

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

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

FIRST REPORT OF THE RECEIVER
May 14, 2021

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 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 “1”.

2. Capitalized terms used in this First Report and not defined herein are as defined in the Appointment Order.
3. The purpose of this report (the “**First Report**”) is to:
 - (a) inform the Court of the status of the Property, including various health and safety issues identified by the Receiver and certain activities undertaken to date by the Receiver;
 - (b) update the Court regarding the Notice of Appeal of the Appointment Order served by the Respondents; and
 - (c) seek an order from the Court: **(i)** confirming the Receiver’s authority to, or alternatively varying the Appointment Order to expressly authorize the Receiver to, notwithstanding any appeal, take such steps as the Receiver considers necessary, in its sole and absolute discretion, to preserve and protect the Property, with such steps to be paid pursuant to the Receiver’s Borrowings Charge; and **(ii)** approving this First Report and the activities of the Receiver set out herein.

II. TERMS OF REFERENCE

4. In preparing this First 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 First 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 First Report are expressed in Canadian dollars.

III. BACKGROUND

The Respondents own the Property. The Applicant holds a second ranking mortgage, behind a charge registered in favour of the Corporation of the Town of Ajax, registered on title to the land identified as 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. The Applicant holds first ranking mortgages over the balance of the Property.

6. Due the Respondents' default of their obligations under the Applicant's mortgage, the Applicant brought an application seeking the appointment of a receiver over the Property. The application was heard by Justice Cavanagh on February 11, 2021 (the "**Hearing Date**"). The application was supported by the Town of Ajax, but opposed by the Respondents. As noted above, the Appointment Order was made on April 15, 2021. The Endorsement of Justice Cavanagh was issued that day.

IV. ACTIVITIES OF THE RECEIVER

7. The Appointment Order, among other things, authorizes the Receiver to:
 - (a) take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property; and

- (b) receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the placement of such insurance coverage as may be necessary or desirable.

- 8. As at the Hearing Date, the Receiver understood the Property to be vacant land.

- 9. On April 16, 2021, following its appointment, the Receiver attended at the Property with the intention of photographing and securing the Property, and obtaining temporary liability insurance coverage pending a review of any existing insurance policies in respect of the Property.

- 10. Upon its attendance at the Property, the Receiver discovered that the Property was not vacant land, but consists of a parking lot and at least seven commercial units (the “**Units**”, some divided into sub-units and occupied by multiple tenants) in a strip mall located across the street from the Ajax City Hall. Some of the Units are tenanted, and some are vacant. The parking lot appears to be in use for all of the units in the strip mall.

- 11. The Receiver re-attended at the Property on April 23, 2021, and met with Traci Hughes (“**Hughes**”), who identified herself as the tenant of one of the Units. Hughes advised the Receiver that,
 - (a) she has been acting as an informal property manager on behalf of the Respondents for approximately 2.5 years pursuant to an oral agreement with Jessica Yang, a representative of the Respondents;

- (b) she collects rent from certain businesses who are tenants or occupants of the Property, on behalf of the Respondents, and uses the funds collected to pay for maintenance costs relating to the Property;
 - (c) she has been involved in the maintenance and repair of the Property, and has managed other operational tasks relating to the Property, such as payment of utilities;
 - (d) she claims to have paid significant amounts towards the maintenance and/or repair of the Property from her personal funds, for which she has not been compensated by the Respondents. Hughes advises she is no longer willing to manage the Property without compensation, particularly given the amount she claims to be owed, and the various legal proceedings initiated against the Respondents and/or the Property.
12. The Receiver attended at each of the Units and observed that they appear to have been neglected and not maintained in a commercially reasonable manner. Among other things, the Receiver observed that,
- (a) units located on the following PINs (the “**Vacant Units**”), are vacant and appear to be infested by mould:
 - (i) 26459-0037(LT)-LT 21 PL 488 AJAX; PT LT 20 PL 488 AJAX; PT LT 22 PL 488 AJAX AS IN CO52847;
 - (ii) 26459-0036(LT)-TO LT 22 PL 488 AJAX; PT LT 23 PL 488 AJAX AS IN CO72557; TOWN OF AJAX; and
 - (iii) 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;

- (b) the Vacant Units are dilapidated and show signs of damage, including that ceiling panels, windows and doors are broken, and copper wiring used in the electrical systems servicing such units has been removed; and
 - (c) the Vacant Units are not properly secured, and show signs of having been attended by unknown persons for the purpose of seeking shelter or to vandalize the units. The Receiver is advised by Hughes that there is a homeless shelter located at 170 Harwood Avenue South, Ajax, and it is possible that homeless persons have attended at the Vacant Units to vandalize and/or seek shelter there.
13. Per the Receiver's discussions with Hughes and representatives of the Town of Ajax, as a result of the Respondents' inability and/or unwillingness to fund the care and maintenance of the Property,
- (a) on several occasions, utility service has been disconnected at the Property due to non-payment of accounts resulting in various issues, including the occupants of the Units not having heat during wintertime;
 - (b) regular maintenance of the HVAC equipment at the Property has not been continued; and
 - (c) property taxes have not been paid since at least 2017 and the amount owing is at least \$700,000.

No Insurance in Place Regarding the Property

14. Upon its appointment, the Receiver arranged for temporary general liability coverage for the Property's parking lot based on the information contained in the application materials, which led the Receiver to believe that the parking lot was the only property subject to the receivership.
15. On April 20, 2021, counsel to the Receiver, Thornton Grout Finnigan LLP ("TGF"), wrote to counsel to the Respondents ("Blaney") and requested that the Respondents produce copies of any applicable property or liability insurance policies so that the Receiver could assess the level of insurance and attend to obtaining additional insurance coverage, if necessary. On April 21, 2021, Blaney responded and advised that on the basis that the Property was vacant their understanding was that there was no insurance in place, but that inquiries would be made of the Respondents. A copy of the email chain including TGF and Blaney's April 20-21, 2021, emails is attached as Appendix "2".
16. On April 21, 2021, TGF wrote to Blaney and repeated its request for applicable policies of insurance, as well as any information with respect to any tenancy of the Property and any rental arrangements. Blaney responded and advised that, to the best of the Respondents' knowledge, there was no insurance in place, but that they would confirm. No further confirmation was received from Blaney.
17. Between April 21-26, 2021, the Receiver sought out quotes for property and liability insurance suitable for the Property, but did not obtain such a policy during that time.

