

CV-22-00685200-00CL

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,
as amended*

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.

(solely in its capacity as court-appointed receiver and manager of
Bridging Finance Inc. and certain related entities and investment funds)

Applicant

- and -

**NORTHERN CITADEL CAPITAL INC., ONE8ONE DAVENPORT INC.,
and 181 DAVENPORT RETAIL INC.**

Respondents

**FACTUM OF THE APPLICANT
(Application Returnable September 23, 2022)**

September 16, 2022

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FACTUM OF THE APPLICANT

PART I - OVERVIEW

1. PricewaterhouseCoopers Inc. (“**PwC**”), solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. (“**BFI**”) and certain related entities and investment funds (in such capacity, the “**Applicant**” or the “**Bridging Receiver**”), seeks an order (the “**Receivership Order**”) appointing Richter Inc. (“**Richter**”) as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the current and future assets, undertakings, and properties (the “**Property**”) of each of Northern Citadel Capital Inc. (“**Northern Citadel**”), One8One Davenport Inc. (“**One8One**”) and 181 Davenport Retail Inc. (“**181 Retail**” and together with Northern Citadel and One8One, the “**Respondents**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and section 101 of the *Courts of Justice Act* (the “**CJA**”).

2. The relief sought by the Bridging Receiver should be granted on the basis that it is “just and convenient” to appoint the proposed Receiver in the circumstances and therefore the applicable legal test set out under section 243 of the BIA and section 101 of the CJA has been satisfied.
3. Further, the Court has the jurisdiction to grant the relief sought in the proposed Receivership Order pursuant to section 243(1)(c) of the BIA, which provides that the Court may appoint a receiver to take any action the court considers advisable where it is just and convenient to do so. As set out below, there is precedent for the provisions of the proposed Receivership Order that deviate from the Model Order.

PART II - THE FACTS

4. The facts relevant to the relief sought by the Bridging Receiver are set out in greater detail in the Affidavit of Tyler Ray sworn August 8, 2022 (the “**Ray Affidavit**”) and are summarized below. All capitalized terms not expressly defined herein are defined in the Ray Affidavit.

Background & Appointment of Bridging Receiver

5. By orders of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 30, 2021, May 3, 2021, and May 14, 2021, PwC was appointed as the Bridging Receiver.¹
6. PwC was appointed as the Bridging Receiver pursuant to section 129 of the Securities Act

¹ Affidavit of Tyler Ray sworn August 8, 2022 (the “**Ray Affidavit**”) at para 4.

upon application by the Commission as a result of the Commission's ongoing investigation into Bridging and certain related individuals and entities.²

7. The Bridging Receiver was appointed to protect the interests of, and maximize value for, Bridging's investors and other stakeholders. As detailed in the Bridging Receiver's various reports to the Court, Bridging's investors are facing significant losses on their investments in the Bridging Funds.³
8. One of the loans in Bridging's portfolio is the Loan made by BFI on behalf of certain of the Bridging Funds to Northern Citadel and certain related entities. The Loan is currently past maturity and in default. On May 12, 2022, the Bridging Receiver issued the Demand Letters and BIA Notices to the Respondents. The Respondents have failed to make any payments in reduction of the Loan notwithstanding the maturity of the Loan and the issuance of the Demand Letters and the BIA Notices.⁴
9. The Bridging Receiver has significant concerns regarding certain events and transactions involving the Respondents, certain related entities, and the former principals of Bridging, some of which are described in the Ray Affidavit and summarized below.⁵
10. The Bridging Receiver brings this application to appoint Richter as Receiver of the Respondents as part of its broader investigation into the affairs of Bridging and in an effort to minimize the losses that Bridging's investors and other stakeholders will suffer as a

² Ray Affidavit at para 5. A29

³ Ray Affidavit at para 7. A29

⁴ Ray Affidavit at paras 8 and 14. A29

⁵ Ray Affidavit at para 10. A30

result of the Loan. The appointment of an independent court officer as Receiver of the Respondents is required in these circumstances to investigate the financial situation and affairs of the Respondents and to realize on their assets (to the extent any such assets are available or recoverable) for the benefit of all stakeholders.⁶

