

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

CANADIAN WESTERN BANK

Applicant

and

2722959 ONTARIO LTD.

Respondent

APPLICATION UNDER SUBSECTION 47 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985 C. B-3 AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. C. C-43, AS AMENDED

AFFIDAVIT

I, EUGENE ROVINELLI, of the Town of Collingwood, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am the President of Eastgate Group Inc., and Rovinelli Holdings Ltd., and as such have knowledge of the matters hereinafter deposed to. I make this affidavit to advise the court that:

- (i) Eastgate Group Inc. has exercised distraint against its tenant, 2156775 Ontario Inc. o/a D'Angelo Brands, respecting the lease of one property (4500 Eastgate Parking, Mississauga), and undertakes to pay any proceeds of sale into trust pending a determination of priorities;
- (ii) Rovinelli Holdings Ltd. has terminated the tenancy of its tenant, 2156775 Ontario Inc. o/a D'Angelo Brands, respecting the lease of another

property (4544 Eastgate Parkway, Mississauga), and seeks direction of the court respecting disposition of a large quantity of paper files left by the tenant at the premises.

2. Eastgate Group Inc. owns commercial property known municipally as 4500 Eastgate Parkway, Mississauga, Ontario ("4500").
3. 4500 was leased to 2156775 Ontario Inc., not to the Respondent, 2722959 Ontario Ltd. 2156775 Ontario Inc. is corporation incorporated pursuant to the laws of the Province of Ontario, that carried on business as a co-packer, known as D'Angelo Brands. Annexed hereto and marked as **Exhibit "A"** to this my affidavit is a true copy of the first page of the Lease dated February 1, 2008 and the signing page. The Lease was signed by Frank D'Angelo in his capacity as President of 2156775 Ontario Inc. The Lease was for a term of six years and was extended or renewed for two further terms.
4. On June 2, 2022, Sterling Bailiffs Inc. served 2156775 Ontario Inc. with a Landlord's Distress Warrant with respect to 4500, for rent arrears and additional rental arrears in the amount of \$4,971,496.72 plus costs.
5. The bottling assembly line equipment has value. Eastgate Group Inc. and the Bailiff arranged for two appraisals from reputable appraisers. One appraisal was for \$742,500.00; the other was for \$673,200.00. We hope to be able to sell the equipment to an entity that will also lease the premises at 4500.

6. Rovinelli Holdings Ltd. owns commercial property known municipally as 4544 Eastgate Parkway, Mississauga, Ontario ("4544").

7. 4544 was leased to 2156775 Ontario Inc., not to the Respondent, 2722959 Ontario Ltd. The property was used by 2156775 Ontario Inc. for offices, head office, warehousing and the operation of a restaurant known as Mamma D's. Annexed hereto and marked as **Exhibit "B"** to this my affidavit is a true copy of the first page of the Lease dated February 1, 2008 and the signing page. The Lease was signed by Frank D'Angelo in his capacity as President of 2156775 Ontario Inc. The Lease was for a term of six years and was extended or renewed for two further terms.

8. On June 2, 2022, Sterling Bailiffs Inc. served 2156775 Ontario Inc. o/a D'Angelo Brands et al, with a Notice To Terminate For Failure Of Tenant To Pay Rent Arrears, in the amount of \$200,719.38, with respect to 4544.

9. Subsequent to the termination, Rovinelli Holdings Ltd. began the process of cleaning out the premises at 4544. Frank D'Angelo was given the opportunity to retrieve personal belongings from the premises. He retrieved some chattels, but unfortunately, left behind a large quantity of paper files. Rovinelli Holdings Ltd. began the process of moving the paper files by tossing them downstairs from the second floor as a first step to disposing of them. However, we became concerned that these files may be of interest to the proposed Receiver. Our lawyer reached out to the Receiver's lawyer and an agreement was reached that the paper files would not be disposed of before the first attendance in court.

10. On or about August 11, 2022, Sterling Bailiffs Inc. sent to us a CRA Notice of Assessment for 2021 HST addressed to 2156775 Ontario Inc., in the amount of \$7,642,938.31.

11. We determined that CRA may have super priority to any proceeds of sale by the Bailiff. It is our intention to continue with the distraint and we hope that the equipment can be sold to an entity that will also lease the premises at 4500. We hope that CRA will agree that this is preferable to a piecemeal option.

12. We undertake to pay the proceeds of any sale of the equipment into trust, pending determination of priorities.

13. Our lawyer has asked that CRA be added to the service list for this Application.

14. This affidavit is made by me in good faith and for no improper purpose.

SWORN REMOTELY BY Eugene)
Rovinelli, stated as being located in)
the Town of Collingwood, in the)
Province of Ontario, before me at)
the City of Mississauga, this 2nd day)
of September, 2022, in accordance)
with Reg.431/20, administering)
oath or declaration remotely)
)
)
)
)
A Commissioner, etc.)



