

Court File No. CV-26-00013340-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CAISSE DESJARDINS ONTARIO CREDIT UNION INC.

Applicant

and

5010980 ONTARIO INC., THE ESTATE OF ROBERT BOUCHER,
DIANE BOUCHER, ANGEL VINCENT and MARTIN GLAUDE

Respondents

APPLICATION UNDER SECTIONS 159 AND 160
OF THE *LAND TITLES ACT*, R.S.O. 1990, C. L.5

APPLICANT'S FACTUM
(Rectification Application)

February 23, 2026

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PART I - OVERVIEW

1. The Applicant, Caisse Desjardins Ontario Credit Union Inc. (the “**Caisse**”), seeks a declaration that its existing charge/mortgage registered as Instrument No. SD390449 against the real property owned by the Debtor (as defined below) and municipally known as 309 Old Skead Road, Garson, Ontario, P3L 1N3 (the “**Property**”) is effective as June 29, 2021 pursuant to sections 159 and 160 of the *Land Titles Act*, R.S.O. 1990, c L.5 (the “**LTA**”)¹ deemed to include, extend to, and encumber the entirety of the consolidated parcel bearing PIN 73492-0694 (LT) and legally described below:

FIRSTLY: WEST 1/2 OF SOUTH 1/2 LOT 2 CONCESSION 5 GARSON SAVE AND EXCEPT LT160689, LT139337, PARTS 1 & 2 SR294, PARTS 1 TO 6 53R15498, PARTS 1 TO 4 53R16808, PARTS 2 & 3 53R15769; PART 1, 2 & 3 53R18637; SECONDLY: PART EAST 1/2 LOT 3 CONCESSION 5 BEING PART 4 PLAN 53R21474; SUBJECT TO AN EASEMENT AS IN LT39707; CITY OF GREATER SUDBURY (the “**Consolidated Parcel**”)

PART II – FACTS

I. THE PARTIES

2. The Caisse is a credit union established under the *Credit Unions and Caisses Populaires Act*, 1994, S.O. 1994, c. 11. By Certificate of Amalgamation dated December 20, 2019, but with an effective date of January 1, 2020, the Caisse changed its name to

¹ *Land Titles Act*, R.S.O. 1990, c L.5 (the “**LTA**”), Sections [159](#) and [160](#).

“CAISSE DESJARDINS ONTARIO CREDIT UNION INC.”²

3. 5010980 Ontario Inc. (“**501**” or the “**Debtor**”) is a corporation that holds a mixed residential-commercial property that previously operated as Touch of Heaven Nordic Spa & Retreat. 501 was incorporated pursuant to the laws of Ontario, with a registered office in the community of Garson, which is part of the City of Sudbury, Ontario.³

4. Robert Boucher (“**Robert**”) was an officer and director of 501 holding the positions of President and Treasurer. Robert provided a limited personal guarantee of certain loans, described below (a “**Guarantor**”), issued by the Caisse to 501.⁴

5. Robert passed away on March 19, 2025. His wife, Diane Boucher (“**Diane**”), acts as the executrix for Robert’s estate (“**Robert’s Estate**”). Up until Robert’s passing, he resided in Garson, Ontario.⁵

6. Diane is an officer and director of 501 holding the positions of Vice-President and Secretary, and currently resides in the community of Val Caron, which is part of the City of Sudbury, Ontario. Diane provided a limited personal guarantee of certain loans, described below (a “**Guarantor**”), issued by the Caisse to 501.⁶

² Affidavit of Yoan Bouchard affirmed February 11, 2026, Application Record, Tab 2 (“**Bouchard Affidavit**”), para 3; **Certificate of Amalgamation**, Exhibit A

³ **Bouchard Affidavit**, para 4; **Corporate Profile Report**, Exhibit B

⁴ **Bouchard Affidavit**, para 5; **Corporate Profile Report**, Exhibit B

⁵ **Bouchard Affidavit**, para 6; **Funeral Director’s Statement of Death**, Exhibit C

⁶ **Bouchard Affidavit**, para 7; **Corporate Profile Report**, Exhibit B

7. Angel Vincent (“**Angel**”) was an officer and director of 501 holding the position of Vice-President from November 29, 2019 until September 14, 2020. Angel provided a limited personal guarantee of certain loans, described below (a “**Guarantor**”), issued by the Caisse to 501. Angel resides in Garson, Ontario.⁷

