

**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**

B E T W E E N:

OWEMANCO MORTGAGE HOLDING CORPORATION

Applicant

- and -

CONCEPT LOFTS LTD. and DONALD DESROCHERS

Respondents

RECEIVERS MOTION RECORD

**MOTION RECORD OF ROSEN GOLDBERG INC., IN ITS CAPACITY AS RECEIVER
APPROVAL OF ACTIVITIES and Third Report
(Returnable on January 23rd, 2023 at 10:00 am by Zoom Videoconference)**

January 18, 2023

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ONTARIO REPRESENT BY THE MINISTER OF FINANCE**

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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:

(Court Seal)

OWEMANCO MORTGAGE HOLDING CORPORATION

Applicant

- and -

CONCEPT LOFTS LTD. and DONALD DESROCHERS

Respondents

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TAB 1

**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*,
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B E T W E E N:

(Court Seal)

OWEMANCO MORTGAGE HOLDING CORPORATION

Applicant

- and -

CONCEPT LOFTS LTD. and DONALD DESROCHERS

Respondents

NOTICE OF MOTION

Rosen Goldberg Inc., in its capacity as receiver and manager (in such capacities, the “**Receiver**”) of all of the assets, undertakings and properties of the Respondent Concept Lofts Ltd. (“**CLL**”) acquired for, or used in relation to a business carried on by CLL, including the property municipally known as 1183 Dufferin Street, in Toronto, Ontario (the “**Dufferin Property**”) and the lands and premises owned by Donald Desrochers (“**Desrochers**”) municipally known as Suites 502 and 503, 1 Balmoral Avenue in Toronto, Ontario (the “**Balmoral Property**”), will make a Motion to a Judge presiding over the Commercial List on Monday January 23, 2023 at 10:00 am by Zoom videoconference.

PROPOSED METHOD OF HEARING: The Motion is to be heard by videoconference

THE MOTION IS FOR:

1. an Order abridging the time for service and filing of this Notice of Motion and Motion Record, including the Third Report of the Receiver dated January 17th, 2023 (the “**Third Report**”), validating service of the Notice of Motion and Motion Record, including the Third Report, and dispensing with further service thereof;
2. an Order approving an arrangement reached between the Applicant Owemanco Mortgage Holding Corporation (“**OMHC**”) and Desrochers which, if approved, will alleviate the need for the Receiver to take immediate possession of and market and sell the Balmoral Property.
3. such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

1. OMHC is a secured lender to:
 - (a) CLL in connection with a principal loan of \$6.675M (“**Facility A**”); and
 - (b) CLL and Desrochers in connection with a further principal loan of \$2.05M (“**Facility B**” and together with Facility A, collectively the “**Loans**”);
2. As security for Facility A, OMHC holds a first-ranking mortgage over the Dufferin Property;
3. As security for Facility B, OMHC holds mortgages blanketed over the Dufferin Property in second position (immediately behind the Facility A mortgage) and over the Balmoral

Property in first position (the “**Blanket Mortgages**”);

4. Unlike the Balmoral Property, the Dufferin Property is subject to three subordinate ranking mortgages in the principal face amounts of \$1.3M, \$1.152,154M and \$547.5K, respectively, in favour of other mortgagees;
5. The Blanket Mortgages contain a cross-default provision such that default under the Facility A mortgage on the Dufferin Property is a default under the Blanket Mortgages;
6. The Dufferin Property is a converted church residential condominium project (the “**Project**”) consisting of 14 residential units and 11 below grade parking stalls. Although construction was substantially completed in the summer of 2021, the Project did not progress significantly, if at all, since that time. The condominium corporation has not yet been created;
7. On September 15, 2022, the City of Toronto (the “**City**”) caused notice of an Order issued on July 16, 2019 under the *Building Code Act, 1992* to be registered against the Dufferin Property (the “**City Order**”). The City Order prohibits footings, foundations, structural framing, ductwork and piping for heating and air conditioning systems from being covered or enclosed. Contrary to the City Order, the footings, foundations, structural framing, ductwork and piping for heating and air conditioning systems are in fact covered or enclosed;
8. Until the City Order is resolved, the City will not issue occupancy certificates for the condominium units in the Dufferin Property. A resolution is, therefore, critical to the successful marketing and sale of the condominium units;
9. Desrochers and his wife Laura Lawrence (“**Lawrence**”) reside in the Balmoral Property. The Balmoral Property is a 2,208 square foot residential condominium unit with 2 underground parking spaces;
10. Pursuant to the Expanded Powers Order, leave was granted to issue a writ of possession in respect of the Balmoral Property;
11. Lawrence subsequently moved before Justice Cavanagh to discharge the Receiver over the

Balmoral Property and stay the writ of possession on the basis that she was never given notice of the receivership application notwithstanding her spousal interest in the Balmoral Property. In the alternative, Lawrence sought an Order permitting her to put OMHC's mortgage against the Balmoral Property into good standing;

12. In reasons released on December 30, 2022, Justice Cavanagh dismissed Lawrence's motion.
13. The dismissal of Lawrence's motion prompted negotiations between Desrochers and OMHC premised on permitting Desrochers and Lawrence to remain in possession of the Balmoral Property. The terms of the arrangement are described below and encapsulated in the draft Order attached to the Receiver's Motion Record. The consideration given by Desrochers for the arrangement is the assignment of 1.2M units that Desrochers holds in Owemanco Mortgage Trust (the "**Investment**") to OMHC. The Receiver understands that the net asset value of each such unit is approximately \$1.00 (Cdn);
14. On January 13, 2023, subject to Court approval, Desrochers and Owemanco agreed as follows:
 - (a) the Investment shall be immediately and irrevocably assigned to OMHC;
 - (b) the Investment shall be liquidated by OMHC, from time to time, and applied for any of the following purposes:
 - i. to pay interest arrears that have accrued under the Loans and protective expenses that have been incurred under the Loans to date;
 - ii. to pay monthly interest on the Loans, insurance and property taxes on a go forward basis; and
 - iii. to pay expenses required for the Receiver to ready condominium units in the Dufferin Property for sale(collectively, the "**Purposes**");

- (c) the proceeds of the Investment as and when liquidated and applied for the Purposes shall be secured by a subordinate interest in the Facility B Loan and the security given therefor, including the Blanket Mortgages, in favour Desrochers or his nominee in accordance with an agreement to be executed by OMHC and Desrochers or his nominee. For greater certainty, proceeds of the Investment when applied for the Purposes shall be deemed to be added to the indebtedness secured under the Facility B Loan;
 - (d) the Sheriff shall not execute the writ of possession against the Balmoral Property unless and until the Investment is exhausted for the Purposes; and
 - (e) any claims and appeal rights that Lawrence and Desrochers may have that the writ of possession is not enforceable against the Balmoral Property if and when the Investment is exhausted for the Purposes shall be irrevocably withdrawn and released.
15. The arrangement is subject to each of Lawrence and Desrochers receiving independent legal advice and an agreement being executed by OMHC and Desrochers or his nominee governing the subordinate interest in the Facility B Loan before the Receiver's motion for Court approval is heard;
16. Insofar as the arrangement calls for execution of the writ of possession against the Balmoral Property to be deferred, and potentially avoided altogether, the Receiver seeks Court approval of the arrangement. A consequence of the arrangement may be that subordinate mortgagees against the Dufferin Property who have no security against the Balmoral Property may be prejudiced if the Dufferin Property is sold first, as Facility B will have not been satisfied in whole or in part from the sale of the Balmoral Property. On the other hand, subordinate mortgagees against the Dufferin Property may have equitable claims against the Balmoral Property, or the proceeds thereof. Moreover, it has always been open to any of the subordinate mortgagees to protect their interests by paying out Facility B and obtaining assignments of the Blanket Mortgages and they have not done so. More importantly from the Receiver's perspective, the arrangement creates some liquidity to fund expenses required for the Receiver to ready the condominium units in the Dufferin

Property for sale, which is accretive to the estate of CLL. On balance, therefore, the Receiver recommends that the arrangement be approved;

17. Section 249 of the *Bankruptcy and Insolvency Act* and Rules 3.02(1), 16.08 and 41.05 of the *Rules of Civil Procedure*; and
18. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- (a) The Third Report; and
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

January 17th, 2023

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TO: **SERVICE LIST**

OWEMANCO MORTGAGE HOLDING CORPORATION
Applicant

-and- CONCEPT LOFTS LTD. et al.
Respondents

Court File No. CV-22-00688570-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

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

B E T W E E N:

OWEMANCO MORTGAGE HOLDING CORPORATION

Applicant

- and -

CONCEPT LOFTS LTD. and DONALD DESROCHERS

Respondents

THIRD REPORT OF ROSEN GOLDBERG INC.

January 17, 2023

I. INTRODUCTION

1. By Order of Justice Cavanagh dated October 21, 2022 (the “**IR Appointment Order**”), Rosen Goldberg Inc. was appointed interim receiver of certain real property of the Respondent Concept Lofts Ltd. (the “**CLL**”) municipally known as 1183 Dufferin Street, in Toronto, Ontario (the “**Dufferin Property**”) pursuant to section 47(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”). A copy of the IR Appointment Order is attached as **Appendix A**.
2. By Order of Justice Cavanagh dated November 7, 2022 (the “**Expanded Powers**”

Order”), the status and mandate of Rosen Goldberg Inc. as interim receiver was varied and amended and pursuant section 243(1) of the BIA and section 101 of the *Courts of Justice Act*, it was appointed ‘full blown’ receiver and manager (in such capacities, the “**Receiver**”) of:

- (a) all of the assets, undertakings and properties of CLL acquired for, or used in relation to a business carried on by CLL, including the Dufferin Property, and all proceeds thereof; and
 - (b) the lands and premises municipally owned by Donald Desrochers (“**Desrochers**”) known as Suites 502 and 503, 1 Balmoral Avenue in Toronto, Ontario (the “**Balmoral Property**”), and all proceeds thereof.
3. A copy of the Expanded Powers Order is attached as **Appendix B**. A copy of Justice Cavanagh’s endorsement in connection with granting the Expanded Powers Order is attached as **Appendix C**.

II. TERMS OF REFERENCE

4. In preparing this Third Report, the Receiver has relied upon information from third party sources (collectively, the “**Information**”). Certain information contained in this Third Report may refer to, or be based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Receiver has relied on this Information, and to the extent possible reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy and completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

III. PURPOSE OF THIS REPORT

5. This Third Report is being filed to report on and seek approval of an arrangement reached between the Applicant Owemanco Mortgage Holding Corporation (“OMHC”) and Desrochers which, if approved, will alleviate the need for the Receiver to take immediate possession of and market and sell the Balmoral Property.

IV. BACKGROUND

6. OMHC is a secured lender to:
 - (a) CCL in connection with a principal loan of \$6.675M (“Facility A”); and
 - (b) CCL and Desrochers in connection with a further principal loan of \$2.05M (“Facility B” and together with Facility A, collectively the “Loans”).
7. As security for Facility A, OMHC holds a first-ranking mortgage over the Dufferin Property.
8. As security for Facility B, OMHC holds mortgages blanketed over the Dufferin Property in second position (immediately behind the Facility A mortgage) and over the Balmoral Property in first position (the “Blanket Mortgages”).
9. Unlike the Balmoral Property, the Dufferin Property is subject to three subordinate ranking mortgages in the principal face amounts of \$1.3M, \$1.152,154M and \$547.5K, respectively, in favour of other mortgagees.
10. The Blanket Mortgages contain a cross-default provision such that default under the Facility A mortgage on the Dufferin Property is a default under the Blanket Mortgages.
11. The Dufferin Property is a converted church residential condominium project (the “Project”) on the east side of Dufferin Street north of Bloor Street West. It consists of 14 residential units and 11 below grade parking stalls. Although construction was substantially completed in the summer of 2021, the Project did not progress

significantly, if at all, since that time. The condominium corporation has not yet been created.