EUGÈNE ROVINELLI

Ted R. Laan

THIS IS EXHIBIT "A" REFERRED
TO IN THE AFFIDAVIT OF EUGENE
ROVINELLI SWORN BEFORE ME
THIS 2ND DAY OF SEPTEMBER, 2022

TED LAAN

THIS LEASE made the 1st day of February, 2008.

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BETWEEN:

EASTGATE GROUP INC., a corporation organized and subsisting
under the laws of the Province of Ontario

(herein called the "Landlord")

OF THE FIRST PART

- and -

2156775 ONTARIO INC. a corporation organized and subsisting
under the laws of the Province of Ontario

(herein called the "Tenant")

OF THE SECOND PART

WITNESSETH that in consideration of the Rent, covenants, obligations and agreements hereinafter reserved and contained and upon the terms and conditions hereinafter provided.

ARTICLE 1
DEFINITIONS

1.1 Meaning of Certain Terms: In this Lease:

- (a) "Additional Rent" means any and all sums of money or charges required to be paid by the Tenant under this lease (except Minimum Rent) whether or not the same are designated "Additional Rent" or whether or not the same are payable to the Landlord or otherwise, and all such sums are payable in lawful money of Canada without any deduction, set-off or abatement whatsoever. Any Additional Rent provided for in this lease becomes due and payable within the next monthly instalment of Minimum Rent unless otherwise provided;
- (b) "Architect" means an architect appointed by the Landlord;
- (c) "Building" means that building constructed by the Landlord upon the Land and of which the Demised Premises forms a part;
- (d) "Common Facilities" means all common areas, facilities and utilities from time to time furnished or designated by the Landlord (as the same from time to time may be altered, reconstructed, reduced or expanded) in connection with the Complex for the use or benefit in common in such manner as the Landlord may permit, of occupants of premises in the Complex and all others entitled thereto and now or hereafter developed or designated by the Landlord, including, without limiting the generality of the foregoing, all heating, ventilating, air-conditioning and mechanical, sprinkler and electrical equipment and machinery and water, gas, sewage, telephone and other communications facilities and electric power services and utilities not comprised within any leasable premises in the Complex for the exclusive use of such premises, and also including parking area and parking structures, access roads, driveways, entrances and exits, sidewalks, ramps, landscaped areas, exterior irrigation and sprinkler systems, stairways, passageways, delivery areas, corridors, mechanical and electrical rooms, garbage facilities, first-aid stations and washrooms; Common Facilities also includes portions of the Complex which may form part of the leasable premises and which are not intended for use by all tenants or occupants of the Complex, and shall include the roof, exterior weather walls, exterior and interior structural elements and bearing walls in the buildings and improvements of the Complex;
- (e) "Complex" means the lands and premises described in Section 1.1(h) and Schedule "A" and every enlargement, amendment or reduction thereof or addition thereto, and includes the Common Facilities, the Building and all other

as the case may be. If there is more than one Tenant, they are all bound jointly and severally by the terms, covenants and conditions herein. No rights, however, shall enure to the benefit of any assignee of the Tenant unless the assignment to such assignee has been approved by the Landlord in writing as provided in Article 19 hereof.

25.18 Surrender/Disclaimer of Existing Lease: The parties hereto acknowledge and agree that this Lease and the rights granted herein shall become effective or operative only upon the surrender or the disclaimer of the existing lease of the Demised Premises executed between Zanetto Rovinelli as landlord and D'Angelo Brands Ltd., as tenant and dated April 1, 2002 as, amended by agreement dated March 28, 2003 (collectively referred to as the "Existing Lease") with such surrender or disclaimer being effective as of the 1st day of February, 2008. Provided however that, upon the surrender or disclaimer of the Existing lease, this Lease shall become effective, retroactive to February 1, 2008..

IN WITNESS WHEREOF the parties hereto have executed this lease.

WITNESS:

EASTGATE GROUP INC.

Per: _____

Name: Eugene Rovinelli
Title: President

I have authority to bind the Corporation

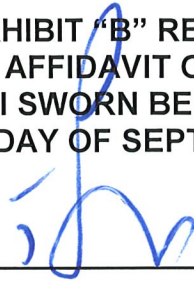
2156775 ONTARIO INC.

Per: _____

Name: Frank D'Angelo
Title: President

I have the authority to bind the Corporation.