8. BDO Canada Limited (“**BDO**”) is a licensed insolvency trustee and receiver. On January 2, 2026, Justice A.D. Kurke of the Superior Court of Justice granted a receivership order (the “**Receivership Order**”) upon an Application brought by the Caisse pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C, 1985, C. B-3 (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, C. C-43 (the “**CJA**”), appointing BDO as receiver and manager (in such capacity, the “**Receiver**”) without security, over all property, assets and undertakings of 501 including the Property.⁸

II. LOAN NO. 0723583 PR 2 RE 309 OLD SKEAD ROAD, GARSON, ONTARIO

9. The Caisse (as lender), 501 (as borrower), and Robert, Diane and Angel (as guarantors) entered into a Loan Agreement on June 7, 2021 (the “**Loan Agreement**”).⁹

10. Pursuant to the Loan Agreement, the Caisse advanced a loan in the total principal amount of \$667,500.00, for a term of fifty-four (54) months, from the date of disbursement together with interest at a rate of 3.400% per annum and calculated monthly and not in

⁷ **Bouchard Affidavit**, para 8

⁸ **Bouchard Affidavit**, para 9; **Receivership Order**, Exhibit D

⁹ **Bouchard Affidavit**, para 10; **Loan Agreement**, Exhibit E

advance. The loan was disbursed on or about December 3, 2021.¹⁰

Security

11. The Caisse holds security against 501 as follows:

- (a) a first position Charge/Mortgage on the Property registered on January 10, 2020 as Instrument No. SD390449 (the “**Collateral Mortgage**”)¹¹ over the Property; and
- (b) a General Security Agreement dated January 7, 2020 (the “**GSA**”) in respect of “all of the undertaking, property and assets of [501] which are now or at any time hereafter owned by [501] or in which [501] has or at any time hereafter acquires any interest of any nature whatsoever,” as part of the definition of “Collateral” set out at Article 1.1(c) and also stipulated in Articles 2.1, 2.2 and 2.6 of the GSA.¹²

12. The personal property security of the Caisse was registered on June 13, 2025 against 501 as related to the applicable personal property of 501 in the provincial registry maintained under the *Personal Property Security Act* (Ontario), R.S.O. 1990, c P.10 (the “**Ontario PPSA**”) under File No. 517285674 and Registration No. 20250613 1453 1590 4868.¹³

¹⁰ **Bouchard Affidavit**, para 11; **Loan Agreement**, Exhibit E

¹¹ **Bouchard Affidavit**, para 12(a); **Collateral Mortgage**, Exhibit F; **Parcel Register**, Exhibit G

¹² **Bouchard Affidavit**, para 12(b); **General Security Agreement**, Exhibit H

¹³ **Bouchard Affidavit**, para 13; **PPSA Registration Confirmation**, Exhibit I

13. Paragraph 9 of the Loan Agreement stipulates the security to be taken and specifically references the Collateral Mortgage on the Property:¹⁴

9. SECURITY

The performance of the Borrower's obligations stipulated herein or arising herefrom must always be secured by the following security interest and charges:

- the existing collateral charge/mortgage of land in the amount of **\$667,500.00** registered under No. _____ at the _____ Land Registry/Titles Office against the property located at **309 OLD SKEAD RD, GARSON, ON, P3L 1N3**, together with the assignment of rents and of insurance proceeds in respect thereto which such assignment is subject to a security interest in favour of the Financial Institution registered in the Ontario Personal Property Registry under Registration Number _____
- the existing general personal property security against all of the present and future personal property of the Borrower filed in the Ontario Personal Property Registry under Registration Number **756256506**
- a guarantee from **DIANE R. BOUCHER** for the amount of **\$unlimited**
 - with respect to all of the Borrower's present and future debts and obligations toward the Financial Institution
- a guarantee from **ANGEL VINCENT** for the amount of **\$unlimited**
 - with respect to all of the Borrower's present and future debts and obligations toward the Financial Institution
- a guarantee from **ROBERT J BOUCHER** for the amount of **\$unlimited**
 - with respect to all of the Borrower's present and future debts and obligations toward the Financial Institution

The Guarantee

14. Robert, Diane and Angel each provided a personal guarantee in favour of the Caisse dated January 7, 2020, in an unlimited amount, plus interest, costs and expenses in respect of all indebtedness, liabilities and obligations of 501 (each being a "**General Guarantee**").¹⁵

