

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 243(1) 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. 1990 C. C.43, AS AMENDED**

**B E T W E E N:**

**DUCA FINANCIAL SERVICES CREDIT UNION LTD.**

Applicant

- and -

**AMERICAN CORPORATON and 1000199992 ONTARIO CORP.**

Respondents

**AIDE MEMOIRE OWEMANCO MORTGAGE HOLDING CORPORATION**  
*(for scheduling appearance on July 16, 2024)*

July 15, 2024

**DICKINSON WRIGHT LLP**

Barristers & Solicitors

199 Bay Street

Suite 2200, Box 447

Commerce Court Postal Station

Toronto, ON M5L 1G4

**DAVID P. PREGER (36870L)**

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Lawyers for Owemanco Mortgage Holding  
Corporation

**TO: SERVICE LIST**

1. Owemanco Mortgage Holding Corporation (“OMHC”) seeks to schedule a motion to lift the stay of proceedings arising from the Order of Black J. dated April 17, 2024, appointing MNP Ltd. as receiver (the “Receiver”), and to obtain an order pursuant 52 of the *Mortgages Act* to set aside a purported tenancy agreement in respect of Unit 1001, 980 Yonge St., a residential condominium unit, in Toronto (the “Unit”). The Unit is owned by Amercan Corporation (the “Debtor”).
2. At the time of the Receiver’s appointment, OMHC was the second mortgagee of the Unit. OMHC’s second mortgage secures payment of the principal amount of \$2 million (the “Second Mortgage”).
3. OMHC was not served with or notified of the receivership application until after the Receiver’s appointment. The appointing creditor in this proceeding, DUCA Financial Credit Union Services Ltd. (“DUCA”), is not a mortgagee of the Unit. OMHC understands that DUCA was unaware of the existence of the Unit when it applied to appoint the Receiver.
4. The professional costs associated with a receiver’s sale are not justified insofar as the Unit is concerned. The Unit should be sold under power of sale.
5. As a result of the first mortgagee of the Unit, National Bank of Canada (“National Bank”), having issued a notice of sale on May 30, 2024 (with the consent of the Receiver), OMHC, to protect its position, redeemed National Bank’s mortgage under the Second Mortgage on July 3, 2024 upon payment of \$385,820.92.

6. The Debtor's principal is Fansey Wang ("Wang"). In addition to the within receivership proceeding, numerous other real estate developments controlled by Wang are also in receivership. On December 21, 2023, Albert Gelman Inc. was appointed receiver of two parcels located on the south side of Jefferson Side Road, west of Yonge Street, in Richmond Hill by Order of Cavanagh J., upon application by Cameron Stephens Mortgage Capital Ltd. ("CMSL"). CMSL is owed in excess of \$40 million. Its loan is guaranteed by the Debtor.

7. On June 11, 2024, Rosen Goldberg Inc. was appointed receiver of a separate parcel fronting Bostwick Crescent and Bond Crescent, in Richmond Hill, by Order of A.J Goodman J., upon application by C & K Mortgages Services Inc. ("C & K"). C & K is owned in excess of \$22 million. C & K's loan also is also guaranteed by the Debtor.

8. A copy of the purported tenancy agreement in respect of the Unit dated March 25, 2024 is attached as **Appendix A**. It is signed by the Debtor's principal Fansey Wang ("Wang"), as landlord, and Tony Muoio ("Muoio"), as tenant. It provides that rent of \$95,000 is payable in cash to Wang for a fixed term of one year, beginning on April 4, 2021.

9. Muoio is known to OMHC. OMHC has had dealings with him over the years in connection with his efforts to raise financing on the security of real estate in Ontario on behalf of developers, including Wang.

10. Section 52 (1) of the *Mortgages Act* affords a statutory remedy to a mortgagee who finds itself faced with a tenancy agreement entered into in contemplation of default under a mortgage

with the object of discouraging a mortgagee from taking possession of a residential complex or adversely affecting the value of a mortgagee' interest in a residential complex.

11. The tenancy agreement is plainly intended to frustrate OMHC from taking possession of the Unit and adversely affect the value of OMHC's interest in the Unit.

12. When this scheduling appearance was arranged, Muoio was unrepresented. Counsel for OMHC was first contacted on July 14 by Steven Gadbois, a lawyer representing Muoio, who advised that he was in discoveries on July 16.

