

Court File No: CV-21-0066512800CL

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

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

**BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT INC., and
CIM BAYVIEW CREEK INC.**

Respondents

**MOTION RECORD
(Returnable August 11, 2022)**

June 17, 2022

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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- and -

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I N D E X

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Tab 1

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

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

**BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT INC., and
CIM BAYVIEW CREEK INC.**

Respondents

**NOTICE OF MOTION
(Returnable August 11, 2022)**

msi Spergel Inc. (“**Spergel**”), in its capacity as Court-appointed receiver (in such capacity, the “**Receiver**”) of all the assets, undertakings and properties of Bayview Creek (CIM) LP, CIM Invests Development Inc. and CIM Bayview Creek Inc. (collectively, the “**Debtors**”), will make a motion to a judge presiding over the Commercial List on Thursday, August 11, 2022 at 10:00 a.m. or as soon after that time as the motion can be heard by Judicial Video Conference via Zoom, Toronto, Ontario.

THE PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THIS MOTION IS FOR:

1. An Order substantially in the form attached at Tab 3 of the Motion Record:
 - (a) abridging the time for service of the Notice of Motion and the Motion Record and validating service so that the motion is properly returnable on August 11, 2022 and dispensing with the requirement for any further service thereof;
 - (b) approving the first report of the Receiver dated June 17, 2022 and the appendices thereto (the “**First Report**”) and the activities of the Receiver described therein;

- (c) approving the Receiver's Interim Statement of Receipts and Disbursements as at June 14, 2022;
 - (d) authorizing and directing the Receiver to execute a Listing Agreement (the "**Listing Agreement**") between the Receiver and Colliers International ("**Colliers**") and to take such steps as the Receiver deems necessary or advisable to carry out the terms thereof;
 - (e) authorizing and directing the Receiver, with Colliers as its real estate consultant, to carry out the sale process (the "**Sale Process**"), as described in the First Report and to take such steps and execute such documentation as the Receiver considers necessary or desirable in carrying out its obligations thereunder, subject to prior approval of this Court being obtained before completion of any transaction under the Sale Process; and
 - (f) sealing certain Confidential Appendices to the First Report, including, the unredacted copy of the Listing Proposal and the appraisals obtained by the Receiver from each of Antec Appraisal Group Inc. and Colliers International Realty Advisors Inc. (collectively, the "**Appraisals**"), pending further order of the Court.
2. Such other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (a) On March 2, 2022, Spergel was appointed Receiver by this Court pursuant to the Order of the Honourable Mr. Justice Cavanagh (the "**Appointment Order**");
- (b) paragraph 3(j) of the Appointment Order authorizes the Receiver to market any or all the Property, including advertising and soliciting offers in respect of the Property, or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (c) paragraph 3(k) the Appointment Order authorizes the Receiver to sell the Property,

subject to Court approval, having regard to the monetary limits set out therein;

- (d) paragraph 3(1) of the Appointment Order authorizes the Receiver to apply for a 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;
- (e) the Receiver has obtained two listing proposals, from each of Colliers and CBRE Limited, as well as the Appraisals, as contemplated by paragraph 3(d) of the Appointment Order;
- (f) the proposed Sale Process and the terms of the listing proposals are summarized in the First Report;
- (g) the Receiver is satisfied that the Sale Process represents the most efficient and fair process to be administered in the circumstances, that will sufficiently expose the Property for sale to the market place and generate maximum value;
- (h) in furtherance of the terms of the Appointment Order, the Receiver brings this motion for approval of the Sale Process;
- (i) certain information was redacted from the public record and its disclosure could potentially impair the value maximizing purpose of the Sale Process and such limited redaction (i) aligns with the purpose of the Sale Process and the interest promoted therein; (ii) is fair and reasonable in the circumstances; and (iii) will achieve the desired benefit without unduly impairing the openness of the Court's process;
- (j) the provisions of the *Bankruptcy and Insolvency Act* and the *Courts of Justice Act* and their inherent and equitable jurisdiction of this Court;
- (k) pursuant to paragraph 26 of the Appointment Order, the Receiver is authorized to apply to this Court for advice and direction in the discharge of its powers and duties;

- (l) rules 1.04, 2.03, 3.02, and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;
- (m) section 249 of the *Bankruptcy and Insolvency Act*;
- (n) section 137(2) of the *Courts of Justice Act*; and
- (o) such further and other grounds as counsel may advise and this Court may permit.

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

- (a) the Receiver's First Report to the Court dated June 17, 2022; and
- (b) such further and other material as counsel may advise and this Court may permit.

June 17, 2022

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DUCA FINANCIAL SERVICES CREDIT UNION LTD.

BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT INC., and CIM BAYVIEW CREEK INC.

- and -

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION
(Returnable August 11, 2022)**

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Tab 2

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

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

**BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT INC., and
CIM BAYVIEW CREEK INC.**

Respondents

**FIRST REPORT OF MSI SPERGEL INC.
IN ITS CAPACITY AS THE RECEIVER OF
BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT INC., and
CIM BAYVIEW CREEK INC.**

June 17, 2022

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APPENDICES

1. Receivership Order of Mr. Justice Cavanagh dated March 2, 2022
2. Endorsement of Mr. Justice Cavanagh dated March 2, 2022
3. City of Richmond Hill - Statement of Taxes dated March 11, 2022
4. DUCA Financial Services Credit Union Ltd. - Mortgage Discharge Statement
5. Bryton Capital Corp. GP Ltd. - Mortgage Discharge Statement
6. Summary of Listing Proposals
7. Receiver's Interim Statement of Receipts and Disbursements at June 14, 2022

CONFIDENTIAL APPENDICES

- A. Colliers International Realty Advisors Inc. - Appraisal Report for 10747 Bayview Avenue, Richmond Hill, Ontario
- B. Antec Appraisal Group Inc. - Appraisal Report for 10747 Bayview Avenue, Richmond Hill, Ontario
- C. Colliers International Listing Proposal with market valuation

I. APPOINTMENT AND BACKGROUND

1. This first report ("**First Report**") is filed by msi Spergel Inc. ("**Spergel**") in its capacity as the Court-Appointed Receiver (in such capacity, the "**Receiver**") of the following entities (collectively, the "**Debtors**"):
 - i. Bayview Creek (CIM) LP. ("**LP**");
 - ii. CIM Invests Development Inc. ("**Invests**"); and
 - iii. CIM Bayview Creek Inc. ("**Bayview**").
2. Spergel was appointed as the Receiver of all of the assets, undertakings and property of the Debtors by the Order of the Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on March 2, 2022 (the "**Receivership Order**"). A Copy of the Receivership Order is attached to this First Report as **Appendix "1"**. A copy of the Endorsement of the Honourable Mr. Justice Cavanagh dated March 2, 2022 (the "**Endorsement**") is attached to this First Report as **Appendix "2"**.
3. Bayview Creek (CIM) LP is a limited partnership with addresses in Markham and Richmond Hill, Ontario.
4. CIM Invests Development Inc. is a federal corporation with a registered office in Markham, Ontario.
5. CIM Bayview Creek Inc. is a federal corporation with a registered office in Markham, Ontario.
6. Bayview is the registered owner of the real property municipality known as 10747 Bayview Avenue, Richmond Hill, Ontario (the "**Real Property**"), more particularly described as Part of Lot 25, Concession 2, E.Y.S. (Markham), Parts 1 and 2 on Plan 65R-31680, Town of Richmond Hill, Regional Municipality of York.
7. The Receiver has retained Borden Ladner Gervais LLP (the "**Receiver's Counsel**" or "**BLG**") as its independent legal counsel.

