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ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF
RHH RENTAL PROPERTIES LTD.
OF THE CITY OF GUELPH, IN THE PROVINCE OF ONTARIO

RESPONDING FACTUM OF 2599894 ONTARIO INC.
(Motion Returnable May 20, 2026)

May 19, 2026

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TO: **THE SERVICE LIST**

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PART I - OVERVIEW¹

1. This factum is filed in opposition to the motion (the “**Motion**”) of Deloitte Restructuring Inc., the trustee in bankruptcy (the “**Trustee**”) of RHH Rental Properties Ltd. (“**RHH**”), seeking an order, among other things, granting a first-priority charge (“**Administration Charge**”) over all assets of RHH to secure the fees and disbursements of the Trustee and its counsel, McMillan LLP (“**McMillan**”) and staying all proceedings by RHH’s secured creditors against RHH and its property for at least six months (the “**Stay**”).

2. In this case the Trustee and its counsel have recklessly racked up fees of approximately half a million dollars without having a plan as to how they would be paid.² They now seek extraordinary, discretionary relief from the court by way of an highly unusual Administration Charge ranking in priority to secured creditors. These secured creditors were secured creditors at the time the Trustee and its counsel accepted their mandates and were known to the Trustee and its counsel.³

3. The Trustee and its counsel ask for the Administration Charge not only to secure future fees but, more importantly, to secure approximately \$500,000 of fees already incurred. The Trustee and its counsel assert that the Administration Charge is necessary to pursue speculative claims that may, or may not, benefit the bankruptcy estate.⁴ It is telling, however, that although there are unsecured creditors in the estate with claims in excess of \$99 million – including sixteen

¹ Capitalized terms used but not defined in this section are defined below.

² First Report of the Trustee dated as of May 13, 2026 (“**First Report**”) at para 51.

³ First Report, Appendix “D”; Affidavit of Yueqing Zhang sworn May 18, 2026 (“**Zhang Affidavit**”), Exhibit “L”.

⁴ First Report at para 55.

creditors with claims of \$1 million or more – it would appear that these creditors, who would be the beneficiaries of the speculative claims, are not willing to fund the Trustee or its counsel with respect to costs already incurred or costs to be incurred with respect thereto.⁵ Similarly, it would appear, that these unsecured creditors are not prepared to pursue this speculative pursuit of recoveries by way of proceedings under section 38 of the *Bankruptcy and Insolvency Act* (the “**BIA**”).⁶

4. A cynical person could think that the Trustee and his counsel are pursuing this motion in order to “backfill” payment of the substantial fees they have incurred and for which they presently have no path to payment. It is interesting that the Trustee has not proposed a cap on the Administration Charge (as in done in every case under the *Companies' Creditors Arrangement Act*⁷) nor has the Trustee submitted a budget or road map for future work of the Trustee and its counsel. The Trustee has admitted that it “has not prepared any estimate of the net benefit to the estate from the proposed activities because, for the reasons described in the First Report, it has yet to undertake an analysis that would permit a meaningful estimate.”⁸

5. The position of the Trustee and its counsel, taken at its highest, is that the Trustee and its counsel are asking the Court to erode the value of the secured creditors’ collateral in order to benefit unsecured creditors who themselves are not prepared to underwrite such fees. The Trustee and its counsel are proposing to pursue quixotic claims at secured creditors’ expense.

⁵ First Report at para 29.

⁶ [s. 38, *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended.](#)

⁷ [RSC 1985, c C-36](#) (“**CCAA**”).

⁸ Zhang Affidavit, Exhibit “L”.

6. The position of the Trustee and its counsel in prejudice in two ways:
- (a) it impairs the efforts of JD Development Group in a practical and legal way in that:
 - (i) it stops JD Development Group's existing foreclosure proceedings, seeking to gain control of the 45 Agnes Project, which is crucial to the JD Development Group; and
 - (ii) with respect to the Pledgee, it transforms a secured creditor into an involuntary funder of speculative litigation; and
 - (b) is contrary to the basic structure of the bankruptcy provisions of the BIA whereby the Pledgee as secured creditor is unaffected by a bankruptcy.

PART II - SUMMARY OF FACTS

A. Background

7. 2599900 Ontario Inc. (the "**Majority Shareholder**") is a majority shareholder of 45 Agnes GP Corp., and 2599894 Ontario Inc. is a secured creditor of RHH (the "**Pledgee**" and, collectively with the Majority Shareholder and its affiliates, "**JD Development Group**").⁹

8. Prior to RHH's bankruptcy, JD Development Group and RHH were co-investors of the lands municipally known as 45 Agnes Street, Mississauga (the "**45 Agnes Project**"). The 45 Agnes Project was being developed through a limited partnership, 45 Agnes LP. The general partner of 45 Agnes LP is 45 Agnes GP Corp. ("**45 Agnes GP**"). The limited partners of 45 Agnes

⁹ Zhang Affidavit at para 1.

