receiver and the Town have prepared a draft New Development Agreement that the

Receiver believes balances the stakeholders' interests and avoids effectively imposing a price ceiling. That draft New Development Agreement is appended to the proposed Sale Procedure.

31. Generally, and as more particularly described in the draft New Development Agreement, subject to any amendments agreed to by the prospective purchaser, the Town and the Receiver, if the successful purchaser under the Sale Procedure fails to commence construction within 150 days from the date of the sale from the Receiver to such purchaser, the Town will have the right to require the purchaser to convey the Property to the Receiver. During that period, the purchase price paid will be held in escrow by the Receiver, less an amount equal to the costs of the Sale Procedure. If the Town exercises the above right, the Receiver would thereafter re-market the Property and the balance of the purchase price would be returned to the purchaser.
32. The terms of the draft New Development Agreement can still be negotiated between the Town and a prospective purchaser.

Securing the Harwood Properties

33. Throughout the Receiver's negotiations with the Town, but particularly around the time when the Receiver resumed activities pursuant to the Appointment Order, the Receiver took steps to secure the Harwood Properties. For example, the Receiver:
 - (a) engaged Richmond Advisory Services Inc. ("RAS") to provide certain property management services;
 - (b) attended at the Harwood Properties with RAS in late February 2022 to, among other things, (i) notify the tenants of the Receiver's appointment, (ii) establish the present

condition of the Harwood Properties and to identify any maintenance needs or health and safety concerns, and (iii) meet with Ms. Hughes, a tenant who advised that she was the Respondents' *ad hoc* property manager;

- (c) identified several maintenance issues, including (i) deficiencies in the HVAC and electrical systems, (ii) a broken boiler used to heat tenant spaces during the winter, and (iii) damage to the Vacant Units, including broken windows and doors that appeared to permit access to such units by unauthorized persons;
- (d) responded to tenant complaints regarding people who appeared to be homeless blocking the entrances to their businesses by contacting local police; and
- (e) retained Orkin Canada Ltd. to address issues with rats and other pests at one of the units at the Harwood Properties.

Insurance

- 34. Once the Respondents' appeal was withdrawn, the Receiver arranged for commercial general liability insurance for the Harwood Properties, which came into effect on March 21, 2022. Due to the Harwood Properties' condition, no property insurance coverage was available to the Receiver.

Books and Records

- 35. On March 9, 2022, the Receiver obtained access to an online drive containing the Respondents' books and records, including:
 - (a) copies of all bank statements for the period January 1, 2020 through February 24, 2022;
 - (b) a digital copy of the Company's accounting records (i.e. Quickbooks file);

- (c) copies of any contracts entered into by the Borrower, including sales agreements, leases, service agreements, contractor agreements, etc.; and
- (d) information relating to the Properties (i.e. environmental reports, blueprints and architectural drawings, vehicle registrations, etc.).

Property Taxes

36. The Receiver is advised by the Town that property taxes payable in connection with the Harwood Properties are past due. As at April 30, 2023, unpaid property taxes in respect of the Harwood Properties will total approximately \$1.349 million. As the Receiver does not have funds with which to pay the property taxes, the Receiver intends to address any outstanding property taxes at the time of the sale of the Harwood Properties.

Other Activities

37. Since its appointment, the Receiver has also,
- (a) registered a copy of the Appointment Order against title to the Property;
 - (b) established a website for these Receivership proceedings with the following URL link: <http://www.rsmcanada.com/harwood-avenue-ajax>;
 - (c) requested and obtained information from certain secured creditors and other stakeholders relating to the Property;
 - (d) retained independent counsel to provide an opinion regarding the validity and enforceability of the charges in favour of 261 registered on title to the Harwood Properties;
 - (e) engaged in a review of the mortgage held by Lawco (formerly AMHI), which numerous stakeholders have suggested is invalid. This review is ongoing;

- (f) issued the notices required pursuant to Sections 245 and 246 of the *Bankruptcy and Insolvency Act* to known creditors of the Property; and
- (g) collected rent from the tenants at the Harwood Properties, which in the aggregate is approximately \$10,215 per month. The Receiver has also addressed issues that have arisen in relation to tenants at the Harwood Properties, including incidents involving fire code violations, pest control issues and a shooting at the Harwood Properties, all of which relate to the unit tenanted by DAM Foods.