Appeal of the Appointment Order

18. On April 26, 2021, the Respondents served a Notice of Appeal in respect of the Appointment Order, a copy of which is attached as Appendix “3”.
19. On April 28, 2021, TGF wrote to Blaney and confirmed that until such time as the Respondents obtain leave to appeal the Appointment Order, the Receiver intends to proceed with its mandate, particularly given the concerns outlined above. A copy of TGF’s April 28th letter is attached as Appendix “4”.
20. On April 28, 2021, Blaney responded and asserted the position that:
 - (a) “[t]he law remains that where an appeal is filed and asserts the appeal is as a right under the applicable subsections of section 193 of the BIA, there is a stay until the Court of Appeal says otherwise in accordance with section 195”;
 - (b) the Receiver has “no mandate at this time”; and
 - (c) “in the event that RSM takes any further steps in this matter, it will be doing so on its own personal behalf and will be personally liable.”A copy of Blaney’s April 28th letter is attached is attached as Appendix “5”.
21. On May 4, 2021, TGF wrote again to Blaney, confirmed the Receiver’s view that the Appointment Order was not stayed by the Respondents’ appeal, and advised of the Receiver’s intention to bring a motion to address the urgent issues affecting the Property. A copy of TGF’s May 4th letter is attached as Appendix “6”.
22. On May 5, 2021, TGF and Blaney exchanged further emails. A copy of the email chain containing this exchange is attached is attached as Appendix “7”.

Other Activities

23. Since its appointment, the Receiver has also,
- (a) taken possession of the Property;
 - (b) registered a copy of the Appointment Order against title to the Property;
 - (c) established a website for these Receivership proceedings:

<http://www.rsmcanada.com/harwood-avenue-ajax>;
 - (d) requested and obtained information from certain secured creditors and other stakeholders relating to the Property; and
 - (e) issued the notices required pursuant to Sections 245 and 246 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 to known creditors of the Property.

V. THE RECEIVER MUST BE AUTHORIZED TO TAKE CONSERVATORY STEPS

24. It is evident from the Receiver's attendances at the Property that the Property is not being adequately managed. The Vacant Units appear to be infested with mould and appear to be frequented by persons who vandalize and/or seek shelter in them. The Receiver is concerned for the health and safety of such persons given that there is no formal property management arrangement in place for the Property (and in any event Hughes has confirmed she will no longer continue her informal property management).
25. The absence of insurance in respect of the Property is concerning, particularly given the health and safety issues described above, some of the Property consists of a parking lot, and other parts of the Property are used by active businesses that serve the general public. In view of the state of disrepair of the Property, and based on the Receiver's enquiries,

certain repairs and maintenance matters may have to be addressed, and funded before the Receiver is able to obtain insurance coverage.

26. The delay in addressing the above issues may risk:
- (a) injury or damage to individuals and/or businesses occupying the Property, whether in the Units or the Property's parking lot, with potential liability for such injury or damage not being covered by an adequate policy of insurance; and
 - (b) the deterioration in the value of the Property to the detriment of the Respondents' creditors.

VI. CONCLUSIONS AND RECOMMENDATIONS

27. The Receiver believes that, notwithstanding any appeal and pending the resolution of the appeal of the Appointment Order, in order to protect the Property and to address the above issues, the Receiver must be expressly authorized to take steps necessary to (i) protect, preserve and manage the Property, (ii) address various health and safety issues at the Property, and (iii) arrange for funding to pay for ongoing costs relating to the management of the Property, including any required repairs and maintenance.

28. Based on the foregoing, the Receiver respectfully requests that the Court make an Order substantially in the form as set out in the motion record in which this First Report is contained.

All of which is respectfully submitted to this Court as of this 14th day of May, 2021.

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:

A handwritten signature in black ink, appearing to read 'B. A. Tannenbaum', with a long horizontal flourish extending to the right.

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 WATERMANS AND
SEWERS IN OR UNDER THE SAID LANDS; AJAX- 226 HARWOOD

APPENDIX 1

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) THURSDAY, THE 15TH
MR. JUSTICE CAVANAGH)
) DAY OF APRIL, 2021

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

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
(appointing Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) 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") appointing RSM Canada Limited as receiver (in such capacities, the "Receiver"), without security, over the lands and premises described as:

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

PIN26459-0036(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

(collectively the “**Harwood Properties**”) owned by Central Park Ajax Developments Phase 1 Inc., 9654488 Canada Inc., 9654461 Canada Inc., 9654372 Canada Inc., 9617680 Canada Inc., and 9654445 Canada Inc. (the “**Debtors**”) was heard February 11, 2021 via videoconference at Toronto, Ontario.

