

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

TANDIA FINANCIAL CREDIT UNION LIMITED

Applicant

- and -

OSCAR BOLD 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

October 6, 2025

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PART I – OVERVIEW

1. Oscar Bold Inc. (the “**Debtor**”) is in default of its payment and other obligations under its secured loan arrangement with Tandia Financial Credit Union (“**Tandia**”).¹ As discussed in more detail below, as of September 2, 2025, the Debtor was in arrears of its monthly payment obligations to Tandia of \$196,772.25 and had breached other covenants to Tandia.² Tandia holds first-ranking security over all personal property and the subject real property of the Debtor.³

2. On September 4, 2025, Tandia made formal demand for repayment (the “**Demand**”) on the Debtor and delivered a Notice of Intention to Enforce Security pursuant to s. 244 of the *Bankruptcy and Insolvency Act* (the “**BIA**”). The ten-day statutory period under subsection 244(1) of the BIA has expired.⁴

3. As of September 3, 2025, a total of \$11,775,839.68 (exclusive of legal fees, disbursements and accruing interest) was owing by the Debtor to Tandia (the “**Indebtedness**”).⁵

4. The Debtor has failed or refused to repay the Indebtedness or enter into any arrangements acceptable to Tandia for repayment of same.⁶ Accordingly, Tandia is contractually entitled to move to enforce its security and appoint BDO Canada Limited (“**BDO**”) as receiver (in such capacity, the “**Receiver**”) of the Debtor’s assets, properties and undertakings, including, without limitation, the real property municipally known as 27 Bold Street, Hamilton, Ontario and legally described in PINs 18611-0001 (LT) to 18611-0032 (LT), inclusive (the “**Real Property**”).

¹ Affidavit of Dawood Khan sworn October 1, 2025 at para 19, Motion Record of Tandia Financial Credit Union at Tab 2 [“**Khan Affidavit**”].

² Khan Affidavit at para 20.

³ Khan Affidavit at paras 14, 18.

⁴ Khan Affidavit at para 21.

⁵ Khan Affidavit at para 22.

⁶ Khan Affidavit at para 26.

PART II – FACTS

5. The Debtor is directly indebted to Tandia with respect to a certain credit facility (the “**Credit Facility**”) made available by Tandia to the Debtor pursuant to and under the terms of a Commitment Letter dated December 6, 2024, as subsequently amended, replaced, restated or supplemented pursuant to and under the terms of a Loan Amending Agreement dated January 15, 2025 and a Second Loan Amending Agreement dated January 22, 2025 and from time to time (collectively, the “**Credit Agreement**”).⁷

6. As security for the Debtor’s obligations to Tandia, including, without limitation, under the Credit Agreement, the Debtor provided each of the following (collectively, the “**Security**”)⁸:

- (a) a general security agreement dated January 27, 2025 (the “**GSA**”), which grants in favour of Tandia, among other things, a security interest in any and all of the property, assets and undertakings of the Debtor, registration in respect of which was duly made pursuant to the *Personal Property Security Act* (Ontario) (the “**PPSA**”);
- (b) a cash collateral agreement dated January 27, 2025 (the “**Cash Collateral Agreement**”), which assigns to Tandia a security interest in term deposits and/or guaranteed investment certificates in the amount of \$150,000 (the “**Cash Collateral**”) and entitles Tandia to take possession of and use same for repayment of the obligations owing to Tandia, which agreement was registered under the PPSA;

⁷ Khan Affidavit at para 8.

⁸ Khan Affidavit at para 12.

- (c) a collateral charge/mortgage in favour of Tandia, in the amount of \$11,650,000.00, in respect of the Real Property (the “**Charge**”), which was registered on title to the Real Property on January 27, 2025 pursuant to instrument number WE1779194; and
- (d) a general assignments of rents dated January 27, 2025, granted by the Debtor in respect of the Real Property, which was registered on title to the Real Property on January 27, 2025 pursuant to instrument number WE1779195.

7. Pursuant to the Credit Agreement, the Debtor is obligated to make blended monthly payments in respect of the Credit Facility, consisting of principal and interest, in the amount of \$67,847.⁹

8. The obligations of the Debtor under the Credit Agreement are due and payable at the option of Tandia upon the occurrence of an event of default. There have been one or more defaults by the Debtor under the Credit Agreement, including, without limitation, material monetary and covenant defaults.¹⁰ Specifically, (i) the Debtor has failed to make the requisite payments of principal and interest as they become due on a monthly basis, and (ii) the Debtor has permitted, without Tandia’s consent, the registration of a subordinate charge against the Real Property by a third-party, namely, S4T Strategic Inc., in the principal amount of \$3,000,000 (together, the “**Specified Defaults**”).¹¹

9. On September 2, 2025, Tandia issued to the Debtor a default letter which outlined the Specified Defaults and required the Debtor to pay the accrued loan installments immediately.¹²

⁹ Khan Affidavit at para 10, Exhibit Bfff.