III. DEFAULTS AND TO APPOINTMENT OF BDO AS RECEIVER

15. Numerous events of default under the Collateral Mortgage occurred that justified the Caisse obtaining the Receivership Order on January 2, 2026 including:

- (a) failure to maintain ongoing property insurance and utility payments resulting in imminent lapse of property insurance and cancellation of utilities during

¹⁴ **Bouchard Affidavit**, para 14; **Loan Agreement**, Exhibit E

¹⁵ **Bouchard Affidavit**, para 15; **General Guarantee and Postponement of Claims**, Exhibit J

the winter months;

- (b) 501 failing to make prompt payment of the amounts due under the Collateral Mortgage;
- (c) as of June 10, 2025, the aggregate indebtedness of 501 due and owing to the Caisse was \$575,398.61 for the Collateral Mortgage in addition to an ongoing accrual of interest as set out in the Loan Agreement excluding professional fees, disbursements and HST (the “**Indebtedness**”);
- (d) 501 failing to make prompt payment of the amount due for property taxes for the Property. As of May 12, 2025, the amount of \$24,024.97 was outstanding related to the year 2025¹⁶; and
- (e) 501 failed to repay the loan in accordance with the Loan Agreement.¹⁷

16. The Caisse made a written demand for payment against the Debtor, Robert, Diane and Angel on June 17, 2025 and also sent a Notice of Intention to Enforce Security under section 244(1) of the *Bankruptcy and Insolvency Act* (the “**NITES**”).¹⁸

IV. THE CONSOLIDATION OF 309 OLD SKEAD ROAD, GARSON, ONTARIO

17. The Caisse’s Collateral Mortgage was registered over the portion of the Property being the lands legally described as follows:

W 1/2 OF S 1/2 LT 2 CON 5 GARSON EXCEPT LT160689, LT139337, PT

¹⁶ **Bouchard Affidavit**, para 16(d); **City of Greater Sudbury’s Tax Certificate**, Exhibit K

¹⁷ **Bouchard Affidavit**, para 16

¹⁸ **Bouchard Affidavit**, para 17; **Demand Letter and NITES**, Exhibit L

1 & 2 SR294, PT 1 TO 6 53R15498, PT 1 TO 4 53R16808, PT 2 & 3 53R15769; PT 1, 2 & 3 53R18637; S/T LT39707; GREATER SUDBURY; being PIN 73492-0604 (LT) (the “**Mortgaged Parcel**”).¹⁹

18. At the time of registration of the Caisse’s Collateral Mortgage over the Mortgaged Parcel, 501 was not the registered or beneficial owner of any lands abutting the Mortgaged Parcel. This changed on June 29, 2021.²⁰

19. On June 29, 2021, without the Caisse’s knowledge and contrary to Articles 2.5 as well as 7.3(c), (h), and (k) of the GSA, 501 acquired lands abutting the Mortgaged Parcel from the City of Greater Sudbury (the “**City**”), which abutting lands are legally described as follows:

PART LOT 3 CONCESSION 5 GARSON BEING PART 4 53R21474; CITY OF GREATER SUDBURY being PIN 73492-0692 (LT) (the “**Abutting Parcel**”).²¹

20. The City required 501 to consolidate the Mortgaged Parcel with the Abutting Parcel. On June 29, 2021, without the Caisse’s knowledge and contrary to Articles 2.5 as well as 7.3(c), (h), and (k) of the GSA, 501 submitted an Application to Consolidate Parcels to merge the Mortgaged Parcel with the Abutting Parcel.²²

21. On August 8, 2021, pursuant to 501’s Application to Consolidate Parcels, the

¹⁹ **Bouchard Affidavit**, para 18; **Collateral Mortgage**, Exhibit F

²⁰ **Bouchard Affidavit**, para 19; **Parcel Register**, Exhibit G

²¹ **Bouchard Affidavit**, para 20

²² **Bouchard Affidavit**, para 21

Caisse's Mortgaged Parcel and the Abutting Parcel were consolidated (the "**Consolidation**") to create a new PIN 73492-0694 (LT) legally described as follows:

FIRSTLY: WEST 1/2 OF SOUTH 1/2 LOT 2 CONCESSION 5 GARSON SAVE AND EXCEPT LT160689, LT139337, PARTS 1 & 2 SR294, PARTS 1 TO 6 53R15498, PARTS 1 TO 4 53R16808, PARTS 2 & 3 53R15769; PART 1, 2 & 3 53R18637; SECONDLY: PART EAST 1/2 LOT 3 CONCESSION 5 BEING PART 4 PLAN 53R21474; SUBJECT TO AN EASEMENT AS IN LT39707; CITY OF GREATER SUDBURY (the "**Consolidated Parcel**").²³