ON READING the Application Record of the Applicant, the Responding Record of the Respondents, the Application Record of the Responding Party the Corporation of the Town of Ajax, the Supplementary Responding Record of the Respondents, the Affidavits of Baozheng Zheng and Allen Rutman on behalf of the Responding Party Ajax Master Holdings Inc., and the Reply Record of the Applicant and on hearing the submissions of counsel for the Applicant, the Respondents, The Corporation of the Town of Ajax, Ajax Master Holdings Inc. and Investecs Developments Inc., and on reading the consent of RSM Canada Limited to act as the Receiver and on being advised of the Consent of the Town of Ajax:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, RSM Canada Limited is hereby appointed Receiver, without security, of the Harwood Properties and for all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to the Harwood Properties, including all proceeds thereof (together with the Harwood Properties, (hereinafter collectively referred to as the "**Property**").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage and operate the Property, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, or cease to perform any contracts of the Debtors in respect of the Property;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors in respect of the Property and to exercise all remedies of the Debtors in respect of the Property in collecting such monies, including, without limitation, to enforce any security held by the Debtors in respect of the Property;
- (f) to settle, extend or compromise any indebtedness owing to the Debtors in respect of the Property;
- (g) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (h) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors in respect of the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (i) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate, provided, however, that such terms and conditions must be satisfactory to the Town of Ajax, unless otherwise ordered by this Court;

(j) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and

(ii) with the approval of this Court, in consultation with the Town of Ajax, in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required; and

(iii) unless otherwise agreed to by the Town of Ajax and the applicable purchaser or transferee, none of the real property presently subject to the Development Agreement and Agreement of Purchase and Sale between Windcorp Grand Harwood Place Ltd. and the Town of Ajax, as amended (The "Development Agreement") shall be sold, conveyed, transferred, leased or assigned by the Receiver without the purchaser or transferee agreeing to enter into a development agreement with the Town of Ajax, on mutually agreeable terms, which include a Right of Repurchase in favour of the Town of Ajax, substantively similar to such right provided for in the Development Agreement.

(k) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property; other than such permitted encumbrances as may be acceptable to the purchaser or rights that run with the land.

- (l) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (m) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (n) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors in respect of the Property;
- (o) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any Property owned or leased by the Debtors;
- (p) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have in respect of the Property; and
- (q) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the

Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors relating to the Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS IN RESPECT OF THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or in respect of the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or in respect of the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtors in respect of the Property, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors in respect of the Property, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors in respect of the Property or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors in respect of the Property are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names in respect of the Property, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts"). For certainty, all receipts in respect of the Property shall be deposited into the Post Receivership Accounts and all Permitted Disbursements (defined below) shall be drawn from the Post Receivership Accounts. "Permitted Disbursements" shall include realty taxes, utilities, insurance, maintenance expenses, other reasonable Property-specific expenses, and business expenses associated with the Property. The monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or

relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

23. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

24 THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <http://www.rsmcanada.com/harwood-avenue-ajax>

25. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors’ creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

26. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors or any of them.

28. THIS COURT ORDERS that the Land Registry Office for the Land Titles Division of Durham (No. 40) shall register this Order against title to the Harwood Properties.

29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents 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 an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the funds in the Receiver's possession with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



Digitally signed by
Mr. Justice Cavanagh

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that RSM Canada Limited, the receiver (the "Receiver") of the Property, as such terms are defined in the Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 2020 appointing the Receiver (the "Order") made in an application having Court file number CV-20-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

RSM Canada Limited, solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

2615333 ONTARIO INC.
Applicant

and

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
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
Proceeding commenced at Toronto

ORDER

GARFINKLE BIDERMAN LLP

Barristers & Solicitors
1 Adelaide Street East, Suite 801
Toronto, Ontario
M5C 2V9

Wendy Greenspoon-Soer LSUC#: 34698L
Tel: 416-869-1234
Fax: 416-869-0547

Lawyers for the Applicant,
2615333 ONTARIO INC.

File Number: 12256-001

APPENDIX 2

Linda Wynne

From: David T. Ullmann <DUllmann@blaney.com>
Sent: Wednesday, April 21, 2021 12:52 PM
To: Rebecca Kennedy; Mervyn D. Abramowitz
Cc: 'Tannenbaum, Bryan'; Berger, Jeff; D. J. Miller; Alexander Soutter
Subject: RE: Central Park Ajax Developments Phase 1 Inc. et al.

Rebecca,

I have forwarded your email to my client. I was out this morning at a medical appointment. Sorry. I am speaking to Thomas later today and will advise. The property is vacant land, is it not? As such, I am not sure if there even is an insurance policy in place, but I am asking.

David

David T. Ullmann
Partner

dullmann@blaney.com

📞 416-596-4289 | 📞 416-594-2437

From: Rebecca Kennedy [mailto:Rkennedy@tgf.ca]
Sent: Wednesday, April 21, 2021 12:50 PM
To: David T. Ullmann <DUllmann@blaney.com>; David T. Ullmann <DUllmann@blaney.com>; Mervyn D. Abramowitz <MAbramowitz@blaney.com>
Cc: 'Tannenbaum, Bryan' <bryan.tannenbaum@rsmcanada.com>; Berger, Jeff <jeff.berger@rsmcanada.com>; D. J. Miller <DJMiller@tgf.ca>; Alexander Soutter <ASoutter@tgf.ca>
Subject: RE: Central Park Ajax Developments Phase 1 Inc. et al.
Importance: High

David,

This issue is of paramount concern to the receiver. We need a response to our email by 5:00 p.m. today.

I have requested a deliver receipt and a read receipt to confirm if you receive this email. Please confirm you are receiving our emails as we need an immediate response from the Respondents.

Best regards,
Rebecca



Rebecca Kennedy | | Rkennedy@tgf.ca | Direct Line +1 416 304 0603 | Suite 3200, TD West Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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From: Rebecca Kennedy

Sent: April 20, 2021 6:05 PM

To: 'DULLmann@blaney.com' <DULLmann@blaney.com>

Cc: 'Tannenbaum, Bryan' <bryan.tannenbaum@rsmcanada.com>; 'Berger, Jeff' <jeff.berger@rsmcanada.com>; D. J. Miller <DJMiller@tgf.ca>; Alexander Soutter <ASoutter@tgf.ca>

Subject: Central Park Ajax Developments Phase 1 Inc. et al.

