Court File No.: CV-26-00000666-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

BANK OF MONTREAL

Applicant

\- and -

16002471 CANADA INC. and **HUDSON RESTORATION MARKHAM 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

FACTUM OF THE APPLICANT

April 2, 2026

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FACTUM OF THE APPLICANT

PART I – OVERVIEW

1. This factum is filed by the Applicant, Bank of Montreal (the **"Bank**"), for an order appointing BDO Canada Limited ("**BDO**") as receiver (the "**Receiver**") without security, of all of the assets, undertakings, and properties of 16002471 Canada Inc. ("**160**") and Hudson Restoration Markham Inc. ("**Hudson**", and together with 160, the "**Respondents**" and, as referred to in the Mgbolu Affidavit and draft Receivership Order[1], the "**Borrowers**" and the "**Debtors**" respectively), acquired for, or used in relation to the businesses carried on by the Respondents, without limitation, the lands and premises municipally known as 940 Sheldon Court, Burlington, Ontario (the "**Sheldon Property**" or the "**Real Property**") legally described in Schedule "A" to

[1] Applicant's Application Record, Tab 3, Draft Receivership Order (the "**Draft Receivership Order**").

the draft Receivership Order, pursuant to section 243 of the *Bankruptcy and Insolvency Act*[2] and section 101 of the *Courts of Justice Act*[3], as amended.

2. The facts underlying this application are more fully set out in the affidavit of Paul Mgbolu sworn March 4, 2026 (the "**Mgbolu Affidavit**")[4]. Unless otherwise specified, capitalized terms used but not defined herein have the meanings ascribed to such terms in the Mgbolu Affidavit.

PART II – FACTS

3. The Respondents are federally incorporated corporations. 160 carries on business from 2334 Hammond Road, Mississauga, Ontario. Hudson carries on business from 802 Cochrane Drive, Markham, Ontario. Mingxiang Guo ("**Guo**") is the sole director and officer of each of the Respondents.[5]

4. 160 is the registered owner of the Sheldon Property, a multi-tenanted office building situated on approximately 1.29 acres of land.[6]

5. Hudson carries on business as a disaster restoration company specializing in remediation, restoration and reconstruction services for residential and commercial properties.[7]

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[2] R.S.C 1985, c. B-3 ("**BIA**").
[3] R.S.O. 1990, c. V. 43 (the "**CJA**").
[4] Applicant's Application Record, Tab 2, Affidavit of Paul Mgbolu sworn September 23, 2025 (the "**Mgbolu Affidavit**").
[5] Mgbolu Affidavit, at paras. 2, 4 and 5; Exhibits "A" and "B" to the Mgbolu Affidavit.
[6] Mgbolu Affidavit, at para 3.
[7] Mgbolu Affidavit at para 5.

Loans and Security

160 Loan

6. Pursuant to a letter agreement dated October 29, 2024 (the "**160 LOA**"), the Bank extended to 160 a non-revolving demand real estate credit facility in the maximum principal amount of $3,980,000 (the "**Real Estate Facility**").[8]

7. As security for the Real Estate Facility, the Bank obtained, among other things, the following (collectively, the "**160 Security**")[9]:

(a) a charge/mortgage in the principal amount of $4,975,000 registered against the Sheldon Property on November 25, 2024 as Instrument No. HR2070010 (the "**Sheldon Mortgage**");

(b) a general security agreement granted by 160 in favour of the Bank dated November 16, 2024 (the "**160 GSA**");

(c) a notice of assignment of rents registered against the Sheldon Property on November 25, 2024 as Instrument No. HR2070029 (the "**Sheldon Notice of Rents**");

(d) a corporate guarantee from Hudson dated November 16, 2024 in the aggregate amount of $3,980,000 plus interest and costs; and

[8] Mgbolu Affidavit, at para 6; Exhibit "C" to the Mgbolu Affidavit.
[9] Mgbolu Affidavit, at para. 9(a)–(e); Exhibits "E", "F", "G", "H" and "I" to the Mgbolu Affidavit.

