

Court File No. 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

RESPONDENTS' FACTUM

October 24, 2022

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OVERVIEW

1. This application arises from an outstanding debt (the “Loan”) to the party in receivership (“BFI”) that was used for the development of a condominium development at 181 Davenport Road in Toronto (the “Davenport Project”). The applicant seeks to appoint a receiver over the respondents Northern Citadel Capital Inc. and One8one Davenport Inc. Those respondents do not oppose this request. Problematically, however, the applicant also seeks—and the respondents oppose—three forms of relief in relation to the Loan that are overbroad and unjustified. Those matters are at issue.

2. First, the applicant seeks the appointment of a receiver over the respondent 181 Davenport Retail Inc. (“181 Davenport”). Despite its name, 181 Davenport had nothing to do with the Davenport Project. It simply holds title to a unit within the Davenport Project that is used as a sales presentation gallery for another project under development at Bloor and Yonge in Toronto (the “One Bloor Project”). BFI advanced funds for improvements to that unit under an amending agreement to the underlying loan agreement concerning the Davenport Project. BFI then obtained security against 181 Davenport and over the gallery. Those funds have since been repaid in full, and 181 Davenport was removed as a guarantor and obligor of the Loan pursuant to a subsequent amending agreement. BFI also agreed to discharge its security and instructed its counsel to do so, but BFI went into receivership before this was completed. The applicant knows this but, unfairly, refuses to discharge the security. The appointment of a receiver over 181 Davenport would not be just in these circumstances.

3. Second, the applicant seeks sweeping investigative powers for its proposed receiver that are not contemplated by this Court’s model appointment order. The applicant claims that, absent

these powers, its “ability to recover on the Loan is at risk”. Other than conclusory assertions like this, the applicant offers no evidence for finding there is any such risk. The applicant has not even alleged the sort of conduct that usually justifies investigative powers for a receiver, e.g., fraud or fraudulent conveyances. And though the applicant claims these powers are also needed to discern the true state of affairs of the respondents, the applicant fails to show why the usual receivership powers would be ineffective at achieving this. In sum, the applicant falls well short of demonstrating that the investigative powers it seeks are necessary or appropriate.

4. Finally, the applicant seeks to empower its proposed receiver to assign the respondents into bankruptcy. This is also unjustified. Courts typically grant this power only when parties are already in receivership and when those parties have engaged in prejudicial conduct like misleading receivers or threatening or attempting to dissipate assets. Because these circumstances are not present here, the applicant’s request for this power should be denied.

FACTS

The BFI loan for the Davenport Project

5. This application relates to a loan (the “Loan”) advanced by a BFI entity relating to a condominium development at 181 Davenport Road in Toronto (the “Davenport Project”) spearheaded by Sam Mizrahi. The facts summarized below largely derive from Mr. Mizrahi’s affidavit in the respondents’ application record. The applicant did not file reply evidence and elected not to cross-examine Mr. Mizrahi.

6. BFI advanced an initial \$16 million (approximately) of the Loan to the respondent Northern Citadel Capital Inc. (“NCI”) in 2012 to help finance the Davenport Project.¹ In December 2014,

¹ Respondents’ Application Record Tab 1, Caselines Master: B-1-52, para. 6. B-1-7

BFI and NCI entered into a loan agreement (the “Loan Agreement”) under which BFI advanced additional Loan funds for the Davenport Project.² The Loan Agreement identified NCI as the “Borrower” of the Loan.³ The Loan Agreement also identified the respondent One8One Davenport Inc. (“One8One”) and Mizrahi Soaring Developments Inc. as “Guarantors” of the Loan.⁴ Soaring Developments amalgamated with One8One in January 2015 and continues as One8One.⁵

7. The funds advanced by BFI making up the Loan total approximately \$25 million, exclusive of interest and costs.⁶ The Loan Agreement has been amended seven times,⁷ but only two of those amendments appear relevant to this application, as will be discussed further below.

The BFI loan for the One Bloor Project

8. In 2016, Mr. Mizrahi approached BFI for financing in relation to a separate project: the development of a mixed-use skyscraper at Bloor and Yonge in Toronto (the “One Bloor Project”).⁸

In particular, Mr. Mizrahi sought funds for:

- (a) improvements to a retail unit within the Davenport Project to be used as a sales and presentation gallery (the “One Bloor Gallery”) for the One Bloor Project; and
- (b) the purchase, by 2495159 Ontario Inc. (“249”), of real property at 14 Dundonald Street in Toronto (the “Dundonald Property”) to be dedicated to the City of Toronto

² Respondents’ Application Record Tab 1, Caselines Master: B-1-52, para. 6.