Corporate Information & Business of the Respondents

11. Each of the Respondents is a corporation incorporated under the laws of the Province of Ontario with its registered head office in Toronto, Ontario. The Respondents developed and marketed the condominium project located at 181 Davenport Road, Toronto, Ontario (the “**181 Davenport Project**”).⁷
12. Sam Mizrahi, the principal of the Respondents, was listed as the sole director of each of the Respondents up until May 15, 2022. It appears that Sam Mizrahi was removed as a director of each of the Respondents effective as of May 15, 2022, three days after the Bridging Receiver delivered the Demand Letters and BIA Notices to the attention of Sam Mizrahi. Sam Mizrahi remains listed as the sole officer of each of the Respondents.⁸

The Loan Agreement & Advances

13. Pursuant to the Loan Agreement, Bridging Finance Inc., as agent (in such capacity, the “**Agent**”) on behalf of Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) and the related investment funds from time to time acting as lender (collectively, the

⁶ Ray Affidavit at para 11. A30

⁷ Ray Affidavit at paras 12 and 13. A31

⁸ Ray Affidavit at para 13. A31

“**Lender**”) made available to Northern Citadel, Mizrahi Inc. (“**MI**”), and 2495159 Ontario Inc. (“**249 Ontario**” and together with Northern Citadel and MI, the “**Borrower**”) a non-revolving term credit facility (the “**Loan**”) in the principal amount of \$41,412,501.00.⁹

14. MI and 249 Ontario are not Respondents to this Application and no relief is being sought by the Bridging Receiver in respect of MI and 249 Ontario on this Application. MI and 249 Ontario were added as entities comprising the “Borrower” pursuant to the November 2016 Amendment. There is a dispute as to whether MI and 249 Ontario still comprise the “Borrower” under the Loan Agreement and have any continuing liability thereunder. The issue of whether MI and 249 Ontario still comprise the “Borrower” under the Loan Agreement and have any continuing liability thereunder is not being addressed in this application, but may be addressed by the Bridging Receiver at a later date.¹⁰
15. Interest currently accrues on the Loan at the rate of 12% per annum. The Lender has received cash payments from the Borrower on only four occasions since the inception of the Loan in December 2014. All of those payments were received prior to expiry of the Term of the Loan on April 30, 2022.¹¹
16. As at June 30, 2022, the total amount owing by the Respondents to the Lender under the Loan is \$54,866,885.69, consisting of principal in the amount of \$17,054,655.33 and accrued and unpaid interest in the amount of \$37,812,230.36, together with all accrued

⁹ Ray Affidavit at para 14. A31

¹⁰ Ray Affidavit at para 15.

¹¹ Ray Affidavit at para 16. A33

costs to the date of payment.¹²

17. The original purpose of the Loan was to finance a portion of Northern Citadel's equity in the 181 Davenport Project. The Bridging Receiver also understands that, as set out in the Loan Agreement, certain Loan advances were used to:¹³
- (a) fund cost overruns on the 181 Davenport Project;
 - (b) make improvements to the approximately 4,097 square foot unit (the "**Unit**") at the 181 Davenport Project to be used as a sales and presentation gallery for "The One" construction project located at 1 Bloor Street West, Toronto, Ontario (the "**1 Bloor Project**"). The Unit is owned by the Respondent 181 Retail; and
 - (c) fund 249 Ontario's purchase of the real property located at 14 Dundonald Street, Toronto, Ontario (the "**Dundonald Property**"). The Dundonald Property was subsequently conveyed in 2020 by 249 Ontario to the City of Toronto (the "**Dundonald Conveyance**") for the benefit of Mizrahi Development Group (The One) Inc. ("**The One**") and/or certain other entities involved in the development of the 1 Bloor Project. The Dundonald Property does not appear to have any connection to the 181 Davenport Project.
18. The Bridging Receiver does not have full and complete information regarding the apparent inability of the Respondents to repay the Indebtedness. The Bridging Receiver has not obtained complete financial disclosure from the Respondents.¹⁴

¹² Ray Affidavit at para 17. A33

¹³ Ray Affidavit at para 19.