¹⁰ Khan Affidavit at para 19.

¹¹ Khan Affidavit at para 20.

¹² Khan Affidavit at para 20 and Exhibit J.

10. In the face of the persisting Specified Defaults, Tandia issued the Demand on September 4, 2025.¹³

11. Following the expiry of the ten (10) day statutory notice period under subsection 244(1) of the BIA, on or about September 17, 2025, Tandia applied the Cash Collateral against the Indebtedness, as it is entitled to do under the Cash Collateral Agreement.¹⁴

12. By email dated September 19, 2025, Tandia expressed a willingness to enter into a forbearance agreement with the Debtor.¹⁵

13. As of the date of finalizing this Factum, Tandia has not received any response from the Debtor regarding its offer to forbear, nor any further update on the Debtor's proposal to address the Indebtedness. In light of the foregoing, Tandia would like to exercise its rights under the Security granted to Tandia by the Debtor by having a receiver appointed over the Debtor's Property.

PART III – ISSUES

14. The legal issue to be determined on this Application is whether to appoint a receiver under s. 243(1) of the BIA or s. 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43 (the “CJA”) over the Property of the Debtor.

¹³ Khan Affidavit at para 21 and Exhibit K.

¹⁴ Khan Affidavit at para 23.

¹⁵ Khan Affidavit at para 27.s

PART IV- LAW & LEGAL AUTHORITIES

A. BDO should be appointed as the receiver of the Property

(i) *The test for the appointment of a receiver under s. 243(1) of the BIA and s. 101 of the CJA*

15. Subsection 243(1) of the *Bankruptcy and Insolvency Act* provides that, on application by a secured creditor, a court may appoint a receiver to, *inter alia*, take possession over the assets of an insolvent person and exercise any control that the court deems advisable over that property and over the insolvent person's business, in circumstances where it is "*just or convenient*" to do so.¹⁶ Similarly, the CJA enables the court to appoint a receiver where such appointment is "*just or convenient*".¹⁷

16. In determining whether it is "just or convenient" to appoint a receiver under either the BIA or the CJA, Ontario courts have applied the decision of Blair J. (as he then was) in *Bank of Nova Scotia v. Freure Village on Claire Creek*.¹⁸ Blair J. held that 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.¹⁹

17. In *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, citing *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.* and *Bennett on Receivership*, this Court listed numerous factors which have been historically taken into account in the determination of whether it is appropriate to appoint a receiver:

¹⁶ *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, s. 243.

¹⁷ *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 101.

¹⁸ *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CanLII 8258 (ONSC).

¹⁹ *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CanLII 8258 at [para 11](#) (ONSC).

- (a) Whether irreparable harm might be caused if no order is made, although as stated above, where the appointment is authorized by the security documentation, it is not essential for a creditor to establish that it will suffer irreparable harm if a receiver is not appointed;
- (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 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.²⁰

18. These factors are not a checklist, but 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.²¹

19. Where the enumerated rights of the secured creditor under its security include the right to seek the appointment of a receiver, the burden on the applicant is significantly relaxed. As stated by Morawetz J. (as he then was) in *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*:

*... where 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. That is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties.*²²

20. This principle was further affirmed more recently by Osborne J. in *iSpan Systems LP*:

*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].*²³

21. Furthermore, the appointment of a receiver becomes less extraordinary still when dealing with a default under mortgage security, as in the present case.²⁴

²⁰ *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186 at [para 25](#), citing *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at [para 25](#). More recently, see *Kingsett Mortgage Corp. v. Maplevue Developments Ltd. et al.*, 2024 ONSC 1983 at [paras 24-25](#).

²¹ *RBC v. 2531961 Ontario Inc. et al.*, 2024 ONSC 1272 at [para 13](#).

²² *Elleway Acquisitions Ltd. v. The Cruise Professionals Ltd.*, 2013 ONSC 6866 at [para 27](#).

²³ *iSpan Systems LP*, 2023 ONSC 6912 at [para. 31](#).

²⁴ *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, 2020 ONSC 1953 at [paras 43-44](#).