II. PURPOSE OF THIS FIRST REPORT AND DISCLAIMER

8. The purpose of this First Report is to report to the Court regarding the Receiver's activities and conduct since the Receiver's appointment dated March 2, 2022, and to seek an Order from this Court for the following:
 - (a) approving the First Report of the Receiver and the activities of the Receiver described therein;
 - (b) approving the Receiver's Interim Statement of Receipts and Disbursements as at June 14, 2022;
 - (c) authorizing and directing the Receiver to execute a listing agreement (the "**Listing Agreement**") between the Receiver and Colliers International ("**Colliers**") and to take such steps as the Receiver deems necessary or advisable to carry out the terms thereof;
 - (d) authorizing and directing the Receiver, with Colliers as its real estate consultant, to carry out the sale process (the "**Sale Process**"), as described in the First Report and to take such steps and execute such documentation as the Receiver considers necessary or desirable in carrying out its obligations thereunder, subject to prior approval of this Court being obtained before completion of any transaction under the Sale Process; and
 - (e) sealing certain Confidential Appendices to the First Report, including, the Colliers Listing Proposal and the appraisals obtained by the Receiver from each of Antec Appraisal Group Inc. and Colliers International Realty Advisors Inc. (collectively, the "**Appraisals**"), pending further Order of the Court.
9. The Receiver will not assume responsibility or liability for losses incurred by the reader due to the circulation, publication, reproduction or use of this First Report for any other purpose.
10. In preparing this First Report, the Receiver has relied upon certain information provided to it by the Debtors and or its principals. The Receiver has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to such information.
11. Unless otherwise stated, all monetary amounts contained in this First Report are expressed in Canadian dollars.

III. ACTIVITIES OF THE RECEIVER

12. Immediately upon its appointment, the Receiver directly, or through the Receiver's Counsel, attended to the following:
 - i. secured possession of the Real Property and attended to all necessary repairs and maintenance, where applicable;
 - ii. arranged for twice weekly security inspections of the Real Property;
 - iii. arranged for funding and the issuance of a Receiver Certificate No 1 (the "**Certificate**") in the amount of \$50,000, which Certificate was funded by DUCA Financial Services Credit Union Ltd. ("**DUCA**");
 - iv. opened a dedicated trust account for the receivership entities;
 - v. arranged for two Appraisals to be completed on the Real Property;
 - vi. arranged for the registration of the Receiver's interest on the title to the Real Property;
 - vii. arranged for liability insurance in the name of the Receiver;
 - viii. notified the office of the Superintendent of Bankruptcy of its appointment as Receiver;
 - ix. prepared and filed all documents mandated by the *Bankruptcy and Insolvency Act*;
 - x. held various discussions and communications with stakeholders pertaining to the marketing and sale of the Real Property; and
 - xi. communicated with the Canada Revenue Agency ("**CRA**") with respect to each of the Debtors.
13. The Receiver contacted the City of Richmond Hill with respect to the property tax arrears and was provided with a Statement of Taxes dated March 11, 2022, which is attached as **Appendix "3"**, which shows a current account balance of \$270,959.93.

14. The Receiver has asked BLG to review the security held by each of DUCA and Bryton Capital Corp. GP Ltd. ("**Bryton**") and to issue security opinions with respect to such security. BLG has delivered its opinions to the Receiver with respect to the security held by each of DUCA and Bryton. The Receiver will report on the review of the DUCA security and the Bryton security in a future report to the Court.
15. The Receiver has been provided with a DUCA mortgage statement dated June 1, 2022, which shows a balance outstanding of \$23,947,782.91. The DUCA mortgage statement is attached as **Appendix "4"**.
16. The Receiver has been provided with a Bryton mortgage statement as at June 3, 2022, which shows a balance outstanding of \$29,179,939.08. The Bryton mortgage statement is attached as **Appendix "5"**.
17. The Receiver has not taken any steps at this time to verify the amounts claimed by each of DUCA and Bryton. Any diligence on the amounts claimed by each of DUCA and Bryton will be undertaken prior to any motion brought by the Receiver to the Court for an Order authorizing a distribution of any realizations in these proceedings.

IV. PROPOSED SALE PROCESS

18. Pursuant to the terms of the Receivership Order, the Receiver is authorized to market any or all of the Property, including advertising and soliciting offers in respect of the Property, or any part or parts thereof, and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.
19. The sole asset of the Debtors is the Real Property.
20. The Receiver engaged the services of Colliers International Realty Advisors Inc. ("**Colliers Realty Advisors**") and Antec Appraisal Group Inc. ("**Antec**") to attend at and conduct a full narrative appraisal of the Real Property. The Receiver obtained the Appraisals in relation to the Real Property from Colliers Realty Advisors on March 30, 2022 and from Antec on April 29, 2022. Copies of the

Appraisals are attached to this First Report as **Confidential Appendices “A” and “B”**.

21. The Receiver requested listing proposals from CBRE Limited (“**CBRE**”) and Colliers. A summary of their listing proposals is attached at **Appendix “6”**. A copy of the Colliers listing proposal is attached as **Confidential Appendix “C”**. The Colliers listing proposal includes a market valuation.
22. The Receiver recommends proceeding with the Colliers listing proposal for the following reasons:
 - The commission structure is lower;
 - The market valuation exceeds the appraised values; and
 - Colliers is well acquainted with the Real Property.
23. In order to provide third parties with an opportunity to consider an acquisition of the Real Property, the Receiver is proposing to market the Real Property for sale for a period of approximately five weeks (the “**Sale Process**”). The Receiver has developed the Sale Process only after it had extensive discussions with various stakeholders about a path forward to market and sell the Real Property.
24. The Receiver and Receiver’s Counsel had various discussions with counsel for Bryton about a possible motion to approve a stalking horse sale process (the “**Stalking Horse Sale Process**”), whereby Bryton would act as a stalking horse purchaser, on the economic terms that was largely similar to the transaction that the Bryton sought Court approval of on August 11, 2021, which was dismissed by the Court pursuant to the Endorsement dated March 2, 2022 (the “**Proposed Bryton Transaction**”).
25. As part of these discussions, the Receiver and the Receiver’s Counsel also had discussions with the other key stakeholders in these proceedings about the proposed Stalking Horse Sale Process, with a view to finding a consensual path forward on a sale process.
26. As part of the proposed Stalking Horse Sale Process, the Receiver proposed to Bryton that a break fee in the amount of 2 percent (the “**Break Fee**”) would be paid

to Bryton, in the event that the Stalking Horse Sale Process yielded a superior bid to the Proposed Bryton Transaction, but that Bryton would agree that in exchange for the payment of the Break Fee, the Receiver would be at liberty to seek an Approval and Vesting Order (“**AVO**”) in respect of the sale of the Real Property to a third party with a superior bid on an unopposed basis, which AVO would vest out the option that Bryton holds in respect of the Real Property.

27. Unfortunately, the Receiver could not come to an agreement with Bryton on terms that the Receiver could move forward with a motion to approve the Stalking Horse Sale Process. As a result, the Receiver did not pursue these discussions any further with counsel for Bryton and the Receiver’s Counsel advised counsel for Bryton and counsel for the other stakeholders, that the Receiver would be bringing a motion to approve a sale process in respect of the Real Property.
28. The Sale Process proposed herein is designed to ensure that the marketing process is fair and reasonable, and prospective interested parties have the ability to make an offer to purchase the Real Property.
29. The principal elements of the Sale Process are as follows:
 - a. A transparent unpriced tender process with a bid deadline date;
 - b. As soon as is reasonably possible, Colliers will distribute marketing material notifying prospective purchasers of the existence of the Sale Process and list the property on the Multiple Listing Service (“**MLS**”) inviting prospective purchasers to express their interest in making an offer in respect of the Real Property, pursuant to the terms of the Sale Process;
 - c. Potential Bidders that wish to commence due diligence will be required to execute a non-disclosure agreement (“**NDA**”);
 - d. Upon execution of the NDA, the Receiver, in conjunction with Colliers, will determine if the potential bidder has a bona fide interest in pursuing a transaction and thus deem them a “**Qualified Bidder**”;