³ Respondents’ Application Record Tab 1, Caselines Master: B-1-53, para. 7.

⁴ Respondents’ Application Record Tab 1, Caselines Master: B-1-53, para. 7.

⁵ Respondents’ Application Record Tab 1, Caselines Master: B-1-53, para. 7.

⁶ Respondents’ Application Record Tab 1, Caselines Master: B-1-53, para. 7.

⁷ Respondents’ Application Record Tab 1, Caselines Master: B-1-52, para. 6.

⁸ Respondents’ Application Record Tab 1, Caselines Master: B-1-53, para. 9.

as parklands in connection with the One Bloor Project.⁹

9. Mr. Mizrahi and BFI (specifically, David Sharpe, who was BFI's CEO, and Graham Marr, who held various senior positions at BFI over time) initially discussed entering into a separate agreement for this financing because it was for a separate project.¹⁰ Ultimately, however, Mr. Sharpe and Mr. Marr informed Mr. Mizrahi that they preferred to proceed by way of an amendment to the Loan Agreement because they believed it would be easier and faster.¹¹

10. Consistent with Mr. Sharpe and Mr. Marr's preference, in November 2016, BFI entered into an amending agreement with the parties to the Loan Agreement, as well as Mizrahi Inc., 249, and 181 Davenport Retail Inc. ("181 Davenport"),¹² which holds title to the One Bloor Gallery.¹³ Under this agreement (the "Bloor-Related Agreement"), BFI advanced \$6,556,500 (the "Bloor-Related Financing) for:

- (a) improvements to the One Bloor Gallery (\$2.5 million);
- (b) 249's the purchase of the Dundonald Property (\$4 million); and
- (c) legal fees (\$56,500).¹⁴

11. Mizrahi Inc. was added as a Borrower under the Bloor-Related Agreement,¹⁵ and it agreed to direct to BFI certain funds it would receive in relation the One Bloor Project (including sales commission and reimbursed costs for the One Bloor Gallery and Dundonald Property) to repay

⁹ Respondents' Application Record Tab 1, Caselines Master: B-1-53, para. 9.

¹⁰ Respondents' Application Record Tab 1, Caselines Master: B-1-54, para. 10.

¹¹ Respondents' Application Record Tab 1, Caselines Master: B-1-54, para. 11.

¹² Supplemental Affidavit of Tyler Ray Tab 1G, Caselines Master: A881-882. A881

¹³ Respondents' Application Record Tab 1, Caselines Master: B-1-54-55, para. 14.

¹⁴ Respondents' Application Record Tab 1, Caselines Master: B-1-54, para. 12.

¹⁵ Supplemental Affidavit of Tyler Ray Exhibit G, Caselines Master: A875. A875

the Loan.¹⁶ 181 Davenport was also added as a Guarantor and Obligor, and 249 as a Borrower and Guarantor.¹⁷ BFI and its counterparties intended that 249, Mizrahi Inc., and 181 Davenport would be released from their duties and obligations under the agreement upon repayment of the Bloor-Related Financing.¹⁸

BFI's Security for the Bloor-Related Financing

12. Through the Bloor-Related Agreement, BFI obtained security over the One Bloor Gallery and the Dundonald Property (the "Security").¹⁹ BFI's security in relation to 181 Davenport and the One Bloor Gallery ranks second to that of KEB Hana Bank Canada ("KEB Bank").²⁰ BFI and its counterparties intended that the Security would be discharged upon repayment of the Bloor-Related Financing.²¹

The repayment of the Bloor-Related Financing

13. In 2020, 249 was prepared to transfer the Dundonald Property to the City of Toronto to fulfil a municipal requirement concerning the One Bloor Project.²² The Bloor-Related Financing needed to be repaid so the property could be transferred free and clear of all encumbrances.²³ Only July 9, 2020, BFI was, accordingly, repaid the sum of \$10,062,593.99, the total amount of the Bloor-Related Financing, plus accrued interest and fees.²⁴

¹⁶ Supplemental Affidavit of Tyler Ray Exhibit G, Caselines Master: A875, paras. 2–3.

¹⁷ Supplemental Affidavit of Tyler Ray Exhibit G, Caselines Master: A878, para. 18.

¹⁸ Respondents' Application Record Tab 1, Caselines Master: B-1-54–55, paras. 13–14.

¹⁹ Respondents' Application Record Tab 1, Caselines Master: B-1-54–55, para. 14.

²⁰ Respondents' Application Record Tab 1, Caselines Master: B-1-55, para. 15.