Hi David,

We have been retained as counsel to RSM Canada Limited in respect of their appointment as the Receiver pursuant to the attached Receivership Order. I understand that you are counsel to the Respondents being Central Park Ajax Developments Phase 1 Inc., 9654488 Canada Inc., 9654461 Canada Inc., 9654372 Canada Inc., 9617680 Canada Inc. and 9654445 Canada Inc. (collectively, the "Respondents").

Pursuant to paragraph 5 of the attached Receivership Order, the Receiver requires copies of all of the insurance policies in respect of the Respondents and their property. Can you please confirm if there are insurance policies in place with respect to the Respondents and their property? Further, if there are insurance policies, please provide us with copies immediately so that the Receiver can assess the level of insurance and attend to obtaining insurance if there is insufficient insurance in place to cover the property.

Please feel free to call me if you need clarification of this request. Again, time is of the essence and we need this information immediately to make sure that the property is properly insured.

Best regards,
Rebecca

APPENDIX 3

Court of Appeal File No.
Commercial List Court File No. CV-20-00651299-00CL

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

2615333 ONTARIO INC.

Applicant
(Respondent)

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
(Appellants)

NOTICE OF APPEAL

THE APPELLANTS appeal to the Court of Appeal from the order of the Honourable Justice Cavanagh (the “**Application Judge**”), of the Superior Court of Justice (Commercial List), dated April 15, 2021 (“**Order**”), and made at Toronto, appointing RSM Canada Limited as receiver (“**Receiver**”) over certain real property (“**the Ajax Properties**”) belonging to the Appellants.

THE APPELLANTS ASK that the Order be set aside and an Order be granted as follows:

1. Dismissing the application dated November 13, 2020 brought by the Applicant, 2615333 Ontario Inc. (the “**261 Ontario**”), that sought various relief including appointing the Receiver in respect of the Ajax Properties (the “**Receivership Application**”);
2. Awarding the Appellants’ costs of:
 - a. This appeal on a substantial indemnity basis; and,
 - b. The Receivership Application below on a substantial indemnity basis;
3. Such further and other relief as counsel may request and that seems just to this Honourable Court.

THE GROUNDS OF APPEAL are as follows:

4. The Application Judge erred (all definitions not otherwise defined herein have the meaning set out in the Endorsement of Justice Cavanagh, dated April 15, 2021):
 - a. In granting the Order;
 - b. In finding that 261 Ontario was a creditor of the Appellants and not an equity investor in the Project;
 - c. In failing to find that the Notices of Intention to Enforce Security (“**Notices**”) delivered by 261 Ontario were “stale dated” and/or spent, and therefore without effect, as no steps were taken with respect thereto until more than two years after their delivery;
 - d. In finding that the doctrine of laches did not apply in the within case with respect to the Notices;

- e. In failing to find that there was no need for the appointment of the Receiver as 261 Ontario had already commenced a legal proceeding against the Appellants, and the Appellants had similarly commenced a legal proceeding against 261 Ontario, which proceedings remain outstanding and ongoing for more than a year, and which provide the proper forum for the adjudication of the dispute between the parties;
 - f. In failing to find that 261 Ontario acted in bad faith in commencing enforcement proceedings against the Appellants, and in particular, that the Receivership Application was brought in bad faith;
 - g. In including as part of the assets subject to the receivership certain real property that is the subject of a Master Development Agreement (“**MDA**”), which is not an asset of the Appellants, but rather of a different corporation, which is not a party to the litigation;
 - h. In finding that the repurchase rights of the Town of Ajax (“**Ajax**”) have priority over the mortgages registered on title to the various properties;
 - i. In providing Ajax with de facto control and a veto over any transaction for the sale and purchase of the real property that is the subject of the receivership, by requiring that any purchaser wishing to purchase real property from the Receiver shall first enter into a development agreement with Ajax on certain terms, which must include a right of repurchase in favour of Ajax similar to that found in the MDA; and,
 - j. In exercising his discretion to appoint the Receiver based on a fundamental misunderstanding of the facts and the evidence;
5. The decision to appoint the Receiver was clearly wrong;
 6. Section 193 of the *Bankruptcy and Insolvency Act* (“**BIA**”);

7. Such further and other grounds as counsel may advise and this Court permit.

THE BASIS OF THE JURISDICTION OF THE COURT OF APPEAL IS:

8. This is an appeal as of right pursuant to s. 193 (a) – (c) of the BIA;

9. The Order appealed from was interlocutory, but involved the appointment of a Receiver;

10. Leave is not required for the commencement of this appeal under ss. 193(a) to (c) as:

a. Matters raised in the within appeal involve future rights, including:

i. The right of Ajax to de facto control the sale of the real property that is the subject of the receivership, by requiring that any purchaser of the real property enter into a development agreement with Ajax on certain terms, including a right of Ajax to repurchase the property similar to that found in the MDA; and,

ii. The right of Ajax to repurchase certain real property having priority over mortgages registered against title to those properties;

b. The Order is likely to affect other cases of a similar nature in the proceeding. The finding that Ajax's repurchase right is in priority to other mortgages will likely impact other aspects of this proceeding, including the priority of funds, and the right of Ajax to impose its will in the receivership, and will also affect those with an economic interest in the debtors and with claims in the receivership. Similarly, the inclusion of the MDA in the receivership impacts LeMine's ability to exercise its consent and other rights in the MDA in the receivership, including in any sale process and beyond;

c. The value of the property that is the subject of the Order and that is involved in this appeal exceeds ten thousand dollars. The Order is not procedural in nature, and the grounds of appeal are largely substantive, concerning priorities and the inclusion of

assets in the receivership to the detriment of other entities. The Order pertains to property not belonging to the debtors and has the effect of giving Ajax veto rights to any sale agreement, which thereby puts into play the value of the Appellants' property. For the same reasons, the Order affects any sale and amounts to a determination of the economic interests of the Appellants' claimants resulting in a gain for some parties, such as Ajax, and a loss for others, such as LeMine as well as other creditors and investors;

11. In the alternative, if leave is required under section 193(e) of the BIA, the Appellants seek leave to appeal the Order, and ask that the leave application be heard at the same time as the appeal.

