

Court File No.: CV-25-00742866-00CL

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

BETWEEN:

**FIERA CANADIAN REAL ESTATE DEBT FUND GP INC. and FIERA FP REAL
ESTATE FINANCING FUND, L.P.**

Applicants

-and-

**OXFORD ROAD DEVELOPMENTS 4 INC., ZHONG CHEN a.k.a. LAWRENCE CHEN,
2250310 ONTARIO INC., and P&H DEVELOPMENT HOLDINGS INC.**

Respondents

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February 17, 2026

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ADDENDA

Schedule 'A' LIST OF AUTHORITIES

Court File No.: CV-25-00742866-00CL

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-and-

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Respondents

FACTUM OF THE APPLICANTS

PART I - INTRODUCTION

1. This Application arises in the context of a receivership over the Respondent, Oxford Road Developments 4 Inc. (the “**Borrower**”).
2. The Applicants, Fiera Canadian Real Estate Debt Fund GP Inc. and Fiera FP Real Estate Financing Fund LP (together, the “**Applicants**” or the “**Lender**”) seek an Order authorizing TDB Restructuring Limited, in its capacity as court-appointed receiver (the “**Receiver**”) over the Borrower, to make an assignment in bankruptcy on behalf of the Borrower.
3. This relief is sought in light of the Borrower’s default under the Loan (as defined herein) and the existence of deemed trust claims asserted by the Canada Revenue Agency (“**CRA**”) that rank ahead of the Lender’s security.

4. The Lender respectfully submits that the requested relief will promote the orderly and efficient administration of the Borrower's estate for the benefit of all stakeholders.

PART II - SUMMARY OF FACTS

5. The Lender carries on business in Ontario as a commercial mortgage lender. The Borrower is a single-purpose corporation operating as a real estate developer.¹

6. The Lender advanced mortgage financing to the Borrower in the principal amount of \$17.55 million (the "**Loan**"). The Loan was provided, among other things, to refinance certain development lands located in the City of Woodstock, Ontario (the "**Property**") and to fund the construction of 19 single-family homes as part of a larger development project undertaken by the Borrower (the "**Project**").²

7. Upon default on the Loan by the Borrower, the Lender brought an application to appoint a receiver over the Borrower (the "**Application**"). On June 6, 2025, Justice Kimmel granted an order, on consent of the parties, appointing the Receiver over the Borrower and the Property (the "**Appointment Order**").³

Deemed Trust Claims

8. In or around the fall of 2025, the Receiver advised the Lender that it had become aware of two deemed trust claims asserted by the Canada Revenue Agency ("**CRA**") against the Borrower, in the following amounts:

- (a) \$195,575.05, representing GST/HST owing by the Borrower (the "**GST/HST**")

¹ Affidavit of Henryk Gelbert sworn February 11, 2026 ("**Gelbert Affidavit**") at paras 2-3

² Gelbert Affidavit at para 5

³ Gelbert Affidavit at paras 4, 7

Deemed Trust”); and

- (b) \$19,914.10, representing source deductions owing by the Borrower (the “**Source Deduction Trust**”).⁴

9. The GST/HST Deemed Trust ranks ahead of the Lender’s Security unless the Borrower is rendered bankrupt.⁵

10. As set out in the Affidavit of Henryk Gelbert sworn May 16, 2025 (the “**First Gelbert Affidavit**”), in support of the Application, the Borrower:

- (a) has failed to meet its obligations to the Lender since October 2024; and
- (b) as of May 8, 2025, was indebted to the Lender in the amount of \$11,483,593.97, plus per diem interest, costs, legal fees, disbursements, and other expenses incurred by the Lender in respect of the Loan.⁶

11. The Lender anticipates a shortfall in recovering this indebtedness, leaving a significant portion of the amount owing (in excess of \$1,000,000.00) as unsecured debt.⁷

12. Accordingly, the Lender seeks an order authorizing the Receiver to make an assignment in bankruptcy on behalf of the Borrower.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

13. The sole issue is whether this Court should grant the Receiver authority to make an assignment in bankruptcy on behalf of the Borrower.

14. It is well established that this Court has jurisdiction to authorize a court-appointed receiver

⁴ Gelbert Affidavit at para 8

⁵ Gelbert Affidavit at para 9

⁶ Gelbert Affidavit at paras 10-11

⁷ Gelbert Affidavit at para 11

to assign a debtor into bankruptcy.