¹⁴ Ray Affidavit at para 22. A36

Security & Guarantees

19. As security for all of the present and future indebtedness and obligations of the Respondents to the Lender under the Loan, each of the Respondents granted to the Agent and the Lender, among other things, security over substantially all of its present and after-acquired property pursuant to separate general security agreements (the “**Respondent GSAs**”).¹⁵
20. The Agent made a registration against 181 Retail pursuant to the PPSA on May 2, 2018. As permitted under the Loan Agreement, the Bridging Receiver, on behalf of the Agent and the Lender, made a PPSA registration against each of Northern Citadel and One8One on May 12, 2022 following the failure by the Borrower to repay the Loan upon expiry of the Term.¹⁶
21. The PPSA searches appended to the Ray Affidavit confirm that the only registration against each of Northern Citadel and One8One is the registration made by the Bridging Receiver on behalf of the Agent and the Lender. There are two PPSA registrations against 181 Retail. The first registration was made by KEB Hana Bank Canada and a subsequent registration was made by the Agent.¹⁷

Events & Transactions Leading up to Application

22. As set out in detail in the Ray Affidavit, the Bridging Receiver has significant concerns

A36 ¹⁵ Ray Affidavit at paras 23 - 29.

¹⁶ Ray Affidavit at paras 24 & 27. A36

A38 ¹⁷ Ray Affidavit at para 29.

regarding certain events and transactions involving the Respondents, certain related entities, and the former principals of Bridging, some of which are summarized below:¹⁸

- (a) **1 Bloor Project & Conflicts of Interest.** The books and records of Bridging indicate that the 1 Bloor Project was indirectly owned by Sam Mizrahi, Jenny Coco, and Natasha Sharpe during the period between approximately March 12, 2015 and December 30, 2020 (the “**Applicable Period**”), which coincides with a substantial majority of the lifespan of the Loan.¹⁹ Jenny Coco and Natasha Sharpe are directors and indirect shareholders of BFI, and were also both members of BFI’s credit committee. The Bridging Receiver has significant concerns regarding the potential conflicts of interest between Jenny Coco and Natasha Sharpe in their capacities as principals of Bridging and members of the BFI credit committee, and separately as indirect owners of the 1 Bloor Project.
- (b) **November 2016 Amendment & Accounts.** Pursuant to the November 2016 Amendment, the definition of “Borrower” was amended to include 249 Ontario and MI in addition to Northern Citadel. Leading up to the November 2016 Amendment, Bridging lacked sufficient collateral coverage for the Loan. In order to cover this shortfall, MI was added as a Borrower under the Loan and the Accounts (primarily comprised of the sales commissions owing to MI in connection with the 1 Bloor Project) were pledged in favour of the Lender. The Accounts formed a material portion of the collateral subject to the Lender’s security. On multiple occasions,

¹⁸ Ray Affidavit at paras 30 – 86. A39

¹⁹ The books and records of Bridging do not contain information regarding the ownership of the 1 Bloor Project beyond the Applicable Period. Ray Affidavit at paras 34 and 36. A41

the Credit Parties represented to Bridging that the estimated Loan repayments sourced through the 1 Bloor Project (by way of the Accounts) would exceed \$20 million in aggregate.