²¹ Respondents' Application Record Tab 1, Caselines Master: B-1-55, para. 14.

²² Respondents' Application Record Tab 1, Caselines Master: B-1-56, para. 19.

²³ Respondents' Application Record Tab 1, Caselines Master: B-1-56, para. 19.

²⁴ Respondents' Application Record Tab 1, Caselines Master: B-1-56, para. 20.

A875

A878

understanding by discharging its security over the Dundonald Property.²⁹ BFI also subsequently removed Mizrahi Inc. and 249 as borrowers under the Bloor-Related Agreement per pursuant to a December 31, 2020 amending agreement, as shown in Figures 2(a) and 2(b) below.³⁰

Dated as of December 31, 2020

Mizrahi Development Group Inc.
189 Forest Hill Road
Toronto, Ontario
M5P 2N3

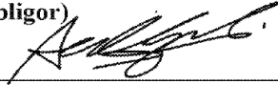
Dear Mr. Mizrahi:

Re: Bridging Finance Inc. as agent for Bridging Income Fund LP (formerly Sprott Bridging Income Fund LP) (the “**Lender**”) loan to Northern Citadel Capital Inc., (collectively, the “**Borrower**”) pursuant to a loan agreement among, *inter alia*, the Borrower and the Lender dated as of December 17, 2014, as amended by letter agreements dated February 24, 2015, March 11, 2015, April 10, 2015, November 27, 2015, June 30, 2016, November 30, 2016 (the “**November Letter**”), November 1, 2017 and May 2, 2018 (collectively, the “**Loan Agreement**”)

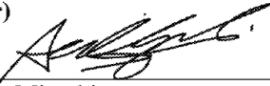
Figure 2(a)

We Acknowledge and Accept the terms and conditions of this Agreement as of this 31th day of December, 2020.

NORTHERN CITADEL CAPITAL INC. (as Borrower and Obligor)

Per: 
Name: Sam Mizrahi
Title: President
I have the authority to bind the corporation

ONE8ONE DAVENPORT INC. (as Guarantor and Obligor)

Per: 
Name: Sam Mizrahi
Title: President

MIZRAHI ENTERPRISES INC. (as Obligor)


Per: 
Name: Sam Mizrahi
Title: President

Figure 2(b)

²⁹ Respondents’ Application Record Tab 1, Caselines Master: B-1-57, para. 22.

³⁰ Respondents’ Application Record Tab 1, Caselines Master: B-1-57, para. 22; Supplemental Affidavit of Tyler Ray Tab 1J, Caselines Master: A903.

16. This amending agreement, which BFI prepared, mistakenly included a signature block identifying Soaring Developments and 181 Retail as guarantors and obligors.³¹ By then, Soaring Developments no longer existed due to its amalgamation with 181 Retail years earlier.³² Mr. Mizrahi did not sign for either of these entities, though, because 181 Retail had fulfilled its obligations to BFI with the repayment of the Bloor-Related Financing.³³ Mr. Mizrahi informed Mr. Sharpe and Mr. Marr of this, and neither of them disputed Mr. Mizrahi on the matter.³⁴ Notably, Mr. Mizrahi communicated this to Mr. Sharpe and Mr. Marr after first inadvertently signing for Soaring Developments and 181 Retail on an earlier draft of the amending agreement.³⁵

BFI's failure to discharge 181 Retail

17. The parties and their counsel were primarily focused on the discharge of the Dundonald Property at the time of the repayment of the Bloor-Related Financing because of time-sensitivity concerning the transfer of that property imposed by the City of Toronto.³⁶ This caused them to overlook the discharging of 181 Retail.³⁷

18. Mr. Mizrahi became aware of this on April 21 2021, when a representative of KEB Bank, asked Mr. Mizrahi about BFI's charge over the One Bloor Gallery.³⁸ Understanding that the registration should have been discharged, Mr. Mizrahi forwarded the e-mail from KEB Bank to Mr. Marr that day and, on April 23, spoke with both Mr. Sharpe and Mr. Marr about this

³¹ Respondents' Application Record Tab 1, Caselines Master: B-1-57, para. 23.

³² Respondents' Application Record Tab 1, Caselines Master: B-1-58, para. 24.

³³ Respondents' Application Record Tab 1, Caselines Master: B-1-58, para. 24.

³⁴ Respondents' Application Record Tab 1, Caselines Master: B-1-58, para. 25.

³⁵ Respondents' Application Record Tab 1, Caselines Master: B-1-58, para. 25.

³⁶ Respondents' Application Record Tab 1, Caselines Master: B-1-58, para. 26.