15. In *RBC v Gustin*, 2019 ONSC 5370, the Court confirmed that it has the authority to empower a receiver to file an assignment in bankruptcy on behalf of a debtor company.⁸ Similarly, in *Bank of Montreal v Owen Sound Golf and Country Club*, 2012 ONSC 557, the Court held that it is “well settled” that a court may authorize a receiver to file an assignment in bankruptcy or consent to a bankruptcy order.⁹

16. Courts have specifically granted receivers authority to file an assignment in bankruptcy where one of the purposes in doing so is reversing the priorities of a claim for HST advanced by the CRA.¹⁰ In *Grant Forest Products Inc. v. Toronto-Dominion Bank*, the Court of Appeal held that a creditor may seek a bankruptcy order under the *Bankruptcy and Insolvency Act*, Canada (“*BIA*”) to alter priorities in its favour.¹¹ In *2403177 Ontario Inc. v Bending Lake Iron Group Limited*, the Court reiterated this finding.¹²

17. Similarly, in *First Source Financial Management Inc. v. Block 80 Holdings et. al.*, Justice Cavanagh granted such relief to “reverse the priority of the Deemed Trust and the Lender’s mortgage charge, and facilitate the closing of the Transaction for the benefit of the Borrower’s stakeholders.”¹³

⁸ *RBC v Gustin*, [2019 ONSC 5370](#) at para 15 [*Gustin*]

⁹ *Bank of Montreal v Owen Sound Golf and Country Club*, [2012 ONSC 557](#) at para 7

¹⁰ *CIBC v. 1340182 Ontario Limited et al.*, [2024 ONSC 3658](#) at para 14.

¹¹ *Grant Forest Products Inc. v. Toronto-Dominion Bank* [2015 ONCA 570](#) [*Grant Forest*] at para.118

¹² *2403177 Ontario Inc. v Bending Lake Iron Group Limited*, [2016 ONSC 199](#)

¹³ *First Source Financial Management Inc. v. Block 80 Holdings et. al.*, [2025 ONSC \(Commercial List\), CV-24-00720929-00CL](#), at para 7.

Bankruptcy will promote an orderly and efficient administration of the Borrower's assets, and benefit all stakeholders

18. Authorizing the assignment will promote the orderly and efficient administration of the Borrower's estate.

19. The Borrower is plainly insolvent. It has ceased meeting its obligations to the Lender since October 2024 and, as of May 8, 2025, was indebted to the Lender in the amount of \$11,483,593.97, plus accruing interest, costs, legal fees, and other expenses. A material shortfall is anticipated, leaving in excess of \$1,000,000 as unsecured debt.¹⁴

20. The Receiver has identified two deemed trust claims asserted by the CRA:

- (a) \$195,575.05 in respect of GST/HST; and
- (b) \$19,914.10 in respect of source deductions.

21. Outside of bankruptcy, the GST/HST Deemed Trust ranks in priority to the Lender's security. Upon bankruptcy, however, that deemed trust will rank as an unsecured claim. The Source Deduction Trust will remain unaffected.

22. Authorizing the Receiver to assign the Borrower into bankruptcy will therefore benefit the stakeholders of the Borrower, by increasing the assets available for distribution.

23. In the circumstances, granting the Receiver authority to assign the Borrower into bankruptcy is appropriate, necessary, and consistent with established jurisprudence.

¹⁴ Gelbert Affidavit at para 11

PART IV - ORDER REQUESTED

24. For all the foregoing reasons, the Applicants request that this Court grant an Order authorizing the Receiver to make an assignment in bankruptcy on behalf of the Borrower.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Date: February 17, 2026



DOMINIQUE MICHAUD

Date: February 17, 2026



ANISHA SAMAT

CERTIFICATE RE AUTHORITIES

I, **Anisha Samat**, lawyer for the Applicants, Fiera Canadian Real Estate Debt Fund GP Inc. and Fiera FP Real Estate Financing Fund, L.P. certify:

All authorities are genuine, as required by the Rule 4.06 (2.1) of the *Rules of Civil Procedure*.

Date: February 17, 2026



ANISHA SAMAT

SCHEDULE 'A'
LIST OF AUTHORITIES

1. *Bank of Montreal v Owen Sound Golf and Country Club*, [2012 ONSC 557](#)
2. *CIBC v. 1340182 Ontario Limited et al.*, [2024 ONSC 3658](#)
3. *First Source Financial Management Inc. v. Block 80 Holdings et. al.*, [2025 ONSC \(Commercial List\), CV-24-00720929-00CL](#),
4. *Grant Forest Products Inc. v. Toronto-Dominion Bank* [2015 ONCA 570](#)
5. *RBC v Gustin*, [2019 ONSC 5370](#)
6. *2403177 Ontario Inc. v Bending Lake Iron Group Limited*, [2016 ONSC 199](#)

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