22. In June 2025, the Caisse through its counsel, Gowling WLG (Canada) LLP ("**Gowlings**"), discovered 501's purchase of the Abutting Parcel and the occurrence of the Consolidation. After issuing its demand for payment and NITES on June 17, 2025, the Caisse allowed 501 to attempt selling the Property until January 5, 2026 unless there was an urgent event such as the cancellation of property insurance or termination of utilities before that date. This was confirmed in an email from Bart Sarsh of Gowlings to the Debtor on November 5, 2025 at 3:41pm.²⁴ In this email, Mr. Sarsh writes:

Due to the issue with the consolidated parcel of land, all mortgages have an issue in which the mortgages need to be amended by court order to reflect that fact that the mortgage security is to cover all parcels of land and not just a portion of it as it currently exists.

Selling the land and building will avoid the need for Desjardins to bring a separate court Application to fix the legal description on its mortgage security, which is a cost to be fully paid by the borrower company.

23. As a result of the Consolidation, the Caisse's Collateral Mortgage now only covers a portion of the Property, being only the Mortgaged Parcel, and does not extend to the

²³ **Bouchard Affidavit**, para 22; **Parcel Register**, Exhibit G; **Property Index Map for the Consolidated Parcel**, Exhibit M

²⁴ **Bouchard Affidavit**, para 23; **November 5, 2025 Email**, Exhibit N

balance of the Property, being the consolidated, Abutting Parcel.²⁵

V. INTENTION OF THE PARTIES

24. At all times, it was the intention of both the Caisse and 501 that the Caisse's Collateral Mortgage would cover all real property owned by 501 as security for the loan, including the whole of the Property, comprised of the entire Consolidated Parcel, and not a portion of it.²⁶

25. As set out in Article 1.1(c) of the GSA that forms part of the security package, the Caisse and 501 agreed that any and all undertakings, assets, and property of 501 existing at the date of the GSA's execution **or acquired thereafter** constitutes "Collateral" in which the Caisse holds a security interest.²⁷ The relevant portions of the GSA are extracted below:

- (c) "Collateral" means, subject to Section 2.4, any and all of the undertaking, property and assets of the Borrower which are now or at any time hereafter owned by the Borrower or in which the Borrower now has or at any time hereafter acquires any interest of any nature whatsoever, including those specific assets more particularly described on Schedule "A" hereto and including, without in any way limiting the generality of the foregoing:
- (i) all present and future equipment of the Borrower, including all machinery, fixtures, plant, tools, furniture, vehicles of any kind or description, all spare parts, accessories installed in or affixed or attached to any of the foregoing, and all drawings, specifications, plans and manuals relating thereto;
 - (ii) all present and future inventory of the Borrower, including all raw materials, materials used or consumed in the business or profession of the Borrower, work-in-progress, finished goods, goods used for packing, materials used in the business of the Borrower not intended for sale, and goods acquired or held for sale or furnished or to be furnished under contracts of rental or service ("Inventory");
 - (iii) all present and future debts, demands and amounts due or accruing due to the Borrower whether or not earned by performance, including without limitation its book debts, accounts receivable and claims under policies of insurance; and all contracts, security interests and other rights and benefits in respect thereof ("Accounts");
 - (iv) all present and future intangible personal property of the Borrower, including all contract rights, goodwill, patents, trade marks, trade names, business styles, copyrights and other industrial property, and all other choses in action of the Borrower of every kind, whether due at the present time or hereafter to become due or owing;
 - (v) all present and future documents of title of the Borrower, whether negotiable or otherwise including all warehouse receipts and bills of lading;
 - (vi) all present and future agreements made between the Borrower as secured party and others which evidence both a monetary obligation and a security interest in or a lease of specific goods ("Chattel Paper");