³⁷ Respondents' Application Record Tab 1, Caselines Master: B-1-58, para. 27.

³⁸ Respondents' Application Record Tab 1, Caselines Master: B-1-58, para. 27.

oversight.³⁹ Each of them verbally confirmed that the registration would be discharged.⁴⁰ Immediately after these discussions, Mr. Mizrahi wrote back to KEB Bank, “I have spoken to Bridging Finance and they will be deleting the registered mortgage charge off title of the property next week.”⁴¹ Mr. Mizrahi forwarded this e-mail to Mr. Marr, who (tellingly) did not contradict Mr. Mizrahi, but instead confirmed he would be speaking to BFI’s counsel shortly thereafter.⁴²

19. BFI’s counsel, however, failed to discharge the registration before BFI went into receivership a week later.⁴³

20. Mr. Mizrahi later spoke to BFI’s counsel, Phil Taylor of Chaitons LLP, about this.⁴⁴ During the call, Mr. Taylor:

- (a) confirmed that Mr. Marr had instructed him to discharge the registration against 181 Retail and that Mr. Marr had advised the applicant of this fact; and
- (b) stated that the discharge was in progress and that the applicant was aware of this fact.⁴⁵

21. Mr. Mizrahi has a recording of this call.⁴⁶ The applicant has not requested production of it.

22. On May 4, four days after the applicant’s appointment as receiver, Mr. Mizrahi e-mailed KEB Bank (copying Mr. Taylor) to confirm that Mr. Taylor was “instructed by Bridging Finance

³⁹ Respondents’ Application Record Tab 1, Caselines Master: B-1-58–59, paras. 27–28.

⁴⁰ Respondents’ Application Record Tab 1, Caselines Master: B-1-59, para. 28.

⁴¹ Respondents’ Application Record Tab 1D, Caselines Master: B-1-85.

⁴² Respondents’ Application Record Tab 1E, Caselines Master: B-1-87–88.

B-1-37

⁴³ [Appointment Order and Endorsement dated April 31, 2021](#).

B-1-44

⁴⁴ Respondents’ Application Record Tab 1, Caselines Master: B-1-60, para. 33.

⁴⁵ Respondents’ Application Record Tab 1, Caselines Master: B-1-60, para. 33.

⁴⁶ Respondents’ Application Record Tab 1, Caselines Master: B-1-60, para. 34.

approximately 10 days ago to remove the 2nd mortgage charge position off title”.⁴⁷ Mr. Taylor did not dispute this. A week later, Mr. Mizrahi again wrote to KEB Hana (and again copying Mr. Taylor) to confirm “we were in the process with Bridgings’ counsel [...] to have the registration deleted”.⁴⁸ Again, Mr. Taylor did not dispute this.

23. PwC refuses to discharge the security against 181 Retail, claiming it is “unaware of any written agreement to that effect.”⁴⁹

DISCUSSION

24. The respondents do not oppose the appointment of a receiver over NCI or One8One but do oppose the appointment of a receiver over 181 Retail because 181 Retail’s debt to BFI has been repaid and the security against 181 Retail should have been discharged. The respondents also oppose the applicant’s request to empower the receiver with investigative authority and the ability to assign the respondents into bankruptcy. The facts and law do not support the appointment of a receiver with the broad powers sought.

A. No grounds for a receiver over 181 Retail

25. 181 Retail is a respondent to this application because—and only because—BFI’s counsel failed to discharge BFI’s security (despite having instructions to do so) before BFI went into receivership.⁵⁰ As the applicant acknowledges, the appointment of a receiver depends in part on whether it is “just” to do so.⁵¹

⁴⁷ Respondents’ Application Record Tab 1D, Caselines Master: B-1-84.

B-1-37

⁴⁸ Respondents’ Application Record Tab 1D, Caselines Master: B-1-83.

⁴⁹ Applicant’s Factum, Caselines Master A771, n.19.

A771

⁵⁰ Respondents’ Application Record Tab 1, Caselines Master: B-1-58, para. 27;

⁵¹ Applicant’s Factum, Caselines Master: A776, para. 32.

A776

26. It would be unjust to appoint a receiver over 181 Retail in these circumstances, particularly when:

- (a) The entirety of the Bloor-Related Funding advanced and owed under the Bloor-Related Agreement has been repaid.⁵²
- (b) The parties intended and understood that 181 Retail (like 249 and Mizrahi Inc.) would be relieved of its duties and obligations to BFI upon repayment of the Bloor-Related Funding.⁵³
- (c) BFI discharged its security over 249, the other party that benefitted from the Bloor-Related Funding,⁵⁴
- (d) BFI entered into an amending agreement that removed 181 Retail as an Obligor and Guarantor of the Loan and removed 249 as a Borrower and Guarantor.⁵⁵
- (e) The debt to BFI at issue in this application relates to different funding advanced to different entities involved in a different project.⁵⁶

27. The respondents respectfully submit that, rather than appoint a receiver over 181 Retail, the Court should direct the applicant to discharge BFI's security against 181 Retail.