- e. Colliers in conjunction with the Receiver will prepare, a confidential information memorandum (“**CIM**”), which will provide, among other things, information considered relevant to the Sale Process. The CIM will be sent to each Qualified Bidder;
- f. The Receiver and Colliers will give each Qualified Bidder access to due diligence materials and information relating to the Real Property;
- g. Due diligence access may include access to an electronic data room (“**Data Room**”), on-site inspections, and other matters which a Qualified Bidder may reasonably request and as to which the Receiver may agree;
- h. A binding Agreement of Purchase and Sale (“**APS**”), based on a form of APS provided by the Receiver, must be submitted in writing to the Receiver by no later than 5:00 p.m. (EST) on September 29, 2022 (“**Bid Deadline**”);
- i. The Receiver, in consultation with the Colliers, may extend the Bid Deadline, once, but is not obligated to do so. If the Bid Deadline is extended, the Receiver will promptly notify all Qualified Bidders;
- j. A Binding APS must comply with all of the following:
 - i. The bid is an offer to purchase the Real Property on terms and conditions acceptable to the Receiver and delivered to the Receiver prior to the Bid Deadline;
 - ii. It is duly authorized and executed and includes a purchase price for the Real Property expressed in Canadian dollars (the “**Purchase Price**”), together with all exhibits, schedules, and all applicable ancillary agreements thereto;
 - iii. Includes a letter of acknowledgement stating that the Qualified

bidder's offer is irrevocable and open for acceptance until a successful bidder is selected by the Receiver;

- iv. Is accompanied by written evidence of a firm, irrevocable commitment for financing or other evidence satisfactory to the Receiver, at its sole discretion, of the ability of the Qualified Bidder to consummate the proposed transaction and pay the Purchase Price;
- v. It fully discloses the identity of each entity that will be bidding for the Real Property, or otherwise sponsoring, financing, participating, or benefiting from such bid;
- vi. It includes an acknowledgement and representation from the Qualified Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Real Property and the Receiver prior to making its bid, (ii) it has relied solely upon its own independent review, investigation, and/or inspection of any documents in making its bid, and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, regarding the Real Property, the Debtors, or the completeness of any information provided in connection therewith;
- vii. It includes evidence, in form and substance reasonably satisfactory to the Receiver, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the binding APS submitted by the Qualified Bidder;
- viii. Provides a deposit in the amount of not less than 5% of the Purchase Price offered by the Qualified Bidder (the "**Deposit**");

- ix. It is received by the Receiver by the Bid Deadline; and
 - x. The bid contemplates closing the transaction set out within 20 Business Days (the “**Closing Date**”) of the granting of an AVO by the Court.
- k. A binding APS will be considered if, among other criteria set out in the Sale Process, it meets the following minimum criteria:
- i. It must be a superior offer, defined as a credible, reasonably certain and financially viable offer made by a Qualified Bidder, the terms of which offer a material recovery to the stakeholders in excess of the obligations owing to DUCA and Bryton on account of their mortgages, property tax arrears and the existing Court-Ordered charges, set-out in the Receivership Order and the Order of the Honourable Mr. Justice Cavanagh dated November 27, 2020.
 - l. The Receiver will review and evaluate each binding APS and: (i) the Receiver may identify the highest bidder/superior offer for the Real Property (the “**Successful Bid**”), or (ii) if no Binding APS emerges from the Sale Process, that the Receiver is prepared to recommend to the Court for approval, the Receiver will report on the outcome of the Sale Process and provide its recommendation on next steps.
30. The Receiver notes that the proposed timeframe set out above is condensed, but the Receiver believes that the deadlines proposed in the Sale Process are reasonable in the circumstances.
31. The Receiver is of the view that, in the circumstances, the proposed Sales Process represents the best opportunity to identify a potential sale for the Real Property and to maximize value for the benefit of its stakeholders.

V. REQUEST FOR A SEALING ORDER

32. The Receiver is seeking a sealing order in respect of the Confidential Appendices to this First Report as they each contain commercially sensitive information, the release of which prior to the completion of a transaction would be prejudicial to the stakeholders of the Debtors' estate.

VI. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

33. Attached to this First Report as **Appendix "7"** is the Receiver's Interim Statement of Receipts and Disbursements as of June 14, 2022.

VII. RECOMMENDATION

34. For the reasons outlined in this First Report, the Receiver respectfully requests that the Court grant the relief specified at paragraph 8 of this First Report.

Dated at Hamilton, Ontario this 17th day of June, 2022.

msi Spergel Inc.

solely in its capacity as the Court-Appointed Receiver of the Debtors and not in its personal or corporate capacity.

Per:



Trevor B. Pringle, CFE, CIRP, LIT
Partner

Appendix 1



Electronically issued : 08-Mar-2022
Délivré par voie électronique : 08-Mar-2022
Toronto

Court File No. CV-21-0066512800CL

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) **WEDNESDAY, THE 2nd**
)
JUSTICE CAVANAGH) **DAY OF MARCH, 2022**

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

**BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT INC., and
CIM BAYVIEW CREEK INC.**

Respondents

**ORDER
(appointing Receiver)**

THIS APPLICATION made by the DUCA Financial Services Credit Union Ltd. (“**DUCA**”) 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 msi Spergel Inc. as receiver (in such capacities, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Bayview Creek (CIM) LP (“**Bayview LP**”), CIM Invests Development Inc. (“**CIM Invests**”) and CIM Bayview Creek Inc. (“**Bayview Inc.**”) (collectively, the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, was heard on August 11, 2021, by Zoom videoconference due to the COVID-19 pandemic, was taken under reserve at the conclusion of the hearing with the Court’s Endorsement being released today.

ON READING the affidavits of Riz Ahmad sworn July 2 and 15, 2021, and of Bryan McWatt, sworn July 12, 2021, including the Exhibits thereto and on hearing the submissions of

counsel for DUCA and the Debtor, no one else appearing although duly served as appears from the affidavits of service of Carmen Yuen, and on reading the consent of msi Spergel Inc. to act as the Receiver,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, msi Spergel Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof as well as PT LT 25, CON 2, (MKM), PTS 1 & 2, PL65R31680; TOWN OF RICHMOND HILL, municipally known as 10747 Bayview Avenue, Richmond Hill, Ontario (the "Property").

RECEIVER'S POWERS

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

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

- (c) to manage, operate, and carry on the business of the Debtor, 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 cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (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 Debtor, 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 Debtor, 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 market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000.00, provided that the aggregate consideration for all such transactions does not exceed \$500,000.00; 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;
- (l) 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;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) 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 Debtor;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its 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.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, 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 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor 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 Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtor, 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 Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor 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

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

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor 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 Debtor 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 Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor 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

12. 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

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

PIPEDA

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

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. 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

16. 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

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless

otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA as well as the DIP Lender's Charge as defined in this Court's order of November 27, 2020 ("DIP Lender's Charge"), which, for greater certainty, shall have priority over the Receiver's Charge.

18. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its 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.

19. 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

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$200,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the

charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA BIA as well as the DIP Lender's Charge which, for greater certainty, shall have priority over the Receiver's Borrowings Charge.

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

22. 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 amount borrowed by it pursuant to this Order.

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

SERVICE AND NOTICE

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

25. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile

transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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

26. 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.

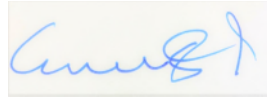
27. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

28. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the 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.

29. 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.

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

31. THIS COURT ORDERS that the order of Schabas J. dated September 18, 2020, is varied to the extent necessary to permit the Receiver to exercise its powers under this Order.