- (c) **Conveyance of Dundonald Property & July 2020 Partial Repayments.** Part of the November 2016 Advance was used to fund 249 Ontario's purchase of the Dundonald Property. The Dundonald Charge in the principal amount of \$15 million was granted by 249 Ontario as New Security for the Loan. The Dundonald Property was subsequently conveyed by 249 Ontario to the City of Toronto in 2020 for the benefit of the 1 Bloor Project. The purpose of the Dundonald Conveyance was to partially satisfy the 1 Bloor Project's municipal parkland obligations owing to the City of Toronto. 249 Ontario received approximately \$6.2 million in connection with the Dundonald Conveyance and directed payment of this amount to Bridging. Bridging agreed to discharge the Dundonald Charge notwithstanding that this amount was less than the \$15 million principal amount of the Dundonald Charge. The Dundonald Property does not appear to have any connection to the 181 Davenport Project. The Bridging Receiver has significant concerns regarding the involvement of Jenny Coco and Natasha Sharpe in the original Dundonald Property acquisition (and the subsequent Dundonald Conveyance) as both principals of Bridging and part owners of the 1 Bloor Project.
- (d) **December 2020 Amendment & 2020 Bridging Audit.** The final amendment to the Loan Agreement was the December 2020 Amendment. The execution of the December 2020 Amendment was one day prior to the date of the audit opinion of Bridging Income Fund LP by KPMG. It appears that the December 2020

Amendment may have been executed to satisfy inquiries from KPMG regarding the status of the Loan and whether it was past due. The December 2020 Amendment was executed after a series of emails and phone calls between Graham Marr of BFI and Sam Mizrahi. As a result of those emails and phone calls, among other things, MI and 249 Ontario were removed from the subject line and signature block of the December 2020 Amendment. MI and 249 Ontario now take the position that this had the effect of extinguishing their continuing liability under the Loan (which would leave the Lender with little to no other sources of recovery for the Loan). The Bridging Receiver continues to investigate this matter.

- (e) **Communications since Bridging Receivership.** The Bridging Receiver has engaged with the Credit Parties on multiple occasions in an effort to understand their financial position and formulate a repayment plan for the Loan. These efforts have been unsuccessful. The Respondents have largely failed to provide basic financial reporting required under the Loan Agreement and have failed to provide any plan for repayment of the Loan.
- (f) **Alleged Cerieco Secret Guarantee.** The Bridging Receiver has also become aware of an Alleged Secret Guarantee pursuant to which Sprott Bridging Income Fund LP allegedly guaranteed a loan (the “**Cerieco Loan**”) by Cerieco to Mizrahi Commercial (The One) LP in the amount of approximately \$213 million in connection with the construction of the 1 Bloor Project. The Bridging Receiver understands that Cerieco has filed a statement of claim (the “**Cerieco Claim**”) claiming over \$200 million in damages against, among others, Sam Mizrahi, Jenny Coco, and certain entities related to the 1 Bloor Project in connection with the

Cerieco Loan. The Cerieco Claim, among other things, alleges that Jenny Coco and Natasha Sharpe, on a confidential basis, effectively leveraged the balance sheet of Bridging Income Fund LP through the Alleged Secret Guarantee in order to obtain the Cerieco Loan for the 1 Bloor Project. The Bridging Receiver continues to investigate this matter and the documents and information related to the Cerieco Claim and the Alleged Secret Guarantee.

Events of Default & Demands

23. Pursuant to the Loan Agreement, the Term of the Loan expired on April 30, 2022. Pursuant to section 3.4 of the Original Loan Agreement, the principal amount of the Loan, together with accrued interest, is due and payable on the expiry of the Term.²⁰
24. The Respondents failed to repay the full amount outstanding under the Loan on the expiry of the Term, contrary to section 3.4 of the Original Loan Agreement (the “**Payment Default**”). The Payment Default is continuing as at the date hereof. The Bridging Receiver has not waived the Payment Default.²¹
25. Pursuant to section 12.1(a) of the Original Loan Agreement, an Event of Default occurs if the Borrower fails to observe or perform any term, condition, covenant, or undertaking involving the payment of money under the Loan Agreement. Pursuant to section 12.2 of the Original Loan Agreement, a default referred to under section 12.1 shall not constitute

²⁰ Ray Affidavit at para 87.