28. Caselaw in the estates context where solicitors fail to act on instructions prior to the death of their clients supports this submission. Decisions of this Court have repeatedly given effect to

⁵² Respondents' Application Record Tab 1, Caselines Master: B-1-56, para. 20.

⁵³ Respondents' Application Record Tab 1, Caselines Master: B-1-55, para. 14. *Cf. Sattva Capital Corp. v. Creston Moly Corp.*, [2014 SCC 53](#), para. 57–58 (noting relevance of “surrounding circumstances” in contractual interpretation”).

⁵⁴ Respondents' Application Record Tab 1, Caselines Master: B-1-57, para. 22.

⁵⁵ Supplemental Affidavit of Tyler Ray Tab 1J, Caselines Master: A903.

A904

⁵⁶ Respondents' Application Record Tab 1, Caselines Master: B-1-52, para. 6.

instructions of clients that are not acted upon by their solicitors in time to properly give effect to those instructions.⁵⁷ Here, as in those cases, BFI’s counsel had the necessary authority and direction to proceed but failed to act on those instructions in a timely manner. Through no fault of its own, 181 Retail now faces the consequences of this.

29. An entity’s entry into receivership has effects similar to those of the death of an individual. The respondents cannot discern a meaningful distinction that would call for the Court to act differently here than it would in the estates context and, accordingly, respectfully request the Court to direct the applicant to discharge the security against 181 Retail.

B. No grounds for investigative powers

30. The applicant seeks sweeping investigative powers in its proposed order, which (as shown in Figures 3(a) and 3(b) below) varies significantly from the Commercial List’s model order for a receivership.⁵⁸

(j) to undertake any investigations considered appropriate by the Receiver with respect to the Business or the Property, including, without limitation, with respect to the location and/or disposition of assets reasonably believed to be, or to have been, Property;

Figure 3(a)

⁵⁷ See, e.g., *Blake v. Blake*, [2022 ONSC 4918](#), paras. 17, 20 (noting the “lawyer had all of the necessary authority and direction to proceed”); *Thompson v. Elliott Estate*, 2020 ONSC 1004, [paras. 71, 94](#) (giving effect to instructions where deceased client had “clear intention” in respect of instructions, including that “expectation” that instructions would be acted upon “immediately”); see also *Bank of Montreal v. Chu*, [1994 CanLII 7246](#) (ON SC) (reasoning that party “should not benefit gratuitously as a result of a solicitor’s error” in respect of the registration of documents).

⁵⁸ See, in particular, Applicants’ Application Record Tab 4, Caselines Master: A742.

(s) to examine under oath any person the Receiver reasonably considers to have knowledge of the Property or the affairs of the Respondents in accordance with Rule 34 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194 (the “**Rules of Civil Procedure**”), including, without limitation, any current or former directors or officers of the Respondents or any other entities that have (or at any time had) any liabilities or obligations in respect of the Loan (as defined in the Ray Affidavit);

Figure 3(b)

31. The applicant seeks these investigative powers in large part because of purported concerns about conduct not by the respondents, but by BFI and its representatives.⁵⁹ But the applicant already has broad investigative powers concerning BFI under this Court’s Appointment Order.⁶⁰ The applicant seeks these additional powers without confirming that it is unable to investigate the matters of concern with its existing powers and, apparently, without even trying to do so.⁶¹

32. To the extent the applicant’s concerns also relate to the conduct of the respondents, those concerns are not of the magnitude of those at issue in the majority of cases (including *East Guardian v. Mazur*, 2014 ONSC 6403, relied on by the applicant) where investigative receivers were appointed, which typically involve fraud or fraudulent conveyances.⁶² What’s more, some

⁵⁹ See Motion Record Tab 1, Caselines Master: A13–16, para. 21; Caselines Master: A17–18, para. 29.

⁶⁰ [Appointment Order and Endorsement dated April 31, 2021](#), p. 5, paras. 2(q)–(r).

⁶¹ See Applicants’ Application Record Tab 2, Caselines Master: A57, para. 65 (stating that the applicant has “conducted an examination of a key BFI employee” in respect of one matter of concern “under oath and an unsworn interview of another key BFI employee”).

