



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

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

**KING CAPITAL MORTGAGE INVESTMENT CORPORATION**

Applicant

**- and -**

**2353110 ONTARIO LIMITED**

Respondent

**APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, and section 101 of the *Courts of Justice Act*,  
R.S.O. 1990, c. C.43**

**NOTICE OF APPLICATION**

TO THE RESPONDENT:

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

THIS APPLICATION will come on for a hearing

- ☐ In person
- ☐ By telephone conference
- ☒ By video conference

at the following location: 330 University Ave., Toronto ON M5G 1R7 on a date to be fixed by the Registrar.

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 applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, 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 applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, 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:

Issued by: \_\_\_\_\_  
Local registrar

Address of court office: 330 University Ave.,  
Toronto ON M5G 1R7

TO: **2353110 ONTARIO LIMITED**  
137 Berkeley Street  
Toronto, ON M5A 2X1

## APPLICATION

The Applicant makes an application for an order:

- a) if necessary, abridging the time for and validating the manner of service of the Notice of Application and Application Record in respect of this application and dispensing with further service thereof;
- b) appointing the TDB Restructuring Limited as receiver and manager (the “**Receiver**”) of the Real Property (as defined below); and
- c) awarding such further and other relief which this Honourable Court deems appropriate and just.

### THE GROUNDS FOR THE APPLICATION ARE:

#### **A. The Parties**

1. The applicant King Capital Mortgage Investment Corporation (the “**Lender**”) is an Ontario corporation in the business of providing mortgage financing and other loans, with a registered head office in Vaughan, Ontario.
2. The respondent 2353110 Ontario Limited (the “**Borrower**”) is an Ontario corporation whose principal business concerns the ownership and leasing of the Real Property (as defined below), with a registered head office in Toronto, Ontario.
3. Jason Emile Bogle (the “**Guarantor**”) is an individual resident in Ontario and is an officer, director, and shareholder of the Borrower.

**B. The Real Property**

4. The Borrower owns the real property municipally known as 137 Berkeley Street, Toronto, Ontario and having the legal description set out in **Schedule “A”** hereto (the **“Real Property”**).

5. The Real Property is the site of commercial offices leased by the Borrower.

**C. The Loan**

6. On or around March 23, 2022, the Lender completed a mortgage loan transaction (the **“Loan”**) with the Borrower in accordance with a commitment letter dated March 10, 2022 (the **“Commitment Letter”**) issued by the Lender.

7. The Loan initially contemplated a facility in the amount of \$1,900,000, all of which was advanced to the Borrower by the Lender.

8. The Commitment Letter contemplated monthly interest-only payments and a term of six months.

9. Under the Commitment Letter, the interest rate per annum of the Loan was 7.99%.

10. On September 8, 2022, the parties renewed the Loan on the following terms (the **“First Renewal”**), among others:

(a) An increase in the interest rate under the Loan to 8.99%; and

(b) An extension of the Loan’s term for an additional 12 months.

11. On October 5, 2023, the parties again renewed the Loan on the following terms (the “**Second Renewal**” and, together with the First Renewal, the “**Renewal Agreements**”), among others:

- (a) An increase in the interest rate under the Loan to 9.99%; and
- (b) An extension of the Loan’s term for an additional 12 months.

12. The Renewal Agreements had the effect of extending the Loan’s term to October 1, 2024 (this date being the “**Maturity Date**”).

**D. Security for the Loan**

13. The Loan was secured by a first mortgage in the amount of \$1,900,000 (the “**Mortgage**”) registered on March 23, 2022 against the Real Property as Instrument No. AT6024668 (the “**Charge**”).

14. The Charge incorporated standard charge terms 200033 by reference.

15. There is a second mortgage in the amount of \$1,750,000 (the “**Second Mortgage**”) in favour of Farrage Developments Inc. (the “**Second Mortgagee**” and, together with the Lender, the “**Secured Creditors**”) registered on September 1, 2022 against the Real Property as Instrument No. AT6174631 (the “**Second Charge**”).

16. Under the terms of the Second Charge, the maturity date of the Second Mortgage was September 16, 2022.

17. The Second Charge was registered on title to the Real Property without the Lender's consent, contrary to the terms of Charge, which required that the Borrower obtain the Lender's consent before further encumbering the Real Property.

18. In addition to the Charge, the Lender registered notices on title to the Real Property in respect of the Renewal Agreements.

19. Other security granted by the Borrower to the Lender includes:

- (a) a guarantee of the Loan by the Guarantor;
- (b) a General Security Agreement by which the Borrower granted security to the Lender over its personal property (the "**GSA**"); and
- (c) An assignment of rents in respect of the Real Property (the "**Assignment of Rents**").