VI. RESPONDENTS' ATTEMPT TO DEAL WITH THE PROPERTY

- 38. In late July 2022, the Receiver received correspondence from counsel to a prospective purchaser claiming that the Respondents had purportedly entered into an agreement of purchase and sale with respect to the Harwood Properties on February 25, 2022, the day after their appeal was withdrawn.
- 39. The Receiver reviewed this purported agreement and determined that it was not acceptable to the Receiver for a number of reasons, including, among other things, the prospective purchaser was (i) not able to demonstrate its development experience, and (ii) appeared to be related to the Respondents. The Town has advised the Receiver that it would not, and will not, support a sale to any party with insufficient development experience, or any party with ties to the Respondents.
- 40. The Receiver advised the prospective purchaser that the Respondents lacked the capacity to enter into an agreement to sell the Harwood Properties and that the Receiver would seek Court approval of its Sale Procedure.

41. As detailed below, the Receiver held further discussions with this prospective purchaser regarding the potential for them to submit a stalking horse offer for the Harwood Properties, subject to providing satisfactory evidence regarding the prospective purchaser's development experience and relationship to the Respondents.

VII. PROPOSED SALE PROCEDURE

42. The Appointment Order authorizes the Receiver to market the Harwood Properties for sale, including advertising and soliciting offers in respect of the Harwood Properties.
43. In order to assist the Receiver in ascertaining the market value of the Harwood Properties and determining the best sale strategy, the Receiver:
 - (a) engaged Colliers International Realty Advisors Inc. to provide an appraisal of the Harwood Properties, which has been provided to the Receiver;
 - (b) entered into discussions with three (3) parties regarding their interest in submitting a stalking horse offer for the Harwood Properties; and
 - (c) sought listing proposals from each of CBRE Limited ("**CBRE**"), Avison-Young, Jones Lang LaSalle, Cushman & Wakefield ULC and Colliers Inc. ("**Colliers**").

Stalking Horse Bids

44. Since the Receiver's appointment, the Receiver has been approached by three separate parties all of which expressed an interest in submitting a stalking horse offer for the Harwood Properties.
45. The Receiver and its counsel spent a significant amount of time attempting to come to an acceptable stalking horse agreement with these parties. However, the Receiver ultimately

determined that the proposed stalking horse offers would not be acceptable, primarily for one or more of the following reasons:

- (a) the potential stalking horse bidder was unable to demonstrate their ability to fund the transaction to the Receiver's satisfaction;
 - (b) the potential stalking horse bidder was not an experienced developer, and did not have a commitment from a development partner; and/or
 - (c) the potential stalking horse bidder was related to the Respondents, and therefore would not be acceptable to the Town.
46. One of the potential stalking horse bidders engaged the Town in discussions regarding a potentially acceptable New Development Agreement. During this time, the Town focused its efforts on negotiating a New Development Agreement with the potential stalking horse bidder, which resulted in further delays to the Receiver and the Town agreeing to a form of draft New Development Agreement that could form part of the Sale Procedure.
47. By September 2022, the Receiver notified the three potential stalking horse bidders that the Receiver would not be proceeding with a stalking horse process. The Receiver advised these parties that they would be welcome to participate and submit an offer for the Harwood Properties in the Sale Procedure.

Listing Proposals

48. The Receiver received listing proposals from CBRE, Colliers and Avison Young. Attached as **Confidential Appendix "1"** is a summary of salient points of each of the listing proposals received. The Receiver seeks a sealing order with respect to this document given that views on the market value of the Harwood Properties are expressed therein.

