

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

B E T W E E N:

NATIONAL BANK OF CANADA

Applicant

- and -

THOMAS DYLAN SUITOR

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 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**

FACTUM OF THE APPLICANT

September 12, 2025

MILLER THOMSON LLP

Scotia Plaza
40 King Street West
Suite 5800
Toronto Ontario
M5H 3S1, Canada

Jeffrey C. Carhart LSO#: 23645M

Email: jcarhart@millerthomson.com

Tel: 416.595.8615

Patrick Corney LSO#: 65462N

Email: pcorney@millerthomson.com

Tel: 416.595.8555

Monica Faheim LSO#: 82213R

mfaheim@millerthomson.com

Tel: 416.597.6087

Lawyers for the Applicant, National Bank of
Canada

TO: Service List

PART I - OVERVIEW

1. This factum is filed by the applicant, National Bank of Canada (“**NBC**”) in support of its application to appoint a receiver over two mortgaged residential properties owned by the respondent, Thomas Dylan Suitor (“**Respondent**”): 2298 Fassel Avenue and 775 King Road in Burlington (“**Real Properties**”).

2. The Real Properties are subject to first-ranking security held by the Applicant. Between March and May 2024, NBC advanced, collectively, more than \$2.2 million to the Respondent under a mortgage loan secured on the Fassel Avenue property and a home equity line of credit secured on the King Road property.

3. The Respondent is in continuing and undisputed default under his obligations to NBC. Initial defaults arose in late 2024 when he became subject to a bankruptcy application and an interim receivership order, and when a charge was registered against the properties to secure the interim receiver’s fees. Monetary defaults followed: The Respondent stopped paying interest on the King Property line of credit in March 2025 and he has failed to make any monthly payments on the Fassel Loan since April 15, 2025. NBC has served formal demands and notices of intention to enforce security and those notices have expired. Repayment has not been made.

4. The question for the Court is whether it is just or convenient to appoint a receiver in the circumstances. NBC respectfully submits that it is. Ontario courts have consistently recognized that where the security itself provides for the appointment of a receiver, as is the case here, the remedy is not extraordinary but contractual, and the burden on the secured creditor is relaxed. NBC respectfully submits there is no reason in this case for the Court to prohibit or restrict NBC’s exercise of its contractual rights. Moreover, real property is especially suited to a receivership and

the Court's oversight will ensure fairness to all stakeholders – especially the Respondent's significant unsecured creditors.

5. The Court's oversight is especially relevant and necessary in this case. The Respondent is subject to an outstanding bankruptcy order (which is under appeal) and has millions of dollars of unsecured obligations. Because the Real Properties are expected to have value in excess of NBC's secured debt, a Court-supervised sale process will provide the most fair and efficient means of safeguarding NBC's rights as a secured creditor, maximizing realizations from the Real Properties, and ensuring an equitable distribution process of the sale proceeds.

PART II - SUMMARY OF FACTS

6. The Respondent entered into two lending arrangements with the Applicant in early 2024: a \$1,000,000 mortgage loan ("**Fassel Loan**") secured against 2298 Fassel Avenue, Burlington ("**Fassel Property**") on March 26, and a \$1,200,000 home equity line of credit ("**King HELOC**") secured against his residence at 775 King Road, Burlington ("**King Property**") on May 23.¹

7. The Respondent holds sole title to the Fassel Property and the King Property, each of which are residential homes.² Historically, the Respondent leased apartments at the Fassel Property – but the units are currently vacant.³ The King Property is the Respondent's primary residence.⁴

8. On August 30, 2024, Fuller Landau Group (in its capacity as receiver of the Respondent's largest unsecured creditor, The Lion's Share Group Inc.) brought an application for a bankruptcy

¹ Affidavit of Sonia de Lorenzi sworn September 11, 2025 ("**Lorenzi Affidavit**") at paras 8 to 13, Tab 2 to the Application Record of National Bank of Canada dated September 11, 2025 (the "**Application Record**").