Digitally signed by
Mr. Justice Cavanagh

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that msi Spergel Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of Bayview Creek (CIM) LP, CIM Invests Development Inc., and CIM Bayview Creek Inc. (collectively, the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof and the PT LT 25, CON 2, (MKM), PTS 1 & 2, PL65R31680; TOWN OF RICHMOND HILL, municipally known as 10747 Bayview Avenue, Richmond Hill, Ontario (the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 2nd day of March, 2022 (the "**Order**") made in an action having Court file number , has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

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

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

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

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

DATED the ____ day of _____, 2022.

msi Spergel Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

Appendix 2

Court File Number: CV-21-00662099-00CL
CV-21-00665128-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

BRYTON CAPITAL CORP. GP LTD. and BAYVIEW CREEK RESIDENCES INC.
(formerly known as BRYTON CREEK RESIDENCES INC.)

Applicants

AND

**CIM BAYVIEW CREEK INC., GRANT THORNTON LIMITED IN ITS CAPACITY AS
THE BANKRUPTCY TRUSTEE OF CIM BAYVIEW CREEK INC., BAYVIEW CREEK
(CIM) LP, 10502715 CANADA INC., MNP LTD. IN ITS CAPACITY AS THE
BANKRUPTCY TRUSTEE OF BAYVIEW CREEK (CIM) LP AND 10502715
CANADA INC., GR (CAN) INVESTMENT CO., LTD., MONEST FINANCIAL INC.,
TRACY HUI, JOJO HUI, CARDINAL ADVISORY LTD., and THE CORPORATION
OF THE CITY OF RICHMOND HILL**

Respondents

-and-

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

AND

**BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT INC., and CIM
BAYVIEW CREEK INC.**

Respondents

Case Management Yes No by Judge:

Counsel	Telephone No:	Email/Facsimile No:
Robert Choi, Adam Beyhum and Aram Keyvani for Bryton Capital Corp. GP Ltd.		
John Russo for RSM Canada Inc. in its capacity as privately appointed receiver of CIM Bayview Creek Inc., Bayview Creek (CIM) LP and 10502715 Canada Inc.		
Adam Slavens, Jonathan Silver and Mike Noel for The Enforcement Committee of the Debenture Holders		
E. Patrick Shea for GR (Can) Investments Co. Ltd. and Monest Financial inc.		
John N. Birch for Grant Thornton Limited in its former capacity as proposal trustee and current capacity as trustee in bankruptcy of CIM Bayview Creek Inc.		
Rory McGovern for Cardinal Advisory Limited		

Order Direction for Registrar **(No formal order need be taken out)**
 Above action transferred to the Commercial List at Toronto **(No formal order need be taken out)**

Adjourned to: _____
 Time Table approved (as follows): _____

DATE OF HEARING: August 11, 2021

ENDORSEMENT

Introduction

[1] Two applications were heard together.

[2] In the first application, the Applicants Bryton Capital Corp. GP Ltd. (“Bryton Capital”) and Bayview Creek Residences Inc. (formerly known as Bryton Creek Residences Inc.) (“Bryton Creek”) (together, “Bryton”) apply for an order:

- a. directing and approving the sale of a property in Richmond Hill (the “Property”) by RSM Canada Limited, in its capacity as the privately appointed receiver over the property of CIM Bayview Creek Inc. (“CIM Bayview”), Bayview Creek (CIM) LP, 10502715 Canada Inc. (collectively, the “Debtors”) as contemplated by the terms of Bryton Capital Corp. GP Ltd.’s mortgage registered on title to the Property and the agreement of purchase and sale between the Debtors and Bayview Creek Residences Inc.;
- b. vesting title to the Property free and clear of all encumbrances;
- c. declaring that any proceedings commenced after December 21, 2020 relating to the validity of the Option (as defined herein) are barred by the principles of *res judicata* and abuse of process;
- d. in the alternative to the relief sought in c., above, declaring that no relief may be granted to, among other things, set aside the Option pursuant to the *Fraudulent Conveyances Act*, RSO 1990, c. A.33, *Assignments and Preferences Act*, RSO 1990, c. A.33, or the oppression remedy pursuant to section 241 of the *Canada Business Corporations Act*, RSC, 1985, c. C-44;
- e. an order declaring that any claims brought under, among other things, ss. 95 and 96 of the *Bankruptcy and Insolvency Act* relating to the Option shall have no effect on the validity or enforceability of the Option, together with an order dismissing those claims.

[3] The second application is brought by DUCA Financial Services Credit Union Limited (“DUCA”), the first ranking mortgagee of the property, seeking appointment of msi Spergel Inc., a licensed trustee, as receiver of the assets, properties and undertakings of the Debtors, including the Property.

[4] For the following reasons, the application by Bryton is dismissed and the application by DUCA is granted.

Factual Background

[5] This application concerns the Property which is a residential development property located in Richmond Hill, Ontario.

Parties

[6] Bryton Capital is a real estate developer and holds a second ranking mortgage on the Property. Bryton Creek is the optionee under an option to purchase the Property (the “Option”).

[7] The Option was assigned by Bryton Creek to itself and 10747 Bayview Mortgage Corp. on June 16, 2021, as permitted by the terms of the Option.

[8] CIM Bayview, as bare trustee for Bayview LP, holds title to the Property. The general partner for Bayview LP is 10502715 Canada Inc. (“105 Canada”).

[9] CIM Bayview, Bayview LP and 105 Canada (“Vendors”) were the Vendors under the Option and the related agreement of purchase and sale (“APS”). All of the Vendors are now bankrupt. Jiubin Feng is the director of the Vendors.

[10] Grant Thornton Limited is the Trustee in Bankruptcy for CIM Bayview.

[11] MNP Ltd. is the Trustee in Bankruptcy for Bayview LP and 105 Canada.

[12] DUCA holds a first-ranking mortgage registered on title to the Property securing repayment of \$20,720,000.

[13] GR (Can) Investment Co. Ltd., together with Monest Financial Inc. (the “Third Mortgagees”) registered a third mortgage against the Property.

[14] Jojo Hui and Tracy Hui are members of the Enforcement Committee of the Debenture Holders (the “Debentureholders”) who, in 2018, enter into a Subscription Agreement and received three year term secured redeemable debentures under which they advanced \$7,630,000 to CIM International Group Inc. (“CIM International”) to develop the Property. In a separate action, they obtained leave to issue a Certificate of Pending Litigation which was registered against the Property.

[15] RSM Canada Limited is the private receiver appointed by Bryton Capital pursuant to the terms of Bryton Capital’s Mortgage and General Security Agreement.

Factual background

[16] Some of the factual background to these applications is set out in my earlier decision in these proceedings reported at 2021 ONSC 220, at paras. 12-33.

[17] The applications relate to an Option Agreement dated June 3, 2019 under which the CIM Group granted to Bryton Creek in an irrevocable option to purchase the Property pursuant to an agreement of purchase and sale dated as of June 3, 2019. The Option was amended on July 1, 2020.

[18] On October 29, 2020, CIM Bayview filed a Notice of Intention to make a Proposal (“NOI”) under the *Bankruptcy and Insolvency Act*. Grant Thornton Limited was appointed as the proposal trustee for CIM Bayview.

[19] In the NOI proceeding, CIM Bayview sought an order approving a sales process for the sale of the property. Bryton opposed this order on the ground that it had a valid and enforceable option to purchase the Property. On November 27, 2020, I made an order extending the date for filing a proposal under the BIA and extending the dates for the exercise of the Option and for completion of a purchase of the Property under the Option.

[20] I ordered that the motion brought by Bryton in relation to the Option be scheduled for hearing on December 21, 2020.

[21] CIM Bayview brought a motion for an order (i) declaring that its notice to disclaim in the Option is valid and effective; (ii) declaring that the Option be vested out in furtherance of a sales process in the NOI insolvency proceeding; (iii) declaring that the Option violated federal law because it constitutes a criminal rate of interest and provided for an increase charge on amounts in arrears under a mortgage loan made by CIM Bayview to Bryton Capital.