LP are 45 Agnes Holdings LP, an affiliate of RHH (the “**RHH Partner**”), and JD 45 Agnes LP, an affiliate of JD Development Group (the “**JD Partner**”).¹⁰

9. 45 Agnes GP’s only business is to act as general partner of 45 Agnes LP. 45 Agnes GP is owned 60% by the Majority Shareholder and 40% by RHH (the “**Minority Shares**”). However, (i) RHH pledged the Minority Shares to the Pledgee as security for a loan, (ii) the Pledgee has possession and control of the Minority Shares, (iii) pursuant to the Pledge Agreement (defined below), RHH is not entitled to exercise any of the rights associated with the Minority Shares and (iv) but for objections (“**Objections**”) raised by the Trustee and other parties with a financing statement registered against RHH, the Pledgee would have accepted title to the Minority Shares in full satisfaction of all indebtedness owing in connection with the loan pursuant to the *Personal Property Security Act* (Ontario)¹¹ (“**PPSA**”).¹²

10. When 45 Agnes LP was formed, the JD Partner held 60% of the LP units and RHH Partner held 40% of the LP units (the “**Minority Units**”). However, the RHH Partner has been a “Defaulting Partner” under the partnership agreement since before RHH’s bankruptcy. The JD Partner has been funding the RHH Partner’s unfunded contributions to 45 Agnes LP. As a result, the RHH Partner is heavily indebted to 45 Agnes LP and its interest is being heavily diluted pursuant to the terms of the partnership agreement. Furthermore, pursuant to both the partnership

¹⁰ Zhang Affidavit at para 4. **Note:** The RHH Partner is not subject to bankruptcy or other insolvency proceedings.

¹¹ [*Personal Property Security Act, R.S.O. 1990, c. P.10, as amended.*](#)

¹² Zhang Affidavit at para 5.

agreement and the Pledge Agreement, the RHH Partner is not entitled to make any decisions or exercise any rights to vote with respect to 45 Agnes LP matters.¹³

B. Indebtedness, Share Pledge and Enforcement

11. RHH borrowed the principal sum of \$1,000,000 from the Pledgee (the “**Loan**”) pursuant to a term promissory note dated January 1, 2024 (the “**Promissory Note**”). The Loan did not accrue interest prior to its maturity on September 1, 2024; thereafter, it accrued interest at the rate of 12% per annum. The Loan, together with all interest accrued or accruing thereon and any fees or costs chargeable under the Promissory Note is hereinafter referred to as the “**Indebtedness**”.¹⁴

12. As security for the Indebtedness, RHH pledged the Minority Shares to the Pledgee pursuant to a securities pledge agreement dated as of January 1, 2024 (the “**Pledge Agreement**”).¹⁵

13. The Pledge Agreement provides that, upon the occurrence of an event of default under the Promissory Note, which includes a failure by RHH to make a payment thereunder when due:

- (a) RHH may no longer exercise its rights under the Minority Shares, including its rights to vote;
- (b) RHH is no longer entitled to receive any dividends payable with respect to the Minority Shares;

¹³ Zhang Affidavit at para 6 and Exhibit “A”.

¹⁴ Zhang Affidavit at para 8 and Exhibit “B”.

¹⁵ Zhang Affidavit at para 9 and Exhibit “C”.

- (c) the Pledgee may irrevocably elect to retain all of the Minority Shares by giving written notice to RHH;
- (d) the Pledgee may exercise any or all of the rights and privileges attaching to the Minority Shares; and
- (e) the Pledgee may deal with the Minority Shares as if the Pledgee were the absolute owner of the Minority Shares.¹⁶

14. In connection with the Pledge Agreement, RHH delivered to the Pledgee the original share certificates evidencing the Minority Shares together with executed blank transfer powers.¹⁷ Pursuant to PPSA sections 1(2)(a) and 30.1(2) and section 23 of the *Securities Transfer Act, 2006*, the Pledgee has “control” of the Minority Shares and thus a first-ranking security interest over any other party with an interest in the Minority Shares.¹⁸

15. RHH failed to repay the Indebtedness when it matured on September 1, 2024. the Pledgee and RHH had subsequently executed a forbearance agreement dated as of January 22, 2025 (the “**Forbearance Agreement**”), which provided RHH until February 1, 2025 to repay the Indebtedness. RHH failed to do so.¹⁹

¹⁶ Zhang Affidavit at para 10 and Exhibit “C”.

¹⁷ Zhang Affidavit at para 11 and Exhibit “D”.

¹⁸ [ss. 1\(2\)\(a\), 30.1\(2\), PPSA; s. 23, Securities Transfer Act, 2006, SO 2006, c 8.](#)

¹⁹ Zhang Affidavit at paras 13-16 and Exhibit “F”.

16. On or about June 11, 2025, with the assistance its former counsel, the Pledgee sent a notice of enforcement to RHH whereby it, among other things, elected to retain the Minority Shares and removed Scott Reid and Todd Neil as directors and officers of 45 Agnes GP.²⁰

17. On or about July 25, 2025, the Pledgee received a letter from McMillan requesting the following (the “**Document Request**”):

- (a) a statement of the indebtedness of RHH, if any, to 259 and the terms of payment for such indebtedness as at June 18, 2025;
- (b) copies of any loan, credit, or other debt agreements or instruments between RHH and 259, including any and all amendments, restatements, supplements or modifications thereto; and
- (c) copies of any security agreements or security instruments granted by RHH to 259, including any and all amendments, restatements, supplements or modifications thereto.²¹

18. On July 30, 2025, external counsel to JD Development Group, Fasken Martineau DuMoulin LLP (“**Fasken**”) sent letters to (a) RHH and (b) the Trustee, with a copy to McMillan, each enclosing a notice of proposal to accept collateral pursuant to section 65 of the PPSA (the “**Foreclosure Notice**”).²² The letter to the Trustee and McMillan addressed the Document Request and also enclosed the Foreclosure Notice.