12. It is appropriate that leave be granted because the appeal:

- a. Is of general importance to the practice of bankruptcy/insolvency matters and/or to the administration of justice as a whole;
- b. Is *prima facie* meritorious; and,
- c. Would not unduly hinder the progress of the herein proceedings;

13. This appeal raises issues that go beyond the parties themselves and are of general importance to the practice of insolvency law, namely:

- a. Whether a Notice of Intention to Enforce Security under the BIA expires after more than two years of inaction;
- b. Whether a court may include in a receivership order property of a corporation that is not itself a party to the proceeding;

c. Whether a municipality ought to have the right in a receivership proceeding to require that a purchaser enter into a prior agreement with the municipality, to the detriment of the creditors; and,

d. Whether a receiver ought to be appointed in circumstances where there is outstanding, protracted litigation between the parties involving the very same issues raised in the receivership;

14. In addition, the appeal concerns issues important to the administration of justice as a whole, specifically whether:

a. Steps taken in a receivership proceeding would have the effect of compromising a party's rights in parallel litigation; and,

b. The equitable remedy of appointing a receiver should be granted when there is evidence that the party seeking the relief acted in bad faith;

15. The appeal is *prima facie* meritorious because the Application Judge made a number of factual and legal errors in reaching the conclusion that it was just and equitable to appoint the Receiver, as set out above;

16. The appeal would not unduly hinder the proceedings in a meaningful way. The Ajax Properties are not in jeopardy of wasting or deteriorating in any way, and can be dealt with in the parallel litigation pending the appeal. Furthermore, this matter is not time sensitive. The litigation between the parties has been ongoing for more than a year and 261 Ontario did not seek the appointment of a receiver in the parallel litigation.

DATE: April 26, 2021

BLANEY MCMURTRY LLP

Lawyers
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

David T. Ullmann (LSO #42357I)

Tel: (416) 596-4289
Email: dullmann@blaney.com

Mervyn D. Abramowitz (LSO #28325R)

Tel: (416) 597-4887
Email: mabramowitz@blaney.com

Lawyers for the Appellants in the Appeal

TO: GARFINKLE BIDERMAN LLP

Barristers & Solicitors
1 Adelaide Street East
Suite 801
Toronto, ON, M5C 2V9

Wendy Greenspoon Soer (LSO # 34698L)

Tel: (416) 869-1234
Email: wgreenspoon@garfinkle.com

Counsel for the Respondent in the Appeal, 2615333 Ontario Inc.

AND TO: THE CORPORATION OF THE TOWN OF AJAX
c/o RITCHIE KETCHESON HART & BIGGART LLP
Barristers & Solicitors 1 Eva Road, Suite 206
Toronto, Ontario, M9C 4Z5

John R. Hart (LSO#21689T)
Tel: (416) 622-6601
Fax: (416) 622-4713
Email: jhart@ritchieketcheson.com

Lawyers for The Town of Ajax

AND TO: PHOENIX LAW LLP
903-4789 Yonge St.
Toronto, Ontario, Canada M2N 0G3

Aziza Hirsi
Tel: 416-512-9888
Fax: 416-225-3888
Email: aziza.hirsi@phoenixlawllp.com

Lawyers for Investecs Development Inc.

AND TO: VICE & HUNTER
85 Plymouth Street, Suite 101
Ottawa, Ontario, K1S 3E2

Patrick R. Simon
Tel: 613-232-5773
Fax: 613-232-3509
Email: prsimon@viceandhunter.ca

Lawyers for REMISZ CONSULTING ENGINEERS LTD.

AND TO: ADAIR GOLDBLATT BIEBER LLP
95 Wellington Street West, Suite 1830
Toronto, Ontario, M5J 2N7

Nathaniel Read-Ellis
Tel: (416) 351-2789
Fax: (416) 47-689-2059
Email: nreadellis@agblp.com

Lawyers for 2449880 Ontario Inc.

AND TO: PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
155 Wellington Street West, 35th Floor
Toronto, Ontario, M5V 3H1

Jeffrey Larry
Tel: (416) 646-4330
Fax: (416) 646-4301
Email: Jeff.larry@paliareroland.com

Lawyers for 2518358 Ontario Inc.

AND TO: DEPARTMENT OF JUSTICE

The Exchange Tower
130 King Street W., #3400
Toronto, Ontario, M5X 1K6

Diane Winters
Tel: (416) 973-3172
Fax: (416) 973-0810
Email: diane.winters@justice.gc.ca

AND TO: MINISTRY OF FINANCE

Legal Services Branch
33 King Street West, 6th Floor
Oshawa, Ontario, L1H 8E9

Kevin J. O'Hara
Tel: (905) 433-6934
Fax: (905) 436-4510
Email: kevin.ohara@fin.gov.on.ca

AND TO: RSM CANADA LIMITED

11 King St. W., Suite 700, Box 27
Toronto, Ontario, M5H 4C7

Bryan A. Tannenbaum
Tel: 416-238-5055
Fax: 416-480-2646
Email: bryan.tannenbaum@rsmcanada.com

Proposed Receiver

AND TO: WINDCORP GRAND HARWOOD PLACE LTD.