[22] Bryton Capital and Bryton Creek brought a motion for an order (i) that the Option is not to be disclaimed or resiliated, (ii) declaring that Bryton Creek not be restrained from exercising the Option or, alternatively, permitting it to exercise the Option; and (iii) directing the Debtors to comply with the terms of the Option and complete the sale of the Property to Bryton Creek.

[23] Grant Thornton, as NOI trustee, did not bring a motion on December 21, 2020 but, in its factum, requested an order declaring that (a) the Option was void as against it as a transfer at undervalue; and (b) payments made by CIM Bayview to Bryton Capital as a break fee when the Option was amended were void as a preference.

[24] I released my decision on this motion on January 12, 2021. The motion by CIM Bayview was dismissed. The motion by Bryton Capital and Bryton Creek was substantially successful, and a declaration was made that Bryton Creek is at liberty to exercise its rights under the Option.

[25] Bryton Creek exercised the Option on January 14, 2021 and requested that the Debtors complete the APS. The Debtors declined to close, citing an appeal from the January 12, 2021 decision.

[26] Cim Bayview filed a Notice of Appeal of the January 12, 2021 decision. The appeal was dismissed for delay on April 14, 2021.

[27] Bryton Creek exercised the Option on January 14, 2021.

[28] On February 8, 2021, CIM Bayview was deemed to have made an assignment for the benefit of creditors and Grant Thornton became trustee of the bankrupt estate.

[29] On May 4, 2021, Bayview Creek LP and 10502715 Canada Inc. made assignments for the benefit of creditors pursuant to the BIA naming MNP Limited ("MNP") as trustee of their bankrupt estates.

[30] Bryton Capital appointed RSM Capital Limited as receiver pursuant to its mortgage and general security agreement.

[31] On May 20, 2021, the trustees in bankruptcy for the Vendors announced that they were disclaiming their interest in the Property.

[32] On June 1, 2021, Bryton Capital took possession of the Property.

[33] On June 2, 2021, GR (Can) Investment Co. Ltd. on its own behalf and on behalf of other creditors of CIM Bayview Creek Inc., 10502715 Canada Inc. and Bayview Creek (CIM) LP issued a Notice of Application against Bryton Creek as respondent.

[34] In its application, GR seeks remedies under s. 241 of the *Canada Business Corporations Act*, the *Assignments and Preferences Act* (“APA”) and the *Fraudulent Conveyances Act* (“FCA”).

[35] The Subordinate Secured Creditors have also brought motions pursuant to s. 38 of the BIA seeking to have the rights of Grant Thornton in its capacity as trustee of the bankrupt estates of CIM Bayview to pursue remedies against Bryton and/or the purchasers of the Property under, among other things, ss. 95 and 96 of the BIA assigned to the participating creditors.

Analysis

A. Application by Bryton Applicants

[36] The following issues arise on Bryton’s application:

- a. Should a vesting order be granted so that title to the Property can be conveyed free and clear of all creditors’ claims pursuant to the Option?
- b. Are the Bryton Applicants entitled to a declaratory order that proceedings relating to the validity of the Option are barred?
- c. Is the Creditors’ application to challenge the Option barred by the December 3, 2020 Order and the principles of *res judicata*?

Should a vesting order be granted?

[37] Bryton brings the application for a vesting order pursuant to s. 100 of the *Courts of Justice Act* (“CJA”). Section 100 of the CJA provides that a court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

[38] Bryton submits that although RSM as privately appointed receiver has the power to convey title to the Property under its security documentation, it requires the assistance of the Court to discharge certain encumbrances and, therefore, a vesting order is necessary in the circumstances.

[39] Under the proposed vesting order, the first and second mortgages would be discharged, and the third mortgage and Certificate of Pending Litigation would also be discharged. The DIP Charge made pursuant to my November 27, 2020 order would also be discharged if the requested vesting order were to be made.

[40] Bryton’s application is opposed by the Third Mortgagees and by the Debentureholders.

[41] Bryton cites *Third Eye Capital Corporation v. Dianor Resources Inc.*, 2019 ONCA 508 in support of their application for a vesting order by which title to the Property would vest in the purchaser, Bryton Residences, on a “free and clear” basis. Bryton submits that there is a proper basis to grant such an order both conveying title and extinguishing claims against the Property pursuant to principles of equity, as explained in *Third Eye*.

[42] In *Third Eye*, the Court of Appeal considered the jurisdiction of the Court to extinguish an interest in land, using a vesting order, under s. 100 of the CJA and s. 243 of the BIA. The Court, at para. 25, described the effect of a vesting order as one that effects the transfer of purchased assets to a purchaser

on a free and clear basis, while preserving the relative priority of competing claims against the debtor / vendor with respect to the proceeds generated by the sale transaction.

[43] Bryton does not seek a vesting order under both s. 100 of the *CJA* and s. 243 of the *BIA*. Bryton seeks this order only under s. 100 of the *CJA*. In *Third Eye*, the Court of Appeal addressed whether, absent an independent basis for jurisdiction, s. 100 of the *CJA* may be the sole basis on which to grant a vesting order. The Court of Appeal cited the statement by Lang J.A. in *Trick v. Trick* (2006), 81 O.R. (3d) 241 (C.A.), at para. 19, in *obiter*, that s. 100 of the *CJA* “does not provide a free standing right to property simply because the court considers that result equitable” and described this statement as supporting the conclusion that “absent an independent basis for jurisdiction, the *CJA* could not be the sole basis on which to grant a vesting order”.

[44] The Court of Appeal then cited a passage from an academic paper on vesting orders addressing whether s. 100 of the *CJA* confers jurisdiction to vest title to property on a free and clear basis and held:

This would suggest that provided there is a basis on which to grant an order vesting property in a purchaser, there is a power to vest out interests on a free and clear basis so long as the terms of the order are appropriate and accord with the principles of equity.

[45] The Court of Appeal went on to consider whether jurisdiction exists under s. 243 of the *BIA* to grant a vesting order and concluded, at para. 81, that a receiver has jurisdiction under s. 243 of the *BIA* to convey property “free and clear of any liens or encumbrances”, noting that the use of vesting orders is in essence incidental and ancillary to the power to sell.

[46] The Court of Appeal cautioned, at para. 82, that, while jurisdiction for this aspect of vesting orders stems from s. 243 of the *BIA*, the exercise of that jurisdiction is not unbounded. The Court noted that its conclusion facilitates the maximization of proceeds and realization of the debtor’s assets but “at the same time operates to ensure that third party interests are not inappropriately violated”.

[47] In *Clarkson Co Ltd. v. Credit Franco Canadien*, 1985 CanLII 2651 (SK CA), the Saskatchewan Court of Appeal held, at para. 6, that a vesting order should not be made unless or until the rights of all interested parties have either been relinquished or have been extinguished by due process.

[48] The Option is a private contract and does not provide for extinguishment of claims upon exercise of the Option and completion of the sale provided for thereby. The rights of RSM as a private receiver do not extend beyond the contractual rights of Bryton. These rights do not include the right to convey the Property “free and clear” of third party interests.

[49] In my January 12, 2021 Order, I made an order that Bayview Creek Residences is at liberty to exercise its rights under the Option. I addressed the request made by Grant Thornton as Proposal Trustee for relief under ss. 95 and 96 of the *BIA* and made the following order:

THIS COURT DECLARES that the Proposal Trustee lacks statutory authority to seek orders under s. 95 and 96 of the *BIA* prior to the filing of a proposal or a bankruptcy and that the Proposal Trustee Request may not be pursued until the Debtor makes a proposal or becomes bankrupt and, accordingly, this order does not preclude the bankruptcy trustee or any other person from pursuing relief under s. 95 or 96 of the *BIA*.

[50] Bryton, through RSM as receiver, is able to complete the APS and convey title to the Property to Bayview Residences as purchaser. A vesting order is not needed for this purpose. The vesting order is requested by Bryton to vest out third party claims.