²¹ Ray Affidavit at para 88.

an Event of Default unless, in the case of default in payment of money, it has continued for at least 10 days after the due date for payment.²²

26. On May 2, 2022 (the first business day after the expiry of the Term), counsel for the Bridging Receiver sent the Default Letter to the Respondents confirming the existence of the Payment Default and advising that, if the Payment Default continued for at least 10 days after the due date for payment, the Payment Default would constitute an Event of Default under the Loan Agreement.²³
27. Notwithstanding the Default Letter, the Respondents failed to make any payments in respect of the Indebtedness or otherwise provide the Bridging Receiver with a response regarding the Payment Default.²⁴
28. On May 12, 2022, the Bridging Receiver delivered the Demand Letters to each of the Respondents advising that the Payment Default had continued for at least 10 days after the due date for payment and therefore constituted an Event of Default under the Loan Agreement. Pursuant to section 12.1 of the Original Loan Agreement, the Indebtedness is immediately due and payable upon the occurrence of an Event of Default. Accordingly, as set out in the Demand Letters, the Bridging Receiver demanded payment of the Indebtedness from each of the Respondents and enclosed a separate BIA Notice.²⁵

²² Ray Affidavit at para 89. A63

²³ Ray Affidavit at para 90.

²⁴ Ray Affidavit at para 91.

²⁵ Ray Affidavit at para 92.

29. The 10-day notice period set out in the BIA Notices expired on May 22, 2022. As at the date hereof, the Respondents have failed to repay the Indebtedness.²⁶
30. Pursuant to section 12.8 of the Original Loan Agreement, upon any Event of Default, the Lender may appoint a receiver or a receiver and manager of the Collateral, being all assets of the Respondents.²⁷

PART III - THE ISSUE

31. The sole issue on this application is whether it is just and convenient for the Court to appoint Richter as Receiver on the terms of the proposed Receivership Order.

PART IV - LAW & ANALYSIS

A. THE RECEIVER SHOULD BE APPOINTED

(i) Jurisdiction to Appoint the Receiver

32. Pursuant to Section 243 of the BIA, the Court may, on application by a secured creditor, appoint a receiver to take control of an insolvent person's property if it is just or convenient to do so:

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

A65 ²⁶ Ray Affidavit at para 93.

²⁷ Ray Affidavit at para 28. A38

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

33. Section 101 of the CJA provides for the appointment of a receiver when "it is just or convenient" to do so.

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

34. The Respondent GSAs charge the property of the Respondents as security for the Respondents' obligations under the Loan. The Bridging Receiver, on behalf of the Lender, is therefore a "secured creditor" within the meaning of the BIA.²⁸

35. The Respondents have failed to repay the Loan notwithstanding expiry of the Term and the issuance of the Demand Letters and the BIA Notices. It does not appear that the Respondents have assets of any meaningful value. The Respondents are "insolvent persons" within the meaning of the BIA.²⁹

36. Courts have considered the following factors, among others, when determining whether it is just or convenient to appoint a receiver:

- (a) the existence of a debt and a default;
- (b) the quality of the security;

²⁸ Ray Affidavit at paras 23 – 28; *BIA*, s. 2. A36

²⁹ Ray Affidavit at paras 66, 88, 92, 93 and 94(f); *BIA*, s. 2.

- (c) the fact that the creditor has the right to appoint a receiver under the documentation provided for in the loan;
- (d) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
- (e) the likelihood of maximizing the return to the parties; and
- (f) the risk to the security holder.³⁰

37. The fact that a secured creditor has a right under its security documentation to appoint a receiver is of central importance. In cases where the security documentation provides for the appointment of a receiver, the analysis is focused on a consideration of whether it is in the interests of all concerned to have the receiver appointed by the court. As noted by Justice Morawetz (as he then was) in *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*:

...while the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties (emphasis added).³¹

³⁰ See for example: [Central 1 Credit Union v. UM Financial Inc. and UM Capital Inc.](#), 2011 ONSC 5612 (Commercial List) at para 22; [RMB Australia Holdings Limited v. Seafeld Resources Ltd.](#), 2014 ONSC 5205 (Commercial List) at para 28; [Bank of Montreal v. Carnival National Leasing Limited and Carnival Automobiles Limited](#), 2011 ONSC 1007 (Commercial List) at paras 24 and 27 [*Carnival Leasing*]; and [Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.](#), 2009 BCSC 1527 at para 25.

