Court File No. CV-25-00749269-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

TANDIA FINANCIAL CREDIT UNION LIMITED

Applicant

- and -

2682229 ONTARIO INC.

Respondent

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, TANDIA FINANCIAL CREDIT UNION LIMITED

(returnable September 18, 2025)

September 16, 2025

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PART I – NATURE OF THE APPLICATION

1. The Applicant, Tandia Financial Credit Union Limited ("**Tandia**" or the "**Lender**"), makes an application for an Order (the "**Receivership Order**") appointing BDO Canada Limited ("**BDO**") as receiver (in such capacity, the "**Receiver**"), without security, of all the assets, properties and undertakings of 2682229 Canada Inc. (the "**Debtor**") acquired for or used in relation to the business carried on by the Debtor, including the real property located at 5738 County Road 90, Utopia, Ontario (the "**Real Property**"), and all proceeds thereof (collectively with the Real Property, the "**Property**").

2. The Debtor owes Tandia approximately $2 million in principal and interest (plus costs and accruing interest) on a general secured basis.

3. Tandia made formal written demand on April 9, 2025. In the numerous months following the issuance of the demand letters, the debt has not been repaid and the Debtor has ceased making ongoing payments on their loan facilities with Tandia.

4. The Debtor has had little to no contact with Tandia over the past several months and, accordingly, Tandia is concerned about the Real Property and management of the Property generally.

5. The statutory notice period has long expired and Tandia's security package includes the contractual right to the appointment of a receiver, and it is respectfully submitted that such appointment is just and convenient in this case.

PART II – SUMMARY OF FACTS

Background and Tandia's Lending Arrangements with the Debtor

6. The Debtor is a privately-owned Ontario corporation, with its registered office located in Utopia, Ontario. The Debtor's sole business is the operation of a gas station at the Real Property under the "Esso" brand with an attached convenience store. Sathaijenderaa Sathiyathevan, Prithiviraj Sathiyathevan and Jasleen Singh (collectively, the "**Personal Guarantors**") are the Debtor's sole directors.

> **Affidavit of Kathy Clark sworn August 25, 2025 [Clark Affidavit] at paras. 3-4, Tab 2 of Tandia's Application Record dated August 26, 2025 (Caselines Master A15).**

7. The Debtor is indebted to Tandia in connection with a certain credit facility (the "**Credit Facility**") made available by Tandia to the Debtor pursuant to and under the terms of a commitment letter entered into between the Lender, as lender, and the Debtor, as borrower, dated October 26, 2022 (as amended, replaced, restated or supplemented from time to time, the "**Credit Agreement**").

> **Clark Affidavit, *supra* at para. 6 (Caselines Master A16).**

8. As security for its obligations to Tandia, the Debtor granted a general security agreement to Tandia dated October 31, 2022 (the "**GSA**"), registration in respect of which was duly made pursuant to the *Personal Property Security Act* (Ontario) (the "**PPSA**").

> **Clark Affidavit, supra at para. 7 (Caselines Master A16).**

9. The GSA secures all present and after-acquired personal property of the Debtor. Tandia has a PPSA registration against the Debtor in respect of all collateral classifications other than consumer goods.

Clark Affidavit, *supra* at paras. 8, 10 (Caselines Master A16 and A17).

10. While the PPSA registration system discloses one additional registration registered against the Debtor, it relates to the lease of certain equipment used by the Debtor and does not impact the Lender's first-in-time position as registered against the personal property of the Debtor.

Clark Affidavit, *supra* at para. 11 (Caselines Master A17).

11. As a term of the Credit Agreement, the Real Property is subject to a charge in favour of the Lender, in the amount of $2,100,000, to secure repayment of amounts owed to the Lender (the "**Tandia Charge**").

Clark Affidavit, *supra* at para. 12 and Exhibit E (Caselines Master A17 and A73).

12. The Tandia Charge is the first-in-time charge registered on title to the Real Property. Following the Tandia Charge, there is a second-in-time charge (the "**Subordinate Charge**") in favour of Precious Beginnings Children's Centre Limited (the "**Subordinate Chargee**").

Clark Affidavit, *supra* at para. 15 (Caselines Master A18).