(e) a personal guarantee from Guo dated November 16, 2024 in the aggregate amount of $3,980,000 plus interest and costs.

Hudson Loan

8. Pursuant to a Letter of Agreement dated October 29, 2024, and a Commercial Card Agreement dated December 3, 2024 (collectively, the "**Hudson LOA**", and together with the 160 LOA, the "**LOAs**"), the Bank advanced the following credit facilities to Hudson (collectively, the "**Credit Facilities**")[10]:

(a) a demand revolving operating overdraft facility in the amount of $200,000 (the "**Operating Facility**"); and

(b) a corporate MasterCard facility authorized in the amount of $50,000 (the "**MasterCard Facility**").

9. As security for Hudson's obligations under the Credit Facilities, the Bank was granted, among other things, the following (collectively, the "**Hudson Security**" and together with the 160 Security, the "**Security**")[11]:

(a) a general security agreement granted by Hudson in favour of the Bank dated November 16, 2024 (the "**Hudson GSA**");

(b) a corporate guarantee from 160 dated November 16, 2024, in the aggregate amount of $250,000 plus interest and costs; and

[10] Mgbolu Affidavit, at para. 7; Exhibit "D" to the Mgbolu Affidavit.
[11] Mgbolu Affidavit, at para. 10(a)–(c); Exhibits "J", "K" and "L" to the Mgbolu Affidavit.

(c) a personal guarantee from Guo dated November 16, 2024 in the aggregate amount of $250,000 plus interest and costs.

10. The Credit Facilities are repayable on demand.[12]

Other Creditors

11. Parcel searches of the Sheldon Property disclose no encumbrances registered on title other than those in favour of the Bank.[13]

12. Searches conducted through the Personal Property Security Registration System (the "**PPSR**") disclose no registrations against 160 other than those registered by the Bank.[14]

13. PPSR searches against Hudson disclose registrations in favour of[15]:

(a) the Bank;

(b) Vault Credit Corporation; and

(c) Ford Credit Canada.

14. Pursuant to an intercreditor postponement and subordination agreement dated November 18, 2024, Vault Credit Corporation postponed and subordinated its security interest in Hudson's personal property in favour of the Bank.[16]

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[12] Mgbolu Affidavit, at paras. 6 and 7; Exhibits "C" and "D" to the Mgbolu Affidavit.
[13] Mgbolu Affidavit, at para. 11; Exhibit "M" to the Mgbolu Affidavit.
[14] Mgbolu Affidavit, at para. 12; Exhibit "N" to the Mgbolu Affidavit.
[15] Mgbolu Affidavit, at para. 12; Exhibit "O" to the Mgbolu Affidavit.
[16] Mgbolu Affidavit, at para. 13; Exhibit "P" to the Mgbolu Affidavit.

Right to Appoint a Receiver

15. Pursuant to the terms of the 160 GSA and the Hudson GSA, a breach of any obligation owing to the Bank constitutes an Event of Default and, upon the occurrence of an Event of Default, the Bank is entitled, among other remedies, to apply to this Court for the appointment of a receiver.[17]

16. Enforcement of the Bank's rights under the Sheldon Mortgage also includes the right to apply to this Court for the appointment of a receiver.[18]

Default, Standstill Agreement and Demands

17. The Respondents have been in default of their obligations to the Bank under the LOAs since the fall of 2025 for, among other things[19]:

(a) arrears of loan payments;

(b) failure to operate their accounts within authorized limits;

(c) exceeding authorized limits under the Credit Facilities;

(d) using the Operating Facility for purposes other than its approved purposes; and

(e) failing to maintain and provide satisfactory evidence of required insurance coverage.

[17] Mgbolu Affidavit, at para. 14; Exhibits "F" and "J" to the Mgbolu Affidavit.
[18] Mgbolu Affidavit, at para. 15; Exhibit "E" to the Mgbolu Affidavit.
[19] Mgbolu Affidavit, at paras. 16 and 22–24.