³¹ [Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.](#), 2013 ONSC 6866 (Commercial List) at para 27.

38. It is not necessary for a creditor whose security documentation provides for the appointment of a receiver to demonstrate that it will suffer irreparable harm if the appointment is not granted by the court.³²

(ii) *It is Just and Convenient to Appoint the Receiver in the Circumstances*

39. The Bridging Receiver submits that it is just and convenient to appoint the Receiver in the circumstances and therefore the statutory test for the appointment of a receiver is satisfied for the following reasons:

- (a) pursuant to the Loan Agreement, the Borrower agreed to permanently repay the Loan on the expiry of the Term. The Respondents have failed to make any payments in respect of the Indebtedness notwithstanding the expiry of the Term;
- (b) as a result of the Payment Default, which constitutes an Event of Default under the Loan Agreement, the Bridging Receiver, on behalf of the Lender, is contractually entitled under the Original Loan Agreement to seek the appointment of Richter as Receiver of the Property of the Respondents;
- (c) the 10-day notice period set out in the BIA Notices has expired;
- (d) the Bridging Receiver does not have full disclosure regarding the financial situation of the Respondents or the use of the principal advances of approximately \$35.5 million under the Loan. The appointment of the proposed Receiver, with the benefit of the investigatory powers set out in the proposed Receivership Order, will provide

³² [Carnival Leasing, supra note 23 at paras 24-28.](#)

the means to investigate the use of the Loan proceeds and the financial situation of the Respondents to the benefit of all stakeholders;

- (e) the Bridging Receiver has significant concerns regarding the events and transactions summarized herein and more particularly described in the Ray Affidavit involving the Respondents, certain related entities, and the former principals of Bridging. The Bridging Receiver does not have full and complete information regarding these events and transactions. The appointment of the Receiver will assist in advancing the investigation into these matters and the Bridging Receiver's broader investigation into the affairs of Bridging; and
- (f) based on the limited reporting delivered to the Bridging Receiver and the Agent by the Respondents, it does not appear that the Respondents have assets of any meaningful value. The appointment of the proposed Receiver over the Property of the Respondents is necessary in the circumstances to determine if there are any assets available to satisfy the claims of the Lender and the other stakeholders of the Respondents and, if appropriate, to realize upon any such assets for the benefit of all stakeholders.

(iii) *Investigatory Powers are Necessary and Warranted*

40. An investigative receiver may be appointed to investigate the affairs of a debtor or to review transactions, even those concerning related non-parties.³³

³³ *Akagi v. Synergy Group (2000) Inc.*, 2015 ONCA 368 at [para 66](#) [*Akagi*].

41. The primary objective of an investigative receiver is to gather information and ascertain the “true state of affairs” concerning the financial dealings and assets of the debtor and potentially a related network of individuals and corporations.³⁴ The investigative receiver acts to equalize an informational imbalance between the parties and assist the creditor in tracing the use of its funds.³⁵
42. The Ontario Court of Appeal in *Akagi* identified four general themes for the court to consider when determining if an investigative receivership is appropriate:
- (a) The appointment of an investigative receiver is necessary to alleviate a risk posed to the plaintiff’s right of recovery;
 - (b) The primary objective of investigative receivers is to determine the true state of affairs of the debtor and related entities;
 - (c) Generally, the investigative receiver does not control or operate the debtor’s business;³⁶ and
 - (d) The investigative receivership must be carefully tailored to assist the creditor’s recovery while protecting the debtor’s interest and go no further than necessary.³⁷
43. To date, the Bridging Receiver’s attempts to obtain complete information from the Respondents in relation to the Loan have been unsuccessful. The information provided has

³⁴ *Ibid* at [para 90](#).

³⁵ *East Guardian v. Mazur*, 2014 ONSC 6403 at [paras 75](#) and [81](#).