The Default Letter and Subordinate Power of Sale

13. On November 19, 2024, counsel for the Lender proceeded to send a Default and Exit Letter to the Debtor, advising, among other things, that: (i) as of October 30, 2024, the Debtor is in arrears of $1,993,606.83, (ii) there have been continued delinquencies during the pendency of

the lending arrangements with the Debtor, and (iii) the Debtor has failed to meet reporting requirements as set out in the Credit Agreement (the "**Default Letter**").

Clark Affidavit, *supra* at para. 16 (Caselines Master A18).

14. The Default Letter further provided that the Lender is no longer prepared to continue its lending relationship with the Debtor or provide any other financial accommodations and provided a deadline of December 31, 2024 to repay the indebtedness owing under the Credit Agreement (the "**Repayment Date**").

Clark Affidavit, *supra* at para. 17 (Caselines Master A18).

15. The Debtor did not provide any response to Tandia by the Repayment Date.

Clark Affidavit, *supra* at para. 18 (Caselines Master A18).

16. While the Lender was preparing to take enforcement action following the passing of the Repayment Date, the Lender was served with a Notice of Sale under Mortgage by the Subordinate Chargee regarding the Real Property on February 10, 2025 (the "**Notice of Sale**").

Clark Affidavit, *supra* at para. 19 and Exhibit H (Caselines Master A19 and A105).

17. Following several months of waiting, the Lender has not seen tangible progress on the Notice of Sale proceedings.

Clark Affidavit, *supra* at para. 21 (Caselines Master A19).

The Demands

18. On April 9, 2025, the Lender proceeded to make formal written demand on the Debtor and the Personal Guarantors for the payment of their respective obligations under the Credit Agreement and associated guarantee (collectively, the "**Demand Letters**").

Clark Affidavit, *supra* at para. 23 and Exhibit "I" (Caselines Master A19 and A110).

19. Pursuant to the Credit Agreement, $2,041,224.13 was owing to the Lender by the Debtor for principal, interest and fees, plus costs and expenses, as of April 8, 2025 (the "**Indebtedness**"). This demand was accompanied by a Notice of Intention to Enforce Security (the "**BIA Notice**") pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**").

Clark Affidavit, *supra* at paras. 24 and Exhibit "I" (Caselines Master A20 and A110).

20. It has been seven months since the Power of Sale was served and five months since Tandia made demand in respect of the Credit Facility and issued the corresponding BIA Notice, and the Indebtedness remains outstanding and continues to grow with interest and costs.

The Debtor's Post-Demand Conduct

21. Following the issuance of the Demand Letters, the Lender has not received a response from the Debtor or the Personal Guarantors.

Clark Affidavit, *supra* at para. 25 (Caselines Master A20).

22. It appears that the gas station business operating at the Premises is continuing to operate, but the Lender has not received payment since October 2024 and the Lender has no visibility on where the profits (if any) of the business are being distributed to.

Clark Affidavit, supra at para. 25 (Caselines Master A20).

23. At this stage, Tandia has lost confidence in the Debtor's management, and believes that the only prudent and reasonable path forward is to take any and all steps necessary to protect the Property by having a receiver appointed. It is within Tandia's rights under its security, including the GSA and the Tandia Charge, to do so.

Clark Affidavit, *supra* at para. 26 and Exhibits "C" and "E" thereto (Caselines Master A20, A45 and A73).

24. The Lender has the authority to appoint a receiver pursuant to terms within the Security. As noted above, the GSA and the Tandia Charge each grant the Lender the power to appoint a receiver over the Property.

Clark Affidavit, supra at para. 29 (Caselines Master A20).

25. The Lender is extremely concerned that the value of the Property, including the Real Property, will degrade over the coming months, which could result in an inability for the Lender to seek recourse regarding the Indebtedness.

Clark Affidavit, supra at para. 31 (Caselines Master A21).

PART III – ISSUE

26. The sole issue to be determined on this application is whether it is just and convenient for this Court to appoint BDO as receiver over the Property.

PART IV – LAW AND ARGUMENT

27. BDO seeks the appointment of a receiver pursuant to subsection 243(1) of the BIA and section 101 of the *Courts of Justice Act* (Ontario) (the "**CJA**"). Both statutes enable the Court to appoint a receiver and manager where such appointment is "*just or convenient*."

BIA, s 243(1); CJA, s 101.

28. In determining whether it is "*just or convenient*" to appoint a receiver under either the BIA or CJA, Ontario courts have applied the decision of The Honourable Mr. Justice Blair in *Freure Village*. In that case, 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.