12. On September 15, 2022, the City of Toronto (the “**City**”) caused notice of an Order issued on July 16, 2019 under the *Building Code Act, 1992* to be registered against the Dufferin Property (the “**City Order**”). The City Order prohibits footings, foundations, structural framing, ductwork and piping for heating and air conditioning systems from being covered or enclosed. Contrary to the City Order, the footings, foundations, structural framing, ductwork and piping for heating and air conditioning systems are in fact covered or enclosed.
13. Until the City Order is resolved, the City will not issue occupancy certificates for the condominium units in the Dufferin Property. A resolution is, therefore, critical to the successful marketing and sale of the condominium units.
14. Desrochers and his wife Laura Lawrence (“**Lawrence**”) reside in the Balmoral Property. The Balmoral Property is a 2,208 square foot residential condominium unit with 2 underground parking spaces, on the west side of Yonge Street between Farnham Avenue and Balmoral Avenue, in Toronto.

V. STATUS OF THE BALMORAL PROPERTY

15. Pursuant to paragraph 5 of the Expanded Powers Order, leave was granted to issue a writ of possession in respect of the Balmoral Property.
16. Lawrence subsequently moved before Justice Cavanagh on December 20, 2022 to discharge the Receiver over the Balmoral Property and stay the writ of possession on the basis that she was never given notice of the receivership application notwithstanding her spousal interest in the Balmoral Property. In the alternative, Lawrence sought an Order permitting her to put OMHC’s mortgage against the Balmoral Property into good standing.
17. In reasons released on December 30, 2022, His Honour held that Lawrence failed to show that she did not receive notice of the receivership application and that the

Blanket Mortgages could not be put into good standing without also putting the Facility A mortgage over the Dufferin Property into good standing, by virtue of the cross-default provision in the Blanket Mortgages. His Honour further held that Lawrence failed to satisfy the test for a stay of the writ of possession and dismissed Lawrence's motion. A copy of His Honour's endorsement is attached as **Appendix D**.

VI. PROPOSED ARRANGEMENT

18. The dismissal of Lawrence's motion prompted negotiations between Desrochers and OMHC premised on permitting Desrochers and Lawrence to remain in possession of the Balmoral Property. The terms of the arrangement are described below and encapsulated in the draft Order attached to the Receiver's Notice of Motion. The consideration given by Desrochers for the arrangement is the assignment of 1.2M units that Desrochers holds in Owemanco Mortgage Trust (the "**Investment**") to OMHC. The Receiver understands that the net asset value of each such unit is approximately \$1.00 (Cdn).
19. On January 13, 2023, subject to Court approval, Desrochers and Owemanco agreed as follows:
 - (a) the Investment shall be immediately and irrevocably assigned to OMHC;
 - (b) the Investment shall be liquidated by OMHC, from time to time, and applied for any of the following purposes:
 - i. to pay interest arrears that have accrued under the Loans and protective expenses that have been incurred under the Loans to date;
 - ii. to pay monthly interest on the Loans, insurance and property taxes on a go forward basis; and
 - iii. to pay expenses required for the Receiver to ready condominium units in the Dufferin Property for sale

(collectively, the “**Purposes**”);

- (c) the proceeds of the Investment as and when liquidated and applied for the Purposes shall be secured by a subordinate interest in the Facility B Loan and the security given therefor, including the Blanket Mortgages, in favour Desrochers or his nominee in accordance with an agreement to be executed by OMHC and Desrochers or his nominee. For greater certainty, proceeds of the Investment when applied for the Purposes shall be deemed to be added to the indebtedness secured under the Facility B Loan;
 - (d) the Sheriff shall not execute the writ of possession against the Balmoral Property unless and until the Investment is exhausted for the Purposes; and
 - (e) any claims and appeal rights that Lawrence and Desrochers may have that the writ of possession is not enforceable against the Balmoral Property if and when the Investment is exhausted for the Purposes shall be irrevocably withdrawn and released.
20. Copies of emails exchanged between counsel for OMHC and Lawrence leading to the arrangement are attached, collectively, as **Appendix E**. As indicated in the emails, the arrangement is subject to each of Lawrence and Desrochers receiving independent legal advice and an agreement being executed by OMHC and Desrochers or his nominee governing the subordinate interest in the Facility B Loan before the Receiver’s motion for Court approval is heard.

VII. RECEIVER’S ANALYSIS AND RECOMMENDATION

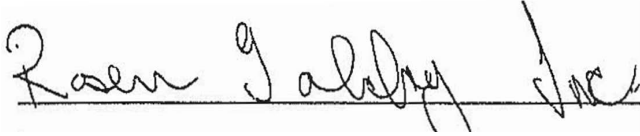
21. If not for the fact that the arrangement calls for execution of the writ of possession against the Balmoral Property to be deferred, and potentially avoided altogether, the Receiver would not have an interest in, and there would no need to seek Court approval, of the arrangement. A consequence of the arrangement may be that

subordinate mortgagees against the Dufferin Property who have no security against the Balmoral Property may be prejudiced if the Dufferin Property is sold first, as Facility B will have not been satisfied in whole or in part from the sale of the Balmoral Property. On the other hand, subordinate mortgagees against the Dufferin Property may have equitable claims against the Balmoral Property, or the proceeds thereof. Moreover, it has always been open to any the subordinate mortgagees to protect their interests by paying out Facility B and obtaining assignments of the Blanket Mortgages and they have not done so. More importantly from the Receiver's perspective, the arrangement creates some liquidity to fund expenses required for the Receiver to ready the condominium units in the Dufferin Property for sale, which is accretive to the estate of CLL. On balance, therefore, the Receiver recommends that the arrangement be approved.

All of which is respectfully submitted,

Dated at Toronto, Ontario, this 17th day of January, 2023.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS
RECEIVER OF CONCEPT LOFTS LTD.
THE BALMORAL PROPERTY, AND NOT IN
ITS PERSONAL OR CORPORATE CAPACITY**

A handwritten signature in black ink, written over a horizontal line. The signature appears to read "Rosen Goldberg Inc." in a cursive style.

APPENDIX “A”

Court File No. CV-22-00688570-00CL

**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**

THE HONOURABLE)	FRIDAY, THE 21st
)	
JUSTICE CAVANAGH)	DAY OF OCTOBER, 2022

OWEMANCO MORTGAGE HOLDING CORPORATION

Applicant

- and -

CONCEPT LOFTS LTD. and DONALD DESROCHERS

Respondents

**APPOINTMENT ORDER
(Interim Receiver)**

THIS MOTION made by the Applicant for an Order pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, (the “BIA”) appointing Rosen Goldberg Inc. as interim receiver (in such capacities, the “Interim Receiver”) of certain property of the Respondent Concept Lofts Ltd. (“CCL”) municipally known as 1183 Dufferin Street, Toronto, Ontario, and legally described in Schedule “A” attached hereto (the “Dufferin Property”), was heard this day by Zoom judicial videoconference.

- 2 -

ON READING the Affidavit of Graham Tobe sworn October 20, 2022 and on hearing the submissions of counsel for the Applicant, Sanjay Gupta on behalf of 2264405 Ontario Inc., and Saneh Bhardwaj on behalf of World Financial Solutions Inc., no one else on the service list appearing, although duly served as appears from the Affidavit of Service of David Seifer sworn October 20, 2022 and on reading the consent of Rosen Goldberg Inc. to act as the Interim Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 47(1) of the BIA, Rosen Goldberg Inc. is hereby appointed Interim Receiver, without security, of the Dufferin Property.

INTERIM RECEIVER'S POWERS

3. THIS COURT ORDERS that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Dufferin Property and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Dufferin Property;
- (b) to receive, preserve, and protect the Dufferin Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to cease to perform any contracts of CCL in relation to the Dufferin Property which interfere with the Interim Receiver's exercise of its powers and duties;

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- (d) to engage contractors, engineers, architects, consultants, experts and such other persons for the purpose of taking conservatory measures in respect of the Dufferin Property;
- (e) to purchase or lease such machinery, equipment, or other assets to assist with the Interim Receiver's exercise of its powers and duties;
- (f) to execute, assign, issue and endorse documents in relation to the Dufferin Property, whether in the Interim Receiver's name or in the name and on behalf of CCL, for any purpose pursuant to this Order;
- (g) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on matters relating to the Dufferin Property and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;
- (h) to register a copy of this Order against title to the Dufferin Property and title to the lands and premises legally described in Schedule "B" attached hereto (the "Balmoral Property"); and
- (i) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including CCL, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER

4. THIS COURT ORDERS that (i) CCL (ii) its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith grant immediate and continued access to the Dufferin Property to the Interim Receiver upon the Interim Receiver's request.

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5. THIS COURT ORDERS that all Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Dufferin Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a “Proceeding”), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DUFFERIN PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Dufferin Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Dufferin Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Interim Receiver, or affecting the Dufferin Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Interim Receiver or CCL to carry on any business which CCL is not lawfully entitled to carry on, (ii) exempt the Interim Receiver or CCL from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE INTERIM RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by CCL in relation to the Dufferin Property, without written consent of the Interim Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with CCL or statutory or regulatory mandates for the supply of goods and/or services, including without

limitation, all computer software, communication and other data services, insurance, utility or other services to CCL in relation to the Dufferin Property, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Interim Receiver, and that the Interim Receiver shall be entitled to the continued use of CCL's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Interim Receiver in accordance with normal payment practices of CCL or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

EMPLOYEES

12. THIS COURT ORDERS that the Interim Receiver shall not be liable for any employee-related liabilities of CCL, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Interim Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

LIMITATION ON ENVIRONMENTAL LIABILITIES

13. THIS COURT ORDERS that nothing herein contained shall require the Interim Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of the Dufferin Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim Receiver's duties and powers under this Order, be deemed to be in Possession of the

Dufferin Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE INTERIM RECEIVER'S LIABILITY

14. THIS COURT ORDERS that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

INTERIM RECEIVER'S ACCOUNTS

15. THIS COURT ORDERS that the Interim Receiver and counsel to the Interim Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the "Interim Receiver's Charge") on the Dufferin Property and the Balmoral Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Interim Receiver's Charge shall form a first charge on the Dufferin Property and the Balmoral Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

16. THIS COURT ORDERS that the Interim Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Interim Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

17. THIS COURT ORDERS that prior to the passing of its accounts, the Interim Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates

and charges of the Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE INTERIM RECEIVERSHIP

18. THIS COURT ORDERS that the Interim Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Interim Receiver by this Order, including interim expenditures. The whole of the Dufferin Property and the Balmoral Property shall be and are hereby charged by way of a fixed and specific charge (the "Interim Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Interim Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that neither the Interim Receiver's Borrowings Charge nor any other security granted by the Interim Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

20. THIS COURT ORDERS that the Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "C" hereto (the "Interim Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

21. THIS COURT ORDERS that the monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Interim Receiver's Certificates.

22. THIS COURT ORDERS that all monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court shall be deposited into one or

more new accounts to be opened by the Interim Receiver (the “Post Interim Receivership Accounts”) and the monies standing to the credit of such Post Interim Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

SERVICE AND NOTICE

23. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: http://www.rosengoldberg.com/company-files.php?company_id=83.

24. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the creditors of CCL and the Respondent Donald Desrochers (collectively, the “Debtors”) other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

TERM OF INTERIM RECEIVER’S APPOINTMENT

25. THIS COURT ORDERS that the term of the Interim Receiver’s appointment shall expire on the earliest of:

- (a) the taking of possession by a receiver, within the meaning of subsection 243(2) of the BIA, of the Dufferin Property;
- (b) the taking of possession by a trustee in bankruptcy of the Dufferin Property; and
- (c) November 19, 2022, or such earlier or later date as this Court may order.

GENERAL

26. THIS COURT ORDERS that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. THIS COURT ORDERS that nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy or receiver and manager of the Debtors.

28. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

29. THIS COURT ORDERS that the Interim Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Interim Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

30. THIS COURT ORDERS that the Applicant shall have its costs of this Motion up to and including entry and service of this Order, as provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid from the Debtors' estates with such priority, according to such allocation as between Debtors and the Dufferin Property and the Balmoral Property, and at such time as this Court may determine.

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31. THIS COURT ORDERS that this Order is strictly without prejudice to the relief sought by the Applicant in its Notice of Application.

32. THIS COURT ORDERS that any interested party (including the Applicant, the Interim Receiver and any of the Debtors) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

33. THIS COURT ORDERS that this Order is effective from today's date and is not required to be entered.



Digitally signed
by Mr. Justice
Cavanagh

SCHEDULE " A "**LANDS AND PREMISES OWNED BY THE
RESPONDENT CONCEPT LOFTS LTD.**

<i>PIN</i>	21291 - 0415	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PART OF LOTS 18, 19 & 20, BLOCK O, PLAN 622, DESIGNATED AS PART 1, PLAN66R26944; CITY OF TORONTO			
<i>Address</i>	1183 DUFFERIN STREET TORONTO			

SCHEDULE " B"

**LANDS AND PREMISES OWNED BY THE
RESPONDENT DONALD DESROCHERS**

<i>PIN</i>	12205 - 0069LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 2, LEVEL 5, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATION E184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO. SUBJECT TO A RIGHT FOR 5 YEARS FROM 9809 09 AS IN D621469, CITY OF TORONTO		
<i>Address</i>	502 UNIT 1 BALMORAL AVENUE TORONTO		
<i>PIN</i>	12205 - 0177LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 8, LEVEL B, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATION E184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO. SUBJECT TO A RIGHT FOR 5 YEARS FROM 9809 09 AS IN D621469, CITY OF TORONTO		
<i>Address</i>	8B UNIT 1 BALMORAL AVENUE TORONTO		
<i>PIN</i>	12205 - 0070LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 3, LEVEL 5, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATION E184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO.		
<i>Address</i>	503 UNIT 1 BALMORAL AVENUE TORONTO		

<i>PIN</i>	12205 - 0281LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 24, LEVEL C, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATION 184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO.		
<i>Address</i>	24C UNIT 1 BALMORAL AVENUE TORONTO		

SCHEDULE "C"

INTERIM RECEIVER CERTIFICATE

CERTIFICATE NO. ●

AMOUNT \$●

1. THIS IS TO CERTIFY that Rosen Goldberg Inc., the interim receiver (the "Interim Receiver") of certain property of the Respondent Concept Lofts Ltd. municipally known as 1183 Dufferin Street, Toronto, Ontario (the "Dufferin Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 21st day of October, 2022 (the "Order") made in an application having Court file number CV-22-00688570-00CL, has received as such Interim Receiver from the holder of this certificate (the "Lender") the principal sum of \$●, being part of the total principal sum of \$● which the Interim Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the ● day of each month] after the date hereof at a notional rate per annum equal to the rate of ● per cent above the prime commercial lending rate of Bank of ● from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Interim Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Dufferin Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Interim Receiver to indemnify itself out of such Dufferin Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Interim

Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Interim Receiver to deal with the Dufferin Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Interim Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ● day of ●, 20●.

ROSEN GOLDBERG INC., solely in its
capacity as Interim Receiver of the Dufferin
Property, and not in its personal capacity

Per: _____

Name:

Title:

OWEMANCO MORTGAGE HOLDING CORPORATION
Applicant

-and-

CONCEPT LOFTS LTD. et al.
Respondents

Court File No. CV-22-00688570-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT
TORONTO

ORDER (APPOINTING INTERIM RECEIVER)

DICKINSON WRIGHT LLP

Barristers & Solicitors
199 Bay Street
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Tel: (416) 646-6867
Fax: (844) 670-6009

Lawyers for the Applicant

APPENDIX “B”



Court File No. CV-22-00688570-00CL

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**

THE HONOURABLE)	MONDAY, THE 7th
)	
JUSTICE CAVANAGH)	DAY OF NOVEMBER, 2022

B E T W E E N:

OWEMANCO MORTGAGE HOLDING CORPORATION

Applicant

- and -

CONCEPT LOFTS LTD. and DONALD DESROCHERS

Respondents

EXPANDED POWERS ORDER
(appointing Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, (the “BIA”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, (the “CJA”) appointing Rosen Goldberg Inc. as receiver and manager (in such capacities, the “Receiver”) without security, of all of the assets, undertakings and properties of the Respondent Concept Lofts Ltd. acquired for, or used in relation to a business carried on by the Respondent Concept Lofts Ltd. and over certain real property owned by the Respondent Donald Desrochers (and together with the Respondent

Concept Lofts Ltd., collectively, the “Debtors”), was heard this day by Zoom judicial videoconference.

ON READING the Affidavit of Graham Tobe sworn October 19, 2022, the Affidavit of Graham Tobe sworn October 20, 2022, the Affidavit of David Seifer sworn November 4, 2022, and the First Report of Rosen Goldberg Inc. dated November 3, 2022, (the “First Report”) and on hearing the submissions of counsel for the Applicant, counsel for the Debtors, Steve Basille, an occupant of Unit 102 at 1183 Dufferin Street, and Fernando Franco, an occupant of Unit 108 at 1183 Dufferin Street, no one else on the service list appearing, although duly served as appears from the Affidavit of Service of Janet Nairne sworn October 20, 2022, the Affidavit of Service of David Seifer sworn October 20, 2022, and the Affidavit of Service of Janet Nairne sworn November 4, 2022, and on reading the First Report and the consent of Rosen Goldberg Inc. to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Application Record, the Supplementary Application Record and the First Report is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that the status and mandate of Rosen Goldberg Inc. as interim receiver pursuant to the Appointment Order (Interim Receiver) dated October 21, 2022 is hereby varied and amended as hereinafter set out.

3. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Rosen Goldberg Inc. is hereby appointed Receiver, without security, of:

- (a) all of the assets, undertakings and properties of the Respondent Concept Lofts Ltd. acquired for, or used in relation to a business carried on by the Respondent Concept Lofts Ltd., including the lands and premises described in Schedule “A” attached hereto, and all proceeds thereof; and

- (b) the lands and premises owned by the Respondent Donald Desrochers described in Schedule “B” hereto, and all proceeds thereof

(collectively, the “Property”).

RECEIVER’S POWERS

4. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, rents, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Respondent Concept Lofts Ltd., including the powers to complete any outstanding or remedial construction on the lands and premises described in Schedule “A”, cause a condominium corporation to be created, execute a condominium declaration, enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Respondent Concept Lofts Ltd.;
- (d) to deal with the City of Toronto and any government authority having jurisdiction in respect of any building or other permits or approvals, outstanding or new, required in connection with the lands and premises described in Schedule “A” whether in the Receiver’s name or in the name and on behalf of the Respondent Concept Lofts Ltd., for any purpose pursuant to this Order;

- (e) to engage contractors, project managers, engineers, architects, consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Respondent Concept Lofts Ltd. or any part or parts thereof;
- (g) to receive and collect all monies, rents and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Respondent Concept Lofts Ltd. in collecting such monies, including, without limitation, to enforce any security held by the Respondent Concept Lofts Ltd.;
- (h) to settle, extend or compromise any indebtedness owing to the Respondent Concept Lofts Ltd.;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of any of the Debtors, for any purpose pursuant to this Order;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Respondent Concept Lofts Ltd., the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business with the approval of this Court and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Respondent Concept Lofts Ltd.;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Respondent Concept Lofts Ltd. may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

WRIT OF POSSESSION

5. THIS COURT ORDERS that leave be and is hereby granted to issue a writ of possession in respect of the lands and premises described in Schedule “B” hereto in order that the Sheriff of the City of Toronto give possession of the lands and premises described in Schedule “B” hereto to the Receiver without delay.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

6. THIS COURT ORDERS that (i) the Debtors, (ii) the Respondent Concept Lofts Ltd.’s current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “Persons” and each being a “Person”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request.

7. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Respondent Concept Lofts Ltd. or in relation to the lands and premises described in Schedule “B” hereto, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “Records”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 7 or in paragraph 8 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege

attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

8. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

9. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a “Proceeding”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

10. THIS COURT ORDERS that no Proceeding against or in respect of the Respondent Concept Lofts Ltd. or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Respondent Concept Lofts Ltd. or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. THIS COURT ORDERS that all rights and remedies against the Respondent Concept Lofts Ltd., the Receiver, or affecting the Property, are hereby stayed and suspended except with the

written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Respondent Concept Lofts Ltd. to carry on any business which the Respondent Concept Lofts Ltd. is not lawfully entitled to carry on, (ii) exempt the Receiver or the Respondent Concept Lofts Ltd. from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

12. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Respondent Concept Lofts Ltd. or by the Respondent Donald Desrochers in in relation to the lands and premises described in Schedule “B” hereto, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. THIS COURT ORDERS that all Persons having oral or written agreements with the Respondent Concept Lofts Ltd. or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Respondent Concept Lofts Ltd., or to the Respondent Donald Desrochers in in relation to the lands and premises described in Schedule “B” hereto, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Respondent Concept Lofts Ltd.’s current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

14. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “Post Receivership Accounts”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

15. THIS COURT ORDERS that all employees of the Respondent Concept Lofts Ltd. shall remain the employees of the Respondent Concept Lofts Ltd. until such time as the Receiver, on the Respondent Concept Lofts Ltd.’s behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

16. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “Sale”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects

identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “Possession”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “Environmental Legislation”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER’S LIABILITY

18. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER’S ACCOUNTS

19. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “Receiver’s Charge”) on the Property, as

security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. THIS COURT ORDERS that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “C” hereto (the “Receiver’s Certificates”) for any amount borrowed by it pursuant to this Order.

25. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver’s Certificates.

SERVICE AND NOTICE

26. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: http://www.rosengoldberg.com/company-files.php?company_id=83.

27. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors’ creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

28. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

30. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estates, according to such allocation as between the Debtors' estates, with such priority and at such time as this Court may determine.

33. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

34. THIS COURT ORDERS that this Order is effective from today's date and is not required to be entered.



Digitally signed by
Mr. Justice Cavanagh

SCHEDULE "A"**LANDS AND PREMISES OWNED BY THE
RESPONDENT CONCEPT LOFTS LTD.**

<i>PIN</i>	21291 - 0415 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PART OF LOTS 18, 19 & 20, BLOCK O, PLAN 622, DESIGNATED AS PART 1, PLAN66R26944; CITY OF TORONTO		
<i>Address</i>	1183 DUFFERIN STREET TORONTO		

SCHEDULE "B"**LANDS AND PREMISES OWNED BY THE
RESPONDENT DONALD DESROCHERS**

<i>PIN</i>	12205 - 0069LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 2, LEVEL 5, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATION E184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO. SUBJECT TO A RIGHT FOR 5 YEARS FROM 9809 09 AS IN D621469, CITY OF TORONTO		
<i>Address</i>	502 UNIT 1 BALMORAL AVENUE TORONTO		
<i>PIN</i>	12205 - 0177LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 8, LEVEL B, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATION E184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO. SUBJECT TO A RIGHT FOR 5 YEARS FROM 9809 09 AS IN D621469, CITY OF TORONTO		
<i>Address</i>	8B UNIT 1 BALMORAL AVENUE TORONTO		
<i>PIN</i>	12205 - 0070LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 3, LEVEL 5, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATION E184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO.		
<i>Address</i>	503 UNIT 1 BALMORAL AVENUE TORONTO		

<i>PIN</i>	12205 - 0281LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 24, LEVEL C, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATIONE184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO.		
<i>Address</i>	24C UNIT 1 BALMORAL AVENUE TORONTO		

SCHEDULE "C"

RECEIVER CERTIFICATE

CERTIFICATE NO. ●

AMOUNT \$●

1. THIS IS TO CERTIFY that Rosen Goldberg Inc., the receiver (the "Receiver") of the assets, undertakings and properties of Concept Lofts Ltd. and certain real property owned by the Donald Desrochers (and together with Concept Lofts Ltd., collectively, the "Debtors"), including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ● day of ●, 2022 (the "Order") made in an application having Court file number CV-22-00688570-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$●, being part of the total principal sum of \$● which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the ● day of each month] after the date hereof at a notional rate per annum equal to the rate of ● per cent above the prime commercial lending rate of Bank of ● from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ● day of ●, 20●.

ROSEN GOLDBERG INC., solely in its
capacity as Receiver of the Property, and not in
its personal capacity

Per: _____

Name:

Title:

OWEMANCO MORTGAGE HOLDING CORPORATION
Applicant

-and-

CONCEPT LOFTS LTD. et al.
Respondents

Court File No. CV-22-00688570-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT
TORONTO

EXPANDED POWERS ORDER
(APPOINTING RECEIVER)

DICKINSON WRIGHT LLP

Barristers & Solicitors
199 Bay Street
Suite 2200, P.O. Box 447
Commerce Court Postal Station
Toronto, Ontario, M5L 1G4

DAVID P. PREGER (36870L)

Email: dpreger@dickinsonwright.com

Tel: (416) 646-4606

DAVID Z. SEIFER (77474F)

Email: dseifer@dickinsonwright.com

Tel: (416) 646-6867

Fax: (844) 670-6009

Lawyers for the Applicant

APPENDIX “C”



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-22-688570-00CL

DATE: November 7, 2022

NO. ON LIST: 3

TITLE OF PROCEEDING: OWEMANCO MORTGAGE HOLDINGS CORP

BEFORE JUSTICE: JUSTICE CAVANAGH

PARTICIPANT INFORMATION**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
David P. Preger	Applicant	dpreger@dickinsonwright.com
David Z. Seifer		dseifer@dickinsonwright.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Samir Chhina	Concept Lofts and Donald Desrochers	samirchhina@gmail.com
Brahm Rosen	Proposed Receiver	brosen@rosengoldberg.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE CAVANAGH:

This application was commenced by Owemanco Mortgage Holding Corporation by Notice of Application issued on October 12, 2022.

The Respondents are Concept Lofts Ltd. (“CLL”) and Donald Desrocher, the president of CLL. CLL is the owner of property at 1183 Dufferin Street, Toronto (the “Dufferin Property”). Mr. Desrocher is the registered owner of property at Suites 502 and 503, 1 Balmoral Avenue, Toronto (the “Balmoral Property”).

The Applicant is a secured lender to (i) CLL in connection with a loan in the principal amount of \$6.675 million, and (ii) CLL and Mr. Desrocher in connection with a further loan in the principal amount of \$2.05 million. The Applicant’s security for the \$6.675 million loan consists of, among other things, a first-ranking mortgage against the Dufferin Property and a first ranking general security agreement given by CLL. The loan is also guaranteed by CLL’s directors. The Applicant’s security for the \$2.05 million loan consists of, among other things, a charge blanketed in second position against the Dufferin Property and in first position against the Balmoral Property.

The loans are in default.

The Applicant seeks an Order appointing Rosen Goldberg Inc. as receiver and manager of the assets undertakings and properties of CLL including the Dufferin Property and the Balmoral Property.

The application came before Kimmel J. on October 20, 2022. The application materials were served on October 19, 2022. Mr. Desrocher received notice of this hearing as did a lawyer who had represented him in discussions with counsel for the Applicant, Samir Chhina. Although he was aware of the application, neither Mr. Desrocher nor any legal counsel representing CLL or Mr. Desrocher appeared at the hearing.

At the hearing before Justice Kimmel, counsel for the Applicant advised of an urgent issue that had recently been disclosed, that is, that the Dufferin Property was uninsured. Counsel for the Applicant requested on an urgent basis that the court appoint the receiver that day to address this concern. Since this issue was not part of what the service list was told would be raised that day, Justice Kimmel adjourned the urgent relief to a one-hour hearing the following day to allow the service list to be notified and a motion record to be put before the court.

This motion came before me on October 21, 2022. Mr. Desrocher had received the motion materials but he did not appear nor did counsel for CLL or Mr. Desrocher. I released an endorsement that day and granted the motion to appoint an interim receiver to take possession of and secure the Dufferin Property. In my endorsement, I wrote that the application for the appointment of a receiver under section 243 (1) of the *BIA* is scheduled to be heard on November 7, 2022 at 10 o’clock a.m. for one hour.

The application for the appointment of a receiver under s. 243(1) of the *BIA* and s. 101 of the *CJA* came before me today. In support of the application, the Applicant filed the affidavits of Graham Tobe sworn October 19 and October 20, 2022 and the affidavit of David Seifer, a lawyer in the firm representing the Applicant, sworn November 4, 2022. The First Report of Rosen Goldberg dated November 4, 2022 was also filed.

At the hearing today, Mr. Chhina appeared for CLL and Mr. Desrocher. He advised that he had just been retained by CLL and Mr. Desrocher the previous day, and he requested an adjournment of the hearing to allow them to file responding affidavit evidence.

I accept that Mr. Chhina was retained to represent the respondents for this application yesterday. However, this was clearly a choice made by Mr. Desrocher. It appears that this choice was made to delay the proceedings. I say this because Mr. Chhina had been representing Mr. Desrocher in discussions with the Applicant going back to September 29, 2022 as shown by email correspondence appended to Mr. Tobe's second affidavit at Exhibit "H". No affidavit was filed by Mr. Desrocher to explain why he had chosen not to formally retain counsel to respond to this application on a timely basis. No explanation was offered for why Mr. Desrocher waited until the day before the hearing to retain counsel, even where counsel had been retained to represent CLL and Mr. Desrocher in relation to the subject matter of the application in September 2022.

The evidence before me is that the loans are in default and have been in default since September 7, 2022. On September 16, 2022, the Applicant made written demand under the loans and issued notices of intention to enforce security pursuant to s. 244 of the *BIA*. Mr. Chhina explained the nature of the evidence his clients wish to file to respond to the application, but the evidence does not include evidence that the loans are not in default. The evidence includes an explanation for why the Dufferin Property was uninsured and the status of efforts made to refinance the loans (including an NOI from a lender). Mr. Chhina submits that the ability of the respondents to refinance is basically the defence to the application.

In the First Report of Rosen Goldberg Inc. as Interim Receiver dated November 4, 2022, the Interim Receiver reports that on September 15, 2022, the City of Toronto caused a notice of an Order issued on July 16, 2019 under the *Building Code Act, 1992* to be registered against the Dufferin Property. The Order prohibits footings, foundations, structural framing, ductwork and piping for heating and air conditioning systems from being covered or enclosed. The Interim Receiver observed that contrary to the Order, the footings, foundations, structural framing, ductwork and piping for heating and air-conditioning systems are in fact covered or enclosed.

The Interim Receiver also reports that two of the units at the Dufferin Property are occupied and that no occupancy certificates have been issued in respect of the project. According to the report of the Interim Receiver, based upon information provided by Mr. Sanjay Dubey, a principal of SDM Constructions Inc. who registered a construction lien against the Dufferin Property and who is an officer and director of CLL, unit 102 is rented by CLL and unit 108 is being rented by Mr. Desrochers notwithstanding that the condominium corporation has not yet been created and units have not yet been conveyed to buyers.

In the circumstances, I declined to grant the requested adjournment. In making this decision, I took into account the relevant circumstances outlined above including my conclusion, in the absence of evidence to the contrary, that Mr. Desrocher intentionally waited to retain legal counsel until yesterday for the purpose of delaying the hearing of the application to appoint a receiver.

The Respondents have had a considerable period of time to seek to refinance the loans but, so far, they have not been successful. It is open to CLL and Mr. Desrosiers to pursue refinancing opportunities after the appointment of a receiver. The fact that it is possible that the loans may be refinanced does not, in my view, justify delaying the appointment of a receiver in the circumstances.

Given the ongoing defaults under the loans, the potential marshaling concerns which the subordinate ranking mortgagees of the Dufferin Property may have in relation to the Balmoral Property, the interests of purchasers of residential units in the Dufferin Property, CLL's ongoing failure to resolve the Order issued by the City of Toronto in July 2019 and create the condominium corporation, and the occupancy of two units without occupancy permits having been issued, I am satisfied that it is just and convenient that a Receiver be appointed without delay to determine how best to realize on the Property for the benefit of all stakeholders.

Order to issue in form of Order signed by me today.

OWEMANCO MORTGAGE HOLDING CORPORATION
Applicant

-and- CONCEPT LOFTS LTD. et al.
Respondents

Court File No. CV-22-00688570-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION
Volume I of II

MAND | RAI LLP

Lawyers
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Lawyers for Rosen Goldberg Inc., the Court-
appointed Receiver of the assets, undertakings and
properties of Concept Lotfs Ltd. and Donald
Desrochers

APPENDIX “D”



SUPERIOR COURT OF JUSTICE
COUNSEL SLIP

COURT FILE

NO.: CV-22-00688570-00CL

DATE: December 20, 2022

TITLE OF PROCEEDING
OWEMANCO MORTGAGE HOLDING CORPORATION V. CONCEPT LOFTS LTD. AND DONALD DESROCHERS
BEFORE MR. JUSTICE CAVANAGH

NAMES OF COUNSEL AND PARTY:

- APPLICANT(S) David Preger and David Seifer for Applicant
- PLAINTIFF(S)

PHONE _____

EMAIL dpreger@dickinsonwright.com
dseifer@dickinsonwright.com

NAMES OF COUNSEL AND PARTY:

- DEFENDANT(S)
- RESPONDENT(S)
-
- RESPONDENT(S)

PHONE _____

EMAIL olu@ogunniylawoffices.com

PHONE _____

Olubunmi Ogunniyi for Laura Lawrence

EMAIL _____

NAMES OF COUNSEL AND OTHER PARTIES:

-
-

PHONE _____

EMAIL pmand@mandlaw.com

PHONE _____

Paul H. Mand for Rosen Goldberg inc. as Receiver

EMAIL _____

ENDORSEMENT OF CAVANAGH J.:

Introduction

- [1] There are two motions before me.
- [2] The moving party, Laura Lawrence, seeks an order amending or varying my Order dated November 7, 2022 appointing a receiver over property at Units 502 and 503, 1 Balmoral Avenue, Toronto, Ontario (the “Balmoral Property”) by deleting paragraphs 3, 4, and 5 of this Order. In the alternative, Ms. Lawrence seeks an order staying all proceedings and enforcement of a Writ of Possession issued in relation to the Balmoral Property. Ms. Lawrence seeks an order permitting her to put the Applicant’s mortgage against the Balmoral Property in good standing.
- [3] At the hearing, Ms. Lawrence requested an adjournment to allow her counsel to examine the Receiver. A court-appointed receiver is not generally subject to cross-examination on the contents of its reports. Ms. Lawrence has not shown that this is one of the exceptional circumstances where leave should be granted to permit examination of a court-appointed receiver.
- [4] For the following reasons, Ms. Lawrence’s motion is dismissed.
- [5] Rosen Goldberg Inc. in its capacity as receiver and manager of the assets, undertakings and properties of Concept Lofts Ltd. including property at 1183 Dufferin Street, Toronto (the “Dufferin Property”) and the Balmoral Property, moves for an order (i) approving the Receiver’s activities since its appointment under my Order dated November 7, 2022, and (ii) authorizing and directing the Receiver, *nunc pro tunc*, to redact from the Second Report served on the parties on the service list appraisal information and the Receiver’s realization analysis in Confidential Appendices filed with the Court.
- [6] I grant the Receiver’s motion.