²⁵ Bouchard Affidavit, para 24

²⁶ Bouchard Affidavit, para 25

²⁷ Bouchard Affidavit, para 26; General Security Agreement, Exhibit H

- (vii) all present and future bills, notes and cheques (as such are defined pursuant to the *Bills of Exchange Act* (Canada)), and all other writings that evidence a right to the payment of money and are of a type that in the ordinary course of business are transferred by delivery without any necessary endorsement or assignment ("Instruments");
- (viii) all present and future money of the Borrower, whether authorized or adopted by the Parliament of Canada as part of its currency or any foreign government as part of its currency;
- (ix) all present and future securities held by the Borrower, including shares, options, rights, warrants, joint venture interests, interests in limited partnerships, bonds, debentures and all other documents which constitute evidence of a share, participation or other interest of the Borrower in property or in an enterprise or which constitute evidence of an obligation of the issuer; and including an uncertificated security within the meaning of Part VI (Investment Securities) of the *Business Corporations Act* (Ontario) and all substitutions therefor and dividends and income derived therefrom ("Securities");
- (x) all books, accounts, invoices, letters, papers, documents and other records in any form evidencing or relating to the undertaking, property and assets of the Borrower which are subject to the Security Interest; and
- (xi) all Proceeds.

2.1 Grant of Security Interest. Subject to Section 2.4, as continuing security for the due and timely payment and performance by the Borrower of the Obligations, the Borrower hereby grants to the Financial Institution a security interest (the "Security Interest") in the Collateral.

2.2 Proceeds of Collateral. For greater certainty, the Security Interest shall extend to the Proceeds of the Collateral.

26. As currently registered, the Caisse's Collateral Mortgage fails to reflect this intention, potentially undermining its position as senior secured creditor and its entitlement to proceeds in respect of the whole of the Consolidated Parcel. It will also cause issues with a sale of the Property by the court appointed Receiver since the Receiver can only sell what is covered by the Caisse's security.²⁸

PART III - ISSUES

27. The following is the main issue on this Application:

- (a) Should the parcel register for the Property be rectified pursuant to sections 159 and 160 of the *LTA*?

²⁸ **Bouchard Affidavit**, para 27

PART IV - THE LAW AND ANALYSIS

The Legal Principles

28. Sections 159 and 160 of the *LTA* establish the court's wide discretionary power to rectify errors or omissions in the Land Titles Register (the "**Register**") in such a manner that is considered just.²⁹

29. First, section 159 of the *LTA* allows a court to order rectification of the Register if it determines that someone is entitled to an estate, right, or interest in registered land or a charge:

Subject to any estates or rights acquired by registration under this Act, where a court of competent jurisdiction has decided that a person is entitled to an estate, right or interest in or to registered land or a charge and as a consequence of the decision the court is of opinion that a rectification of the register is required, the court may make an order directing the register to be rectified in such manner as is considered just.³⁰

30. Second, section 160 of the *LTA* allows aggrieved parties to apply to court for rectification when there is an erroneous entry, an omission, or unreasonable delay in making an entry in the Register:

Subject to any estates or rights acquired by registration under this Act, if a person is aggrieved by an entry made, or by the omission of an entry from the register, or if default is made or unnecessary delay takes place in making an entry in the register, the person aggrieved by the entry, omission, default or delay may apply to the court for an order that the register be rectified, and the court may either refuse the application with or without costs to be paid by the applicant or may, if satisfied of the justice of the case, make an order for the rectification of the

²⁹ [Wesley v. Iles](#), 2013 ONCA 8 at [para 18](#) ("**Wesley**"); [FirstOntario Credit Union Limited v. Nagra et al.](#), 2024 ONSC 3398 at [paras. 27-28](#).

³⁰ *LTA*, [s. 159](#).

register.³¹

31. The court's authority to order rectification of the register, and the manner in which any rectification will occur, are governed by the court's determination of what is just in the circumstances of the case. In [Wesley v. Iles](#), 2013 ONCA 8 at para. 18, the Court of Appeal for Ontario described the discretion afforded by section 159 of the *LTA* as a "wide discretion ... which allows [the trial judge] to make any order directing the land register be rectified in such manner as is considered just".³²

32. While the Caisse's Application is grounded in sections 159 and 160 of the *LTA*, which provide broad discretionary authority to rectify the Register in such manner as is considered just, the principles underlying equitable rectification are also instructive, although it is not binding on the court in the context of an Application under the *LTA*.³³

33. In [Canada \(Attorney General\) v. Fairmont Hotels](#), 2016 SCC 56, the Supreme Court of Canada held that rectification allows the Court to achieve correspondence between the parties including agreement and the substance the legal instrument intended to record that agreement:

[12] If by mistake a legal instrument does not accord with the true agreement it was intended to record—because a term has been omitted, an unwanted term included, or a term incorrectly expresses the parties' agreement—a court may exercise its equitable jurisdiction to rectify the instrument so as to make it accord with the parties' true agreement. Alternatively put, rectification allows a court to achieve correspondence

³¹ *LTA*, s. 160.