²⁰ Zhang Affidavit at para 17 and Exhibit “G”.

²¹ Zhang Affidavit at para 18 and Exhibit “H”.

²² Zhang Affidavit at para 19; First Report at para 19.

19. The Trustee and other creditors with financing registrations objected to the proposal in the Foreclosure Notice.²³

20. By letter dated August 12, 2025, 45 Agnes GP was served with the Action and the Mareva Order. The Action and the Mareva Order had an adverse impact on the 45 Agnes Project. JD Development Group has been working cooperatively with Plaintiffs' Counsel to loosen restrictions on the 45 Agnes Project, which pose a higher-order risk to the 45 Agnes Project than RHH's bankruptcy. As those efforts progress, JD Development Group anticipates that it will seek to address the Objections in the near term to further and finally disentangle the 45 Agnes Project from RHH's bankruptcy.²⁴

C. Short Service of the Motion

21. Fasken was served with notice of this non-urgent Motion on the evening of May 13, 2026, with only three business days' notice and over the Victoria Day holiday weekend.²⁵

22. Fasken asked the Trustee and McMillan to adjourn the motion to a later date given the short notice and given that JD Development Group's lead insolvency counsel is on holiday in Greece. The Trustee would not extend this courtesy.²⁶

D. The Trustee's Report and its Response to Written Questions

23. The Trustee's First Report identifies the following sixteen unsecured creditors with claims of \$1 million or more:

²³ Zhang Affidavit at para 20; First Report at para 19.

²⁴ Zhang Affidavit at para 21.

²⁵ Zhang Affidavit at para 24.

²⁶ Zhang Affidavit at para 24 and Exhibit "L".

- (a) 2132338 Ontario Ltd: \$1,139,66;
- (b) 2152683 Ontario Ltd: \$1,000,000;
- (c) 2397718 Ontario Ltd: \$2,300,000;
- (d) 2475677 Ontario Inc: \$2,000,000;
- (e) 534452 Ontario Inc: \$1,000,000;
- (f) 5554498 Ontario Inc: \$3,295,135;
- (g) Aldo and Gabriella Martone: \$1,275,000;
- (h) Cherry Forest Products: \$13,919,728;
- (i) John and Katherine Baranski: \$4,257,096;
- (j) Kessab Investments: \$5,491,500;
- (k) Kingsett Capital c/o First National Financial LP: \$21,999,036;
- (l) Level 3 Capital Management Inc: \$2,550,000;
- (m) Libro Credit Union Limited: \$3,131,063;
- (n) PRK Financial Inc: \$2,268,448;
- (o) RKSPM Investments Inc: \$7,819,123; and

(p) Wenrob Holding Company Ltd: \$1,082,500.²⁷

24. By letter dated May 14, 2026, in accordance with the protocol set out in *Confectionately Yours*²⁸, Fasken wrote to McMillan setting out 16 questions related to the Trustee's First Report.²⁹

25. By email dated Saturday, May 16, 2026, the Trustee partially responded to some of the questions and did not respond at all to many of the questions.³⁰ In its response, the Trustee admitted the following:

- (a) the Trustee is not prepared to provide any cap to the Administration Charge being sought;
- (b) the Trustee has not prepared any estimate of the net benefit to the estate from the proposed activities because, for the reasons described in the First Report, it has yet to undertake any analysis that would permit a meaningful estimate;
- (c) the Trustee accepted its role having reviewed RHH's Statement of Affairs circulated in advance of the first meeting of creditors and having reviewed the PPSA search in respect of RHH.³¹

²⁷ First Report, Appendix "C".

²⁸ *Confectionately Yours Inc (Re)*, [2002 CanLII 45059 \(ON CA\)](#) at [paras 62-63](#), [66-67](#); *Confectionately Yours Inc., Re*, [2001 CanLII 28453 \(ON SC\)](#) at [paras 3-6](#).

²⁹ Zhang Affidavit, Exhibit "L".

³⁰ Zhang Affidavit, Exhibit "L".

³¹ Zhang Affidavit, Exhibit "L".

26. By email dated May 17, 2026, Fasken asked that McMillan respond to questions 6, 7, 8 and 9 set out in the May 14, 2026 letter.³² Question #8 was related to unsecured creditors:

“Who are the ten largest unsecured creditors of the RHH estate? What is the amount of each of these creditors’ claims? What discussions have taken place with those creditors regarding payment of the Trustee’s fees and the funding of the steps referred to in the First Report? Please produce all related documentation.”

27. By email dated May 17, 2026 McMillan provided the following response: “With respect to question 8, the registry of claims is attached to the First Report as Appendix C as I mentioned in my email of yesterday morning.”³³ The Trustee has provided no information or documents related to requests that the largest creditors in the estate fund the Trustee and its counsel in order to pursue estate claims. It is ironic that the potential beneficiaries of the Trustee’s speculative efforts are not prepared to fund the Trustee and that the Trustee is looking to secured creditors for support.

