

Court File No. CV-24-00713287-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3,
AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990 C. C.43, AS AMENDED

B E T W E E N:

AFC MORTGAGE ADMINISTRATION INC.

Applicant

and

SUNRISE ACQUISITIONS (ELMVALE) INC., SAJJAD HUSSAIN,
MAHVESH HUSSAIN, MUZAMMIL KODWAVI and SAFANA KODWAVI

Respondents

AIDE MEMOIRE OF THE RECEIVER

Hearing via videoconference returnable May 29,
2026

TEPLITSKY LLP
Barristers
70 Bond Street
Suite 200
Toronto ON M5B 1X3

Jonathan Kulathungam (42049N)
jkulathungam@teplitskyllp.com
Tel : (416) 365-9320
Fax: (416) 365-0695

Lawyers for the Receiver

TO: **MAND RAI LLP**
Barristers & Solicitors
155 Rexdale Blvd.
Suite 400
Toronto ON
M9W 5Z8

Paul Mand (46022F)
pmand@mandlaw.com
Tel : (416) 740-5653
Fax: (416) 740-3480

Lawyers for the Applicant

AND **TYR LLP**
TO: 488 Wellington Street West
Suite 300-302
Toronto ON
M5V 1E3

Jason Wadden
jwadden@tyrllp.com
Tel: (416) 627-9815
Shimon Sherrington
ssherrington@tyrllp.com
Tel: (587) 777-0367

Tel : (416) 477-5525

Lawyers for the Respondents

AND **SUPRIYA JOSHI (she/her)**
TO: Barrister, Solicitor & Notary Public
30-1530 Drew Rd.
Mississauga, ON
supriya.joshi@sjoshilaw.ca

Tel: 905-362-0111

Lawyer for Mahvesh Hussain

AND Sajjad Hussain
TO: sajjad@paybank.ca

Self-represented

AND **OSLER, HOSKIN & HARCOURT LLP**

TO: 1 First Canadian Place
100 King Street West
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Sean Stidwill
sstidwill@osler.com

Tel: 416.362.2111

Lawyers for FAAN Mortgage Administrators

AND **TORYS LLP**

TO: 79 Wellington St. W., Suite 3000
Box 270, TD Centre
Toronto, ON
M5K 1N2

Adam Slavens
aslavens@torys.com

Tel: 416.865.7333

Lawyers for Tarion Warranty Corporation

1. Pursuant to the timetabling Order of Justice Dietrich, two motions were scheduled:
 - (a) The determination of priorities as it relates to a Lien Claim (as further explained below);
 - (b) Motion by the Receiver as it relates to the sale of the Grand Vellore Property on the basis that it is “necessary”.
2. The motions were to be argued on May 21, 2026, but were adjourned on the consent of all parties given amongst other things:
 - (a) Safana Kodwavi, who is the wife of Muzammil Kodwaiv, retaining new counsel.
 - (b) AFC is pursuing an insurance claim as it relates to the Abbruzze Property.

Background

3. On April 15, 2024, Rosen Goldberg Inc. was appointed as Receiver over the assets of the Debtors comprising primarily of:
 - (a) 74 Yonge Street, Elmvale, Ontario and 5 and 6 Train Avenue, Elmvale, Ontario (“**Elmvale Property**”);
 - (b) 9 Cicada Court, Toronto, Ontario (“**Cicada Property**”);
 - (c) 88 Abbruzze Court, Woodbridge, Ontario (“**Abbruzze Property**”);
 - (d) 72 Grand Vellore Crescent, Vaughan, Ontario (“**Grand Vellore Property**”);
 - (e) 91 Longshore Valley, Whitby, Ontario (“**Longshore Property**”).
4. As set out in the Order of Justice Black dated April 15, 2024 (Tab 1), the Receiver’s ability to take steps as it relates to the Grand Vellore Property is limited. The Receiver pursuant to Section 3 of the Order, can only take steps as it relates to the Grand Vellore Property “*if necessary*”.
5. Pursuant to the Approval and Vesting Orders granted by Justice Conway on April 15, 2024 (and subsequent to a failed appeal), the Cicada Property, Abbruzze Property and Elmvale Property were sold.
6. Pursuant to the Order of Justice Myers dated September 19, 2025, the Longshore Property was sold. No relief has been sought as against the Grand Vellore Property.