Factual background

- [7] This application was commenced by Owemanco Mortgage Holding Corporation by Notice of Application issued on October 12, 2022. The respondents are Concept Lofts Ltd. (“CLL”) and Donald Desrocher, the president of CLL. Mr. Desrocher is the registered owner of the Balmoral Property. Ms. Lawrence is the spouse of Mr. Desrocher.
- [8] The Applicant is a secured lender to (i) CLL in connection with the loan in the principal amount of \$6.675 million, and (ii) CLL and Mr. Desrocher in connection with a further loan in the principal amount of \$2.05 million. The Applicant’s security for the \$6.675 million loan consists of, among other things, a first ranking mortgage against the Dufferin Property. The Applicant’s security for the \$2.05 million loan consists of, among other things, a mortgage blanketed in second position against the Dufferin Property and in first position against the Balmoral Property.
- [9] The loans are in default.
- [10] In its application, the Applicant sought an order appointing Rosen Goldberg Inc. as receiver and manager of the assets, undertakings and properties of CLL including the Dufferin Property at the Balmoral Property.
- [11] On October 21, 2022 I made an Order appointing Rosen Goldberg inc. as interim receiver of the Dufferin Property.

[12] On November 7, 2022 I made an Order (the “Receivership Order”) appointing Rosen Goldberg Inc. as receiver of the assets, undertakings and properties of CLL including the Dufferin Property and the Balmoral Property owned by Mr. Desrocher.

Analysis

Was Ms. Lawrence given proper notice of the application for the appointment of a receiver in the hearing date for this application?

[13] Ms. Lawrence submits that as the spouse of Donald Desrocher, the owner of the Balmoral Property, their matrimonial home under the *Family Law Act*, she had the right to notice if someone wished to realize upon a lien, encumbrance or execution or exercise a forfeiture against the Balmoral Property. Ms. Lawrence submits that she has this right under subsections 19 (1) and 22 (1) of the *Family Law Act* and under section 33 of the *Mortgages Act*.

[14] Section 22 (2) of the *Family Law Act* provides:

A notice to which a spouse is entitled under subsection (1) shall be deemed to be sufficiently given served or given personally or by registered mail addressed to the spouse at his or her usual or last known address or, if none, the address of the matrimonial home, and, if notice is served or given by mail, the server shall be deemed to have been made on the fifth day after the date of mailing.

[15] In her reply affidavit, Ms. Lawrence states that she should have been properly served with the application materials by the applicant, but she was not.

[16] The Applicant points to email correspondence with Mr. Ogunniyi, Ms. Lawrence’s counsel for this motion, beginning in October 2022. By email dated October 13, 2022, counsel for the Applicant wrote to Mr. Ogunniyi (and others) attaching his client’s Notice of Application and advising that a hearing had been scheduled at 10:30 a.m. on October 20, 2022. The Applicant’s counsel also advised that the purpose of the appearance on October 20, 2022 would be to schedule the hearing date for the application.

[17] Ms. Lawrence states in her affidavit that her lawyer, Mr. Ogunniyi, had written to the Applicant’s lawyer, David Preger, on October 15, 2022 to advise that he did not represent any party in these proceedings and that he had no instructions to accept service of any notice on behalf of any party in the within proceedings.

[18] A separate application was commenced by Mr. Desrocher and Ms. Lawrence against Owemanco by Notice of Application issued on October 13, 2022 in the Superior Court of Justice in Milton. In this application, Mr. Desrocher and Ms. Lawrence seek (i) an order declaring that they have the right to put the mortgage held by Owemanco in good standing with respect to the Balmoral Property, and (ii) an order staying all enforcement action against them by Owemanco pending trial or other disposition of the application. The lawyer of record for Mr. Desrocher and Ms. Lawrence on this application is their counsel on this motion, Mr. Ogunniyi.

[19] When she was cross-examined on her affidavit for this motion, Ms. Lawrence testified that she was not given notice of hearings with respect to the application. Ms. Lawrence was asked to agree that her lawyer, Mr. Ogunniyi, who was her counsel on the separate application commenced in Milton seeking relief in relation to the mortgage on the Balmoral Property, received copies of all materials predating the appointment of the receiver. Ms. Lawrence was instructed not to answer the question.

- [20] In response to this objection, counsel for the Applicant explained that he wanted to go through with Ms. Lawrence evidence that established that her counsel in the related proceeding received all of the application materials and was notified of the hearing date for the application. Ms. Lawrence was again instructed not to answer these questions.
- [21] Counsel for the Applicant was entitled to ask questions on the cross-examination of Ms. Lawrence to seek to establish that she received notice of the receivership application through her lawyer of record in the related application who received these materials. The refusals were not justified. In the circumstances, I draw an adverse inference that if Ms. Lawrence had answered the questions that were improperly refused, her answers would have been unhelpful to her on the question of whether she received notice of the receivership application.
- [22] I conclude that Ms. Lawrence has failed to show that she did not receive notice of the Applicant's application for an order appointing a receiver over the Balmoral Property, through the notice given to her lawyer of record on her separate application for relief in relation to the mortgage registered against the Balmoral Property.

Has the Applicant shown that the receivership order was properly made?

- [23] The Receivership Order contains a "comeback" clause in paragraph 33. In *Textron Financial Canada Ltd. v. Beta Ltée/Beta Brands Ltd.*, 2007 CanLII 30473, at para. 89, Leitch R.S.J. observed that such a provision is intended to apply in situations where parties impacted by an order are not provided with notice of the making of the order. Leitch R.S.J. held that a motion to vary a receivership order is not a substitute for an appeal where the time for an appeal has passed.
- [24] Where a motion is brought to vary a receivership order pursuant to a comeback provision, and the moving party did not have notice of the making of the order, the onus is on the responding party (the initial applicant) to show that the order originally made was appropriate. See *Royal Bank of Canada v. Reid-Built Homes Ltd.*, 2018 ABQB 124, at para. 39; reversed, in part, on other grounds: *Edmonton (City) v. Alvarez & Marsal Canada Inc.*, 2019 ABCA 109.
- [25] If, contrary to my conclusion, Ms. Lawrence was not given notice of the application for the appointment of a receiver, the Applicant would have an onus on this motion to show that the Receivership Order was properly made. I now address whether the Applicant has met this onus.
- [26] Ms. Lawrence has had an opportunity to present evidence to show why the Receivership Order should not have been made against the Balmoral Property.
- [27] Ms. Lawrence submits that because she was not given proper notice of the receivership application and hearing, the receivership order against the Balmoral Property is invalid and should be set aside. Where a motion to vary a receivership order is made pursuant to a comeback provision in the order by a person who did not receive notice, the order is not automatically set aside. On the motion, the applicant has the onus of showing that the receivership order was appropriate.
- [28] Ms. Lawrence has not tendered evidence that casts doubt on the validity of the Applicant's mortgage against the Balmoral Property. Ms. Lawrence has not tendered evidence to show that mortgage against the Balmoral Property is not in default.
- [29] Ms. Lawrence relies on a renewal agreement dated September 7, 2022 by which the mortgage registered against the Balmoral Property (in first position) and against the Dufferin Property (in second position) was renewed with a maturity date of March 1, 2023. Pursuant to the renewal,

the debtors agreed to pay \$70,930 on account of renewal fees and the Applicant's legal fees in 6 consecutive monthly instalments of \$11,821.67, together with regular monthly payments under the mortgage loan. The payments required by this renewal agreement were not made.

- [30] Ms. Lawrence submits that she has been denied a right to put the Balmoral mortgage into good standing by paying the renewal fee as it relates to the Balmoral mortgage (\$15,000), and any arrears of interest. Ms. Lawrence submits that the Receivership Order should be set aside as it applies to the Balmoral Property, and that she should be allowed to put the Balmoral mortgage into good standing through these payments.
- [31] Ms. Lawrence points to a letter dated September 16, 2022 from counsel for the applicant to CCL and Mr. Desrochers which refers to a renewal fee of \$15,000. This letter was sent in relation to the loan facility secured by the mortgage in second position of the Dufferin Property and the mortgage in first position on the Balmoral Property. A separate letter, also dated September 16, 2022, relates to the other loan facility secured by the first mortgage on the Dufferin Property. This letter refers to a renewal fee of \$50,000.
- [32] Ms. Lawrence submits that the Balmoral Mortgage is separate from the Dufferin Mortgage and must be treated distinctly from the Dufferin Mortgage. In support of this submission, Ms. Lawrence cites *Posocco v. Battista*, [2016] O.J. No. 4102, at para. 18, where the motion judge relied on *Isman v. Sinnot*, [1920] 61 S.C.R. 1 for this proposition.
- [33] I do not agree that the principle stated in *Posocco* applies on this motion. This is because each of the Balmoral mortgage and the Dufferin mortgage has a cross-default provision whereby a default under any charge or security between CCL or Mr. Desrochers and the Applicant is deemed to be an event of default under all security documents between any of them and the Applicant and shall entitle the Applicant to pursue its remedies under any or all of its security documents.
- [34] As a result of the cross-default provision, Ms. Lawrence cannot put the Balmoral mortgage into good standing by paying a portion of the renewal fee and arrears of interest on the Balmoral mortgage, as she requests. Ms. Lawrence would also have to put the Dufferin mortgage into good standing and doing so would require her to (i) clear the outstanding work order against the Dufferin Property, (ii) discharge the construction lien registered against the Dufferin Property, (iii) pay the full amount of the renewal fee and arrears on interest, including in respect of the Dufferin Mortgage, and (iv) pay the costs of the receivership. On the evidence before me, it is not practically feasible for Ms. Lawrence to do so.
- [35] A spouse's right to equal possession of a matrimonial home under s. 19 of the *Family Law Act* does not constitute an interest in land. Section 19(2)(a) of the *Family Law Act* gives separated spouses the right to remain in the matrimonial home as a personal right, not as an interest in land. See *Falconbridge on Mortgages*, 5th Edition, Part IV, Chapter 18, §18:3.
- [36] In the absence of an agreement to the contrary, a secured creditor with multiple pieces of security is entitled to enforce in whatever order and against whatever piece of security it sees fit. See *Sebastien v. Brunello Imports Inc.*, 2022 ONSC 5272, at para. 53.
- [37] I have considered the evidence tendered by Ms. Lawrence on this motion. I am satisfied that the Applicant has shown that the Receivership Order was properly made. It is open to Ms. Lawrence to seek to refinance the mortgage on the Balmoral Property while the receiver is in place and before the Balmoral Property is sold. The fact that it is possible that the loans made to CLL and

Mr. Desrochers may be refinanced does not justify setting aside the Receivership Order as it applies to the Balmoral Property.