³⁶ This is not a strict rule, however. See for example [Stroh v. Millers Cove Resources Inc., 1995 CarswellOnt 275 \(Ct J \(Gen Div\) \[Comm. List\]\)](#), aff’d [1995 CarswellOnt 3551 \(Ct J \(Gen Div\) \[Div. Ct\]\)](#) where Farley J. appointed a receiver to take control of corporate assets and investigate certain self-dealing transactions made by the majority shareholder.

³⁷ *Akagi*, *supra* note 29 at [para 90](#).

been incomplete while other of the Bridging Receiver's inquiries have been ignored. Without further insight into the financial situation of the Respondents, the Bridging Receiver's ability to recover on the Loan is at risk.

44. In order to fully identify how the proceeds of the Loan were used and the Property of the Respondents available to repay the Loan, the Receiver requires the ability to investigate and compel production of documents relevant to the Loan. These documents may be in the possession and control of entities other than the Respondents.

45. The proposed terms of the Receivership Order go no further than necessary to ensure the Receiver may investigate the Respondents' activities and obtain a more complete picture of their assets and transactions.

(iv) The Receiver should be Authorized to Assign the Respondents into Bankruptcy

46. The Court is empowered to authorize a receiver to file an assignment in bankruptcy on behalf of the debtor.³⁸

47. In granting this authority to a receiver, the Court should consider the specific facts of the case to determine if a bankruptcy may present a preferable option to the receiver. The Court has previously granted this power to a receiver for the purpose of permitting the receiver to avail itself of the enhanced investigatory power of a trustee in the face of an uncooperative debtor or suspicious circumstances.³⁹

³⁸ *RBC v. Gustin*, 2019 ONSC 5370 at [paras 12](#) and [15](#) [*Gustin*], citing *Bank of Montreal v. Owen Sound Golf & Country Club Ltd.*, [2012 ONSC 557](#) and *Royal Bank v. Sun Squeeze Juices Inc.*, [1994 CarswellOnt 266](#), [1994] O.J. No. 567 (Gen. Div. [Comm. List]) [*Sun Squeeze*], aff'd [1994 CanLII 8771 \(CA\)](#).

³⁹ *Gustin*, *supra* note 38 at [para 8](#); *Sun Squeeze*, *supra* note 38 at para 14.

48. The Bridging Receiver does not have full insight into the financial affairs of the Respondents and has identified significant concerns regarding certain events and transactions involving the Respondents, certain related entities, and the former principals of Bridging. While the investigatory powers sought in the Receivership Order will allow for a clearer picture to be formed, the Receiver may require the enhanced powers and remedies provided to a Trustee under the BIA to address these concerns.

B. SPECIFIC RELIEF SOUGHT

49. The proposed Receivership Order largely follows the terms of the Model Order. It is respectfully submitted that the terms of the draft Receivership Order are necessary and appropriate based on the facts set out herein to permit the Receiver to take possession of, and realize upon, the assets of the Respondents for the benefit of the Bridging Receiver and the other stakeholders.
50. The following provisions in the Receivership Order are specifically required and appropriate in the circumstances. The Court has the statutory jurisdiction to grant the following provisions pursuant to section 243(1)(c) of the BIA, which provides that the Court may appoint a receiver to take any action the court considers advisable where it is just or convenient to do so.

(i) *Investigatory Powers*

51. Paragraphs 4(j) and (s) of the proposed Receivership Order provide that the Receiver may undertake any investigation the Receiver considers appropriate in relation to the location and/or disposition of assets reasonably believed to be or have been Property and that the

Receiver may conduct examinations under oath of any person reasonably believed to have knowledge of the Property or the affairs of the Respondents.

52. Given the lack of full disclosure by the Respondents to the Bridging Receiver regarding their financial situation, the Receiver requires enhanced powers to compel disclosure of relevant information. Further, the significant concerns identified by the Bridging Receiver regarding certain events and transactions involving the Respondents, certain related entities and the former principals of Bridging (including the utilization of Loan proceeds to benefit the 1 Bloor Project), support the granting of such enhanced powers as just and convenient in the circumstances.