49. After reviewing the proposals submitted, including information provided by each of the realtors on their views on the Harwood Properties’ estimated realizable value, their proposed marketing strategy and compensation structure, the Receiver, with the concurrence of 261, proposes to enter into a listing agreement with Avison Young to market the Harwood Properties for sale.
50. A copy of the Listing Agreement (without schedule) the Receiver proposes to sign is attached as **Appendix “E”**. The schedule to the Listing Agreement is attached as **Confidential Appendix “2”**. The Receiver is seeking an Order authorizing it to enter into the Listing Agreement.

Proposed Sale Procedure

51. The proposed Sale Procedure is summarized below, and may be subject to revision by the Receiver in accordance with the terms of the Sale Procedure:

Summary of Proposed Sale Procedure	
<p>Pre-Marketing</p> <p><i>Execute listing agreement</i></p> <p><i>Pre-marketing due diligence</i></p> <ul style="list-style-type: none"> • Review of available documents <p><i>Preliminary discussions</i></p> <ul style="list-style-type: none"> • Pre-market conversations with targeted purchasers <p><i>Finalize marketing material</i></p> <ul style="list-style-type: none"> • Prepare marketing materials, teaser brochure and NDA • Online data room • Finalization of due diligence material <p><i>List on MLS</i></p>	<p>Weeks 0-5</p>
<p>Marketing</p> <p><i>3-Staged marketing process</i></p> <ul style="list-style-type: none"> • Stage 1: Personal introduction to target prospects • Stage 2: Mass Marketing introduction • Stage 3: Detailed information to qualified prospects 	<p>Weeks 5-12</p>

<i>Bid Deadline: August 24, 2023 (12 weeks)</i>	
Negotiation/Closing <i>Negotiating</i> <ul style="list-style-type: none">• Review and summarize all offers• Set final negotiation strategy• Discussion between the Town of Ajax and certain Qualified Bidders selected by the Receiver regarding a form of New Development Agreement acceptable to the Town, the Qualified Bidder and the Receiver• Select Successful Bid and potential Back-Up Bid• Finalize APS with Successful Bidder including any due diligence period <i>Closing (including Court approval of proposed sale, etc.)</i> <ul style="list-style-type: none">• Motion for approval of the sale may extend past 16 weeks depending on terms of the Successful Bid, Court availability, and the time necessary for discussions between the Town and the Qualified Bidders selected by the Receiver• Closing not expected to be later than 30 days following approval of the Successful Bid	Weeks 13-16+

52. Additional aspects of the proposed Sale Procedure include:

- (a) the Harwood Properties will be marketed on an “as is, where is” basis;
- (b) the Harwood Properties will be listed “unpriced”;
- (c) the Harwood Properties will be listed on MLS;
- (d) the Receiver will have the right to reject any and all offers, including the highest offer; and
- (e) any transaction by the Receiver for the Harwood Properties will be subject to Court approval.

53. The Receiver will provide information on its marketing efforts at the time that the Receiver seeks the approval of the Court for any agreement of purchase and sale that the Receiver proposes to enter.

VIII. RECEIVER'S CERTIFICATES AND INTERIM R&D

54. The Receiver's Interim Statement of Receipts and Disbursements (the "**Interim R&D**") for the period April 15, 2021 to April 15, 2023 is attached as **Appendix "F"** to this Second Report. As set out in the Interim R&D, the Receiver's cash receipts were \$611,719, and cash disbursements were \$550,711, resulting in a net cash balance of \$61,008.
55. Pursuant to paragraph 20 of the Appointment Order, the Receiver is authorized to borrow a maximum amount of \$500,000. Given the ongoing professional fees of the Receiver and its counsel and the costs associated with continuing to maintain and secure the Harwood Properties, the borrowing limit of \$500,000 is not sufficient for the Receiver to carry out its mandate.
56. Accordingly, the Receiver respectfully requests that the borrowing limit in paragraph 20 of the Appointment Order be increased to \$1,500,000. While the Receiver is uncertain of the amount of funds it will need to borrow, the Receiver is of the view that a limit of \$1,500,000 will avoid the need for further court applications requesting an increase to the borrowing limit.