PART III - ISSUES

28. This Court is being asked to determine whether:

- (a) the Administration Charge should be granted in priority to secured creditors; and
- (b) a stay should be imposed on secured creditors of RHH for at least six months.

29. JD Development Group submits that the answer to each issue above is “no”.

³² Zhang Affidavit, Exhibit “L”.

³³ Zhang Affidavit, Exhibit “L”.

PART IV - LAW & ARGUMENT

E. The BIA Provides that Secured Creditors “Float” Above the Bankruptcy Regime

30. The bankruptcy regime established under the BIA deals with the treatment and priority of the claims of *unsecured creditors*, rather than *secured creditors*. This is reflected in the structure of the BIA and the express preservation of secured creditors’ rights throughout its provisions.

31. In particular, the BIA expressly provides that:

- (a) on a bankruptcy order, the property of the debtor vests in the trustee subject “to the rights of secured creditors”,³⁴
- (b) the scheme of distribution as set out in section 136, including the costs of administration, which is a second-ranking preferred claim is stated to be “subject to the rights of secured creditors”,³⁵ and
- (c) the automatic stay of proceedings does not apply to enforcement rights of secured creditors, absent a court order, and then only for a limited period.³⁶

32. These provisions make it clear that the rights of secured creditors stand and are unimpeded by proceedings in bankruptcy. The property over which they hold security is not available for distribution to secured creditors, unless it is redeemed according to section 128(3).³⁷

³⁴ [s. 71, BIA.](#)

³⁵ [s. 136, BIA.](#)

³⁶ [s. 69.3\(2\), BIA.](#)

³⁷ *Avery's Trucking Inc. (Re)*, [2013 NSSC 302](#) at [para 7.](#)

33. The general rule in bankruptcy matters is that secured creditors rank in advance of the trustee's second-ranking preferred claim for administration costs.³⁸ As stated by the Court in *Golfside* (**emphasis added**):³⁹

[19] Generally, a trustee has no priority for fees and expenses against secured assets; meaning in this case the Obcorp Lien would have priority over the Trustee's fees and expenses claim. **A trustee should arrange to protect itself before incurring fees, expenses, and legal costs to administer the estate** (Houlden, Morawetz & Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th ed (Toronto: Thomson Reuters, 2019) at para 6. However, there are exceptions established at common law, discussed in the next section.

[20] Unless the Court's inherent jurisdiction can be applied in this situation, the Obcorp Lien, as a secured claim, would have priority over the Trustee's fees and expenses.

34. This reflects a fundamental principle of bankruptcy law: absent statutory authority or a Court order, the costs of administration cannot be imposed on secured creditors or their collateral.

F. Inherent Jurisdiction under Section 183 is Not Applicable

35. Section 183 of the BIA vests courts with "jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy".⁴⁰ Generally, inherent jurisdiction should only be exercised where it is necessary to further fairness and efficiency in legal process and to prevent abuse.⁴¹

³⁸ *Golfside Ventures Ltd (Re)*, [2023 ABKB 86](#) ["*Golfside*"] at [para 12](#).

³⁹ *Golfside* at [paras 19-20](#).

⁴⁰ [s. 183\(1\), BIA](#). **Note:** Section 183 is not as expansive as section 11(1) of the CCAA, which grants the court with jurisdiction to "make any order that it considers appropriate in the circumstances".

⁴¹ *Kingsway General Insurance Company v Residential Warranty Company of Canada Inc. (Trustee of)*, [2006 ABCA 293](#) ["*Kingsway*"] at [para 37](#).

36. There are two preconditions which must be met prior to the Court exercising its inherent jurisdiction: (a) the BIA must be silent or not have dealt with the matter exhaustively; and (b) after weighing competing interests, the benefit of the relief sought must outweigh the prejudice to those affected.⁴² Both of these preconditions are not met in the circumstances.

(i) *The BIA Provides for the Priority of Secured Creditors over Administration Costs*

37. It is respectfully submitted that the BIA does, in fact, address the priority of secured creditors *vis-à-vis* the administration costs of the trustee. As stated above, the second-ranking preferred claim for administration costs is stated expressly to be “subject to the rights of secured creditors”. The proviso, “subject to the rights of secured creditors” should be generously interpreted given the general scheme of the BIA to not interfere with the rights of secured creditors.

38. The Pledgee is a secured creditor, and there has been no dispute expressed in these proceedings with respect to the validity of the Pledgee’s secured claim.

39. The cases relied upon by the Trustee do not establish a general principle that a trustee’s administration costs can trump the claims of secured creditors. To the contrary, each of those cases begins from the settled premise that secured creditors rank in priority to the trustee’s fees. Those cases are distinguishable on the following grounds and demonstrate that inherent jurisdiction is not applicable:

- (a) First, *Kingsway* involved an undetermined trust claim and not claims of secured creditors. The Court noted that the BIA did not address the trustee’s ability to obtain

⁴² *Creative Wealth Media Finance Corp et al*, [2025 ONSC 4326](#) [“*Creative Wealth*”] at [para 9](#).

a charge for its fees on property that is subject to undetermined trust claims.⁴³ The trustee had disallowed the trust claim, and the main issue was the validity of that very trust.⁴⁴ By contrast, the BIA is not silent with respect to secured creditors; it expressly preserves their rights, such that their claims rank outside of, and in priority to, the bankruptcy distribution scheme.