² Lorenzi Affidavit at paras 7 and 11, Tab 2 to the Application Record.

³ Lorenzi Affidavit at para 7, Tab 2 to the Application Record.

⁴ Lorenzi Affidavit at para 11, Tab 2 to the Application Record.

order in respect of the Respondent (the “**Bankruptcy Application**”). As part of the Bankruptcy Application, Fuller Landau Group brought a motion to appoint TDB as interim receiver pending the return of the Bankruptcy Application.⁵

9. TDB was appointed as interim receiver (in such capacity, the “**Interim Receiver**”) without security, of all of the property, assets and undertaking of the Respondent on October 7, 2024 pursuant to the Order of Justice Osborne (the “**Interim Receivership Order**”).⁶

10. The Bankruptcy Application, the motion to appoint an interim receiver, and this application were all brought in the context of the *Balboa Inc., Re CCAA* proceeding, which commenced on January 23, 2024. The Respondent is a principal of the debtor entities in that proceeding.⁷

11. Justice Osborne found that “nothing is ordinary about the circumstances of the Balboa CCAA Proceeding, and the Lion’s Share Receivership Proceeding. Significant questions about the whereabouts of millions of dollars belonging to investors remain unanswered.”⁸

12. The Respondent defaulted under the Fassel Loan and the King HELOC when he became subject to the Bankruptcy Application and the Interim Receivership Order, and when a charge was registered on title to the Real Properties to secure the fees and disbursements of the Interim Receiver.⁹

⁵ Lorenzi Affidavit at paras 26-27, Tab 2 to the Application Record

⁶ Exhibit “I” to the Lorenzi Affidavit, Tab 2I to the Application Record.

⁷ Endorsement of Justice Osborne dated October 7, 2024, Exhibit “I” to the Lorenzi Affidavit, Tab 2I to the Application Record, para 19.

⁸ Endorsement of Justice Osborne dated October 7, 2024 at para 83, Exhibit “I” to the Lorenzi Affidavit, Tab 2I to the Application Record.

⁹ Lorenzi Affidavit at paras 15-17, Tab 2 to the Application Record.

13. On February 13, 2025, NBC demanded from the Respondent repayment of both of the Fassel Loan and the King HELOC; and served the Respondent with notices of intention to enforce security (“**NITES**”).¹⁰

14. The NITES expired on or about 12:00 a.m. on February 25, 2025.¹¹

15. The Bankruptcy Application was argued on February 25, 2025.¹²

16. The Honourable Justice Steele granted the bankruptcy order (“**Bankruptcy Order**”) on March 25, 2025. TDB was appointed as the trustee in bankruptcy of the Respondent’s estate.¹³

17. The Respondent appealed the Bankruptcy Order and the appeal is scheduled to be heard on January 26, 2026.¹⁴

18. On or about the time of the Bankruptcy Order, the Respondent began to default on his payment obligations to NBC. He stopped paying interest on the King HELOC in late March and stopped making his monthly payments on the Fassel Loan in mid-April.¹⁵ These defaults are continuing.

19. NBC directly notified the Respondent of these monetary defaults shortly after they occurred.¹⁶ On April 28, the Respondent’s counsel confirmed receipt of these notices.¹⁷

¹⁰ Lorenzi Affidavit at para 20, Tab 2 to the Application Record

¹¹ Lorenzi Affidavit at para 20, Tab 2 to the Application Record

¹² Lorenzi Affidavit at para 29, Tab 2 to the Application Record.

¹³ Lorenzi Affidavit at para 29, Tab 2 to the Application Record.

¹⁴ Lorenzi Affidavit at para 30, Tab 2 to the Application Record.

¹⁵ Lorenzi Affidavit at paras 22-24, Tab 2 to the Application Record.

¹⁶ Lorenzi Affidavit at para 25, Tab 2 to the Application Record.

¹⁷ Lorenzi Affidavit at para 25, Tab 2 to the Application Record.