18. In December 2025, the Respondents' accounts were transferred to the Bank's Special Accounts Management Unit ("**SAMU**").[20]

19. On December 9, 2025, the Bank, the Respondents and Guo entered into a standstill agreement (the "**Standstill Agreement**"), pursuant to which the Bank agreed to forbear from enforcing its rights and remedies until March 31, 2026 (the "**Standstill Period**"), unless earlier terminated upon an Event of Default under the Standstill Agreement.[21]

20. The Standstill Agreement provides that, upon the occurrence of an Event of Default, the Bank may terminate the Standstill Period and exercise its rights and remedies under the LOAs and the Security, including issuing demands and applying to the Court for the appointment of a receiver.[22]

21. Pursuant to the Standstill Agreement, and as conditions of the Bank's forbearance, the Respondents agreed, among other things, to[23]:

(a) continue making all scheduled payments of principal, interest and other amounts owing under the Credit Facilities as and when due;

(b) maintain all operating accounts within authorized limits;

(c) deliver updated and satisfactory evidence of insurance coverage naming the Bank as loss payee or additional insured, as applicable; and

[20] Mgbolu Affidavit at para. 17.
[21] Mgbolu Affidavit, at para. 19; Exhibit "Q" to the Mgbolu Affidavit.
[22] Mgbolu Affidavit, at para. 20; Exhibit "Q" to the Mgbolu Affidavit.
[23] Mgbolu Affidavit, at para. 21; Exhibit "Q" to the Mgbolu Affidavit.

(d) pursue refinancing and/or a sale transaction sufficient to repay the indebtedness owing to the Bank.

22. During the Standstill Period, the Respondents failed to comply with the Standstill Agreement and the LOAs, including by failing to make required principal and interest payments for December 2025 and January and February 2026.[24]

23. By correspondence dated January 7, 2026, the Bank, through counsel, advised the Respondents of their defaults under the Standstill Agreement and the LOAs and demanded that such defaults be immediately cured.[25]

24. By letters dated January 13, 2026, the Bank demanded payment of the indebtedness owing under the Credit Facilities and related guarantees and issued notices of intention to enforce security pursuant to section 244 of the BIA (the "**NITES**") to 160 and Hudson.[26] The ten-day notice period under the NITES has long expired. Despite demand and the delivery of the NITES, the Respondents have failed to repay the indebtedness owing to the Bank.[27]

PART III – ISSUE

25. The sole issue on this application is whether it is just and convenient to appoint BDO as receiver, without security, of all of the assets, undertakings and properties of the Respondents.

[24] Mgbolu Affidavit, at para. 22.
[25] Mgbolu Affidavit, at para. 24; Exhibit "R" to the Mgbolu Affidavit.
[26] Mgbolu Affidavit, at para. 26; Exhibit "S" to the Mgbolu Affidavit.
[27] Mgbolu Affidavit, at paras. 26, 28 and 29; Exhibit "S" to the Mgbolu Affidavit.

PART IV – LAW AND ARGUMENT

Test for the Appointment of a Receiver

26. Pursuant to section 243 of the BIA and section 101 of the CJA, the Court has the power to appoint a receiver where it is "just or convenient" to do so.[28]

27. In determining whether it is "just or convenient" to appoint a receiver, the Court historically considers numerous factors. These factors include:

(a) whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;

(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;

[28] *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, ss. 243(1); *Courts of Justice Act*, R.S.O. 1990, c C.43, as amended, s. 101(1).

(h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;

(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;

(o) the likelihood of maximizing return to the parties; and

(p) the goal of facilitating the duties of the receiver.[29]

28. The above referenced factors are not a checklist, but should be viewed holistically to determine whether, in all circumstances, the appointment of a receiver is just or convenient.[30]

29. Furthermore, it is not necessary for a secured creditor as the moving party, to establish that it will suffer irreparable harm if a receiver is not appointed. [31]

[29] *Canadian Equipment Finance and Leasing Inc v the Hypoint Company Limited*, 2022 ONSC (Ont S.C.J.) [Com. List] at para 25; see also, *Aggregated Investments Inc. et. al. v. Pace Group Holding Inc. et .al.*, 2025 ONSC 2695 (Ont. S. C. J. [Com. List] ["***Aggregated***"] at para. 24.
[30] *Ibid*, *Aggregated* at para. 25.
[31] *Bank of Montreal v Carnival National Leasing Limited*, 2011 ONSC 1007 at para 24, citing *Bank of Nova Scotia v Freure Village of Clair Creek*, [1996] OJ No 5088 at para 10 (Ct J Gen Div).