³² [Wesley](#), *supra* note 29, at [para 18](#); [Bluekat Capital Corp. v. YDB Investments Corp.](#), 2019 ONSC 6218 at [para 39](#).

³³ [TD Bank v Rehmtulla](#), 2017 ONSC 4237 at [paras 27 and 30](#)

between the parties' agreement and the substance of a legal instrument intended to record that agreement, when there is a discrepancy between the two. Its purpose is to give effect to the parties' true intentions, rather than to an erroneous transcription of those intentions (Swan and Adamski, at SS8.229).³⁴

34. The Supreme Court of Canada in [Canada \(Attorney General\) v. Fairmont Hotels](#) confirmed that rectification is available where an error has resulted from a mistake common to both or all of the parties to an agreement if:

- (a) The court is satisfied that there was a prior agreement whose terms are definite and ascertainable;
- (b) The agreement was still in effect at the time the instrument was executed;
- (c) The instrument fails to accurately record the agreement; and
- (d) The instrument, if rectified, would carry out the parties' prior agreement.³⁵

35. Rectification is, ultimately, an equitable remedy that seeks to give effect to the true intention of the parties and prevent errors from causing windfalls. The doctrine is also "based on simple notions of relief against unjust enrichment", namely, that it would be unfair to rigidly enforce an error that enriches one party at the expense of another. Since unjust enrichment can also result from a mistake in carrying out the intention of the parties, the remedy is also available to correct errors in implementation.³⁶

³⁴ [Canada \(Attorney General\) v. Fairmont Hotels](#), 2016 SCC 56 at [para 12](#) ("**Fairmont Hotels**"); [Fonger v. Thuss et al.](#), 2021 ONSC 7255 at [para 87](#) ("**Fonger**").

³⁵ [Fairmont Hotels](#), *ibid.*, at [para 14](#); [Fonger](#), *ibid.*, at [para 89](#).

³⁶ [Fairmont Hotels](#), *ibid.*, at [paras 63 and 66](#).

Rectification is Necessary and Appropriate in this Case

36. In the present case, it is just to grant the relief sought to extend the registered Collateral Mortgage to cover the entire Consolidated Parcel. First, refusing rectification would leave the Caisse, a bona fide senior secured creditor, without effective recourse to the full collateral that was contractually agreed upon, which is a result that is fundamentally inequitable. Second, the current deficiency in the registration arose solely from 501's failure to notify the Caisse of the Consolidated Parcel, as required under the GSA. It would be unjust to allow 501 to benefit from its own breach. Third, without rectification, the court-appointed Receiver will be unable to sell the entirety of the Property, frustrating the orderly administration of the receivership and prejudicing all stakeholders.³⁷

37. The terms under the GSA are definite and ascertainable. Under Article 1.1(c) of the GSA, the Caisse and 501 agreed that any and all undertakings, assets, and property of 501 existing at the date of the GSA's execution or **acquired thereafter** constitutes "Collateral" in which the Caisse holds a security interest. Pursuant to Articles 2.1 and 2.2 of the GSA, 501 granted the Caisse an ongoing security interest to the Collateral including the proceeds from the Collateral.³⁸

38. Article 4.1(l) of the GSA allows the Caisse to appoint a receiver over the Collateral and for the receiver to take possession of the Collateral and to sell or otherwise dispose

³⁷ **Bouchard Affidavit**, para 28

³⁸ **Bouchard Affidavit**, para 26; General Security Agreement, Exhibit H

of the whole or any part of the Collateral on such terms and in such manner as the receiver shall determine.. Articles 4.1(h) and 4.3 allow the Caisse or the Receiver to sell all or any portion of the Collateral.³⁹

39. Articles 7.3(c), (e), (h) and (k) required 501 not to deal with the Collateral in any other way than provided for in the GSA, to notify the Caisse of any change in information that could affect the Collateral or the Caisse's security interests, to provide the Caisse with all information with respect to the Collateral that the Caisse may reasonably require from time to time, and to give or turn over all other documents that the Caisse may require in order to complete or continue its security interests.⁴⁰

40. The entirety of the Consolidated Parcel forms part of the Collateral as agreed to under the GSA. 501 granted a security interest in the Mortgaged Parcel as well as the Abutting Parcel being acquired after the execution of the GSA meaning that the Caisse's security interest extends to the entirety of the Consolidated Parcel. 501 agreed to the appointment of the Receiver that has the ability to take possession of and deal with any part of the Collateral as the Receiver shall determine.