IX. CONCLUSIONS

57. The Receiver respectfully requests that the Court make an Order:
- (a) approving the Second Report and the Receiver's conduct and activities set out herein;

- (b) approving the First Report and the Receiver's conduct and activities set out therein;
- (c) increasing the Receiver's Borrowings Charge limit to \$1,500,000.00;
- (d) approving the Interim R&D;
- (e) approving the Sale Procedure;
- (f) authorizing the Receiver to enter into the Listing Agreement; and
- (g) sealing the Receiver's summary of salient points of each of the listing proposals received by the Receiver, and Schedule "A" to the Listing Agreement, attached as **Confidential Appendices "1" and "2"**, respectively.

All of which is respectfully submitted to this Court as of this 2nd day of May, 2023.

RSM Canada Limited, in its capacity as Court-appointed Receiver of the Property listed on Schedule "A" hereto, and not in its personal or corporate capacity

Per:



Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President

Schedule "A"

PIN:26459-0050(LT) -PT LT 3, PL 488 AJAX AS IN CO78427; AJAX- 134 HARWOOD

PIN: 26459-0046(LT)- LT 6 PL 488 AJAX; AJAX - 148 HARWOOD

PIN: 26459-0045(LT)- LT 7 PL 488 AJAX; LT 8 PL 488 AJAX; AJAX – 152 HARWOOD

PIN: 26456-0108- PART OF MUNICIPAL PARKING AREA, PLAN 488 PICKERING, PART 1, PLAN 40R28209; SUBJECT TO AN EASEMENT AS IN DR1517437; TOWN OF AJAX-184/188 HARWOOD

PIN: 26459-0037(LT)-LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847; AJAX-214 HARWOOD

PIN: 26459-0036(LT)-TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX- 224 HARWOOD

PIN: 26459-0035(LT)- PCL 23-1 SEC M27; LT 23 PL M27 EXCEPT THE NLY 2 FT FROM FRONT TO REAR AS SHOWN ON PL M27; S/T AN EASEMENT, IF ANY, FOR THE CORPORATION OF THE TOWN OF AJAX, FOR THE PURPOSE OF CONSTRUCTING, REPAIRING AND MAINTAINING WATERMAINS AND SEWERS IN OR UNDER THE SAID LANDS; AJAX- 226 HARWOOD

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

2615333 ONTARIO INC.

- and -

CENTRAL PARK AJAX DEVELOPMENTS PHASE 1 INC. *et al*

Applicant

Respondents

Court File No.: CV-20-00651299-00CL

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

Proceedings commenced at Toronto, Ontario

**SECOND REPORT OF THE RECEIVER
May 2, 2023**

THORNTON GROUT FINNIGAN LLP
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Lawyers for the Court-appointed Receiver

TAB 5

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

THE HONOURABLE) MONDAY, THE 4TH
)
JUSTICE CAVANAGH) DAY OF MARCH, 2024

2615333 ONTARIO INC.

Applicant

- and -

**CENTRAL PARK AJAX DEVELOPMENTS PHASE 1 INC., 9654488 CANADA INC.,
9654461 CANADA INC., 9654372 CANADA INC., 9617680 CANADA INC. and
9654445 CANADA 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