Should an order be made staying enforcement of the Writ of Possession?

- [38] Ms. Lawrence submits that because she was not given proper notice of the application for a receivership order over the Balmoral Property, the Writ of Possession that was issued pursuant to the Receivership Order was improperly obtained and should be stayed.
- [39] I have concluded that Ms. Lawrence has failed to show that she did not receive notice of the application for the appointment of a receiver. Even if I had held that Ms. Lawrence did not receive proper notice, I have held that the Applicant has satisfied the onus that would apply to show that the Receivership Order was properly made.
- [40] Ms. Lawrence has not shown that there is a serious question to be tried with respect to her right to put the mortgage against the Balmoral Property in good standing and redeem the mortgage on the basis of the payments she proposes to make. This is because of the cross-default provisions in the mortgages to which I have referred.
- [41] Ms. Lawrence submits that she will suffer irreparable harm if the Writ of Possession is not stayed because she will lose the right to occupy her matrimonial home. When Ms. Lawrence was cross-examined, she was asked whether she or her husband own another residence in the Turks and Caicos Islands or whether they had plans to go there in early 2023. Ms. Lawrence was instructed not to answer these questions on the ground that the answer is not relevant. The refusal was not proper because the Applicant was entitled to ask questions directed to whether Ms. Lawrence had another property in addition to the Balmoral Property because this could be a factor in respect of the question of irreparable harm. I draw an adverse inference from this refusal that the answer would have been unhelpful to Ms. Lawrence's position on the question of whether she will suffer irreparable harm if a stay of the Writ of Possession is not granted.
- [42] I am not satisfied that Ms. Lawrence has shown that she will suffer irreparable harm if a stay of the Writ of Possession is not granted.
- [43] Ms. Lawrence submits that there is more than enough equity in the Dufferin Property to satisfy the indebtedness owed by CLL and Mr. Desrochers to the Applicant. As such, Ms. Lawrence submits that the balance of convenience favours an order staying enforcement of the Writ of Possession.
- [44] As I have held, absent an agreement to the contrary, a secured creditor is entitled to enforce its security against multiple pieces of security in whatever order and against whatever piece of security it sees fit. Under the Receivership Order, the Receiver is empowered and authorized to take steps to realize on the security held by the Applicant. The Receiver is subject to a duty to act in an even-handed manner in the interests of all stakeholders.
- [45] If an order were to be made staying the Writ of Possession, the Receiver would be required to enforce the security held by the Applicant first against the Dufferin Property and incur expenses in so doing. The powers and duties of the Receiver under the Receivership Order should not be modified to require the Receiver to exercise them in a particular way, as requested by Ms. Lawrence.
- [46] It is open to Ms. Lawrence to refinance the mortgage on the Balmoral Property and pay the indebtedness secured thereby.

[47] Ms. Lawrence has not shown that the balance of convenience favours an order staying the Writ of Possession.

[48] For these reasons, I am not satisfied that it would be equitable in all of the circumstances to grant an order staying enforcement of the Writ of Possession.

Motion by the Receiver

[49] I have reviewed the Receiver's motion materials including the Second Report of the Receiver dated December 7, 2022. I am satisfied that the requested order should be granted approving Receiver's activities.

[50] With respect to the request for a sealing order allowing confidential appraisal information and the Receiver's realization analysis to be redacted, I am satisfied that the principles in *Sherman Estate v. Donovan*, 2021 SCC 25 are satisfied because the Confidential Appendices contain commercially sensitive information that, if not sealed, may negatively impact the realization of the proceeds from the sales of the properties. The requested sealing order is granted.

Disposition

[51] For these reasons, Ms. Lawrence's motion is dismissed.

[52] The Applicant does not seek an order for costs of this motion at this time. The Applicant reserves a right to revisit the question of costs depending on the outcomes of the dispositions of the Dufferin Property.

[53] The Receiver's motion is granted. I ask counsel for the Receiver to provide a draft form of Order to the Commercial List Office to be provided to me to be signed.

December 30, 2022

APPENDIX “E”

David P. Preger

From: David P. Preger
Sent: Wednesday, January 11, 2023 2:46 PM
To: 'olu ogunniylawoffices.com'
Cc: David Z. Seifer; Janet C. Nairne
Subject: RE: EXTERNAL: Re: Owemanco v. Concept Lofts Ltd et al

Importance: High

Without Prejudice

Mr. Ogunniyi,

My client is agreeable to foregoing the Deposit, such that the full \$1.2M investment that Mr. Desrochers has invested with my client will be the source of the "Investment" as that that term is defined in my proposal below. All other terms and conditions of the proposal below would remain the same and time would remain of the essence. Please confirm Ms. Laurence's and Mr. Desrochers' acceptance by no later than noon tomorrow.

From: olu ogunniylawoffices.com <olu@ogunniylawoffices.com>
Sent: Wednesday, January 11, 2023 2:14 PM
To: David P. Preger <DPreger@dickinson-wright.com>
Cc: David Z. Seifer <DSeifer@dickinson-wright.com>; Janet C. Nairne <JNairne@dickinson-wright.com>
Subject: EXTERNAL: Re: Owemanco v. Concept Lofts Ltd et al

Good Afternoon Mr. Preger,

Thank you for your e-mail.

Considering the time-sensitive nature of your Proposal, I would like to address the issue of the \$100,000 deposit to your firm on an urgent basis.

I am yet to take instructions but I am aware that Ms. Lawrence/Mr. Desrochers do not have an additional \$100,000 just "lying around". As you also know, they are not in a position to leverage the Balmoral Property to get your firm this amount.

Under the circumstances, the only pragmatic approach would be to direct that your firm be paid the \$100,000 from the \$1.2M.

I am writing to you ahead of taking instructions so that I can obtain an expedited response in the interim.

OLUBUNMI OGUNNIYI
Barrister & Solicitor
2680 Matheson Boulevard East,
Suite 102
Mississauga, Ontario L4W 0A5

Tel: 1-866-840-5167
Fax: 1-877-201-3476
E-Mail: olu@ogunniylawoffices.com

From: David P. Preger <DPreger@dickinson-wright.com>
Sent: Wednesday, January 11, 2023 1:19 PM
To: olu [ogunniylawoffices.com](mailto:olu@ogunniylawoffices.com)
Cc: David Z. Seifer; Janet C. Nairne
Subject: Owemanco v. Concept Lofts Ltd et al

Without Prejudice

Mr. Ogunniyi,

I am instructed by my client OWEMANCO Mortgage Holding Corporation to make the following proposal in order to avoid the Sheriff executing under the writ possession against the Balmoral property immediately:

(a) Upon acceptance of this proposal Mr. Desrochers will pay a deposit of \$100,000 to my firm in trust (the "Deposit").

(b) Mr. Desrochers will direct my firm and my client in writing to release \$1.2M (the "Investment") to my client. The source of the Investment will be the Deposit and a further \$1.1M of the \$1.2M Mr. Desrochers has invested with my client. The release of Investment will be effective upon Court approval. The Investment will be used by my client for any of the following purposes (i) to pay interest arrears that have accrued under the \$6.675M loan and the \$2.05M loan and protective expenses that have been incurred under the loans to date; (ii) to pay monthly interest on the loans, insurance and taxes on a go forward basis; and (iii) to pay expenses required to ready the Dufferin condo units for sale.

(b) the funds applied from the Investment as set out above will be secured by a subordinate interest in the \$2.05 loan. The subordinate interest will be documented in a Participation Agreement on terms acceptable to my client. Mr. Desrochers will be presumably want such interest to be held by a nominee so as to avoid a merger of his ownership interest in the Balmoral property with his beneficial interest in the \$2.05M mortgage. The Participation Agreement will need to be settled immediately (i.e. prior to Court approval);

(c) execution of the writ of possession on the Balmoral property will not proceed unless and until such time as the Investment is exhausted for the purposes set out above;

(d) Ms. Laurence and Mr. Desrochers will irrevocably withdraw and release any claim and appeal rights they may have that the writ of possession is not enforceable against the Balmoral property if and when the Investment is exhausted for the purposes set out above;

(e) the arrangement set out above will be subject to Court approval, which the Receiver will seek as soon as reasonably possible (i.e. next week if Court time is available);

(f) each of Ms. Laurence and Mr. Desrochers will obtain separate independent legal advice immediately (i.e. prior to Court approval) with regard to the arrangement set out above;

(g) pending Court approval, my client will instruct the Sheriff not to execute under the writ possession. If the Receiver's motion for Court approval is dismissed, the above-noted arrangement will be at end and the Sherriff will be free to execute under the writ of possession; and

(h) the draft Order approving the arrangement set out above must be settled by no later than noon on January 13, 2023 (this Friday).

In view of timing, please confirm Ms. Laurence's and Mr. Desrochers' acceptance and have the Deposit delivered by noon on January 12, 2023 (tomorrow) so that I may prepare and send you the draft Order.

David P. Preger Partner

199 Bay Street

Suite 2200

Commerce Court West

Toronto ON M5L 1G4

[cid:image85fd3.JPG@b804a39d.42a9e660]<<http://www.dickinson-wright.com/our-people/David-Preger>>[cid:image87a441.JPG@f24c1cd8.46985ad7]<http://www.dickinson-wright.com/~vcf/David_P_Preger.vcf>

Phone 416-646-4606

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[cid:image6b2236.JPG@3e8f7b2e.4ea19ada]<<https://www.dickinson-wright.com/>>

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Information confidentielle : Le présent message, ainsi que tout fichier qui y est joint, est envoyé à l'intention exclusive de son ou de ses destinataires; il est de nature confidentielle et peut constituer une information privilégiée. Nous avertissons toute personne autre que le destinataire prévu que l'examen, la retransmission, l'impression, la copie, la distribution ou toute autre utilisation de ce message et de tout fichier qui y est joint est strictement interdit. Si vous n'êtes pas le destinataire prévu, veuillez en aviser immédiatement l'expéditeur par retour de courriel et supprimer ce message et tout document joint de votre système.

David P. Preger

From: olu ogunniylawoffices.com <olu@ogunniylawoffices.com>
Sent: Thursday, January 12, 2023 11:29 AM
To: David P. Preger
Cc: Graham tobe; Laura Lawrence; David Z. Seifer
Subject: Re: EXTERNAL: 1183 Dufferin st

Mr. Preger,

I confirm that the terms of Owemanco's Proposal as set out yesterday are acceptable.

I look forward to hearing from you further on next steps.

OLUBUNMI OGUNNIYI
Barrister & Solicitor
2680 Matheson Boulevard East,
Suite 102
Mississauga, Ontario L4W 0A5

Tel: 1-866-840-5167
Fax: 1-877-201-3476
E-Mail: olu@ogunniylawoffices.com

From: David P. Preger <DPreger@dickinson-wright.com>
Sent: Thursday, January 12, 2023 10:52 AM
To: olu@ogunniylawoffices.com
Cc: Graham tobe; Laura Lawrence; David Z. Seifer
Subject: Re: EXTERNAL: 1183 Dufferin st

Without Prejudice,

Mr. Ogunniyi, I am receipt of Mr. Desrochers' email below. He also left a voicemail message for Mr. Tobe. I will not deal directly with Mr. Desrochers but in the interest of time am copying him and Ms. Laurence (who was also copied with Mr. Desrochers' email below). My client is prepared to extend the deadline for acceptance of its proposal until 5 pm today. Time does not permit any extension beyond that point. All other terms and conditions of the proposal remain the same and time remains of the essence.