⁶² See, e.g., *East Guardian v. Mazur*, 2014 ONSC 6403, [para. 3](#) (noting concern that debtor was “in the process of trying to put his assets ... beyond the reach of his creditors”); *Degroote v. DC Entertainment Corp et al.*, 2013 ONSC 7101, [para. 53](#) (finding party seeking investigative receivership “established a

A57

[H 2014 ONSC 6403](#)

B-1-65

[H 2013 ONSC 7101](#)

of the applicant's concerns appear to have little to do with the applicant's ability to recover the debt at issue here.⁶³

33. Whether its concerns are valid or not, the applicant seeks these powers prematurely. The applicant asserts, "Without further insight into the financial situation of the Respondents, the Bridging Receiver's ability to recover on the Loan is at risk."⁶⁴ This ignores that the applicant may well obtain that very insight by virtue of the appointment of a receiver with normal receivership powers. Moreover, the purported "risk" would appear to be overstated: The lack of any allegations (let alone evidence) of fraud on the part of the respondents belies the existence of any such risk.

34. Finally, the applicant suggests that investigative powers are needed so it can "fully identify how the proceeds of the Loan were used".⁶⁵ The applicant's materials contain no evidence or even suggestion that the proceeds of the Loan were used in any improper way. It's unclear, then, why the applicant considers it necessary to conduct such an investigation. And, again, the applicant overlooks that the normal powers of a receivership may lead to that information in any event.

35. At bottom, the applicant seeks roving powers unconnected to any demonstrable need.⁶⁶

strong case in fraud"); *Vale v St. Lawrence Grains*, 2016 ONSC 320, [paras. 7–8](#) (noting prior appointment of investigative receiver in matter after debtor conveyed assets apparently to "avoid[] his creditors").

⁶³ See, e.g., Applicant's Application Record Tab 1, Caselines Master: A14, paras. 21(a) and (c) ("1 Bloor Project & Conflicts of Interest" and "Alleged Cerieco Secret Guarantee", respectively)

A14

⁶⁴ Applicant's Factum, Caselines Master: A782, para. 43.

A781

⁶⁵ Applicant's Factum, Caselines Master: A782, para. 44.

A782

⁶⁶ Indeed, though the applicant claims in its pleading that "no relief is being sought by the Bridging Receiver in respect of [Mizrahi Inc.] and 249 Ontario on this Application", the applicant itself fails to appreciate that the broad investigative powers sought would, effectively, grant the applicant relief against Mizrahi Inc.

The Court of Appeal has expressed immense disfavour with the granting of such powers in circumstances like those here.⁶⁷ Adherence to that authority calls for rejecting the applicant's request for investigative powers here.

C. No grounds for authority to assign the respondents into bankruptcy

36. The applicant's request for the Court to empower its proposed receiver to assign the respondents into bankruptcy is equally problematic. The applicant argues that an order to that effect is appropriate because this Court has done so in prior matters involving an "uncooperative debtor or suspicious circumstances."⁶⁸

37. Neither case relied on by the applicant is on point:

(a) *RBC v. Gustin* involved a party that was already in receivership and, further, that "threatened to remove assets from the Receiver's reach" and stood credibly accused of making "misrepresentations" to the receiver.⁶⁹ Here, in contrast, the respondents are not in receivership, and the applicant does not allege (let alone show) there have been any misrepresentations on the part of the respondents or threats by the respondents to dissipate assets.

(b) *Royal Bank v. Sun Squeeze Juices Inc.* similarly involved a party already in receivership who had, as the Court noted, made payments that potentially amounted to "fraudulent preferences."⁷⁰ Again, these facts are not present (or even alleged) here.

⁶⁷ See *Akagi v. Synergy Group (2000) Inc.*, 2015 ONCA 368, [paras. 1, 100–104](#) (critiquing receivership order as improperly "tantamount to a criminal investigation or a public inquiry" and vacating receivership order as "overreaching" in relation to the needs of the case).

⁶⁸ Applicant's Factum, Caselines Master: A782, para. 47. [A782](#)

⁶⁹ *RBC v. Gustin*, 2019 ONSC 5370, [paras. 4, 5, 8](#).

⁷⁰ *Royal Bank v. Sun Squeeze Juices Inc.*, [1994 CarswellOnt 26](#), paras. 3, 14.

38. The applicant's request is not supported by the facts or law. (It also overlooks the interests of a senior creditor, KEB Bank, which holds a first mortgage and *PPSA* registration over the One Bloor Gallery.) Should the facts of this matter change, nothing prevents the applicant from returning to the Court for further direction and authority as appropriate.