[51] At this stage of the bankruptcy proceedings, the Debentureholders and the Third Mortgagees have not been given a fair opportunity to pursue claims for oppression, under the APA and the FCA, and based on an alleged transfer at undervalue. In these circumstances, it would not be equitable to vest out these claims without adjudication of their merits.

[52] To extinguish the claims for relief under s. 95 or 96 of the *BIA* without adjudication would conflict with the January 12, 2021 Order. To grant the requested vesting order without adjudication of the claims of third parties under s. 241 of the *CBCA*, the *APA* and the *FCA*, and s. 95 or 96 of the *BIA*, would also conflict with the principles set out by the Court of Appeal in *Third Eye* with respect to vesting orders under s. 100 of the *CJA* and would not be appropriate or in accord with the principles of equity.

[53] The motion by Bryton for a vesting order is dismissed.

Is Bryton entitled to a declaratory order that proceedings relating to the validity of the Option are barred?

[54] Bryton seeks an order declaring that any proceedings commenced after December 21, 2020 relating to the validity of the Option are barred by the principles of *res judicata* and abuse of process under s. 97 of the *Courts of Justice Act*. Bryton submits that courts may grant declaratory relief in these circumstances to provide commercial certainty and define the parties' respective rights.

[55] Bryton relies on the decision of the Supreme Court of Canada in *S.A. v. Metro Vancouver Housing Corp.*, 2019 SCC 4 in which the Court held that declaratory relief is granted by the courts on a discretionary basis, and may be appropriate where (a) the court has jurisdiction to hear the issue, (b) the dispute is real and not theoretical, (c) the party raising the issue has a genuine interest in its resolution, and (d) the responding party has an interest in opposing the declaration being sought.

[56] Bryton submits that they meet these requirements because (a) rule 14.05(3)(e) authorizes a proceeding by application where the relief claimed is the settling of the priority of interests or charges; (b) the dispute is real because the Third Mortgagees have issued a Notice of Application to challenge the validity of the Option which will be supported by the Debentureholders; (c) the declaratory relief is necessary to provide commercial certainty to permit financing and development of the Property; and (d) the Third Mortgagees and any creditors aligned with their position have been given notice of this application and are able to make submissions in opposition to the relief sought.

[57] Bryton submits that the Third Mortgagees and the Debentureholders were required to tender any evidence upon which they rely in response to the application for declaratory relief and, like on a motion for summary judgment, put their best foot forward. They submit that in the absence of evidence on the issues involving alleged transfers at undervalue the application for declaratory relief should be granted.

[58] In *S.A.*, the application for declaratory relief was made pursuant to the British Columbia Supreme Court Rules which authorized an application where the sole or principal question at issue is one of construction of an oral or written contract or other document.

[59] The Third Mortgagees and the Debentureholders have not yet commenced proceedings under s. 95 or s. 96 of the BIA. There are no pleadings or evidence before me with respect to the merits of such claims.

[60] The jurisdiction conferred on the court by s. 97 of the *CJA* to make binding declarations of right is not a free-standing provision that allows a judge to do whatever seems fair. It allows the court to confirm legal rights that already exist: *T.T.K.O., S.P.O. G.D.K.* 2011 ONSC 6601, at para. 43.

[61] Bryton seeks an order barring claims that have not been made from being adjudicated on their merits. It is not open to them to do so, simply because they seek declaratory relief in this application. The attempt by Bryton to pre-emptively bar creditors' claims that have not yet been made is, in my view, misconceived.

[62] Bryton's claim for declaratory relief is denied.

Are the claims by creditors to challenge the validity of the Option barred by the doctrine of *res judicata*?

[63] Bryton, in addition to its claim for declaratory relief, seeks, in the alternative, an order that creditors' challenges to the validity of the Option should be barred by operation of the doctrine of *res judicata*.

[64] Bryton relies on an Order dated December 3, 2020 made at a scheduling conference in which the following Order was made:

THIS COURT FURTHER ORDERS that any motions or cross-motions relating to whether the Bryton Option is valid and whether the stay of proceedings in respect of CIM Bayview ("CIM Bayview") should be lifted to allow for the Bryton Option to be enforced at this time shall be heard at the time of hearing the Bryton Option Motion (the "Bryton Option Validity and Enforcement Motions").

[65] All creditors on the service list for the proposal proceeding, including the Third Mortgagees and Debentureholders, were given notice of this Order.

[66] Bryton submits that the creditors' claims to challenge the validity of the Option, including the Third Mortgagees' claims under the *FCA*, *APA*, oppression remedy and as assignees under s. 38 of the BIA are precluded by the doctrine of cause of action estoppel. Bryton submits that the doctrine of cause of action estoppel applies to all causes of action that a party had the opportunity to raise in the prior proceedings and, in all of the circumstances, should have raised. Bryton submits that the January 12, 2021 Order is a final order and that the Third Mortgagees and the Debentureholders were privy to the proposal proceedings in which that Order was made and, as such, they were required to make any claims challenging the Option as part of the motion heard on December 21, 2020.

[67] Bryton submits that the Third Mortgagees, the Debentureholders, and any other creditor with notice of the proposal proceedings were required to file materials and advance their claims in that proceeding. Bryton submits that the causes of action that the Third Mortgagees wish to litigate were already argued in December 2021 and, although the Third Mortgagees now advance claims under different legal theories, any claims seeking to challenge the validity of the Option should have been made and adjudicated at the prior hearing.

[68] At the time that the motions were heard in the proposal proceeding on December 21, 2020, CIM Bayview, Bayview Creek LP, and 10502715 Canada Inc. were not bankrupt. CIM Bayview made an assignment for the benefit of its creditors on February 8, 2021, and Grant Thornton was appointed as trustee of the bankruptcy estate. Bayview Creek LP and 10502715 Canada Inc. made assignments for the benefits of their creditors on May 4, 2021 and MNP was named as trustee of their bankruptcy estates. The causes of action that the Third Mortgagees and other supporting creditors seek to acquire under s. 38 of the BIA could not have been asserted in the proposal proceedings in December 2020. The causes of action that became vested in the trustees in bankruptcy could not have been acquired by creditors until the debtors were bankrupt.

[69] In my January 21, 2021 endorsement, at para. 105, I wrote that “if CIM Bayview is deemed to have made an assignment of all its property for the general benefit of its creditors, ... the trustee in bankruptcy would then have statutory authority to seek orders under s. 95 and s. 96 of the BIA”. Any other causes of action to be acquired from Grant Thornton and MMP under s. 38 of the BIA could not have been pursued until after the debtors became bankrupt. With respect to direct claims by the Third Mortgagees, these claims involve inter-creditor matters that relate to the claims to be obtained by assignment under s. 38 of the BIA. These claims are properly brought by way of an application or action. In the circumstances, I do not agree that it was incumbent on the Third Mortgagees to seek relief by way of a motion in December 2020, particularly in circumstances where the debtors were not bankrupt.

[70] Although Bryton made separate submissions in their factum in relation to their claim for declaratory relief and their submission that creditors’ claims to challenge the validity of the Option are barred by *res judicata*, I regard these submissions to be related. For the reasons I have given, Bryton’s claim for declaratory relief is misconceived and opposition to claims made by the Third Mortgagees or the Debentureholders should be made in proceedings they commence and not by seeking declaratory relief.

[71] I conclude that the Third Mortgagees and the Debentureholders are not precluded by operation of the doctrine of cause of action estoppel from asserting claims under the FCA, APA, oppression remedy, or as assignees under s. 38 of the BIA.

[72] Bryton submits that the Third Mortgagees and the Debentureholders are bound by findings made in my January 21, 2021 endorsement and that such findings give rise to issue estoppel which has the effect of precluding them from relitigating such findings in a subsequent proceeding.