**ORDER
(Approval of Receiver’s Activities, Fee Approval, and Sealing)**

THIS MOTION made by RSM Canada Limited, in its capacity as Court-appointed receiver (in such capacity, the “**Receiver**”), without security, of certain lands and premises owned by the Respondents and identified in Schedule “A” hereto (collectively, the “**Real Property**”), and all of the assets, undertakings and properties of the Respondents acquired for, or used in relation to such Real Property, including all proceeds thereof, for an Order (i) approving the Receiver’s Third Report dated December 8, 2023 (the “**Third Report**”) and Fourth Report dated February 5, 2024 (the “**Fourth Report**”) and the Receiver’s activities, decisions and conduct set out therein, (ii) approving the Receiver’s Interim SR&D (as defined herein) and the Receiver’s and its counsel’s fees and disbursements, and (iii) sealing Confidential Appendices “1” and “2” to the Fourth Report, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Third Report and the Fourth Report, and on hearing the submissions of counsel for the Receiver and such other parties listed on the Counsel Slip, no one else appearing although duly served as appears from the Affidavit of Service of ► sworn February ►, 2024, filed,

DEFINED TERMS

1. **THIS COURT ORDERS** that capitalized terms not expressly defined herein, are defined and shall have the meanings set forth in the Receiver's Third and Fourth Reports.

APPROVAL OF RECEIVER'S ACTIVITIES

2. **THIS COURT ORDERS** that the Third Report and the Fourth Report, and the Receiver's activities, decisions and conduct set out therein are hereby ratified and approved, provided, however, that only the Receiver in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

SEALING

3. **THIS COURT ORDERS** that Confidential Appendices "1" and "2" to the Fourth Report shall be sealed, kept confidential and not form part of the public record, until further Order of this Court.

INTERIM SR&D AND FEE APPROVAL

4. **THIS COURT ORDERS** that the Receiver's Interim Statement of Receipts and Disbursements for the period April 15, 2021 to January 31, 2024 (the "**Interim SR&D**"), as set out in the Fourth Report and attached as Appendix "I" to the Fourth Report, is hereby approved.
5. **THIS COURT ORDERS** that the Receiver's fees for the period from October 20, 2020 to December 31, 2023 in the amount of \$387,438.70, plus disbursements in the amount of \$39.38, and HST in the amount of \$50,372.21, for a total of \$437,850.29, as set out in the Affidavit of Bryan A. Tannenbaum sworn February 3, 2024 and attached as Appendix "J" to the Fourth Report, are hereby approved.

6. **THIS COURT ORDERS** that the fees of Thornton Grout Finnigan LLP for the period from April 16, 2021 to December 31, 2023 in the amount of \$424,740.00, plus disbursements in the amount of \$7,668.07, and HST in the amount of \$56,170.41, for a total of \$488,578.48, as set out in the Affidavit of Rebecca L. Kennedy sworn February 5, 2024 and attached as Appendix “K” to the Fourth Report, are hereby approved.

GENERAL

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada to give effect to this Order and to assist the Receiver in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as may be necessary or desirable to give effect to this Order and to assist the Receiver in carrying out the terms of this Order.
 8. **THIS COURT ORDERS** that this Order is effective from today’s date and is enforceable without further need for entry and filing.
-

Schedule "A"

Real Property

PIN26459-0050 (LT) - PT LT 3, PL 488 AJAX AS IN CO78427; AJAX- 134 HARWOOD

PIN26459-0046 (LT) - LT 6 PL 488 AJAX; AJAX - 148 HARWOOD

PIN26459-0045 (LT) - LT 7 PL 488 AJAX; LT 8 PL 488 AJAX; AJAX – 152 HARWOOD

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2615333 ONTARIO INC.

- and -

CENTRAL PARK AJAX DEVELOPMENTS PHASE 1 INC., et al

Applicant

Respondents

Court File No. CV-20-00651299-00CL

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

Proceedings commenced at Toronto, Ontario

**ORDER
(Approval of Receiver's Activities, Fee Approval, and Sealing)**

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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

2615333 ONTARIO INC.

- and - **CENTRAL PARK AJAX DEVELOPMENTS PHASE 1 INC. *et al***

Applicant

Respondents

Court File No. CV-20-00651299-00CL

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

Proceedings commenced at Toronto, Ontario

**MOTION RECORD
(Motion for directions and other relief returnable March 4, 2024)
Vol. 3 of 3**

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