634515 Road 63
Singhampton, Ontario N0C 1M0

Laura Starr
Tel: 416-302-9060
Email: Laurafstarr@aol.com

AND TO: DLA PIPER (CANADA) LLP

1 First Canadian Place
100 King Street West
Suite 6000
Toronto, ON M5X 1E2

Edmond Lamek (LSO No. 33338U)
Tel: (416) 365-3444
Email: edmond.lamek@dlapiper.com

Danny Nunes (LSO No. 53802D)
Tel: (416) 365-3421
Email: danny.nunes@dlapiper.com

Lawyers for Ajax Master Holding Inc

2615333 ONTARIO INC.
Applicant (Respondent in Appeal)

and

**CENTRAL PARK AJAX DEVELOPMENTS
PHASE 1 INC. et al.**
Respondents (Appellants in Appeal)

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

COURT OF APPEAL FOR ONTARIO

Proceeding Commenced in Toronto

NOTICE OF APPEAL

BLANEY MCMURTRY LLP

Lawyers

2 Queen Street East, Suite 1500

Toronto ON M5C 3G5

David T. Ullmann (LSO #42357I)

Tel: (416) 596-4289

Email: dullmann@blaney.com

**Mervyn D. Abramowitz (LSO
#28325R)**

Tel: (416) 597-4887

Email: mabramowitz@blaney.com

Lawyers for the Appellants in the Appeal

Recipients Emails:

Wendy Greenspoon-Soer, counsel for

wgreenspoon@garfinkle.com

APPENDIX 4

April 28, 2021

VIA EMAIL

David Ullmann
Blaney McMurtry LLP
Barristers and Solicitors
2 Queen Street East, Suite 1500
Toronto, ON M5C 3G5

Dear Mr. Ullmann:

Re: 2615333 Ontario Inc. v. Central Park Ajax Developments Phase 1 Inc. et al.
Court File No.: CV-20-00651299-00CL

We are counsel to RSM Canada Limited in its capacity as receiver over the lands referred to in the Order of Justice Cavanaugh dated April 15, 2021 (the “**Order**”).

We have been directed to your client’s Notice of Appeal of the Order. As you are aware, there is no automatic right to appeal from an order appointing a receiver: *Business Development Bank of Canada v Pine Tree Resorts Inc*, 2013 ONCA 282 at para 12.

Your client requires leave to appeal the Order. Pending leave being granted, there is no appeal and therefore no stay of proceedings pursuant to s.195 of the *Bankruptcy and Insolvency Act*: *Flightcraft Inc v Parsons (Trustee of)*, 1999 BCCA 370 at para 23.

Until and unless your client obtains leave to appeal the Order, the receiver intends to proceed with its mandate, particularly given that it has discovered several issues that cause concern. These include that: there are several operating businesses at the properties subject to the receivership; there is inadequate property management of these units; there does not appear to be any insurance in place in respect of these units; and some of the units are affected by mold and appear to be sheltering one or more homeless person(s).

We are also following up on Ms. Kennedy’s several emails to you on April 21, 2021, where we made requests for any insurance in place in respect of the properties and details of any tenancies

of such properties. As noted in those emails, these issues are of paramount concern to the receiver. We request your prompt response.

Yours truly,

Thornton Grout Finnigan LLP



Alexander Soutter

AS/lw

APPENDIX 5

David T. Ullmann
T: (416) 596-4289
E: dullmann@blaney.com

April 28th, 2021

SENT VIA EMAIL at ASoutter@tgf.ca

Mr. Alexander Soutter
Thornton Grout Finnigan LLP
Toronto-Dominion Centre – TD West Tower
100 Wellington Street West
Suite 3200
Toronto, ON, M5K 1K7

Dear Mr. Soutter,

Re: 2615333 Ontario Inc v Central Park Ajax Developments Phase 1 Inc et al.

We are in receipt of your letter of today's date which alleges RSM can continue to act as receiver in this matter pending the outcome of the appeal which was filed yesterday. Your letter is incorrect. The *Pine Tree Resorts* case you cite does not stand for the proposition that you cite. We encourage you to review it more carefully. The law remains that where an appeal is filed and asserts the appeal is as a right under the applicable subsections of section 193 of the BIA, there is a stay until the Court of Appeal says otherwise in accordance with section 195.

I will remind you that Ms. Miller and I had exactly this same issue before Justice Hailey following the filing of the notice of appeal in the Ellesmere matter. We remind you that section 195 of the BIA is explicit that the stay which is in place can only be varied or set aside by the Court of Appeal, and not the Commercial List. Indeed the *Pine Tree* case is a Court of Appeal case. In that other matter, your firm filed a motion disputing these points, cited the same law as you have done in your letter, and His Honour correctly said this matter had to be decided by the Court of Appeal and was not properly before the Commercial List. If you have any doubt of this, please review Ms. Miller's notes of that attendance, which was on October 18, 2019.

As such, we are quite certain that there is a stay pending a determination by the Court of Appeal that leave is required. It is our position that leave is not required.

In the circumstances, your firm has no standing to do anything given that your client has no mandate at this time. Unlike our previous interaction in the Ellesmere matter, your client is not also the applicant in this matter and has no standing to participate in any appeal. It falls to 261 to contest this appeal, should they choose to do so, and not to you or Mr. Tannenbaum. We will wait for Ms Greenspoon's response.

Please note that in the event that RSM takes any further steps in this matter, it will be doing so on its own personal behalf and will be personally liable. In the event RSM incurs any expenses including any expenses with respect to your firm, they will have to pay them themselves hereafter.

Yours very truly,
Blaney McMurtry LLP

A handwritten signature in black ink, appearing to read 'D. Ullmann', written over the printed name of the sender.

David T. Ullmann
DTU/ab

c.c.: Alexandra Teodorescu

APPENDIX 6

May 4, 2021

VIA EMAIL

David Ullmann
Blaney McMurtry LLP
Barristers and Solicitors
2 Queen Street East, Suite 1500
Toronto, ON M5C 3G5

Dear Mr. Ullmann:

Re: 2615333 Ontario Inc. v. Central Park Ajax Developments Phase 1 Inc. et al.
Court File No.: CV-20-00651299-00CL

Thank you for your letter of April 28, 2021. We disagree with your characterization of events in the Ellesmere matter.