Sent from my iPhone

> On Jan 12, 2023, at 10:36 AM, Donald Desrochers <dond26244@gmail.com> wrote:
>
> RE : Owamenco V Concept lofts ltd
> FIRST and Second Mortgages
>
> To All we need an extension of time until Jan. 13 /2023 at 5 pm to understand and deal with Conditions
> It appears from the first general Reading of the Proposal it's acceptable But my Wife Laura wants to speak

Her Lawyer Olu who is out the the Country in a 6 hour delayed time Zone

>

> Regards

> Don Desrochers

David P. Preger Partner

Dickinson Wright LLP

199 Bay Street

Suite 2200

Commerce Court West

Toronto ON M5L 1G4

Phone 416-646-4606

Fax 416-670-6009

Email DPreger@dickinsonwright.com

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David P. Preger

From: David P. Preger
Sent: Thursday, January 12, 2023 7:15 PM
To: 'olu ogunniylawoffices.com'
Cc: Paul Mand; 'Brahm Rosen'; David Z. Seifer; Janet C. Nairne
Subject: Order
Attachments: Order (Approving Arrangement) 4874-1880-0457 v.6.pdf

Importance: High

Without Prejudice,

Mr. Ogunniyi,

I am attached the Order. As the Order will sought by the Receiver, it is subject to review and approval by Mr. Mand, who is being copied.

In accordance with the terms of my client's proposal, the form of the Order must be settled by noon tomorrow. Having said that, the sooner, I receive confirmation from you that Order is acceptable, the sooner I can instruct the Sheriff.

**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**

THE HONOURABLE) DAY, THE
JUSTICE) DAY OF JANUARY, 2023

B E T W E E N:

OWEMANCO MORTGAGE HOLDING CORPORATION

Applicant

- and -

CONCEPT LOFTS LTD. and DONALD DESROCHERS

Respondents

ORDER

THIS MOTION made by Rosen Goldberg Inc. in its capacity as the Court-appointed receiver and manager (in such capacities, the “Receiver”) of all of the assets, undertakings and properties of the Respondent Concept Lofts Ltd. (“CLL”) acquired for, or used in relation to a business carried on by CLL, and over the lands and premises owned by the Respondent Donald Desrochers (“Desrochers”) described in Schedule “B” hereto (the “Balmoral Property”), was heard this day by Zoom judicial videoconference.

ON READING the Third Report of the Receiver dated January ●, 2023 (the “Third Report”) and on hearing the submissions of counsel for the Receiver, counsel for the Applicant

Owemanco Mortgage Holding Corporation (“Owemanco”) and counsel for Laura Lawrence (“Lawrence”), no one else on the service list appearing, although served as appears from the Affidavit of Service of ● sworn January ●, 2023,

1. THIS COURT ORDERS that the time for service of the Motion Record and the Third Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that the arrangement between Desrochers, Lawrence and Owemanco described in the Third Report and as set out in the exchange of emails contained in Appendix ● to the Third Report be and is hereby approved.

3. THIS COURT ORDERS that 1,200,000 units held by Desrochers in Owemanco Mortgage Trust (the “Investment”) shall be immediately and irrevocably assigned to Owemanco.

4. THIS COURT ORDERS that the Investment shall be liquidated by Owemanco, from time to time, and applied for the purposes set out in paragraph 5 hereof.

5. THIS COURT ORDERS that the proceeds of the Investment as and when liquidated shall be used by Owemanco for any of the following purposes:

- (a) to pay interest arrears that have accrued under the \$6,675,000 loan from to CLL (the “\$6.675M Loan”) and the \$2,050,000 loan from Owemanco to CLL and Desrochers (the “\$2.05M Loan” and together with the \$6.675M Loan, collectively, the “Loans”) and protective expenses that have been incurred under the Loans to date;
- (b) to pay monthly interest on the Loans, insurance and property taxes on a go forward basis; and
- (c) to pay expenses required for the Receiver to ready units on the lands and premises described in Schedule “A” for sale.

6. THIS COURT ORDERS that the proceeds of the Investment as and when liquidated and applied for the purposes set out in paragraph 5 hereof shall be secured by a subordinate interest in the \$2.05 Loan in favour • in accordance with the Agreement executed by Owemanco and •.

7. THIS COURT ORDERS that the Sheriff of the City of Toronto shall not execute the writ of possession against the Balmoral property (the “Writ of Possession”) unless and until the Investment is exhausted for the purposes set out in paragraph 5 hereof.

8. THIS COURT ORDERS that any claim and appeal rights that Lawrence and Desrochers may have that the Writ of Possession is not enforceable against the Balmoral property if and when the Investment is exhausted for the purposes set out in paragraph 5 hereof be and are hereby irrevocably withdrawn and released.

9. THIS COURT ORDERS that this Order is effective from today’s date and is not required to be entered.

SCHEDULE "A"

**LANDS AND PREMISES OWNED BY THE
RESPONDENT CONCEPT LOFTS LTD.**

<i>PIN</i>	21291 - 0415	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PART OF LOTS 18, 19 & 20, BLOCK O, PLAN 622, DESIGNATED AS PART 1, PLAN66R26944; CITY OF TORONTO			
<i>Address</i>	1183 DUFFERIN STREET TORONTO			

SCHEDULE "B"

**LANDS AND PREMISES OWNED BY THE
RESPONDENT DONALD DESROCHERS**

<i>PIN</i>	12205 - 0069LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 2, LEVEL 5, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATION E184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO. SUBJECT TO A RIGHT FOR 5 YEARS FROM 9809 09 AS IN D621469, CITY OF TORONTO		
<i>Address</i>	502 UNIT 1 BALMORAL AVENUE TORONTO		
<i>PIN</i>	12205 - 0177LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 8, LEVEL B, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATION E184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO. SUBJECT TO A RIGHT FOR 5 YEARS FROM 9809 09 AS IN D621469, CITY OF TORONTO		
<i>Address</i>	8B UNIT 1 BALMORAL AVENUE TORONTO		
<i>PIN</i>	12205 - 0070LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 3, LEVEL 5, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATION E184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO.		
<i>Address</i>	503 UNIT 1 BALMORAL AVENUE TORONTO		

<i>PIN</i>	12205 - 0281LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 24, LEVEL C, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATION E184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO.		
<i>Address</i>	24C UNIT 1 BALMORAL AVENUE TORONTO		

OWEMANCO MORTGAGE HOLDING CORPORATION
Applicant

-and-

CONCEPT LOFTS LTD. et al.
Respondents

Court File No. CV-22-00688570-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT
TORONTO

ORDER

MAND | RAI LLP

Lawyers
155 Rexdale Blvd
Suite 400
Toronto, ON M9W 5Z8

Paul H. Mand (46022F)

Tel: (416) 740-5653

Email: pmand@mandlaw.com

Tel: 416-740-2000

Lawyers for Rosen Goldberg Inc.

David P. Preger

From: olu ogunniylawoffices.com <olu@ogunniylawoffices.com>
Sent: Thursday, January 12, 2023 9:37 PM
To: David P. Preger
Cc: Paul Mand; Brahm Rosen; David Z. Seifer; Janet C. Nairne
Subject: EXTERNAL: Re: Order - Owemanco v. Concept Lofts Ltd et al
Attachments: imaged7474c.JPG; imagef10a85.JPG; image21c19c.JPG

Mr. Preger,

I confirm that the Draft Order is approved as to form and content.

OLUBUNMI OGUNNIYI
Barrister & Solicitor
2680 Matheson Boulevard East,
Suite 102
Mississauga, Ontario L4W 0A5

Tel: 1-866-840-5167
Fax: 1-877-201-3476
E-Mail: olu@ogunniylawoffices.com

From: David P. Preger <DPreger@dickinson-wright.com>
Sent: Thursday, January 12, 2023 7:14 PM
To: olu@ogunniylawoffices.com
Cc: Paul Mand; Brahm Rosen; David Z. Seifer; Janet C. Nairne
Subject: Order

Without Prejudice,

Mr. Ogunniyi,

I am attached the Order. As the Order will sought by the Receiver, it is subject to review and approval by Mr. Mand, who is being copied.

In accordance with the terms of my client's proposal, the form of the Order must be settled by noon tomorrow. Having said that, the sooner, I receive confirmation from you that Order is acceptable, the sooner I can instruct the Sheriff.

David P. Preger Partner

199 Bay Street

Suite 2200

Commerce Court West

Toronto ON M5L 1G4

[cid:image7474c.JPG@6d35b1d9.4bbad715]<<http://www.dickinson-wright.com/our-people/David-Preger>>

[cid:imagef10a85.JPG@d0c1e6c3.42aca62a]<http://www.dickinson-wright.com/~vcf/David_P_Preger.vcf>

Phone 416-646-4606

Fax 844-670-6009

Email DPreger@dickinsonwright.com

[cid:image21c19c.JPG@c6c4411c.4695b8a9]<<https://www.dickinson-wright.com/>>

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David P. Preger

From: olu ogunniylawoffices.com <olu@ogunniylawoffices.com>
Sent: Thursday, January 12, 2023 11:27 PM
To: David P. Preger
Cc: Paul Mand; Brahm Rosen; David Z. Seifer; Janet C. Nairne
Subject: Re: EXTERNAL: Re: Order - Owemanco v. Concept Lofts Ltd et al
Attachments: imaged6f99a.JPG; image4d238e.JPG; image6a04c7.JPG

That's fine.

Thanks.

OLUBUNMI OGUNNIYI
Barrister & Solicitor
2680 Matheson Boulevard East,
Suite 102
Mississauga, Ontario L4W 0A5

Tel: 1-866-840-5167
Fax: 1-877-201-3476
E-Mail: olu@ogunniylawoffices.com

From: David P. Preger <DPreger@dickinson-wright.com>
Sent: Thursday, January 12, 2023 11:12 PM
To: olu@ogunniylawoffices.com
Cc: Paul Mand; Brahm Rosen; David Z. Seifer; Janet C. Nairne
Subject: Re: EXTERNAL: Re: Order - Owemanco v. Concept Lofts Ltd et al

It's not theoretical. It's one loan secured against both properties. His money as it drawn will be added to the indebtedness. Understood?

Sent from my iPhone

On Jan 12, 2023, at 10:30 PM, olu [ogunniylawoffices.com](mailto:olu@ogunniylawoffices.com) <olu@ogunniylawoffices.com> wrote:

It may just be a theoretical point but as the \$1.2M will essentially be Desrochers'/nominee's, Desrochers will be increasing the indebtedness on his own property? Just a thought.

We can proceed with the terms as you have set out for the purposes of expediting the finalization of the Order but it would be something to consider in due course.

OLUBUNMI OGUNNIYI
Barrister & Solicitor
2680 Matheson Boulevard East,
Suite 102
Mississauga, Ontario L4W 0A5

Tel: 1-866-840-5167
Fax: 1-877-201-3476
E-Mail: olu@ogunniyilawoffices.com

David P. Preger Partner

199 Bay Street
Suite 2200
Commerce Court West
Toronto ON M5L 1G4

[cid:image6f99a.JPG@36e56d29.41a7ee53]<<http://www.dickinson-wright.com/our-people/David-Preger>>[cid:image4d238e.JPG@dcb861e3.419acd0f]<http://www.dickinson-wright.com/~vcf/David_P_Preger.vcf>

Phone 416-646-4606

Fax 844-670-6009

Email DPreger@dickinsonwright.com

[cid:image6a04c7.JPG@17ca9b15.45980609]<<https://www.dickinson-wright.com/>>

From: David P. Preger <DPreger@dickinson-wright.com>

Sent: Thursday, January 12, 2023 10:16 PM

To: olu ogunniyilawoffices.com<<http://ogunniyilawoffices.com>>

Cc: Paul Mand; Brahm Rosen; David Z. Seifer; Janet C. Nairne

Subject: Re: EXTERNAL: Re: Order - Owemanco v. Concept Lofts Ltd et al

As it affects both properties.