***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*] (CanLII: http://canlii.ca/t/1wbtz).**

29. When the rights of the secured creditor under its security include a specific right to the appointment of a receiver (as in the present case), the burden on the applicant seeking the relief is relaxed. Indeed, the Honourable Chief Justice Morawetz held in *Elleway Acquisitions* that:

> [W]hile the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties.

***Elleway Acquisitions Limited v. The Cruise Professionals Limited*, 2013 ONSC 6866 [Comm. List] at para. 27 [*Elleway Acquisitions*] (CanLII: http://canlii.ca/t/g22q3).**

30. More recently, The Honourable Justice Osborne echoed this holding in *iSpan Systems*:

> 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].
>
> ***iSpan Systems LP*, 2023 ONSC 6212 [Comm. List] at para. 31 [*iSpan Systems*] (CanLII: https://canlii.ca/t/k0x62).**

31. This is a situation where there is a contractual right to appoint a receiver (in both the GSA and the Tandia Charge) and the appointment of BDO is not extraordinary relief. Rather, this is the applicant seeking to enforce a term of an agreement already made by both parties.

32. Tandia submits that the test for the appointment of a receiver is met. Pursuant to sections 11 and 13 of the GSA, Tandia is contractually entitled to have a receiver appointed upon the nonpayment of any principal or interest when due. Such an event has occurred and the appointment of a receiver is no longer an extraordinary remedy; it is simply the result of enforcing a contractual term that was mutually assented to by the Debtor and Tandia.

> **Clark Affidavit, *supra* at Exhibit "C" (Caselines Master A45).**

33. More than a reasonable time for the Debtor to repay Tandia has elapsed since issuance of the demand and BIA Notice on April 9, 2025. The scheduled hearing date for this application is over five months since the release of the BIA Notice, which period far exceeds that which is reasonable.

> ***Bank of Montreal v. Carnival National Leasing Limited*, 2011 ONSC 1007, 74 C.B.R. (5th) 300, [2011] O.J. No. 671 at para. 13 (Gen. Div. [Comm. List]) [*Carnival Leasing*] (CanLII: https://canlii.ca/t/2fqm3).**

34. Tandia wishes to take any and all steps necessary to enforce its security and realize on same and the appointment of BDO as receiver is necessary for the protection of the Debtor's estate and the interests of Tandia as a secured creditor.

Clark Affidavit, *supra* at paras. 32-33 (Caselines Master A21).

35. BDO is a licensed insolvency trustee and is familiar with the Debtor's circumstances and arrangements with the Debtor. BDO has consented to act as the Receiver should the Court so appoint it.

Clark Affidavit, *supra* at paras. 34-35 (Caselines Master A21).

PART V – RELIEF REQUESTED

36. In light of the foregoing, it is respectfully submitted that this Court should grant the Receivership Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of September, 2025.



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SCHEDULE "A"

AUTHORITIES CITED

Jurisprudence

1. *Bank of Montreal v. Carnival National Leasing Limited*, 2011 ONSC 1007, 74 C.B.R. (5th) 300, [2011] O.J. No. 671 (Gen. Div. [Comm. List]).
2. *Bank of Nova Scotia v. Freure Village of Clair Creek* (1996), 40 C.B.R. (3d) 274, [1996] O.J. No. 5088 (Gen. Div. [Comm. List]).
3. *Elleway Acquisitions Limited v. The Cruise Professionals Limited*, 2013 ONSC 6866 [Comm. List].
4. *iSpan Systems LP*, 2023 ONSC 6212 [Comm. List].

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)).

September 16, 2025

DATE

AIRD & BERLIS LLP

SCHEDULE "B"
TEXT OF STATUTES, REGULATIONS & BY-LAWS

***Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, s. 243**

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.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

(a) the insolvent person consents to an earlier enforcement under subsection 244(2); or

(b) the court considers it appropriate to appoint a receiver before then.

Definition of receiver

(2) Subject to subsections (3) and (4), in this Part, receiver means a person who

(a) is appointed under subsection (1); or

(b) is appointed to take or takes possession or control 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 under

(i) an agreement under which property becomes subject to a security (in this Part referred to as a "security agreement"), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of receiver — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of disbursements

(7) In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

***Courts of Justice Act*, R.S.O. 1990, c. C-34, as amended, s. 101**

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.

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