20. Section 9 of the GSA provides that the Lender may appoint a receiver in respect of the Borrower's assets in the event that the Borrower defaults on its obligations under the GSA (which obligations include the Borrower's obligations in respect of the Charge and the Loan).

***E. The Borrower Defaults***

21. The Borrower has defaulted on its obligations to the Lender under the Charge and the Loan, including by:

- (a) Failing to repay the Loan in full by the Maturity Date; and
- (b) Failing to make required monthly interest payments since July 1, 2024; and

- (c) Permitting the Second Charge to be registered on title to the Real Property without the Lender's consent (collectively, the "**Defaults**").

22. The Lender has made repeated demands that the Borrower repay the Loan since August 1, 2024.

23. On October 21, 2024, counsel for the Lender sent a demand letter and Notice of Intention to Enforce Security under section 244 of the *Bankruptcy and Insolvency Act* to the Borrower.

24. Notwithstanding the demands to date, the Defaults have not been cured and the Loan has not been repaid.

**F. Notice of Sale**

25. On September 23, 2024, the Lender issued a notice of sale in respect of its Charge on the Real Property, which was based on an action commenced by the Lender against the Borrower and the Guarantor issued on September 6, 2024 (the "**Action**").

26. Neither the Borrower nor the Guarantor have delivered a statement of defence to the Action to date.

27. The Real Property is occupied by the Guarantor who operates his business from this location. Tenants at the Real Property, who are closely associated with the Guarantor, have refused to provide copies of their leases, pay rent to the Lender pursuant to the Assignment of Rents, or cooperate with the agents of the Lender in any manner.

**G.     *Need for a Receiver***

28.     The appointment of a receiver of the Real Property is urgently needed to assist the Secured Creditors in realizing upon their security.

29.     In particular, the appointment of a receiver is needed for the following reasons:

- (a)     The Borrower has been in default of its obligations to the Lender for three months. It is unfair to allow the Borrower to continue to benefit from use of the Real Property while no interest payments are being made to the Lender;
- (b)     To allow a receiver to collect rents from the Real Property, to ensure that these monies are used for the benefit of the Borrower's creditors;
- (c)     Despite the Assignment of Rents made by the Borrower in favour of the Lender, the tenants at the Real Property have not paid rent to the Lender, prejudicing both the Lender as well as subsequent encumbrancers; and
- (d)     There is a second mortgage on the Real Property, which is also in default. The appointment of a neutral, court-appointed officer to control the Real Property will minimize litigation and facilitate the sale of the Real Property for the benefit of all of the Borrower's stakeholders.

30.     The Lender is entitled under the terms of the GSA to appoint a receiver of the Borrower's assets, including the Real Property, in the event the Loan is in default.

31.     TDB Restructuring Limited has consented to its appointment as Receiver, if so appointed.



32. Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.
33. Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.
34. Rules 3.02, 14.05, 16.08 and 41 of the *Rules of Civil Procedure*; and
35. Such further and other grounds as counsel may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of this Application:

- (a) The affidavit of Andrew Unger, to be affirmed;
- (b) The consent of the Receiver; and
- (c) Such further and other evidence as counsel may advise and this Honourable Court may permit.

November 4, 2024

**Paliare Roland Rosenberg Rothstein LLP**  
155 Wellington Street West, 35th Floor  
Toronto, Ontario M5V 3H1

**Jeffrey Larry (LSO# 44608D)**  
Tel.: (416) 646-4330  
Email: jeff.larry@paliareroland.com

**Ryan Shah (LSO# 88250C)**  
Tel: 416.646.6356  
ryan.shah@paliareroland.com

Lawyers for the Applicant

**SCHEDULE “A”**

**PIN 21091 - 0117 LT**

PT LT 34 PL 7A TORONTO AS IN CA135666, S/T INTEREST IN CA135666; CITY OF  
TORONTO

KING CAPITAL MORTGAGE INVESTMENT CORPORATION  
Applicant

-and- 2353110 ONTARIO LIMITED  
Respondent

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

**NOTICE OF APPLICATION**

**PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**  
155 Wellington Street West, 35<sup>th</sup> Floor  
Toronto, ON M5V 3H1  
Fax: (416) 646-4301

**Jeffrey Larry** (LSO#44608D)  
Tel: (416) 646-4330  
jeff.larry@paliareroland.com

**Ryan Shah** (LSO# 88250C)  
Tel: 416.646.6356  
ryan.shah@paliareroland.com

Lawyers for the Applicant