- (b) In *Golfside*, the Court exercised its inherent jurisdiction to grant the trustee a charge ranking in priority to an unexpected lien, the existence of which was initially unknown at the time of bankruptcy.⁴⁵ Importantly, in that case, and unlike this case, the trustee made an arrangement with a secured creditor to postpone its claims to the trustee's fees at the beginning of its mandate and was later faced with an unexpectedly significant lien claim. The Court in *Golfside* noted that inherent jurisdiction was appropriate because "the interaction between the BIA and the *Builders' Lien Act*...may unfairly disadvantage the most prudent trustee".⁴⁶ By contrast, here, the Trustee made no arrangement with the Pledgee in this bankruptcy while being aware of the existence of its secured claim. The Trustee did not take steps to protect its interests when it had knowledge at the time of the bankruptcy.⁴⁷

⁴³ *Kingsway* at [para 18](#).

⁴⁴ *Kingsway* at [paras 8, 39-40](#).

⁴⁵ *Golfside* at [paras 51-52](#).

⁴⁶ *Golfside* at [para 47](#).

⁴⁷ Zhang Affidavit, Exhibit "L".

- (c) In *Creative Wealth*, the secured creditors were served and did not oppose the requested charge.⁴⁸ In those circumstances, it may be inferred that the secured creditors considered in that case that the trustee's efforts was beneficial to their interests. Here, there is no benefit to be gained by the Pledgee; rather, the Pledgee will be prejudiced by the Administration Charge.⁴⁹

40. The circumstances of this bankruptcy are more closely analogous to *Re ASI Acoustical Supplies Inc*⁵⁰. In that case, the trustee incurred expenses in administering the assets without making any agreements with secured creditors regarding its fees, despite being aware of the existence of secured claims prior to its appointment. The British Columbia Supreme Court upheld the Registrar's decision, confirming that such circumstances fall squarely within the scheme contemplated by the BIA, which is "subject to the rights of secured creditors".⁵¹ The Court held that the trustee "chose to act throughout without taking the necessary steps to secure the payment of fees and disbursements...at his own peril."⁵²

(ii) *The BIA Already Contemplates Review by the Trustee of Secured Claims*

41. At paragraph 56(a) of the First Report, the Trustee recommends that the Court grant the Administration Charge to allow its legal counsel to "conduct a security review of each of RHH's purported secured creditors to quantify the quantum of secured claims against RHH."⁵³

⁴⁸ *Creative Wealth* at [para 18](#).

⁴⁹ Zhang Affidavit at para 22.

⁵⁰ [2000 BCSC 1838](#) [*"Re ASI"*].

⁵¹ *Re ASI* at [para 17](#).

⁵² *Re ASI* at [para 21](#).

⁵³ First Report at para 56(a).

42. Section 128 of the BIA provides the mechanism through which the Trustee can require secured creditors to prove their claims.⁵⁴ Section 128 does not permit the Trustee to seek a charge to cover the cost of such a review. Rather, it allows the Trustee to redeem the security following its review and assessment of the value thereof if the Trustee is of the view that doing so will benefit the estate.⁵⁵

43. By letter dated July 25, 2025, the Trustee's legal counsel requested support for the Pledgee's security interest.⁵⁶ The Trustee explicitly said it was not then making a request of the Pledgee pursuant to section 128 of the BIA. By letter dated July 30, 2025, the Pledgee addressed the Document Request.⁵⁷ The Trustee has not exercised its rights under section 128 of the BIA. It should not be permitted to reinvent the wheel as it relates to secured creditors at the expense of such secured creditors.

(iii) The Administration Charge and Stay do not Outweigh the Prejudice

44. The proposed Administration Charge and the Stay will cause prejudice to JD Development Group for several reasons, including:

- (a) the Administration Charge will subordinate the interests of the Pledgee to those of the Trustee and McMillan, neither of which will be engaging in any activities that will benefit JD Development Group;

⁵⁴ [s. 128, BIA.](#)

⁵⁵ [s. 128\(3\), BIA.](#)

⁵⁶ Zhang Affidavit at para 18 and Exhibit "H".

⁵⁷ Zhang Affidavit at para 19 and Exhibit "J".

- (b) while the Administration Charge encumbers the Minority Shares and the Stay restrains the Pledgee's rights as secured creditor, the Pledgee (and the Trustee) will require this Court's involvement in dealings concerning the Minority Shares;
- (c) engagement with the Court will require JD Development Group to incur legal costs and delay in future dealings with the Minority Shares; and
- (d) the value of the 45 Agnes Project will languish or deteriorate while the Minority Shares remain tied up in the bankruptcy.⁵⁸

45. With respect to imposing the Stay on secured creditors and in particular, the Pledgee, the Trustee has not provided any evidence as to "very cogent reasons" required to justify such relief. There is no evidence, beyond speculation, that the Trustee's prospective efforts will generate a benefit to the estate sufficient to outweigh the prejudice to the Pledgee, particularly in light of the approximately \$500,000 in fees already incurred.

46. There is also an air of unreality to the Trustee's position. The Trustee has incurred significant costs without securing its position and now seeks to prime known secured creditors without any assurance of corresponding benefit to the estate. The only clear and immediate effect of the requested relief would be to secure approximately \$500,000 in professional fees ahead of valid and undisputed secured claims.

