



Court File No.

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

**B E T W E E N:**

**CBJ DEVELOPMENTS INC., CBJ - CLEARVIEW GARDEN ESTATES INC. and CBJ -  
BRIDLE PARK II INC.**

Applicants

- and -

**1180554 ONTARIO LIMITED**

Respondent

**APPLICATION UNDER Rules 14.05(3)(d) and (h) of the  
Rules of Civil Procedure, R.R.O., REG 194**

*(Court seal)*

**NOTICE OF APPLICATION**

**TO THE RESPONDENT**

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicants appears on the following page.

THIS APPLICATION will come on for a hearing

- In person
- By telephone conference
- By video conference

before a judge presiding over the Commercial List on November 22, 2023 at 10:00 a.m., or as soon after that time as the matter can be heard, via Zoom coordinates to be provided by the court.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date November 15, 2023

Issued by .....

Local registrar

Address of  
court office

330 University Avenue  
Toronto, ON M5G 1R7

**TO: TEPLITSKY LLP**

Barristers  
70 Bond Street, Suite 200  
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*Lawyers for the Respondent*

## APPLICATION

1. CBJ Developments Inc. (“**CBJ**”), CBJ – Clearview Garden Estates Inc. (“**CBJ Clearview**”) and CBJ – Bridle Park II Inc. (“**CBJ II**”) (hereinafter collectively referred to as the “**Applicants**”), make this application for, amongst other things:

- a) if necessary, abridging the time for service and filing of this notice of application and the application record or, in the alternative, dispensing with and/or validating service of same;
- b) a declaration that the Notice of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) sent by the Respondent to the Applicants on September 7, 2023 is void as a result of the Respondent having taken an enforcement step prior to the expiry of the ten-day notice period prescribed by section 244(2) of the BIA by sending Notices of Sale (as defined below) pursuant to the *Mortgages Act*, R.S.O. 1990, c. M.40 (the “**Mortgages Act**”), to the Applicants on September 7, 2023; and
- c) such further and other relief as is just.

2. The grounds for the application are:

- a) CBJ, CBJ Clearview and CBJ II are each active corporations incorporated in the Province of Ontario. Christopher Agagnier (“**Mr. Agagnier**”) and Jeffrey Burrell (“**Mr. Burrell**”) act as the directors of each of the Applicants;
- b) 1852773 Alberta Ltd. (“**185**”), a party to the Loan Agreement (as defined below), is a corporation of which Mr. Agagnier is a director;
- c) the Respondent, 1180554 Ontario Limited (“**118**”), is an active corporation incorporated in the Province of Ontario. According to the corporate profile, its sole director and officer is Paul Mantini, a partner at Bennett Jones LLP;
- d) in 2021, the Applicants purchased three large properties in Stayner, Ontario (the “**Stayner Properties**”) with the goal of developing the land for residential use and

sale. In order to assist with the purchase of the Stayner Properties, CBJ and 185, with the advice of counsel, entered into a loan agreement with 118 (as representative of a syndicate of lenders) dated September 15, 2021 for the principal amount of \$16,000,000 (the “**Loan Agreement**”);

- e) Mr. Agagnier and Mr. Burrell, along with Kimberly Zacharias and Salvatore Romeo, guaranteed the obligations under the Loan Agreement pursuant to a guarantee dated October 8, 2021;
- f) the loan is secured by, among other things, three first fixed mortgages as follows: a \$5,000,000 mortgage registered on title to the portion of the Stayner Properties owned by CBJ, a \$5,000,000 mortgage registered on title to the portion of the Stayner Properties owned by CBJ II and a \$6,000,000 mortgage registered on title to the portion of the Stayner Properties owned by CBJ Clearview;
- g) 118 (as lender) and CBJ and 185 (as borrowers) also entered into a side letter agreement dated September 15, 2021 (the “**Side Letter**”), pursuant to which the parties agreed that, *inter alia*, CBJ and 185 would enter into a participation agreement (the “**Participation Agreement**”). According to the Side Letter, the Participation Agreement would require CBJ and 185 to pay to 118 \$10,000 per single detached, semi-detached or townhouse unit and \$5,000 per unit for apartments, condos, or other high density units, upon the receipt of a deposit for the sale of each specific unit, which obligation would be secured;
- h) the Participation Agreement was entered into by 118, the Applicants and 185 on September 28, 2021;
- i) CBJ and 185 missed the August, 2023 interest payment to 118 under the Loan Agreement;
- j) on September 7, 2023, 118, by its counsel, sent to the Applicants both:
  - i) a Notice of Intention to Enforce Security under section 244 of the BIA (the “**Section 244 Notice**”); and

- ii) a Notice of Sale under the *Mortgages Act* with respect to each of the three Stayner Properties (the “**Notices of Sale**”);
- k) pursuant to the Section 244 Notice, 118 demanded, as of September 1, 2023, \$27,981,804.70 as payment for, *inter alia*, the principal and interest of each of the mortgages on the Stayner Properties as well as the payment under the Participation Agreement (which payment comprised \$11,685,000 of the \$27,981,804.70);
- l) the mortgages under the Loan Agreement matured on October 15, 2023;
- m) 118 has since brought an application to appoint a receiver/manager over all of the assets, undertakings and properties of the Applicants;
- n) the inclusion of the payments under the Participation Agreement in the demands for repayment has frustrated the efforts of the Applicants to sell or refinance the Stayner Properties;
- o) pursuant to section 244(2) of the BIA, where a notice is required to be sent under subsection 244(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;
- p) by issuing the Notices of Sale contemporaneously with the Section 244 Notice, the Respondent took steps to enforce the security before the expiration of the ten day wait period prescribed by the BIA. As a result, the Section 244 Notice is void and of no force or effect;
- q) section 244(2) of the BIA;
- r) sections 31 and 32 of the *Mortgages Act*;
- s) section 97 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- t) Rule 14.05(3)(d) and (h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

u) such further grounds as are required and this Court may permit.

3. The following documentary evidence will be used at the hearing of the application:

a) the Agreed Statement of Facts; and

b) such further and other evidence as counsel may advise and this Court may permit.

November 15, 2023

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**GARDEN ESTATES INC. and CBJ - BRIDLE PARK II  
INC.**

Applicants

Respondent

Court File No.

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

**Proceedings commenced at Toronto**

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**NOTICE OF APPLICATION**

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