ORDER REQUESTED

39. The respondents respectfully request an order in the form attached to this factum as Schedule "C".

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of October, 2022.



Ewa Krajewska & David Postel

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Akagi v. Synergy Group (2000) Inc.*, [2015 ONCA 368](#)
2. *Bank of Montreal v. Chu*, [1994 CanLII 7246](#)
3. *Blake v. Blake*, [2022 ONSC 4918](#)
4. *Degroote v. DC Entertainment Corp et al.*, [2013 ONSC 7101](#)
5. *East Guardian v. Mazur*, [2014 ONSC 6403](#)
6. *RBC v. Gustin*, [2019 ONSC 5370](#)
7. *Royal Bank v. Sun Squeeze Juices Inc.*, [1994 CarswellOnt 26](#) (ON SC)
8. *Sattva Capital Corp. v. Creston Moly Corp.*, [2014 SCC 53](#)
9. *Thompson v. Elliott Estate*, [2020 ONSC 1004](#)
10. *Vale v St. Lawrence Grains*, [2016 ONSC 320](#)

SCHEDULE "B"
TEXT OF STATUTES, REGULATIONS & BY-LAWS

Nil.

B-1-116

SCHEDULE "C"
DRAFT ORDER

B-1-71

Court File No. 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*

THE HONOURABLE)
) ~~FRIDAY~~, THE ~~29TH~~ DAY
)
CHIEF JUSTICE MORAWETZ) OF ~~SEPTEMBER~~OCTOBER, 2022

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

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by PricewaterhouseCoopers Inc., solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds (in such capacity, the “**Applicant**”), for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), appointing Richter Inc.

(“**Richter**”) as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of each of Northern Citadel Capital Inc. (“**Northern Citadel**”) and, One8One Davenport Inc. (“**One8One**”), ~~and 181 Davenport Retail Inc. (“**181 Retail**”~~ and together with Northern Citadel and 181 Davenport Retail Inc. ~~and One8One~~, the “**Respondents**”), was heard this day by videoconference.

ON READING the Affidavit of Tyler Ray sworn August 8, 2022 and the Exhibits thereto (the “**Ray Affidavit**”), and the Supplemental Affidavit of Tyler Ray sworn September 20, 2022, and the Exhibits thereto;

AND ON READING the Affidavit of Sam Mizrahi sworn October 13, 2022, and the Exhibits thereto;

AND ON READING the written submissions of the Applicant and Respondents;

AND ON ~~and~~ on hearing the submissions of counsel for the Applicant, ~~counsel for the proposed Receiver, and such other parties listed on the counsel slip, no one else appearing although duly served as appears from the Affidavit of Service of Adam Driedger sworn August 15, 2022, and on reading the consent of Richter to act as the Receiver~~ and counsel for the Respondents,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record of the Applicant is hereby abridged and validated such that this Application is properly returnable today, further service thereof is hereby dispensed with, and substitute service thereof via electronic mail is authorized.

INTERPRETATION

2. **THIS COURT ORDERS** that all references herein to the “Respondents” shall mean the Respondents or any one or more of the Respondents.

APPOINTMENT

3. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Richter is hereby appointed Receiver, without security, of all of the present and future assets, undertakings, and properties of each of the ~~Respondents-Northern Capital and One8One~~ (the “Receivership Parties”) acquired for, or used in relation to the business carried on by the ~~Receivership Parties~~Respondents, and all proceeds thereof (collectively, the “**Property**”).

RECEIVER’S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories of the Property, accessing and taking control of the ~~Receivership Parties’~~ Respondents’ bank accounts and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Receivership Parties Respondents (the “**Business**”), including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the Business, or disclaim or cease to perform any contracts of the Receivership Parties Respondents or in respect of the Property;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, insurance brokers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver’s powers and duties, including, without limitation, those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the Business or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Receivership Parties Respondents and to exercise all remedies of the Receivership Parties Respondents in collecting such monies, including, without limitation, to enforce any security held by the Receivership Parties Respondents and to apply for and collect any tax refund owing;
- (g) to settle, extend or compromise any indebtedness owing to the Receivership Parties Respondents;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver’s name or in the name and on behalf of the Receivership Parties Respondents, for any purpose pursuant to this Order;

- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Receivership Parties~~Respondents~~, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to undertake any investigations considered appropriate by the Receiver with respect to the Business or the Property, including, without limitation, with respect to the location and/or disposition of assets reasonably believed to be, or to have been, Property;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may consider appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business as follows:
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver considers advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Receivership Parties~~Respondents~~;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Receivership Parties~~Respondents~~, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any Property owned or leased by the Receivership Parties~~Respondents~~;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Receivership Parties ~~Respondents~~ may have;