Construction Lien

7. Pursuant to the Order of Justice Conway of August 15, 2024, a holdback of \$183,293.44 (“**Holdback**”) from the proceeds of the sale of the Cicada Property was held as it relates to the construction lien registered by Masonry Supply Ltd.

8. Given concerns with respect to a limitation period and the provisions of the *Construction Act*, the Lien Claimant set the matter down for trial and a Case Conference was held before Justice Akazaki. Justice Akazaki left the issue of priorities to be determined by the Commercial Court:

“There is no need to set the action for a reference to determine quantum. Judgment can issue for the undisputed quantum, with a term that it cannot be enforced as against the funds held by the Receiver until priority is determined by the Commercial List.”

9. The Lien Claimant and AFC are proceeding with a hearing to determine priorities. While this dispute is between two distinct parties, the Receiver has provided an opinion, based on the jurisprudence and the provisions of the *Construction Lien Act*:
 - (a) The statutory holdback under the provisions of the *Construction Act* be paid to Masonry Supply Ltd (\$14,350.00); and
 - (b) The remainder to be paid to the Applicant, AFC Mortgage Administration Inc. (to reduce the debt obligation).

Abbruzze Litigation

10. The Abbruzze Property underwent an extensive fire.
11. The insurance company (“Impact Insurance”) denied covered.
12. AFC has commenced an action seeking payment as it was named as the Second Mortgagee insurance policy and insured the Abbruzze Property against all risks of direct physical loss or damage, provided such loss or damage occurred during the policy period. It also insured the Second Mortgagee that, “*notwithstanding any act, neglect, omission or misrepresentation attributable to the Mortgagor, owner or occupant of the property insured....*”, that the Second Mortgagee was insured against all perils (“Standard Mortgage Clause”). AFC has taken the position that the Standard Mortgage Clause creates a separate contract between the insurer and the mortgagee.
13. Impact Insurance’s defence is due on June 5, 2026.
14. The Receiver has been advised that there have been ongoing discussions.
15. The position of Impact Insurance is that it was not advised that the Abbruzze Property had been tenanted. Rather, it had been insured as “owner occupied”.

Interested Parties

16. There are other interested parties including FAAN. FAAN does not have a secured interest in the Grand Vellore Property. FAAN are judgment creditors of *inter alia*, Muzammil Kodwavi. This is pursuant to prior orders of this court wherein Mr. Kodwavi and Sajjad Hussain were found to have misappropriated approximately \$14 million

dollars. A mortgage of approximately \$10 million dollars was registered on other properties but not on the Grand Vellore Property.

17. FAAN is also seeking the sale of the Grand Vellore Property.

Remaining Steps

18. The remaining steps which need to be undertaken:
- (a) The priority Lien Claim motion;
 - (b) An order approving the activities and fees of the Receiver and its counsel;
 - (c) A determination as to whether or not the sale of the Grand Vellore Property is necessary. The issue here is that Abbruzze insurance litigation does have an effect as to whether or not the sale of the Grand Vellore Property is necessary. However, a determination of the Abbruzze insurance litigation may take several years.
 - (d) During that time, the debt obligation of the debtors continues to balloon. As such, the Receiver is of the view that the sale of the Grand Vellore Property is necessary.
19. There are also the possible claims from other parties relating to any excess funds (including the claim by FAAN).
20. The issue and directions needed of this court are whether or not:
- (a) The motion for the Grand Vellore sale proceed at this stage regardless of the Abbruzze insurance litigation; and
 - (b) Timetabling of the motion as it relates to the Lien Claimants.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of May, 2026.

Jonathan Kulathungam

Jonathan Kulathungam

AFC MORTGAGE ADMINISTRATION INC.
Applicant

-and- SUNRISE ACQUISITIONS (ELMVALE) INC. et al.
Respondents

Court File No. CV-24-00713287-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF
PROCEEDING COMMENCED AT
TORONTO

AIDE MEMOIRE OF THE RECEIVER

TEPLITSKY LLP

Barristers
70 Bond Street
Suite 200
Toronto ON M5B 1X3

Jonathan Kulathungam (42049N)
jkulathungam@teplitskyllp.com
Tel: (416) 365-9320

Lawyers for the Receiver

Email for parties served:
Paul Mand: pmand@mandlaw.com
Jason Wadden: jwadden@tyrllp.com