20. On May 26, 2025, TDB as Interim Receiver brought a motion (“**IR Sale Process Motion**”)¹⁸, with the support of the Respondent, to expand its powers to conduct a Court-supervised sale process with respect to certain properties (including the Real Properties) either held by the Respondent, or held by corporations associated with, related to, or controlled by the Respondent.¹⁹

21. In support of its motion, the Interim Receiver confidentially filed an independent opinion of value from CBRE Limited concerning the market value of the various properties, including the Real Properties.²⁰

22. The IR Sale Process Motion was heard on June 18. The Honourable Justice Steele dismissed the IR Sale Process Motion on June 24, 2025. Her Honour held that an interim receivership is fundamentally preservative in nature and, consistent with that purpose, the Court would require evidence of a rapid deterioration in the value of the subject assets before exercising its inherent jurisdiction to grant disposition powers to the Interim Receiver. Because such evidence was not before the Court, the motion was dismissed.²¹

23. However, in Her Honour’s reasons for decision, Justice Steele noted, in *obiter*, that “[i]t may well be that a full receivership is appropriate; but that application would have to be brought pursuant to s. 243 of the BIA.”²²

¹⁸ The IR Sale Process Motion was adjourned to June 5, 2025.

¹⁹ IR Sale Process Decision, Exhibit “N” to the Lorenzi Affidavit, Tab 2N to the Application Record.

²⁰ Second Report of the Interim Receiver, Exhibit “O” to the Lorenzi Affidavit, Tab 2O to the Application Record.

²¹ IR Sale Process Decision, Exhibit “N” to the Lorenzi Affidavit, Tab 2N to the Application Record.

²² IR Sale Process Decision, Exhibit “N” to the Lorenzi Affidavit, Tab 2N to the Application Record.

24. NBC now brings the within application for the appointment of TDB as Receiver of the Fassel Property and the King Property, pursuant to section 243 of the *Bankruptcy and Insolvency Act* (and section 101 of the *Courts of Justice Act*).

PART III - STATEMENT OF ISSUES

25. The issue to be determined by this Court is whether it is just or convenient to appoint a Receiver on the terms of the proposed Receivership Order. NBC respectfully submits that it is.

PART IV - LAW AND ARGUMENT

A. Law on Appointing a Receiver

26. Pursuant to section 243(1) of the BIA and section 101 of the CJA, the court has broad discretion to appoint a receiver where it is “just or convenient to do so”.²³

27. In determining whether it is “just or convenient” to appoint a receiver under either statute, Ontario courts have applied the decision of Justice Blair (as he then was) in *Freure Village*. Here, His Honour confirmed that, in deciding whether the appointment of a receiver is just or convenient, the court “...must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto,” which includes the rights of the secured creditor under its security.²⁴

28. The applicant need not establish that it will suffer irreparable harm if the proposed receiver is not appointed.²⁵

²³ [Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 \[BIA\]](#); [Courts of Justice Act, R.S.O. 1990, c. C.43 \[CJA\]](#).

²⁴ *Bank of Nova Scotia v. Freure Village of Clair Creek* (1996), 40 C.B.R. (3d) 274, [\[1996\] O.J. No. 5088](#) at [para 10](#) (Gen. Div. [Comm. List]) [*Freure Village*].

²⁵ [Bank of Montreal v Carnival National Leasing Limited](#), 2011 ONSC 1007 at paras 24, 28.

29. This Court has set out a number of factors, not as a checklist, but as a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient. These factors are presented in Schedule “A” hereto.

