

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

BETWEEN:

**ENLIGHTENED FUNDING CORPORATION**

Applicant

- and -

**VELOCITY ASSET AND CREDIT CORPORATION AND  
926749 ONTARIO LTD. O/A CLONSILLA AUTO SALES AND LEASING**

Respondents

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

**AFFIDAVIT OF EAMONN GLAVEY  
(Sworn October 24, 2023)**

I, **EAMONN GLAVEY**, of the City of Kelowna, in the Province of British Columbia,  
**MAKE OATH AND SAY:**

1. I swear this Affidavit in support of the Applicant's application for the appointment of a receiver in respect of the Respondents (as defined below) and in response to the Responding Motion Record of the Respondents dated October 20, 2023.

2. I am the President of Enlightened Funding Corporation ("**Enlightened**" or the "**Applicant**"). I have responsibility for matters pertaining to the borrowings of Velocity Asset and Credit Corporation ("**Velocity**"), as guaranteed by 926749 Ontario Ltd. o/a Clonsilla Auto Sales and Leasing (the "**Dealer**" and together with Velocity, the "**Respondents**"), from Enlightened and,

as such, have personal knowledge of the matters to which I depose in this affidavit, unless otherwise indicated.

3. All capitalized terms not defined herein shall have the same meanings ascribed to such terms in the Affidavit I swore on October 6, 2023 (the "**Initial Affidavit**").

### **RESPONDENT'S PROPOSED REFINANCING**

4. As outlined in the Initial Affidavit, the Respondents have defaulted on the material terms of several prior agreements. This included defaults of their obligations under the initial Credit Agreement which have yet to be rectified and defaults of their obligations under the subsequently signed Emergency Draw Agreement and Forbearance Agreement. The Emergency Draw Agreement and Forbearance Agreement were entered into at the request of the Respondents after Enlightened had already declared its intention to enforce on its security.

5. Enlightened lacks confidence in the Respondents' proposed refinancing plan outlined in the draft term sheet (the "**Term Sheet**") attached as Exhibit "D" to the Affidavit of Hugh Waddell sworn October 20, 2023 (the "**Waddell Affidavit**") and does not believe that the proposed financing to be made available pursuant to the Term Sheet presents an acceptable alternative to the appointment of a receiver in the circumstances.

6. The Term Sheet contains at least 12 Conditions to Closing (collectively, the "**Closing Conditions**") that create significant uncertainty regarding whether the Respondents would ever be in a position to draw on funding under the Term Sheet. Most troubling is the requirement that BHL (as defined in the Term Sheet) be satisfied, in its sole discretion, with its business, legal and accounting due diligence investigations and review. The Closing Conditions reflect the real

possibility that closing of the funding contemplated under the Term Sheet will never occur, causing Enlightened to continue to suffer material prejudice.

7. Even if the Respondents could satisfy all of the Closing Conditions (which the Applicant seriously doubts), in paragraph 7 of the Waddell Affidavit, Mr. Waddell notes that "there would be no prejudice to the Applicant if the Respondents were given the opportunity to finalize the replacement financing and repay the Applicant in 90 days."

8. The Indebtedness has been due and owing since May 2023 and any proposed repayment to the Applicant must be immediately, failing which the appointment of a Receiver is the only outcome that protects the Applicant's interests. The suggestion that the Applicant should wait a further 90 days to see if the Respondents can close highly conditional financing is unreasonable in the circumstances. The Applicant should not be forced to bear the risk of a proverbial "Hail Mary" attempt at refinancing by the Respondents.

9. The term sheet backed by HST credits (the "**HST Term Sheet**") attached as Exhibit "B" to the Waddell Affidavit is similarly deficient. The HST Term Sheet is in a form that is far from complete, with the word "binding" itself square bracketed on the first page.

10. The nature of security proposed by the HST Term Sheet is untenable to the extent that it is un-executable. Paragraph 13 of the HST Term Sheet is conditioned on the receipt of Enlightened's release of its interest in the Tax Credits (as defined therein). However, paragraph 11 of the Waddell Affidavit states that the "Applicant does not have security over the HST receivable". The PPSA financing statements dated October 4, 2023, attached to the Initial Affidavit as Exhibit "K" show that other parties have security interests in the Tax Credits. As such, the HST Term Sheet is

conditioned on the receipt of a consent that is inapplicable while missing consents that would be required in order to obtain the security required under the HST Term Sheet.