[73] Bryton, in substance, seeks a declaration that the doctrine of issue estoppel applies to claims by the Third Mortgagees and the Debentureholders that have not yet been made. Until such claims are made, it would not be proper to determine whether the doctrine of issue estoppel applies to preclude relitigation of any issues decided in my January 21, 2021 decision.

[74] The doctrine of issue estoppel is not applicable.

B. DUCA’s application for appointment of a receiver

[75] DUCA brings an application for the appointment of msi Spergel inc. as receiver of the assets, undertakings and properties of Bayview Creek (CIM) LP and CIM Bayview Creek Inc. and CIM Invests Development Inc. including the property at 10747 Bayview Avenue, Richmond Hill, Ontario (the “Property”) pursuant to s. 243 of the BIA and s. 101 of the CJA. The Third Mortgagee supports DUCA’s application.

[76] DUCA has a first ranking \$20,720,000 mortgage charge on the Property. DUCA's mortgage is in default and has matured. There is no forbearance period in effect. DUCA's security provides for the appointment of a receiver.

[77] Spergel is a licenced trustee and qualifies to be appointed as a receiver under s. 243(1) of the *BIA*. See *Colour Box Ltd. (Re)*, 1995 CanLII 7143, at para. 17 *et seq.*

[78] Bryton Capital and Bryton Creek oppose DUCA's application. They submit that there is no need for such an appointment and that the appointment of a receiver by the court would only lead to increased delay and costs.

[79] DUCA's decision not to seek the appointment of a receiver earlier does not weigh against the appointment of a receiver, as Bryton submits. The circumstances have changed, and DUCA is entitled to take the changed circumstances into account in deciding whether to seek the appointment of a receiver.

[80] I am satisfied that, in the circumstances, it would be just and convenient to appoint Spergel as receiver. A court appointed receiver will be able to take possession of the Property, ensure that it is secure and protected, address issues relating to property taxes and, generally, act having regard to the interests of all of the stakeholders. A court appointed receiver will be in a position to deal with any issues relating to disposition of the Property, or any distribution issues. The structure and discipline that will be provided by the appointment of a receiver will assist the parties and the Court in dealing with the contentious issues before the court. Under the proposed receivership order, Spergel will be able to seek advice and directions from the court when appropriate. Notwithstanding the opposition from Bryton, I do not see prejudice to Bryton that will arise from the appointment by the court of a receiver.

[81] I grant DUCA's application.

Disposition

[82] For these reasons,

- a. The application by Bryton Capital and Bryton Creek is dismissed.
- b. The Application by DUCA is granted, and an order is made appointing Spergel as receiver in the form of order requested by DUCA and posted on CaseLines. The Order of Schabas J. dated September 18, 2020 is varies to the extent necessary to permit the Receiver to exercise its powers under the appointment order. I ask counsel for DUCA to provide me with an approved form of order to be issued.

[83] If the parties are unable to resolve costs, I ask that they agree on a timetable for written submissions and provide it to me for approval.

Cavanagh J.

March 2, 2022

Appendix 3



Statement of Taxes

CIM INVESTS DEVELOPMENT INC
 502-55 COMMERCE VALLEY DR W
 MARKHAM ON L3T 7V9

Issue Date: March 11, 2022
 Customer No: 73PSXE4P
 Roll No: 38-05-0-051-19010-00000-03
 Location: 10747 BAYVIEW AVE
 Legal Dscr: MARKHAM CON 2 PT LT 25 RP
 65R31680 PTS 1 AND 2
 Agent:

Payments can be made in person at your financial institution or by telephone/internet banking. Payment can also be mailed to our processing centre, or deposited in our drop box at 225 East Beaver Creek Road. For detailed information on payment options please visit RichmondHill.ca or call Access Richmond Hill at 905-771-8949.

Tax Levy Information							
Tax Year	Interim	Annual	Supplementaries	Appeals	Apportionment	Cap/Clawback	Total
2022	\$61,958.00						\$61,958.00

Summary of Taxes Owning				Future Due Instalments	
Tax Year	Tax/Charges	Penalty/Interest	Total Overdue	Due Date	Amount
2022	\$31,286.33	390.98	\$31,677.31	May 02, 2022	\$30,979.00
2021	\$124,365.67	13,551.96	\$137,917.63		
2020	\$59,902.93	10,483.06	\$70,385.99		
2019 & Prior					
Total	\$215,554.93	\$24,426.00	\$239,980.93		

Current Account Balance	\$270,959.93
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Note: Penalty/interest is applied to overdue taxes at a rate of 1.25% on the day after due date and on the first day of each month until paid.

Total overdue represents any unpaid tax/charges and/or penalty/interest to date.

Tax Roll Number
38-05-0-051-19010-00000-03
 CIM INVESTS DEVELOPMENT INC

Remittance Portion

Overdue Amount
\$239,980.93

Payable at most Financial Institutions.
 If paying by mail, cheques are payable to
 City of Richmond Hill and mailed to
 Tax Payment Processing Centre,
 P.O. Box 1997, Stn B, Toronto ON M5T 3G7



Amount paid
 \$ _____

0455 38050051190100000003 239980935

Appendix 4

DISCHARGE STATEMENT

DATE: June 1, 2022

RE: **BORROWER:** Bayview Creek (CIM) LP, CIM Invests
Development Inc. and CIM Bayview Creek Inc.
ACCOUNT NUMBER: 922293.73
PROPERTY ADDRESS: 10747 Bayview Avenue, Richmond Hill, Ontario

Principal Balance,	\$	20,720,000.00
Accrued Interest to June 1, 2022	\$	2,923,279.78
Legal Expense	\$	304,503.13
TOTAL	\$	23,947,782.91
Per Diem Rate	\$	4,938.74

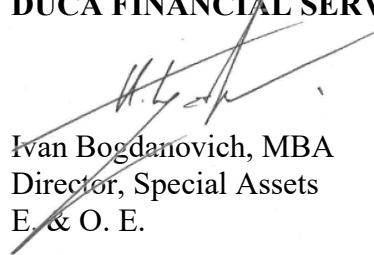
Funds must be made payable to DUCA FINANCIAL SERVICES CREDIT UNION LTD., and delivered to the attention of the Commercial Mortgage Department at DUCA's offices at 5255 Yonge Street, 4th Floor, Toronto, Ontario M2N 6P4.

Please be advised that any monies received after 2:00 pm will be processed on the next business day and will be subject to the applicable per diem rate.

Upon receipt of the "TOTAL" plus the applicable per diem indicated on this statement as well as any additional expense incurred to the date of payment, DUCA will execute a Discharge of Charge. If a registration fee for E-Registration has been charged above, a registration document will be forwarded instead, within a reasonable period of time.

This statement is only valid for 30 days from the date of this letter. If payout figures are required after this time period, please request another statement.

DUCA FINANCIAL SERVICES CREDIT UNION LTD.



Ivan Bogdanovich, MBA
Director, Special Assets
E. & O. E.

Appendix 5



Bryton Capital Corp. GP LTD.