47. Even if the Court has jurisdiction to grant the first-ranking Administration Charge to the Trustee, the Court should not do so in this case for the following reasons:

⁵⁸ Zhang Affidavit at para 22.

- (a) The Trustee was aware of the Pledgee's secured claim before it incurred costs and fees and failed to make arrangements with secured creditors, and in particular, the Pledgee, as was done in *Golfside*;⁵⁹
- (b) The Trustee and its counsel are experienced insolvency practitioners, yet failed to take steps to protect themselves before incurring fees, expenses, and legal costs. The Trustee has provided no explanation for this failure.
- (c) It would appear that the unsecured creditors of the estate, whose claims exceed \$99 million, are not prepared to "step up" and fund the Trustee's fees, although they are the beneficiaries of any speculative recovery.⁶⁰ They are also not willing to take on the speculative litigation by way of section 38 proceedings.
- (d) Granting an Administration Charge will not create liquidity to pay for future fees and disbursements. The Trustee has not demonstrated that further expenditures will result in a measurable benefit to the estate.⁶¹ Any such "benefit" remains speculative, whereas the prejudice to the Pledgee is concrete. Indeed, the Trustee refused to provide any cap to the Administration Charge and admits to not having prepared any estimate of net benefit to the estate of the its proposed activities.⁶²

⁵⁹ *Golfside* at [para 6](#).

⁶⁰ First Report at para 29.

⁶¹ Zhang Affidavit, Exhibit "L".

⁶² Zhang Affidavit, Exhibit "L".

PART V - ORDER REQUESTED

48. For the aforementioned reasons, JD Development Group respectfully submits that the Court decline the approval of Administration Charge and the Stay.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of May, 2026.

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Ontario Inc. and related entities

SCHEDULE "A"

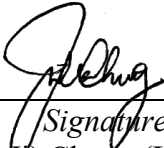
LIST OF AUTHORITIES

1. *Confectionately Yours Inc (Re)*, [2002 CanLII 45059 \(ON CA\)](#)
2. *Confectionately Yours Inc, Re*, [2001 CanLII 28453 \(ON SC\)](#)
3. *Avery's Trucking Inc (Re)*, [2013 NSSC 302](#)
4. *Golfside Ventures Ltd (Re)*, [2023 ABKB 86](#)
5. *Kingsway General Insurance Company v Residential Warranty Company of Canada Inc (Trustee of)*, [2006 ABCA 293](#)
6. *Creative Wealth Media Finance Corp. et al*, [2025 ONSC 4326](#)
7. *Re ASI Acoustical Supplies Inc*, [2000 BCSC 1838](#)

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date May 16, 2026



Signature
Julia (Yun Yi) Chung (LSO: 90012D)

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Personal Property Security Act, RSO 1990, c P.10

Determination of control

1(2) For the purposes of this Act,

- (a) a secured party has control of a certificated security if the secured party has control in the manner provided under [section 23](#) of the *Securities Transfer Act, 2006*;
- (b) a secured party has control of an uncertificated security if the secured party has control in the manner provided under [section 24](#) of the *Securities Transfer Act, 2006*;
- (c) a secured party has control of a security entitlement if the secured party has control in the manner provided under [section 25](#) or [26](#) of the *Securities Transfer Act, 2006*;
- (d) a secured party has control of a futures contract if,
 - (i) the secured party is the futures intermediary with which the futures contract is carried, or
 - (ii) the futures customer, secured party and futures intermediary have agreed that the futures intermediary will apply any value distributed on account of the futures contract as directed by the secured party without further consent by the futures customer; and
- (e) a secured party having control of all security entitlements or futures contracts carried in a securities account or futures account has control over the securities account or futures account.

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Priorities

30 (1) If no other provision of this Act is applicable, the following priority rules apply to security interests in the same collateral:

1. Where priority is to be determined between security interests perfected by registration, priority shall be determined by the order of registration regardless of the order of perfection.
2. Where priority is to be determined between a security interest perfected by registration and a security interest perfected otherwise than by registration,
 - i. the security interest perfected by registration has priority over the other security interest if the registration occurred before the perfection of the other security interest, and
 - ii. the security interest perfected otherwise than by registration has priority over the other security interest, if the security interest perfected otherwise than by registration was perfected before the registration of a financing statement related to the other security interest.

3. Where priority is to be determined between security interests perfected otherwise than by registration, priority shall be determined by the order of perfection.

3.1 Where priority is to be determined between perfected security interests in a prescribed class of collateral, priority shall be determined in accordance with the regulations.

4. Where priority is to be determined between unperfected security interests, priority shall be determined by the order of attachment. R.S.O. 1990, c. P.10, s. 30 (1); [2019, c. 7](#), Sched. 49, s. 8.

...

Compulsory disposition of consumer goods

65 (1) Where a security agreement secures an indebtedness and the collateral is consumer goods and the debtor has paid at least 60 per cent of the indebtedness secured and has not signed, after default, a statement renouncing or modifying the debtor's rights under this subsection, the secured party who has taken possession of the collateral shall, within ninety days after taking possession, dispose of or contract to dispose of the collateral under [section 63](#), and, if the secured party fails to do so, the debtor may proceed under [section 67](#) or in an action for damages or loss sustained. R.S.O. 1990, c. P.10, s. 65 (1); [2000, c. 26](#), Sched. B, s. 16 (11).