30. It is well established that the extraordinary nature of a receiver “is significantly reduced when dealing with a secured creditor who has the right to a receivership under its security arrangements.”²⁶ The court should not easily interfere with the contract between the parties.²⁷

31. Therefore, when the rights of the secured creditor under its security includes a specific right to appointment of a receiver, the evidentiary burden on the applicant seeking the relief is relaxed. As stated by Justice Osborne in *iSpan Systems LP* (His Honour relying upon the decision of Chief Justice Morawetz in *Elleway Acquisitions*):

“Where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: while the appointment of a receiver is generally an extraordinary equitable remedy, the courts do not so regard the nature of the remedy where the relevant security permits the appointment and as a result, the applicant is merely seeking to enforce a term of an agreement already made by both parties [citations omitted].”²⁸

32. Justice Koehnen has stated that a receivership “...becomes even less extraordinary when dealing with a default under a mortgage.”²⁹

²⁶ [BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc.](#), 2020 ONSC 1953 at paras 43-44.

²⁷ [United Savings Credit Union v. F & R Brokers Inc.](#), 2003 BCSC 640 at para 16.

²⁸ [iSpan Systems LP](#), 2023 ONSC 6212 at para 31.

²⁹ [BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.](#), 2020 ONSC 1953 (CanLII) at para 44 [citing Farley J. in *Confederation Life Insurance Co. v. Double Y Holdings Inc.*, 1991 CarswellOnt 1511 (Ont. S.C.J.(Commercial List) at para. 20.]

33. Where large amounts of money are at stake a receivership is particularly appropriate.³⁰ In the case of *Weig v Weig*, the Ontario Superior Court held that a \$1.17 million mortgage was a “very large mortgage”.³¹

B. Appointing a Receiver is Just, Convenient, and Appropriate in the Circumstances

34. It is both just and convenient to appoint TDB as Receiver of the Real Property on the basis of the undisputed facts of this case.

35. It is undisputed that: The Respondent is in continuing default of his obligations to NBC; NBC has demanded repayment from the Respondent and served NITES; the NITES have expired; the Indebtedness as not been repaid; and the applicable loan and security documents explicitly provide NBC with the right to appoint a receiver upon default under same.³²

36. Furthermore, it is both just and convenient to appoint TDB as Receiver of the Real Property for the following additional reasons:

- (a) NBC is the first-ranking secured creditor and only mortgagor on title in respect of the Real Properties.³³
- (b) NBC has lost confidence in the Respondents ability to repay the Indebtedness.³⁴
- (c) The nature of the property and the rights and interests of the parties thereto militate in favour of a receivership: It is well-established that real property is suited to a

³⁰ *Weig v. Weig*, 2012 ONSC 7262 at paras 20-21.

³¹ *Weig v. Weig*, 2012 ONSC 7262, at paras 16(ii) and 116.

³² Lorenzi Affidavit at paras 44-46, Tab 2 to the Application Record.

³³ Lorenzi Affidavit at para 43, Tab 2 to the Application Record.

³⁴ Lorenzi Affidavit at para 45, Tab 2 to the Application Record.

receivership,³⁵ and NBC is the only creditor of the Respondent that holds security over the Real Property.³⁶

- (d) A “very large” amount of money is at stake, with the Respondent’s secured indebtedness to NBC exceeding \$2.2 million.³⁷
- (e) The proposed Receiver expects, based on the Respondent’s own assessment as well as CBRE’s independent assessment, that there will be equity in each Real Property in excess of NBC’s Indebtedness.³⁸
- (f) The Respondent, a bankrupt pending his appeal, has a material body of unsecured creditors with claims upon the equity in the Real Properties.³⁹
- (g) Court supervision of sale process and subsequent distribution of funds will provide a public forum for unsecured creditors to voice their opinion on any proposed sale of either Real Property and, following closing of any sale of either Real Property, will provide the fairest and most efficient means to determine claims of unsecured creditors to the surplus proceeds – and distribute same.

³⁵ [Receivership versus CCAA in Real Property Development: Constructing a Framework for Analysis, 2020 CanLIIDocs 3602](#).

³⁶ Lorenzi Affidavit at para 43, Tab 2 to the Application Record.

³⁷ Lorenzi Affidavit at paras 8 and 12, Tab 2 to the Application Record.

³⁸ Second Report of the Interim Receiver, Exhibit “O” to the Lorenzi Affidavit, Tab 2O to the Application Record.