30. Where a debtor has expressly agreed to the appointment of a receiver or a receiver manager in the event of default, the court should not ordinarily interfere with the contract between the parties.[32]

31. When security agreements, such as the 160 GSA, the Hudson GSA and the Sheldon Mortgage**,** noted above, allow for the appointment of a receiver following a default, especially in cases of a mortgage default, receivership is no longer an extraordinary remedy.[33]

It is Just and Convenient to Appoint the Receiver

32. A court-appointed receivership is just and convenient in the circumstances as:[34]

(a) the Respondents are indebted to the Bank in the amount of $4,176,870.30, plus costs;

(b) the Respondents have failed to make required principal and interest payments, notwithstanding a single payment of $30,000.00, and have continued to be in default under the LOAs and the Standstill Agreement;

(c) the Bank has demanded repayment of the indebtedness and delivered notices of intention to enforce security pursuant to section 244 of the *BIA*, and the applicable notice period has expired;

(d) the 160 GSA, the Hudson GSA and the Sheldon Mortgage provide that, upon default, the Bank is entitled to seek the appointment of a receiver;

[32] *United Savings Credit Union v F & R Brokers Inc*, 2003 BCSC 640 at paras 16-17.
[33] *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc*, 2020 ONSC 1953 at paras 43-44.
[34] Mgbolu Affidavit, at paras. 14–15, 20–22, 26, 28, 31–32; Exhibits “E”, “F”, “J”, “S” and “U”.

(e) the Bank entered into the Standstill Agreement and provided the Respondents with additional time to remedy their defaults, which they failed to do;

(f) the Respondents have not provided any feasible plan to repay the indebtedness;

(g) the Respondents' continued defaults have resulted in the Bank losing confidence in their ability to repay the indebtedness;

(h) the appointment of a receiver is necessary to preserve and realize upon the Bank's collateral in an orderly and court-supervised process; and

(i) BDO has consented to act as receiver.

33. The appointment of a Receiver is necessary in order to, among other things[35]:

(a) determine whether Hudson's business is viable and can be sold as a going concern and, if so, whether it can continue to operate pending a sale;

(b) determine whether there are any environmental issues associated with the Sheldon Property;

(c) collect and preserve accounts receivable, rents and other proceeds subject to the Bank's security; and

(d) take possession of, secure, manage and market the Sheldon Property in an orderly and court-supervised realization process for the benefit of all stakeholders, including the Bank.

[35] Mgbolu Affidavit, at para. 31.

PART IV-RELIEF SOUGHT

34. For the reasons set out above, the Bank respectfully submits that this Court should grant an Order appointing BDO as Receiver over all of the Respondent's assets, undertakings and properties.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of April, 2026.

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SCHEDULE "A"

AUTHORITIES

Tab	Title	Pinpoints
1	*Aggregated Investments Inc. et. al. v. Pace Group Holding Inc. et .al.*, 2025 ONSC 2695 (Ont. S. C. J. [Com. List]	24, 25
2	*Bank of Montreal v Carnival National Leasing Limited*, 2011 ONSC 1007	24
3	*Bank of Nova Scotia v Freure Village of Clair Creek*, [1996] OJ No 5088 (Ct J Gen Div)	10
4	*Canadian Equipment Finance and Leasing Inc v the Hypoint Company Limited*, 2022 ONSC (Ont S.C.J.) [Com. List]	25
5	*United Savings Credit Union v F & R Brokers Inc*, 2003 BCSC 640	16-17
6	*BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc*, 2020 ONSC 1953	43-44

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: April 2, 2026

Signature

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY-LAWS

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

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, as amended**

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. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

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