~~(s) to examine under oath any person the Receiver reasonably considers to have knowledge of the Property or the affairs of the Respondents in accordance with Rule 34 of the Rules of Civil Procedure, R.R.O. 1990, Reg 194 (the “Rules of Civil Procedure”), including, without limitation, any current or former directors or officers of the Respondents or any other entities that have (or at any time had) any liabilities or obligations in respect of the Loan (as defined in the Ray Affidavit);~~

~~(t) if considered appropriate by the Receiver, to cause the Respondents to file an application for bankruptcy under the BIA and Richter shall be authorized and empowered, but not obligated, to act as trustee in bankruptcy; and~~

~~(u)(s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including opening any mail or other correspondence addressed to the Receivership Parties~~Respondents~~,~~

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Receivership Parties~~Respondents~~, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. THIS COURT ORDERS that (i) the Receivership Parties~~Respondents~~; (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel, financial advisors and shareholders, and all other persons acting on their instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “Persons” and each being a “Person”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or

control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Business, the Property, or the affairs of the Receivership Parties~~Respondents~~, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE RECEIVERSHIP PARTIES RESPONDENTS OR THE PROPERTY

10. **THIS COURT ORDERS** that no Proceeding against or in respect of the Receivership Parties Respondents or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under

way against or in respect of the Receivership Parties Respondents or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

12. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Receivership Parties Respondents, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Receivership Parties Respondents or statutory or regulatory mandates for the supply of goods and/or services, including, without limitation, all computer software, communication and other

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

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER’S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

22. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider

necessary or desirable (the “**Receiver’s Borrowings**”), provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures and the fees and expenses of the Receiver and its counsel. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the Receiver’s Borrowings, together with interest and charges thereon, in priority to all Encumbrances, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

26. **THIS COURT ORDERS** that the Guide Concerning Commercial List E-Service (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.richter.ca/insolvencycase/northern-citadel-capital-inc--one8one-davenport-inc--and-181-davenport-retail-inc/>.

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

GENERAL

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

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Receivership Parties~~Respondents~~.

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

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

32. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid

by the Receiver from the Receivership Parties' Respondents' estates with such priority and at such time as this Court may determine.

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

34. **THIS COURT ORDERS** that the Receiver, its counsel and counsel for the Applicant may serve or distribute this Order, or any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the creditors or any other stakeholders or other interested parties of the Receivership Parties Respondents and their advisors (if any). For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

DISCHARGE OF SECURITY

35. THIS COURT ORDERS that the Applicant discharge or cause to be discharged any security under the control of the Applicant against, over, or in relation to 181 Davenport Retail Inc. or its properties.

SCHEDULE "A"

Receiver's Certificate

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Richter Inc., the receiver and manager (the "**Receiver**") of the assets, undertakings and properties of each of Northern Citadel Capital Inc. ("**Northern Citadel**") ~~and~~ One8One Davenport Inc. ("**One8One**"), ~~and 181 Davenport Retail Inc. ("**181 Retail**" and~~ together with Northern Citadel ~~and One8One~~, the "**Respondents Receivership Parties**"), acquired for, or used in relation to a business carried on by the ~~Respondents~~ **Receivership Parties** (collectively, the "**Property**"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ~~23rd~~ 29th day of ~~September~~ October, 2022 (the "**Order**") made in an application having Court File No. CV-22-00685200-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$, being part of the total principal sum of \$500,000 which the Receiver is authorized to borrow under and pursuant to the Order.

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

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to

the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

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

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the _____ day of MONTH, 2022.

Richter Inc., solely in its capacity as Receiver of the Property of the Receivership Parties~~Respondents~~, and not in its personal capacity

Per:

_____ Name:

Title:

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

PricewaterhouseCoopers Inc.
in its capacity as receiver and manager of Bridging Finance Inc. and
certain related entities and investment funds)

- and - **Northern Citadel Capital Inc., One8One Davenport
and 181 Davenport Retail Inc.**

Applicant

Resp

Court File No. CV-22-0068520

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

Proceedings commenced at Toronto, Ontario

**ORDER
(Appointing Receiver)**

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Lawyers for the Applicant

WATERHOUSECOOPERS INC

-and-

NORTHERN CITADEL CAPITAL INC

B-1

Court File No. CV-22-006852

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

PROCEEDING COMMENCED AT TORONTO

RESPONDENTS' FACTUM

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B-1