13. On July 14, counsel for OMHC emailed Mr. Gadbois to confirm that the appearance on July 16 is merely a scheduling appearance to obtain a date for a hearing of OMHC's motion. Mr. Gadbois was advised to arrange to have another member of his firm attend or, alternatively, provide a list a dates in August when he you would be available to argue the motion. Mr. Gadbois has not responded. A copy of the email exchange is attached as **Appendix B**.

14. In view of the apparent mischief associated with the tenancy agreement, OMHC seeks to schedule a firm date for the hearing of its motion in August. The motion should not take more than one hour to argue.

# Appendix A

**Note**

This tenancy agreement (or lease) is required for tenancies entered into on **March 1, 2021 or later**. It does not apply to care homes, sites in mobile home parks and land lease communities, most social housing, certain other special tenancies or co-operative housing (see Part A of General Information).

Residential tenancies in Ontario are governed by the *Residential Tenancies Act, 2006*. This agreement cannot take away a right or responsibility under the *Residential Tenancies Act, 2006*.

Under the Ontario *Human Rights Code*, everyone has the right to equal treatment in housing without discrimination or harassment.

All sections of this agreement are mandatory and cannot be changed.

**1. Parties to the Agreement****Residential Tenancy Agreement between:****Landlord(s)**

1. Landlord's Legal Name  
AmerCan Corporation

[Add a Landlord \(+\)](#)**Note:**

See Part B in General Information

**and Tenant(s)**

- |                       |                    |
|-----------------------|--------------------|
| 1. Last Name<br>Muoio | First Name<br>Tony |
| 2. Last Name          | First Name         |
| 3. Last Name          | First Name         |
| 4. Last Name          | First Name         |

[Add a Tenant \(+\)](#)**2. Rental Unit**

The landlord will rent to the tenant the rental unit at:

Unit (e.g., unit 1 or basement unit) 1001	Street Number 980	Street Name Yonge Street	
City/Town Toronto	Province Ontario	Postal Code M4W 3V8	

Number of vehicle parking spaces and description (e.g., indoor/outdoor, location)

1 garage parking

The rental unit is a unit in a condominium.

Yes  No

If yes, the tenant agrees to comply with the condominium declaration, by-laws and rules, as provided by the landlord.

### 3. Contact Information

#### Address for Giving Notices or Documents to the Landlord

Unit 2	Street Number 179	Street Name Marlborough Street	PO Box
City/Town Boston		Province MA	Postal Code/ZIP Code 02116

Both the landlord and tenant agree to receive notices and documents by email, where allowed by the Landlord and Tenant Board's Rules of Procedure.

Yes  No

If yes, provide email addresses:

The landlord is providing phone and/or email contact information for emergencies or day-to-day communications:

Yes  No

If yes, provide information:

#### Note:

See Part B and E in General Information

### 4. Term of Tenancy Agreement

This tenancy starts on: 2024/04/01  
Date (yyyy/mm/dd)

This tenancy agreement is for: (select an option below and fill in details as needed)

a fixed length of time ending on: 2025/03/31  
Date (yyyy/mm/dd)

a monthly tenancy

other (such as daily, weekly, please specify): \_\_\_\_\_

#### Note:

The tenant does not have to move out at the end of the term. See Parts C and D in General Information.

### 5. Rent

a) Rent is to be paid on the \_\_\_\_\_ (e.g., first, second, last) day of each (select one):

Month

Other (e.g., weekly) prepaid in full

b) The tenant will pay the following rent:

Base rent for the rental unit \$95,000.00

Parking (if applicable) \_\_\_\_\_

Other services and utilities (specify if applicable):

_____	_____
_____	_____
_____	_____

**Total Rent (Lawful Rent) \$95,000.00**

[Add Service or Utility \(+\)](#)

This is the lawful rent for the unit, subject to any rent increases allowed under the *Residential Tenancies Act, 2006*. For example, the landlord and tenant may agree to a seasonal rent increase for additional services of air conditioning or a block heater plug-in. This amount does not include any rent discounts (see Section 7 and Part G in General Information).

c) Rent is payable to:

Fanseay Wang

d) Rent will be paid using the following methods:

cash

**Note:**

The tenant cannot be required to pay rent by post-dated cheques or automatic payments, but can choose to do so.

- e) If the first rental period (e.g., month) is a partial period, the tenant will pay a partial rent of \$ [ ] on [ ] . This partial rent covers the rental of the unit from [ ] to [ ] .  
Date (yyyy/mm/dd) Date (yyyy/mm/dd) Date (yyyy/mm/dd)
- f) If the tenant's cheque is returned because of non-sufficient funds (NSF), the tenant will have to pay the landlord's administration charge of \$ [ ] plus any NSF charges made by the landlord's bank.