(ii) *Authority to Assign into Bankruptcy*

53. Paragraph 4(t) of the proposed Receivership Order provides that the Receiver may, if considered appropriate by the Receiver, cause the Respondents to file an application for bankruptcy under the BIA.
54. Given the lack of available information regarding the Respondents' financial position and the significant concerns identified by the Bridging Receiver regarding certain events and transactions involving the Respondents, certain related entities and the former principals of Bridging, the Bridging Receiver respectfully submits that the Receiver should be granted the ability to obtain the enhanced powers and remedies provided to a Trustee under the BIA if considered appropriate by the Receiver.

PART V - RELIEF REQUESTED

55. For all of the foregoing reasons, the Bridging Receiver requests that this Court grant an Order substantially in the form of the draft Receivership Order located at Tab 3 of its Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th of September, 2022.

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For Grant Moffat

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**SCHEDULE “A”
LIST OF AUTHORITIES**

No.	Case Law
1.	<u>Central 1 Credit Union v. UM Financial Inc. and UM Capital Inc.</u> , 2011 ONSC 5612
2.	<u>RMB Australia Holdings Limited v. Seafield Resources Ltd.</u> , 2014 ONSC 5205
3.	<u>Bank of Montreal v. Carnival National Leasing Limited and Carnival Automobiles Limited</u> , 2011 ONSC 1007
4.	<u>Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.</u> , 2009 BCSC 1527
5.	<u>Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.</u> , 2013 ONSC 6866
6.	<u>Akagi v. Synergy Group (2000) Inc.</u> , 2015 ONCA 368
7.	<u>East Guardian v. Mazur</u> , 2014 ONSC 6403
8.	<u>Stroh v. Millers Cove Resources Inc.</u> , 1995 CarswellOnt 275 (Ct J (Gen Div) [Comm. List]), aff'd 1995 CarswellOnt 3551 (Ct J (Gen Div) [Div. Ct])
9.	<u>RBC v. Gustin</u> , 2019 ONSC 5370
10.	<u>Bank of Montreal v. Owen Sound Golf & Country Club Ltd.</u> , 2012 ONSC 557
11.	<u>Royal Bank v. Sun Squeeze Juices Inc.</u> , 1994 CarswellOnt 266, [1994] O.J. No. 567 (Gen. Div. [Comm. List]), aff'd 1994 CanLII 8771 (CA).

**SCHEDULE “B”
RELEVANT STATUTES**

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

Definitions

2 In this Act,

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due

secured creditor means a person holding a mortgage, hypothec, pledge, charge or lien on or against the property of the debtor or any part of that property as security for a debt due or accruing due to the person from the debtor, or a person whose claim is based on, or secured by, a negotiable instrument held as collateral security and on which the debtor is only indirectly or secondarily liable, and includes

- (a) a person who has a right of retention or a prior claim constituting a real right, within the meaning of the *Civil Code of Québec* or any other statute of the Province of Quebec, on or against the property of the debtor or any part of that property, or
- (b) any of

- (i) the vendor of any property sold to the debtor under a conditional or instalment sale,

- (ii) the purchaser of any property from the debtor subject to a right of redemption, or

- (iii) the trustee of a trust constituted by the debtor to secure the performance of an obligation,

if the exercise of the person’s rights is subject to the provisions of Book Six of the *Civil Code of Québec* entitled *Prior Claims and Hypothecs* that deal with the exercise of hypothecary rights

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

Advance notice

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or
- (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Courts of Justice Act, R.S.O. 1990 c. C-43, as amended

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the **A789**
Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

PRICEWATERHOUSECOOPERS INC.
(solely in its capacity as court-appointed receiver and manager
of Bridging Finance Inc. and certain related entities and
investment funds)
Applicant

- and - **NORTHERN CITADEL CAPITAL INC., ONE8ONE**
DAVENPORT INC.,
and 181 DAVENPORT RETAIL INC.
Respondents

Court File No. CV-22-00685200-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto, Ontario

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