65 Queen Street W. Suite
210
Toronto, ON M5H 2M5
Tel: 416-363-5050
Fax: 416-363-5505

Jun 01, 2022

**CIM BAYVIEW CREEK INC.
55 Commerce Valley Drive West,
Unit 502, Markham,
Ontario L3T 7V9**

MORTGAGE STATEMENT

**RE: 2nd Mortgage loan to CIM Bayview Creek Inc. – 10747 Bayview Avenue, Richmond Hill,
Ontario**

Bryton Capital Corp. GP hereby informs you of the balance of your loan as at Jun 3, 2022:

Principal Balance on June 03, 2022	\$22,300,000.00
Interest Arrears (Nov 1, 2019 – Jun 3, 2022)	\$ 5,416,985.30
Professional Fees	\$ 1,462,953.78
Total Outstanding Balance as of June 03, 2022	\$29,179,939.08

*Per Diem Rate \$ 5,973.27

Judy Lock
Finance Manager
Bryton Capital Corp. GP LTD

Appendix 6

Summary of Marketing Proposals: 10747 Bayview Avenue

	CBRE	Colliers International
Background	Approximately 100,000+ employees in 110 countries, with 530 plus offices. The Land Services Group listing team consists of 2 team leads and 2 sales representatives.	17,000 professionals operating in 62 countries worldwide. The listing team would consist of an EVP & SVP from the Toronto Urban Redevelopment Advisory Team.
Marketing Plan	Modified tender process with an unpriced offering and bid date. Full marketing package, custom brochure, targeted marketing and calling campaign, email Blasts to major commercial brokerages and CBRE network of investors, MLS Listing.	Recommend going to market unpriced with a deadline to submit offers. Direct marketing to key local, national and international Colliers hubs. Comprehensive awareness campaign utilizing MLS, direct presentations, custom brochures, email blasts, national advertising and other regional publications, Colliers' Canada website and online advertising.
Timing	Underwriting & pre-marketing 2 weeks; Marketing process 8 weeks; Offers & negotiations 2 weeks; Execution & transaction management 4-8 weeks.	Launch date TBD; Pre-due diligence/pre-marketing 3 weeks; Marketing launch/program 5 weeks; Bid date; Negotiation, Finalization of APS 1 week; Due diligence 3-4 weeks; Completion of Sale 3-5 weeks.
Commission Structure	0.95% of the gross sales price or 1.5% with a co-operating agent	0.85% of the total sale price or 1.15% with a co-operating brokerage
Break Fee	Zero Dollars	Zero Dollars
Listing Term	6 months	6 months

Appendix 7

District of Ontario
Division No. 09 - Toronto
Estate No. 31-459342

Bayview Creek (CIM) LP, CIM Invests Development Inc. and CIM Bayview Creek Inc.
Receiver's Interim Statement of Receipts and Disbursements
As at June 14, 2022

RECEIPTS

Advance from secured creditor	\$ 50,000.00
Interest	39.50
	<hr/>

TOTAL RECEIPTS

\$ 50,039.50

DISBURSEMENTS

Appraisal fees	\$ 13,830.00
Repairs and Maintenance	5,275.80
HST paid	2,737.82
Insurance	2,619.00
Security	1,615.00
Travel	1,232.30
License, filing fees, postage and bank charges	427.37
	<hr/>

TOTAL DISBURSEMENTS

27,737.29

Net Receipts over Disbursements

\$ 22,302.21 E&OE

Confidential Appendix A

(Subject to the request for a sealing order)

Confidential Appendix B

(Subject to the request for a sealing order)

Confidential Appendix C

(Subject to the request for a sealing order)

Court File No: CV-21-0066512800CL

**DUCA FINANCIAL SERVICES CREDIT UNION
LTD.**

- and -

**BAYVIEW CREEK (CIM) LP,
CIM INVESTS DEVELOPMENT
INC., and CIM BAYVIEW
CREEK INC.**

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

**FIRST REPORT OF MSI SPERGEL INC.
IN ITS CAPACITY AS THE RECEIVER OF
BAYVIEW CREEK (CIM) LP, CIM INVESTS
DEVELOPMENT INC., and
CIM BAYVIEW CREEK INC.**

BORDEN LADNER GERVAIS LLP

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Lawyers for msi Spergel inc., the Receiver

Tab 3

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

THE HONOURABLE)
)
MR. JUSTICE CAVANAGH)

THURSDAY, THE 11TH
DAY OF AUGUST, 2022

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

**BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT INC., and
CIM BAYVIEW CREEK INC.**

Respondents

**ORDER
(Sale Process)**

THIS MOTION, made by msi Spergel Inc., in its capacity as the Court-appointed receiver (the “**Receiver**”) of all the assets, undertakings and properties of Bayview Creek (CIM) LP, CIM Invests Development Inc. and CIM Bayview Creek Inc. (collectively, the “**Debtors**”), for an order, among other things, approving a sale process, was heard this day by Zoom videoconference due to the COVID-19 pandemic.

ON READING the Receiver’s Motion Record and the first report of the Receiver dated June 17, 2022 and the appendices thereto (the “**First Report**”), and on hearing the submissions of counsel for the Receiver and counsel for such other parties in attendance at the hearing, as noted in the Participant Sheet, and upon reading the Affidavit of Service of Mariela Adriana Gasparini sworn June 17, 2022, filed:

SERVICE

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

CAPITALIZED TERMS

2. **THIS COURT ORDERS** that capitalized terms not defined herein, shall have the meanings ascribed thereto in the First Report.

REPORT AND ACTIVITIES OF THE RECEIVER

3. **THIS COURT ORDERS** that the First Report and the activities of the Receiver, as set out in the First Report, be and are hereby approved; provided, however, that only the Receiver, in its personal capacity only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

4. **THIS COURT ORDERS** that the Interim Statement of Receipts and Disbursements as at June 14, 2022 be and is hereby approved.

SALE PROCESS

5. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to execute a listing agreement (the "**Listing Agreement**") between the Receiver and Colliers International ("**Colliers**") and to take such steps as it deems necessary or advisable to carry out the terms of the Listing Agreement.

6. **THIS COURT ORDERS** that the Receiver, with Colliers as its' real estate consultant, is authorized and directed to carry out the Sale Process, as described in the First Report, and is hereby authorized and directed to take such steps and to execute such documentation as the Receiver considers necessary or desirable in carrying out its obligations thereunder, subject to prior approval of this Court being obtained before completion of any transaction under the Sale Process.

7. **THIS COURT ORDERS** that the Receiver and its affiliates, partners, directors, employees, advisers, agents, counsel and controlling persons (collectively, the “**Assistants**”) shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing their duties under the Sale Process, except to the extent of such losses, claims, damages or liabilities arising or resulting from the gross negligence or willful misconduct of the Receiver, as determined by this Court.

8. **THIS COURT ORDERS** that the Receiver may apply to this Court to amend, vary or supplement this Order, or for advice and directions with respect to the discharge of its powers and duties under this Order, or under the Sale Process, at any time during the term of the Sale Process.

SEALING

9. **THIS COURT ORDERS** that Confidential Appendices “**A**”, “**B**” and “**C**” to the First Report be and are hereby sealed, pending further order of the Court.

PIPEDA

10. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), the Receiver and its Assistants are hereby authorized and permitted to disclose and deliver for review personal information of identifiable individuals to prospective purchasers or bidders for the Property and their advisors, but only to the extent desirable or required to carry out the Sale Process and to negotiate or attempt to complete a transaction pursuant to the Sale Process (a “**Transaction**”). Each prospective purchaser or bidder (and their respective advisors) 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 for the purpose of effecting a Transaction, and if it does not complete a Transaction, shall return all such information to the Receiver, or in the alternative destroy all such information and provide confirmation of its destruction if required by the Receiver. The purchaser(s) of any of the Property shall maintain and protect the privacy of such information and, upon closing of the Transaction(s) to which any such purchaser is a party, shall be entitled to use the personal information provided to it that is related to the Property acquired

pursuant to the Sale Process in a manner that is in all material respects identical to the prior use of such information by the Debtors and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Receiver.

GENERAL

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or any other jurisdiction, 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, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order, and this Order is enforceable without the need for entry and filing.

**DUCA FINANCIAL SERVICES CREDIT UNION
LTD.**

- and -

**BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT
INC., and CIM BAYVIEW CREEK INC.**

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

ORDER
(Sale Process)

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Court File No: CV-21-0066512800CL

DUCA FINANCIAL SERVICES CREDIT UNION
LTD.

BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT
INC., and CIM BAYVIEW CREEK INC.

- and -

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

MOTION RECORD
(Returnable August 11, 2022)

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