Sent from my iPhone

On Jan 12, 2023, at 10:08 PM, olu ogunniyilawoffices.com<<http://ogunniyilawoffices.com>>
<olu@ogunniyilawoffices.com> wrote:

Mr. Preger,

I am assuming that it shall be deemed to be added to the indebtedness secured under the \$2.05 Loan as it affects the Dufferin Property (the lands and premises described in Schedule "A").

OLUBUNMI OGUNNIYI
Barrister & Solicitor
2680 Matheson Boulevard East,
Suite 102
Mississauga, Ontario L4W 0A5

Tel: 1-866-840-5167
Fax: 1-877-201-3476
E-Mail: olu@ogunniyilawoffices.com

David P. Preger Partner

199 Bay Street
Suite 2200
Commerce Court West
Toronto ON M5L 1G4
[cid:image0d274f.JPG@1fba32c0.46b2bbd7]<<http://www.dickinson-wright.com/our-people/David-Preger>>[cid:imagedc59e5.JPG@6b919e7b.4cafc854]<http://www.dickinson-wright.com/~vcf/David_P_Preger.vcf>
Phone 416-646-4606
Fax 844-670-6009
Email DPreger@dickinsonwright.com

[cid:image35d801.JPG@c2958685.489e1e75]<<https://www.dickinson-wright.com/><https://www.dickinson-wright.com>>

From: David P. Preger <DPreger@dickinson-wright.com>
Sent: Thursday, January 12, 2023 9:57 PM
To: olu@ogunniyilawoffices.com<<http://ogunniyilawoffices.com>><<http://ogunniyilawoffices.com>>
Cc: Paul Mand; Brahm Rosen; David Z. Seifer; Janet C. Nairne
Subject: Re: EXTERNAL: Re: Order - Owemanco v. Concept Lofts Ltd et al

Without Prejudice

Mr. Ogunniyi,

Thanks for your email. Upon reflection, I believe that there should be a further sentence added to the Order at the end of paragraph 6 as follows:

“For greater certainty, proceeds of the Investment when applied for the purposes set out in paragraph 5 hereof shall be deemed to be added to the indebtedness secured under the \$2.05 Loan.”

That will avoid any argument by other creditors that the money advanced from the Investment is not secured.

Please confirm your agreement.

Sent from my iPhone

On Jan 12, 2023, at 9:37 PM, olu
ogunniylawoffices.com<<http://ogunniylawoffices.com>><<http://ogunniylawoffices.com>>
<olu@ogunniylawoffices.com> wrote:

Mr. Preger,

I confirm that the Draft Order is approved as to form and content.

OLUBUNMI OGUNNIYI
Barrister & Solicitor
2680 Matheson Boulevard East,
Suite 102
Mississauga, Ontario L4W 0A5

Tel: 1-866-840-5167
Fax: 1-877-201-3476
E-Mail: olu@ogunniylawoffices.com

David P. Preger Partner

199 Bay Street
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Commerce Court West
Toronto ON M5L 1G4
[cid:imaged46ee1.JPG@a75512de.43b055fc]<<http://www.dickinson-wright.com/our-people/David-Preger>>[cid:image19b264.JPG@00b85d88.469328f2]<http://www.dickinson-wright.com/~vcf/David_P_Preger.vcf>
Phone 416-646-4606
Fax 844-670-6009
Email DPreger@dickinsonwright.com

[cid:imagedd1fdd.JPG@96d350cd.46ad8ddf]<<https://www.dickinson-wright.com/><https://www.dickinson-wright.com>>

From: David P. Preger <DPreger@dickinson-wright.com>

Sent: Thursday, January 12, 2023 7:14 PM

To: olu

ogunniylawoffices.com<<http://ogunniylawoffices.com>><<http://ogunniylawoffices.com>><<http://ogunniylawoffices.com>>

Cc: Paul Mand; Brahm Rosen; David Z. Seifer; Janet C. Nairne

Subject: Order

Without Prejudice,

Mr. Ogunniyi,

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David P. Preger Partner

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[cid:imaged7474c.JPG@6d35b1d9.4bbad715]<<http://www.dickinson-wright.com/our-people/David-Preger>>

[cid:imagef10a85.JPG@d0c1e6c3.42aca62a]<http://www.dickinson-wright.com/~vcf/David_P_Preger.vcf>

Phone 416-646-4606

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Email DPreger@dickinsonwright.com

[cid:image21c19c.JPG@c6c4411c.4695b8a9]<<https://www.dickinson-wright.com/><https://www.dickinson-wright.com>>

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<imaged7474c.JPG>

<imagef10a85.JPG>

<image21c19c.JPG>

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<imaged46ee1.JPG>

<image19b264.JPG>

<imagedd1fdd.JPG>

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<image0d274f.JPG>

<imagedc59e5.JPG>

<image35d801.JPG>

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OWEMANCO MORTGAGE HOLDING CORPORATION
Applicant

-and- **CONCEPT LOFTS LTD. et al.**
Respondents

Court File No. CV-22-00688570-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT
TORONTO

RECEIVER'S REPORT

MAND | RAI LLP

Lawyers
155 Rexdale Blvd
Suite 400
Toronto, ON M9W 5Z8

Paul H. Mand (46022F)

Tel: (416) 740-5653
Email: pmand@mandlaw.com

Tel: 416-740-2000

Lawyers for Rosen Goldberg Inc., the Court-appointed Receiver of the assets, undertakings and properties of Concept Lofts Ltd. and Donald Desrochers

TAB 3

**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**

THE HONOURABLE) DAY, THE
JUSTICE)
DAY OF JANUARY, 2023

B E T W E E N:

OWEMANCO MORTGAGE HOLDING CORPORATION

Applicant

- and -

CONCEPT LOFTS LTD. and DONALD DESROCHERS

Respondents

ORDER

THIS MOTION made by Rosen Goldberg Inc. in its capacity as the Court-appointed receiver and manager (in such capacities, the “Receiver”) of all of the assets, undertakings and properties of the Respondent Concept Lofts Ltd. (“CLL”) acquired for, or used in relation to a business carried on by CLL, and over the lands and premises owned by the Respondent Donald Desrochers (“Desrochers”) described in Schedule “B” hereto (the “Balmoral Property”), was heard this day by Zoom judicial videoconference.

ON READING the Third Report of the Receiver dated January 17, 2023 (the “Third Report”) and on hearing the submissions of counsel for the Receiver, counsel for the Applicant Owemanco Mortgage Holding Corporation (“Owemanco”) and counsel for Laura Lawrence (“Lawrence”), no one else on the service list appearing, although served as appears from the Affidavit of Service of Brahbind Kamboj sworn January 18, 2023,

2. THIS COURT ORDERS that the time for service of the Motion Record and the Third Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

3. THIS COURT ORDERS that the arrangement between Desrochers, Lawrence and Owemanco described in the Third Report and as set out in the exchange of emails contained in Appendix E to the Third Report be and is hereby approved.

4. THIS COURT ORDERS that 1,200,000 units held by Desrochers in Owemanco Mortgage Trust (the "Investment") shall be immediately and irrevocably assigned to Owemanco.

5. THIS COURT ORDERS that the Investment shall be liquidated by Owemanco, from time to time, and applied for the purposes set out in paragraph 5 hereof.

6. THIS COURT ORDERS that the proceeds of the Investment as and when liquidated shall be used by Owemanco for any of the following purposes:

- (a) to pay interest arrears that have accrued under the \$6,675,000 loan from to CLL (the "\$6.675M Loan") and the \$2,050,000 loan from Owemanco to CLL and Desrochers (the "\$2.05M Loan" and together with the \$6.675M Loan, collectively, the "Loans") and protective expenses that have been incurred under the Loans to date;
- (b) to pay monthly interest on the Loans, insurance and property taxes on a go forward basis; and
- (c) to pay expenses required for the Receiver to ready units on the lands and premises described in Schedule "A" for sale.

7. THIS COURT ORDERS that the proceeds of the Investment as and when liquidated and applied for the purposes set out in paragraph 5 hereof shall be secured by a subordinate interest in the \$2.05 Loan in favour • in accordance with the Agreement executed by Owemanco and •. For greater certainty, proceeds of the Investment when applied for the purposes set out in paragraph 5 hereof shall be deemed to be added to the indebtedness secured under the \$2.05 Loan.

8. THIS COURT ORDERS that the Sheriff of the City of Toronto shall not execute the writ of possession against the Balmoral property (the "Writ of Possession") unless and until the Investment is exhausted for the purposes set out in paragraph 5 hereof.

9. THIS COURT ORDERS that any claim and appeal rights that Lawrence and Desrochers may have that the Writ of Possession is not enforceable against the Balmoral property if and when the Investment is exhausted for the purposes set out in paragraph 5 hereof be and are hereby irrevocably withdrawn and released.

10. THIS COURT ORDERS that this Order is effective from today's date and is not required to be entered.

SCHEDULE "A"

**LANDS AND PREMISES OWNED BY THE
RESPONDENT CONCEPT LOFTS LTD.**

<i>PIN</i>	21291 - 0415	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PART OF LOTS 18, 19 & 20, BLOCK O, PLAN 622, DESIGNATED AS PART 1, PLAN66R26944; CITY OF TORONTO			
<i>Address</i>	1183 DUFFERIN STREET TORONTO			

SCHEDULE "B"

LANDS AND PREMISES OWNED BY THE RESPONDENT DONALD DESROCHERS

<i>PIN</i>	12205 - 0069LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 2, LEVEL 5, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATION E184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO. SUBJECT TO A RIGHT FOR 5 YEARS FROM 9809 09 AS IN D621469, CITY OF TORONTO		
<i>Address</i>	502 UNIT 1 BALMORAL AVENUE TORONTO		
<i>PIN</i>	12205 - 0177LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 8, LEVEL B, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATION E184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO. SUBJECT TO A RIGHT FOR 5 YEARS FROM 9809 09 AS IN D621469, CITY OF TORONTO		
<i>Address</i>	8B UNIT 1 BALMORAL AVENUE TORONTO		
<i>PIN</i>	12205 - 0070LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 3, LEVEL 5, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATION E184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO.		
<i>Address</i>	503 UNIT 1 BALMORAL AVENUE TORONTO		

<i>PIN</i>	12205 - 0281LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	UNIT 24, LEVEL C, METRO TORONTO CONDOMINIUM PLAN NO. 1205 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS: REM PCL 1-1, SEC A703; LTS 1 & 2 & PT LT 6, PL 703 YORK; PT LTS 1, 2 & 3, PTLANE (CLOSED), PT 6" RES., PL 1207 YORK; PT LT A, PL 1432 YORK; ALL DES ASPTS 1 & 2 ON 66R17690; S/T & T/W AS SET OUT IN SCHEDULE 'A' OF DECLARATIONE184380; WLY LIMIT OF YONGE ST CONFIRMED BY BOUNDARIES ACT PL BA1748, INST. CT416761; CITY OF TORONTO.		
<i>Address</i>	24C UNIT 1 BALMORAL AVENUE TORONTO		

OWEMANCO MORTGAGE HOLDING CORPORATION
Applicant

-and- **CONCEPT LOFTS LTD. et al.**
Respondents

Court File No. CV-22-00688570-00CL

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ORDER

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