Acceptance of collateral

(2) In any case other than that mentioned in subsection (1), a secured party may, after default, propose to accept the collateral in satisfaction of the obligation secured and shall serve a notice of the proposal on the persons mentioned in [clauses 63 \(4\)](#) (a) to (d). R.S.O. 1990, c. P.10, s. 65 (2).

Objection

(3) If any person entitled to notification under subsection (2), whose interest in the collateral would be adversely affected by the secured party's proposal, delivers to the secured party a written objection within 15 days after service of the notice, the secured party shall dispose of the collateral in accordance with [section 63](#). R.S.O. 1990, c. P.10, s. 65 (3); [2006, c. 34](#), Sched. E, s. 21 (1).

Extension of time

(3.1) Upon application by any person entitled to notification under subsection (2), the Superior Court of Justice may make an order extending the 15-day period mentioned in subsection (3). [2006, c. 34](#), Sched. E, s. 21 (2).

Proof of interest

(4) The secured party may require any person who has made an objection to the proposal to furnish proof of that person's interest in the collateral and, unless the person furnishes the proof within ten days after demand by the secured party, the secured party may proceed as if no objection had been made. R.S.O. 1990, c. P.10, s. 65 (4).

Application to judge

(5) Upon application to the Superior Court of Justice by the secured party, and after notice to every person who has made an objection to the proposal, the court may order that an objection to the proposal of the secured party is ineffective because,

(a) the person made the objection for a purpose other than the protection of the person's interest in the collateral or in the proceeds of a disposition of the collateral; or

(b) the fair market value of the collateral is less than the total amount owing to the secured party and the estimated expenses recoverable under [clause 63 \(1\) \(a\)](#). R.S.O. 1990, c. P.10, s. 65 (5); [2000, c. 26](#), Sched. B, s. 16 (1).

Foreclosure

(6) If no effective objection is made, the secured party shall be deemed to have irrevocably elected to accept the collateral in full satisfaction of the obligation secured at the earlier of,

(a) the expiration of the 15-day period mentioned in subsection (3) or, if the period was extended under subsection (3.1), the expiration of the extended period; and

(b) the time when the secured party received from each person entitled to notification under subsection (2) written consent to having the secured party retain the collateral in satisfaction of the obligation. [2000, c. 26](#), Sched. B, s. 16 (12); [2006, c. 34](#), Sched. E, s. 21 (3).

Effect of foreclosure

(6.1) After the deemed election under subsection (6), the secured party is entitled to the collateral free from all rights and interests in it of any person entitled to notification under subsection (2) whose interest is subordinate to that of the secured party and who was served with the notice. [2000, c. 26](#), Sched. B, s. 16 (12).

Effect of disposition

(7) When a secured party disposes of the collateral after expiration of the period mentioned in subsection (6) to a buyer who buys in good faith for value and who takes possession of it or, in the case of an intangible, receives an assignment of it, the buyer acquires the collateral free from any interest of the secured party and the debtor and free from every interest subordinate to that of the secured party, whether or not the requirements of this section have been complied with by the secured party. R.S.O. 1990, c. P.10, s. 65 (7).

[Securities Transfer Act, 2006, SO 2006, c 8](#)

Purchaser's control of certificated security

23. (1) A purchaser has control of a certificated security that is in bearer form if the certificated security is delivered to the purchaser. 2006, c. 8, s. 23 (1).

Same

(2) A purchaser has control of a certificated security that is in registered form if the certificated security is delivered to the purchaser and,

(a) the security certificate is endorsed to the purchaser or in blank by an effective endorsement; or

(b) the security certificate is registered in the name of the purchaser at the time of the original issue or registration of transfer by the issuer. 2006, c. 8, s. 23 (2).

Bankruptcy and Insolvency Act, RSC 1985, c B-3

Vesting of property in trustee

71 On a bankruptcy order being made or an assignment being filed with an official receiver, a bankrupt ceases to have any capacity to dispose of or otherwise deal with their property, which shall, subject to this Act and to the rights of secured creditors, immediately pass to and vest in the trustee named in the bankruptcy order or assignment, and in any case of change of trustee the property shall pass from trustee to trustee without any assignment or transfer.

...

Stays of proceedings — bankruptcies

69.3 (1) Subject to subsections (1.1) and (2) and sections 69.4 and 69.5, on the bankruptcy of any debtor, no creditor has any remedy against the debtor or the debtor's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy.

End of stay

(1.1) Subsection (1) ceases to apply in respect of a creditor on the day on which the trustee is discharged.

Secured creditors

(2) Subject to sections 79 and 127 to 135 and subsection 248(1), the bankruptcy of a debtor does not prevent a secured creditor from realizing or otherwise dealing with his or her security in the same manner as he or she would have been entitled to realize or deal with it if this section had not been passed, unless the court otherwise orders, but in so ordering the court shall not postpone the right of the secured creditor to realize or otherwise deal with his or her security, except as follows:

(a) in the case of a security for a debt that is due at the date the bankrupt became bankrupt or that becomes due not later than six months thereafter, that right shall not be postponed for more than six months from that date; and

(b) in the case of a security for a debt that does not become due until more than six months after the date the bankrupt became bankrupt, that right shall not be postponed for more than

six months from that date, unless all instalments of interest that are more than six months in arrears are paid and all other defaults of more than six months standing are cured, and then only so long as no instalment of interest remains in arrears or defaults remain uncured for more than six months, but, in any event, not beyond the date at which the debt secured by the security becomes payable under the instrument or law creating the security.