It remains our view that your clients' obtain leave to appeal the Order of Justice Cavanaugh dated April 15, 2021 (the "**Order**") and that there is no stay of proceedings in effect. Blair JA made that clear in *Business Development Bank of Canada v Pine Tree Resorts Inc*, 2013 ONCA 282:

[12] In my view, there is no automatic right to appeal from an order appointing a receiver.

The Court of Appeal has upheld this decision as recently as in 2019: *Buduchnist Credit Union Limited v 2321197 Ontario Inc*, 2019 ONCA 588 at para 12.

It is apparent that urgent steps must be taken to preserve the property described in the Order (the "**Property**"). As we have previously advised, there appears to be no insurance in place, there are issues with mold, and homeless persons are accessing certain vacant units. There is a risk to the health and safety of such persons and others.

Further, the vacant units at the Property are in a state of neglect and have clearly not been managed in a commercially reasonable manner for a long time. The receiver has also confirmed that significant property taxes remain outstanding in respect of the property.

All of the foregoing circumstances cannot be allowed to persist. The significant health and safety issues, the state of the Property, and the Respondents' apparent unwillingness or inability to address these issues are all of serious concern to the receiver.

While the receiver maintains the view that there is no stay in place, given the immediate issues affecting the Property, the receiver will be bringing an urgent motion before Justice Cavanaugh to amend the Order and expressly provide that the receiver can take such actions as necessary to preserve the Property pending any steps with respect to your client's appeal.

Justice Cavanaugh is available on May 26, 2021, at 10 am. Please confirm we may sign the enclosed motion request form on your behalf. If we do not receive your signature by 11 am tomorrow, we will schedule a case conference at the earliest available time to address the scheduling of this urgent motion.

Yours truly,

Thornton Grout Finnigan LLP



Alexander Soutter

APPENDIX 7

Linda Wynne

From: David T. Ullmann <DUllmann@blaney.com>
Sent: Wednesday, May 5, 2021 11:54 AM
To: Alexander Soutter
Cc: D. J. Miller; Rebecca Kennedy; bryan.tannenbaum@rsmcanada.com; jeff.berger@rsmcanada.com; wgreenspoon@GARFINKLE.com; Mervyn D. Abramowitz; Linda Wynne; Alexandra Teodorescu; Ariyana Botejue
Subject: Re: 2615333 Ontario Inc v Central Park Ajax Developments Phase 1 Inc et al [IMAN-CLIENT.FID140157]

Mr Soutter,

Although it appears it will be no good for us to explain things to you, you have completely misunderstood our letter and the law. We have conceded nothing to you and your self-serving conclusion in your letter is not the law but just a compound error on your previous mistakes.

We can no longer protect you or your client from the error you are about to make.

Regards,

David

Sent from my Bell Samsung device over Canada's largest network.

From: Alexander Soutter <ASoutter@tgf.ca>
Sent: Wednesday, May 5, 2021 11:34:31 AM
To: David T. Ullmann <DUllmann@blaney.com>
Cc: D. J. Miller <DJMiller@tgf.ca>; Rebecca Kennedy <Rkennedy@tgf.ca>; bryan.tannenbaum@rsmcanada.com <bryan.tannenbaum@rsmcanada.com>; jeff.berger@rsmcanada.com <jeff.berger@rsmcanada.com>; wgreenspoon@GARFINKLE.com <>wgreenspoon@GARFINKLE.com>; Mervyn D. Abramowitz <MAbramowitz@blaney.com>; Linda Wynne <LWynne@tgf.ca>; Alexandra Teodorescu <ATEodorescu@blaney.com>; Ariyana Botejue <ABotejue@blaney.com>
Subject: RE: 2615333 Ontario Inc v Central Park Ajax Developments Phase 1 Inc et al [IMAN-CLIENT.FID140157]

Mr. Ullmann,

Thank you for confirming that there is no automatic right to an appeal under s.193 of the BIA. It follows that there is also not an automatic stay of proceedings. Until your client has obtained leave to appeal, there is no appeal. Further, until you obtain a stay, or a declaration that s.193 applies in these circumstances, there is no stay. As such, there is no stay of Justice Cavanaugh's order.

We've advised that we disagree with your characterization of events in the Ellesmere matter. If you insist on dredging it up, however, we remind you that your client in that matter consented to the order quashing the appeal, conceding that leave was required but not obtained.

Our client, the receiver, intends to carry out its mandate and our instructions remain to bring a motion to vary Justice Cavanaugh's order to provide for provisional execution in order to address the serious issues affecting the property resulting from their failure to be managed in a commercially reasonable manner. As you have refused to sign the motion request form, we will seek a chambers appointment to schedule the motion.

Your suggestion that our firm may be liable for costs is serious, and unwarranted.

Regards,



Alexander Soutter | ASoutter@tgf.ca | Direct Line +1 416-304-0595 | www.tgf.ca

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From: David T. Ullmann [mailto:DUllmann@blaney.com]

Sent: Wednesday, May 5, 2021 10:39 AM

To: Alexander Soutter <ASoutter@tgf.ca>

Cc: D. J. Miller <DJMiller@tgf.ca>; Rebecca Kennedy <Rkennedy@tgf.ca>; bryan.tannenbaum@rsmcanada.com; jeff.berger@rsmcanada.com; wgreenspoon@GARFINKLE.com; Mervyn D. Abramowitz <MAbramowitz@blaney.com>; Linda Wynne <LWynne@tgf.ca>; Alexandra Teodorescu <ATEodorescu@blaney.com>; Ariyana Botejue <ABotejue@blaney.com>

Subject: RE: 2615333 Ontario Inc v Central Park Ajax Developments Phase 1 Inc et al [IMAN-CLIENT.FID140157]

Mr. Soutter,

Thank you for your letter. As set out in my letter to Ms. Kennedy last week, we do not assert there is an automatic right of appeal from a receivership order. Rather, section 193 of the BIA sets out what matters may be appealed as a right, and the question as to whether or not a matter comes within the provisions of section 193 of the BIA will be determined by the Court of Appeal, pursuant to section 195 of the BIA.