³⁹ Paragraphs 70 to 76 of Endorsement of Justice Osborne dated October 7, 2024, Exhibit “I” to the Lorenzi Affidavit, Tab 2I to the Application Record.

- (h) As a secured creditor, NBC's remedies against the Respondent are not stayed by the Bankruptcy Order – nor is the pending appeal of the Bankruptcy Order relevant to the determination of this application.
- (i) If the Bankruptcy Order is upheld, the Respondent's bankruptcy will proceed more efficiently, to the benefit of his unsecured creditors; because TDB, which is also the Respondent's putative trustee in bankruptcy, will likely have already begun the process of preparing the Real Properties for sale (if not actively marketing them).

PART V - ORDER REQUESTED

37. NBC respectfully requests that this honourable court grant the Receivership Order found at Tab "3" of the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this September 12, 2025.



MILLER THOMSON LLP
 40 King Street West, Suite 5800
 Toronto Ontario
 M5H 3S1

Jeffrey C. Carhart LSO#: 23645M
 Email: jcarhart@millerthomson.com
 Tel: 416.595.8615

Patrick Corney LSO#: 65462N
 Email: pcorney@millerthomson.com
 Tel: 416.595.8555

Monica Faheim LSO#: 82213R
 mfaheim@millerthomson.com
 Tel: 416.597.6087

Lawyers for the Applicant, National Bank of
 Canada

SCHEDULE “A”

Factors relevant to the “just or convenient” analysis [*Kingsett Mortgage Corp. v. Maplevue Developments Ltd., et al.*, 2024 ONSC 1983, paras 24-25]:

- (a) whether irreparable harm might be caused if no order is made;
- (b) the risk to the security holder taking into consideration the size of the debtor’s equity in the assets and the need for protection or safeguarding of assets while litigation takes place;
- (c) the nature of the property;
- (d) the apprehended or actual waste of the debtor’s assets;
- (e) the preservation and protection of the property pending judicial resolution;
- (f) the balance of convenience to the parties;
- (g) the fact that the creditor has a right to appointment under the loan documentation;
- (h) the enforcement of rights under a security instrument;
- (i) the principle that the appointment of a receiver should be granted cautiously;
- (j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
- (k) the effect of the order upon the parties;
- (l) the conduct of the parties; (m) the length of time that a receiver may be in place;
- (n) the cost to the parties; and
- (o) the likelihood of maximizing return to the parties; and
- (p) the goal of facilitating the duties of the receiver.

**SCHEDULE “B”
LIST OF AUTHORITIES**

1. [Bank of Nova Scotia v. Freure Village on Clair Creek](#) (1996), 40 CBR (3d) 274 (Ont Gen Div)
2. [Bank of Montreal v Carnival National Leasing Limited](#), 2011 ONSC 1007
3. [BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc.](#), 2020 ONSC 1953
4. [United Savings Credit Union v. F & R Brokers Inc.](#), 2003 BCSC 640
5. [Canadian Equipment Finance and Leasing Inc. v The Hypoint Company Limited](#), 2022 ONSC 6186.
6. [Weig v. Weig](#), 2012 ONSC 7262

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date September 12, 2025



Signature

**SCHEDULE “C”
RELEVANT STATUTES**

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

Courts of Justice Act, R.S.O. 1990, c. C.43

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

NATIONAL BANK OF CANADA

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THOMAS DYLAN SUITOR

Court File No. CV-25-00751438-00CL

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FACTUM OF THE APPLICANT

MILLER THOMSON LLP

Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto ON M5H 3S1

Jeffrey Carhart (LSO#:23645M)

Email: jcarhart@millerthomson.com
Tel: 416-595-8615

Patrick J. Corney LSO#: 65462N

pcorney@millerthomson.com
Tel: 416.595.8555

Monica Faheim LSO#: 82213R

mfaheim@millerthomson.com
Tel: 416.597.6087

Lawyers for the Applicant