22. It is not essential that the moving party establish, prior to the appointment of a receiver, that:

(a) it will suffer irreparable harm; or

(b) that the situation is urgent.²⁵

(ii) *The application of the test for the appointment of a receiver*

23. Tandia respectfully submits that the test for the appointment of a receiver pursuant to s. 243 of the BIA is met. Pursuant to the GSA granted by the Debtor to Tandia, Tandia is entitled to have a receiver appointed over the Debtor upon any default under the Credit Agreement or pursuant to any failure by the Debtor to repay the Indebtedness owing to Tandia on demand. Accordingly, the appointment of a receiver in this case is not an extraordinary measure; it is simply the result of enforcing the contractual terms assented to by the Debtor.

24. Tandia has not sought the appointment of a receiver hastily or without giving the Debtor an opportunity to cure the Specified Defaults or enter into a forbearance arrangement. Indeed, Tandia notified the Debtor of the Specified Defaults prior to issuing the Demand, and further indicated to the Debtor that it would be willing to negotiate terms of a forbearance arrangement, yet Tandia received no substantive response in this regard.²⁶

25. The appointment of a receiver is necessary for the protection of the Debtor's estate and the interests of Tandia as a secured creditor. The Indebtedness owing to Tandia is significant (exceeding \$11,000,000), and continues to accrue. This application to appoint a receiver is grounded in Tandia's concerns about the mismanagement and dissipation of Tandia's collateral if the Debtor remains in the control of its existing management, in whom Tandia has lost confidence.

²⁵ *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007 at [paras 28-29](#).

²⁶ *Business Development Bank of Canada v 170 Willowdale Investments Corp.*, 2023 ONSC 3230 at [para 65](#).

26. Tandia has no visibility on the extent of any liabilities of the Debtor which may have statutory priority outside of a bankruptcy. Such liabilities may continue to accumulate without intervention.

27. The appointment of the receiver is necessary for the preservation of the collateral and the diligent supervision and management of same during an anticipated sales process. Tandia is not required to proceed by way of private power of sale proceedings. The appointment of a receiver will provide an effective and appropriate means to realize on the mortgage security by a court-appointed officer who owes duties to all stakeholders.²⁷

28. The balance of convenience weighs heavily in favour of Tandia. Given the Debtor's failure to put forward a viable proposal for the repayment of the Indebtedness, Tandia is concerned that it would have difficulty enforcing its rights in the absence of a court-appointed receiver. The Debtor has not repaid the Indebtedness, nor provided any path forward for how it intends to satisfy the obligations owing to Tandia. The Debtor's conduct favours appointment of a receiver.

29. Tandia bargained for the right to appoint a Receiver by including that provision in its Security, which was accepted by the Debtor. Short of the appointment of a receiver, there are no other remedies available to Tandia that will adequately protect its interests.

30. Accordingly, Tandia respectfully submits that the appointment of BDO as receiver of the Debtor is appropriate in the circumstances.

²⁷ *KingSett Mortgage Corporation v. 30 Roe Investments Corp.*, 2022 ONSC 2777 at [para 35](#); aff'd *KingSett Mortgage Corporation v. 30 Roe Investments Corp.*, 2022 ONCA 479.

PART V – RELIEF SOUGHT

31. In light of the foregoing, Tandia respectfully requests that this Court grant the aforementioned relief in the form of the draft Order appended at Tab 3 of the Bank’s Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of October, 2025.



Matilda Lici

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007
2. *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CanLII 8258 (ONSC)
3. *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, 2020 ONSC 1953
4. *Business Development Bank of Canada v 170 Willowdale Investments Corp.*, 2023 ONSC 3230
5. *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186
6. *Elleway Acquisitions Ltd. v. The Cruise Professionals Ltd.*, 2013 ONSC 6866
7. *iSpan Systems LP*, 2023 ONSC 6912
8. *Kingsett Mortgage Corporation v. 30 Roe Investments Corp.*, 2022 ONSC 2777
9. *Kingsett Mortgage Corp. v. Maplevue Developments Ltd. et al.*, 2024 ONSC 1983
10. *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527
11. *RBC v. 2531961 Ontario Inc. et al.*, 2024 ONSC 1272

**SCHEDULE “B”
RELEVANT STATUTES**

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

PART XI

Secured Creditors and Receivers

Marginal note: 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, RSO 1990, c. C. 43

Interlocutory Orders

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).

**TANDIA FINANCIAL CREDIT UNION
LIMITED**

- and -

OSCAR BOLD INC.

Court File No. CV-25-00092187-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced at Hamilton

**FACTUM OF THE APPLICANT,
TANDIA FINANCIAL CREDIT UNION LIMITED
(Application returnable October 14, 2025)**

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