41. The GSA was still in effect at the time the instrument was executed. Article 9.1 of the GSA indicates that the GSA was effective at the time of execution and the security interest shall be a continuing security interest for the due and timely payment and performance of 501's obligations related to any indebtedness, liabilities, and obligations

³⁹ **Bouchard Affidavit**, para 26; General Security Agreement, Exhibit H

⁴⁰ **Bouchard Affidavit**, para 26; General Security Agreement, Exhibit H

to the Caisse. The GSA was executed on January 7, 2020 and the Collateral Mortgage was registered on January 10, 2020.

42. Currently, the Collateral Mortgage does not reflect the common intention of all parties as set out in the GSA; that the Caisse's Collateral Mortgage would cover all current and future real property owned by 501 as security for the loan, including the whole of the Consolidated Property.

43. The parties agreed that the Caisse's security interest would extend to all property existing at the time the GSA was executed as well as any property acquired afterwards. At the time of registration of the Caisse's Collateral Mortgage over the Mortgaged Parcel, 501 was not the registered or beneficial owner of the Abutting Parcel. 501 failed to disclose that the Abutting Parcel was acquired or that the Mortgaged Parcel and the Abutting Parcel were consolidated into the Consolidated Parcel.

44. 501's failure to notify the Caisse of the acquisition of the Abutting Parcel and the subsequent Consolidation constitutes a breach of its express covenants under the GSA. Article 7.3(c) required 501 not to "exchange, transfer, assign, rent, dispose of or deal with the Collateral in any other way than provided in this Agreement." Article 7.3(e) obligated 501 to "notify the Financial Institution without delay of any loss or damage to the Collateral or of any change in the information contained in this Agreement or of any existing or potential claim that could affect the Borrower, the Collateral or the Financial Institution's Security Interest." These breaches caused the current discrepancy between the parties'

agreement and the registered mortgage. Rectification is therefore appropriate to remedy the consequences of 501's own wrongful conduct and to prevent 501 from benefiting from its breach.

45. The fact that the Collateral Mortgage does not reflect that it attaches to the entirety of the Consolidated Parcel may prevent the sale of the Property by the court-appointed Receiver. This contradicts the agreement in the GSA that the Receiver may dispose of the Property as the Receiver shall determine and will leave the Caisse without recourse even though the parties negotiated the loan with the understanding that the Caisse's security would cover the entirety of the Property.

46. If this Court grants the rectification, it will allow the parties to carry out what was contractually agreed upon. Extending the Collateral Mortgage to the entirety of the Consolidated Parcel will allow the Caisse's security interest to be secured against the entirety of the Property and for the Receiver to dispose of the Property as it sees fit and subject to court approval.

47. If the rectification to the Collateral Mortgage is not granted, 501 will be unjustly enriched at the Caisse's expense. The Caisse advanced \$667,500.00 to 501 on the understanding—expressed in the GSA—that all of 501's property, present and future, would secure the loan. Allowing 501 to retain the benefit of that advance while the Caisse is left with only partial security over the Property would constitute a windfall to 501 arising directly from its own breach of the GSA. Equity will not permit such a result.

48. The Caisse's proposed rectification does not prejudice the Debtor, being 501, the Estate of Robert Boucher, Diane Boucher and Angel Vincent, as the Debtor's underlying obligations remain unchanged. The rectification merely corrects an administrative deficiency to reflect the original intention of all parties as demonstrated in the GSA. The extension of the Caisse's Collateral Mortgage serves to protect the guarantors by potentially reducing the outstanding deficiency balance and their corresponding liability for such deficiency balance upon the realization of the Property by the Receiver.⁴¹

49. The Land Registry Services Branch of the Ministry of Public and Business Service Delivery has specified the proper manner in which to seek the relief requested. The Land Registrar cannot amend the Register through changes to the content field and such an order should never be put before the Court. The appropriate remedy is to seek an order for declaratory relief deeming to contain certain provisions on a *nunc pro tunc* basis:⁴²

b. Improper Content

i. Alteration of Registered Instruments

The Land Registrar may amend the register, through changes to the contents of fields on the parcel page or through deletion or addition of instruments. The Land Registrar cannot alter the contents of registered instruments. A draft order purporting to compel the Land Registrar to do so should never be put before the Court. If the actual contents of a registered instrument are to be changed, the parties may consider obtaining declarative relief. An example of such relief would be an order deeming instruments to have been registered on a certain date or deeming them to contain certain provisions on a *nunc pro tunc* basis. Such an order should be registered using an Application to Register Court Order if no amendments are being performed by the Land Registrar.