### **NECESSITY OF A RECEIVERSHIP**

11. Enlightened believes a receivership is the only viable option that would result in the material repayment of the Indebtedness at this time.

12. The legal test for a receivership has been met. Enlightened issued Demand Letters and NITES as early as May of this year and Enlightened has a contractual right to the appointment of a receiver pursuant to the Loan Documents. In addition, the Respondents consented to the appointment of a receiver in the Forbearance Agreement.

13. While payments owing to Enlightened were made for June and July of 2023 as stated in the Waddell Affidavit and Enlightened acknowledges that these payments were inadvertently characterized as outstanding in the Initial Affidavit, payment for August and September are due and owing and of 2023 have yet to be paid and payment for October is due in approximately one week and the Respondent's appear to be unable to make that payment as well. The previous misstatement does little to change the fact that the Respondents are behind on several months of payments. Three months of missing payments is in itself a basis for the appointment of receiver over the Respondents.

14. Mr. Waddell's suggestion that the Applicants would not suffer prejudice from the Respondents ongoing failure to make repayment is patently false. The Applicant has suffered and continues to suffer prejudice as a result of the Respondents' repeated failure to abide by their contractual agreements and the terms of the many indulgences granted by the Applicant.

15. As stated in the Initial Affidavit, a large portion of the Dealer Security comprises cash that is held in the Dealer Blocked Account. The initial agreement of the parties foresaw the preservation of the Dealer Security through the segregation of the cash that comprised part of the Dealer Security into this Dealer Blocked Account. This account has not been used for the duration of the time the loan was in place.

16. While the utilization of the Dealer Blocked Account was not an issue when payments were being made, the risk to such collateral became clear when payments to the Applicant stopped, but the Dealer's collection of cash accruing from the Leases continued and the Dealer Security was comingled with the collateral of other creditors in the Dealer's general business account.

17. Apart from the reasons previously identified by Enlightened, this comingling of collateral further justifies the appointment of a receiver on an urgent basis in order to identify the Dealer Collateral and separate it from funds that may be subject to the security of other creditors.

18. It is Enlightened's belief that the Respondents will suffer no material prejudice from the appointment of a receiver in the current circumstances, since the Receiver will seek to realize upon the security in a transparent and commercially reasonable manner in accordance with the Receiver's duties and applicable law. If the Respondents are able to secure financing, they will have an opportunity to purchase the assets in the Court-supervised Receivership, to which they previously consented in the Forbearance Agreement, and the Receiver will consider their offer together with any other offers put before the Receiver.

19. Given the current situation, the history of defaults and the lack of feasibility of proposed alternatives, Enlightened believes that the only reasonable outcome is for a receiver to be appointed over the Respondents.

SWORN BEFORE ME over )  
videoconference on this 24<sup>th</sup> day of October, )  
2023. The affiant was located in the City of )  
Kelowna, in the Province of British )  
Columbia and the Commissioner was located )  
in the City of Toronto, in the Province of )  
Ontario. This affidavit was commissioned )  
remotely and the declaration was )  
administered in accordance with Ontario )  
*Regulation 431/20.* )



**MILAN SINGH-CHEEMA**

A Commissioner for Oaths in and for the  
Province of Ontario



**EAMONN GLAVEY**

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R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT***

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Applicant

Respondents

Court File No.: CV-23-00707330-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced in Toronto

**AFFIDAVIT OF EAMONN GLAVEY  
(Sworn October 24, 2023)**

**BENNETT JONES LLP**

One First Canadian Place, Suite 3400  
P.O. Box 130  
Toronto, ON M5X 1A4

**Raj Sahni** (LSO# 42942U)

Tel: (416) 777-4804

Email: [sahnir@bennettjones.com](mailto:sahnir@bennettjones.com)

**Michael Shakra** (LSO#: 64604K)

Tel: (416) 777-6236

Email: [shakram@bennettjones.com](mailto:shakram@bennettjones.com)

**Milan Singh-Cheema** (LSO#: 88258Q)

Tel: (416) 777-5527

Email: [singhcheemam@bennettjones.com](mailto:singhcheemam@bennettjones.com)

Lawyers for the Applicant