In the Pine Resorts case, and in the Buduchnist case, the Court of Appeal did just that. After saying there is no automatic right to an appeal in a receivership, the court went on to analyze whether or not there was a right of appeal under section 193 in each case, based on the matters in issue. The court concluded in both cases that there was no such appeal on the facts of those cases as the matter in issue in each case did not fall within the wording of section 193. The court did not say that there can never be an appeal as a right in a receivership. If the Pine Tree case were to stand, as you suggest, for the proposition that there is never an appeal from a receivership order without leave, there would have been no need to proceed with the analysis of whether the matter in each case fell within the wording of section 193. Further, in Buduchnist, the court would have simply cited the Pine Tree case and said there is no appeal without first obtaining leave. The court did not do so because that is not the law.

Further, as both of these decisions are decisions of the Court of Appeal, the Superior Court and in particular the Commercial List, has no authority to overrule these cases or decide not to follow them. Plus, this is not the first time that your firm has raised this issue with ours. Ms. Miller, of your firm, raised this very issue before Justice Hainey back in October 2019. His Honour was aware of the two Court of Appeal cases referenced above, and he refused to hear the matter at all, dismissing Ms. Miller's objection in chambers.

In the absence of a change to the wording of the BIA, the law in this type of situation is clear. If section 193 of the BIA is engaged, which is the case here, a stay of proceedings applies until or unless the Court of Appeal says otherwise.

Further, we dispute your client's claim to standing in this matter. The issue of the validity of the receivership has been challenged and made the subject of an appeal. Until this issue is resolved,

your client has no standing, and certainly has no standing to challenge the appeal of the receivership order. If you proceed to court on this point, you will be exposing both your firm and your client to costs.

Indeed, Ms. Greenspon, counsel to the applicant in the application correctly identified that the correct procedure is to attend before the Court of Appeal and deal with the issue there. She has indicated that she will be proceeding with a motion in that court and we await her next steps in that regard. In the meantime, we expect that you will refrain from taking any further steps.

Regards,

David

David T. Ullmann

Partner

dullmann@blaney.com

📞 416-596-4289 | 📞 416-594-2437

From: Alexander Soutter [<mailto:ASoutter@tgf.ca>]

Sent: Tuesday, May 4, 2021 8:15 PM

To: Ariyana Botejue <ABotejue@blaney.com>

Cc: D. J. Miller <DJMiller@tgf.ca>; Rebecca Kennedy <Rkennedy@tgf.ca>; bryan.tannenbaum@rsmcanada.com; jeff.berger@rsmcanada.com; wgreenspoon@GARFINKLE.com; Mervyn D. Abramowitz <MAbramowitz@blaney.com>; Linda Wynne <LWynne@tgf.ca>; David T. Ullmann <DULLmann@blaney.com>; Alexandra Teodorescu <ATeodorescu@blaney.com>

Subject: RE: 2615333 Ontario Inc v Central Park Ajax Developments Phase 1 Inc et al [IMAN-CLIENT.FID140157]

Dear Mr. Ullmann,

Please see the attached letter and enclosure.

Regards,



Alexander Soutter | ASoutter@tgf.ca | Direct Line +1 416-304-0595 | www.tgf.ca

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From: Ariyana Botejue [<mailto:ABotejue@blaney.com>]

Sent: Wednesday, April 28, 2021 4:24 PM

To: Alexander Soutter <ASoutter@tgf.ca>

Cc: D. J. Miller <DJMiller@tgf.ca>; Rebecca Kennedy <Rkennedy@tgf.ca>; bryan.tannenbaum@rsmcanada.com; jeff.berger@rsmcanada.com; wgreenspoon@GARFINKLE.com; Mervyn D. Abramowitz <MAbramowitz@blaney.com>; Linda Wynne <LWynne@tgf.ca>; David T. Ullmann <DULLmann@blaney.com>; Alexandra Teodorescu <ATeodorescu@blaney.com>

Subject: RE: 2615333 Ontario Inc v Central Park Ajax Developments Phase 1 Inc et al [IMAN-CLIENT.FID140157]

Dear Mr. Soutter,

Attached, please find correspondence from Mr. Ullmann.

Thank you,

Ariyana Botejue

Legal Assistant to Stephen Gaudreau & David Ullmann

abotejue@blaney.com

416-593-1221 ext. 4777

From: Alexander Soutter [<mailto:ASoutter@tgf.ca>]

Sent: Wednesday, April 28, 2021 10:28 AM

To: David T. Ullmann <DUllmann@blaney.com>

Cc: D. J. Miller <DJMiller@tgf.ca>; Rebecca Kennedy <Rkennedy@tgf.ca>; bryan.tannenbaum@rsmcanada.com;
jeff.berger@rsmcanada.com; wgreenspoon@GARFINKLE.com; Mervyn D. Abramowitz <MAbramowitz@blaney.com>;
Linda Wynne <LWynne@tgf.ca>

Subject: 2615333 Ontario Inc v Central Park Ajax Developments Phase 1 Inc et al [IMAN-CLIENT.FID140157]

Good morning,

Please see the attached letter. As I noted previously, you may disregard my earlier letter.

Regards,



PLEASE NOTE:

**TGF's office is undergoing renovations
and is not accepting personal deliveries.**

Please forward all couriers to:

1 Yonge St. Suite 1801, Toronto, ON M5E 1W7

Alexander Soutter | Associate | ASoutter@tgf.ca | Direct Line +1 416-304-0595 | Suite 3200, TD West Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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