⁴¹ Bouchard Affidavit, para 29.

⁴² [2024-02 Court Orders, Land Registry Services Branch of the Ministry of Public and Business Service Delivery updated August 21, 2025](#)

50. Deeming the existing charge/mortgage to include the newly vested lands and ordering the existing charge (being Instrument No. SD390449 (the Collateral Mortgage)), to be added to PIN 73492-0694 (LT) for the Consolidated Parcel will properly reflect the intentions of the Caisse, the Debtor, the Estate of Robert Boucher, Diane, and Angel, as covenanted in the GSA.⁴³

PART V - RELIEF SOUGHT

51. The Caisse seeks an order declaring that the existing charge/mortgage registered as Instrument No. SD390449 is deemed *nunc pro tunc* effective June 29, 2021 to include, extend to, and encumber the entirety of the consolidated parcel bearing PIN 73492-0694 (LT) and legally described as:

FIRSTLY: WEST 1/2 OF SOUTH 1/2 LOT 2 CONCESSION 5 GARSON SAVE AND EXCEPT LT160689, LT139337, PARTS 1 & 2 SR294, PARTS 1 TO 6 53R15498, PARTS 1 TO 4 53R16808, PARTS 2 & 3 53R15769; PART 1, 2 & 3 53R18637; SECONDLY: PART EAST 1/2 LOT 3 CONCESSION 5 BEING PART 4 PLAN 53R21474; SUBJECT TO AN EASEMENT AS IN LT39707; CITY OF GREATER SUDBURY (the **"Consolidated Parcel"**)

52. The Caisse seeks a further order directing the Land Registrar at the Land Registry Office No. 53 to register a copy of the resulting Order on title to the parcel register for the Consolidated Parcel.

⁴³ Bouchard Affidavit, para 30.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of February, 2026.



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SCHEDULE "A"

LIST OF AUTHORITIES

1. [Wesley v. Iles, 2013 ONCA 8](#)
2. [FirstOntario Credit Union Limited v. Nagra et al., 2024 ONSC 3398](#)
3. [Bluekat Capital Corp. v. YDB Investments Corp, 2019 ONSC 6218](#)
4. [TD Bank v Rehmtulla, 2017 ONSC 4237](#)
5. [Canada \(Attorney General\) v. Fairmont Hotels, 2016 SCC 56](#)
6. [Fonger v. Thuss et al., 2021 ONSC 7255](#)
7. [2024-02 Court Orders, Land Registry Services Branch of the Ministry of Public and Business Service Delivery updated August 21, 2025](#)

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 February 23, 2026



Bart Sarsh and Zachary Dubeau

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

1. [Land Titles Act, RSO 1990, c L.5,](#)

Court may order rectification

159 Subject to any estates or rights acquired by registration under this Act, where a court of competent jurisdiction has decided that a person is entitled to an estate, right or interest in or to registered land or a charge and as a consequence of the decision the court is of opinion that a rectification of the register is required, the court may make an order directing the register to be rectified in such manner as is considered just. R.S.O. 1990, c. L.5, s. 159.

Application to court to rectify

160 Subject to any estates or rights acquired by registration under this Act, if a person is aggrieved by an entry made, or by the omission of an entry from the register, or if default is made or unnecessary delay takes place in making an entry in the register, the person aggrieved by the entry, omission, default or delay may apply to the court for an order that the register be rectified, and the court may either refuse the application with or without costs to be paid by the applicant or may, if satisfied of the justice of the case, make an order for the rectification of the register. R.S.O. 1990, c. L.5, s. 160; [2012, c. 8,](#) Sched. 28, s. 88.

CAISSE DESJARDINS ONTARIO CREDIT UNION INC.

Applicant

- and - 5010980 ONTARIO INC., et al

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
SUDBURY

APPLICANT'S FACTUM
(Rectification Application)

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