THIS IS EXHIBIT "B" REFERRED
TO IN THE AFFIDAVIT OF EUGENE
ROVINELLI SWORN BEFORE ME
THIS 2ND DAY OF SEPTEMBER, 2022

A handwritten signature in blue ink, appearing to be 'TL', is written over a horizontal line.

TED LAAN

THIS LEASE made the 1st day of February 2008.

BETWEEN:

ROVINELLI HOLDINGS LTD.,

a corporation organized and subsisting under the laws of the Province of Ontario

(herein called the "Landlord")

OF THE FIRST PART

- and -

2156775 ONTARIO INC.

a corporation organized and subsisting under the laws of the Province of Ontario

(herein called the "Tenant")

OF THE SECOND PART

WITNESSETH that in consideration of the Rent, covenants, obligations and agreements hereinafter reserved and contained and upon the terms and conditions hereinafter provided.

**ARTICLE 1
DEFINITIONS**

1.1 Meaning of Certain Terms: In this Lease:

- (a) "Additional Rent" means any and all sums of money or charges required to be paid by the Tenant under this lease (except Minimum Rent) whether or not the same are designated "Additional Rent" or whether or not the same are payable to the Landlord or otherwise, and all such sums are payable in lawful money of Canada without any deduction, set-off or abatement whatsoever. Any Additional Rent provided for in this lease becomes due and payable within the next monthly instalment of Minimum Rent unless otherwise provided;
- (b) "Architect" means an architect appointed by the Landlord;
- (c) "Building" means that building constructed by the Landlord upon the Land and of which the Demised Premises forms a part;
- (d) "Common Facilities" means all common areas, facilities and utilities from time to time furnished or designated by the Landlord (as the same from time to time may be altered, reconstructed, reduced or expanded) in connection with the Complex for the use or benefit in common in such manner as the Landlord may permit, of occupants of premises in the Complex and all others entitled thereto and now or hereafter developed or designated by the Landlord, including, without limiting the generality of the foregoing, all heating, ventilating, air-conditioning and mechanical, sprinkler and electrical equipment and machinery and water, gas, sewage, telephone and other communications facilities and electric power services and utilities not comprised within any leasable premises in the Complex for the exclusive use of such premises, and also including parking area and parking structures, access roads, driveways, entrances and exits, sidewalks, ramps, landscaped areas, exterior irrigation and sprinkler systems, stairways, passageways, delivery areas, corridors, mechanical and electrical rooms, garbage facilities, first-aid stations and washrooms; Common Facilities also includes portions of the Complex which may form part of the leasable premises and which are not intended for use by all tenants or occupants of the Complex,

acknowledges that it has not executed this lease by reason of any inducement, representation or warranty that any other person, firm or corporation shall be, shall become or shall remain as a tenant or occupant of the Complex.

- 25.15 Applicable Law: This lease shall be construed in accordance with the laws of the Province of Ontario.
- 25.16 Schedules: Schedule "A" attached hereto shall form a part of this lease.
- 25.17 Assigns: All rights and liabilities herein granted to, or imposed upon the respective parties hereto, extend to and bind the successors and assigns of the Landlord and the heirs, executors, administrators, and permitted successors and assigns of the Tenant, as the case may be. If there is more than one Tenant, they are all bound jointly and severally by the terms, covenants and conditions herein. No rights, however, shall enure to the benefit of any assignee of the Tenant unless the assignment to such assignee has been approved by the Landlord in writing as provided in Article 20 hereof.
- 25.18 Surrender/Disclaimer of Existing Lease: The parties hereto acknowledge and agree that this Lease and the rights granted herein shall only become effective or operative upon the surrender or the disclaimer of the existing lease of the Demised Premises between Eastgate Holdings (4544) Ltd and D'Angelo Brands Ltd dated July 29, 2003 (the "Existing Lease") effective February 1, 2008. Provided, however, that upon the surrender or disclaimer of the Existing Lease, this Lease shall become effective, retroactive to February 1, 2008.

IN WITNESS WHEREOF the parties hereto have executed this lease.

ROVINELLI HOLDINGS LTD.

Per: 
Name: Eugene Rovinelli
Title: President

I have authority to bind the Corporation.

2156775 ONTARIO INC.

Per: 
Name: Frank D'Angelo
Title: President

I have authority to bind the Corporation.

Plaintiffs **CANADIAN WESTERN BANK**

-and-

2722959 ONTARIO LTD.

Defendants

Court File No: CV-22-0068100-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT

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Ted R. Laan (LSO 18492Q)
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Lawyers for Eastgate Group Inc., and
Rovinelli Holdings Ltd.

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