Exception

(2.1) No order may be made under subsection (2) if the order would have the effect of preventing a secured creditor from realizing or otherwise dealing with financial collateral.

...

Proof may be requested

128 (1) Where the trustee has knowledge of property that may be subject to a security, the trustee may, by serving notice in the prescribed form and manner, require any person to file, in the prescribed form and manner, a proof of the security that gives full particulars of the security, including the date on which the security was given and the value at which that person assesses it.

Where reply not received

(1.1) Where the trustee serves a notice pursuant to subsection (1), and the person on whom the notice is served does not file a proof of security within thirty days after the day of service of the notice, the trustee may thereupon, with leave of the court, sell or dispose of any property that was subject to the security, free of that security.

Dividend on balance

(2) A creditor is entitled to receive a dividend in respect only of the balance due to him after deducting the assessed value of his security.

Trustee may redeem security

(3) The trustee may redeem a security on payment to the secured creditor of the debt or the value of the security as assessed, in the proof of security, by the secured creditor.

...

Priority of claims

136 (1) Subject to the rights of secured creditors, the proceeds realized from the property of a bankrupt shall be applied in priority of payment as follows:

(a) in the case of a deceased bankrupt, the reasonable funeral and testamentary expenses incurred by the legal representative or, in the Province of Quebec, the successors or heirs of the deceased bankrupt;

(b) the costs of administration, in the following order,

(i) the expenses and fees of any person acting under a direction made under paragraph 14.03(1)(a),

(ii) the expenses and fees of the trustee, and

(iii) legal costs;

(c) the levy payable under section 147;

(d) the amount of any wages, salaries, commissions, compensation or disbursements referred to in sections 81.3 and 81.4 that was not paid;

(d.01) the amount equal to the difference a secured creditor would have received but for the operation of sections 81.3 and 81.4 and the amount actually received by the secured creditor;

(d.02) the amount equal to the difference a secured creditor would have received but for the operation of sections 81.5 and 81.6 and the amount actually received by the secured creditor;

(d.1) claims in respect of debts or liabilities referred to in paragraph 178(1)(b) or (c), if provable by virtue of subsection 121(4), for periodic amounts accrued in the year before the date of the bankruptcy that are payable, plus any lump sum amount that is payable;

(e) municipal taxes assessed or levied against the bankrupt, within the two years immediately preceding the bankruptcy, that do not constitute a secured claim against the real property or immovables of the bankrupt, but not exceeding the value of the interest or, in the Province of Quebec, the value of the right of the bankrupt in the property in respect of which the taxes were imposed as declared by the trustee;

(f) the lessor for arrears of rent for a period of three months immediately preceding the bankruptcy and accelerated rent for a period not exceeding three months following the bankruptcy if entitled to accelerated rent under the lease, but the total amount so payable shall not exceed the realization from the property on the premises under lease, and any payment made on account of accelerated rent shall be credited against the amount payable by the trustee for occupation rent;

(g) the fees and costs referred to in subsection 70(2) but only to the extent of the realization from the property exigible thereunder;

(h) in the case of a bankrupt who became bankrupt before the prescribed date, all indebtedness of the bankrupt under any Act respecting workers' compensation, under any Act respecting unemployment insurance or under any provision of the Income Tax Act creating an obligation to pay to Her Majesty amounts that have been deducted or withheld, rateably;

(i) claims resulting from injuries to employees of the bankrupt in respect of which the provisions of any Act respecting workers' compensation do not apply, but only to the extent of moneys received from persons guaranteeing the bankrupt against damages resulting from those injuries; and

(j) in the case of a bankrupt who became bankrupt before the prescribed date, claims of the Crown not mentioned in paragraphs (a) to (i), in right of Canada or any province, rateably notwithstanding any statutory preference to the contrary.

...

Courts vested with jurisdiction

183 (1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

(a) in the Province of Ontario, the Superior Court of Justice;

(b) [Repealed, 2001, c. 4, s. 33]

(c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;

(d) in the Provinces of New Brunswick and Alberta, the Court of Queen's Bench;

(e) in the Province of Prince Edward Island, the Supreme Court of the Province;

(f) in the Provinces of Manitoba and Saskatchewan, the Court of Queen's Bench;

(g) in the Province of Newfoundland and Labrador, the Trial Division of the Supreme Court; and

(h) in Yukon, the Supreme Court of Yukon, in the Northwest Territories, the Supreme Court of the Northwest Territories, and in Nunavut, the Nunavut Court of Justice.

**IN THE MATTER OF THE BANKRUPTCY OF RHH RENTAL PROPERTIES LTD.
OF THE CITY OF GUELPH, IN THE PROVINCE OF ONTARIO**

Court File No.: BK-25-03236991-0035
Estate No.: 35-3236991

ONTARIO
**SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

PROCEEDING COMMENCED AT GUELPH

**RESPONDING FACTUM OF 2599894 ONTARIO INC.
(Returnable May 20, 2026)**

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