**Note:**

The landlord's administration charge for an NSF cheque cannot be more than \$20.00

## 6. Services and Utilities

The following services are included in the lawful rent for the rental unit, as specified:

Gas	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Air conditioning	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Additional storage space	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
On-Site Laundry	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No <input type="checkbox"/> No Charge <input type="checkbox"/> Pay Per use
Guest Parking	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No <input type="checkbox"/> No Charge <input type="checkbox"/> Pay Per use
Other [ ]	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Other [ ]	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Other [ ]	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

[Add Service \(+\)](#)

Provide details about services or list any additional services if needed (if necessary add additional pages):



The following utilities are the responsibility of:

Electricity  Landlord  Tenant

Heat  Landlord  Tenant

Water  Landlord  Tenant

If the tenant is responsible for any utilities, provide details of the arrangement, e.g. tenant sets up account with and pays the utility provider, tenant pays a portion of the utility costs (if necessary add additional pages):

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## 7. Rent Discounts

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Select one:

There is no rent discount.

or

The lawful rent will be discounted as follows:

Provide description of rent discount (if necessary add additional pages):

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### Note:

See Part G in General Information for what types of discounts are allowed.

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## 8. Rent Deposit

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Select one:

A rent deposit is not required.

or

The tenant will pay a rent deposit of \$ \_\_\_\_\_. This can only be applied to the rent for the last rental period of the tenancy.

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### Note:

This amount cannot be more than one month's rent or the rent for one rental period (e.g., one week in a weekly tenancy), whichever is less. This cannot be used as a damage deposit. The landlord must pay the tenant interest on the rent deposit every year. See Part H in General Information.

## 9. Key Deposit

Select one:

A key deposit is not required.

or

The tenant will pay a refundable key deposit of \$ \_\_\_\_\_ to cover the cost of replacing the keys, remote entry devices or cards if they are not returned to the landlord at the end of the tenancy.

If a refundable key deposit is required, provide description and number of keys, access cards and remote entry devices:

### Note:

The key deposit cannot be more than the expected replacement cost. See Part H in General Information.

## 10. Smoking

Under provincial law, smoking is not allowed in any indoor common areas of the building. The tenant agrees to these additional rules on smoking:

Select one:

None

or

Smoking rules

Provide description of smoking rules (if necessary add additional pages):

### Note:

In making and enforcing smoking rules, the landlord must follow the Ontario *Human Rights Code*. See Parts M and S in General Information.

## 11. Tenant's Insurance

Select one:

There are no tenant insurance requirements.

or

The tenant must have liability insurance at all times. If the landlord asks for proof of coverage, the tenant must provide it. It is up to the tenant to get contents insurance if they want it.

## 12. Changes to the Rental Unit

The tenant may install decorative items, such as pictures or window coverings. This is subject to any reasonable restrictions set out in the additional terms under Section 15.

The tenant cannot make other changes to the rental unit without the landlord's permission.

### 13. Maintenance and Repairs

The landlord must keep the rental unit and property in good repair and comply with all health, safety and maintenance standards.

The tenant must repair or pay for any undue damage to the rental unit or property caused by the wilful or negligent conduct of the tenant, the tenant's guest or another person who lives in the rental unit.

The tenant is responsible for ordinary cleanliness of the rental unit, except for any cleaning the landlord agreed to do.

**Note:**

See Part J in General Information.

### 14. Assignment and Subletting

The tenant may assign or sublet the rental unit to another person only with the consent of the landlord. The landlord cannot arbitrarily or unreasonably withhold consent to a sublet or potential assignee.

**Note:**

There are additional rules if the tenant wants to assign or sublet the rental unit. See Part P in General Information.

### 15. Additional Terms

Landlords and tenants can agree to additional terms. Examples may include terms that:

- Require the landlord to make changes to the unit before the tenant moves in, and
- Provide rules for use of common spaces and/or amenities.

These additional terms should be written in plain language and clearly set out what the landlord or tenant must or must not do to comply with the term. If typed, the additional terms should be in a font size that is at least 10 points.

An additional term cannot take away a right or responsibility under the *Residential Tenancies Act, 2006*.

If a term conflicts with the *Residential Tenancies Act, 2006* or any other terms set out in this form, the term is void (not valid or legally binding) and it cannot be enforced. Some examples of void and unenforceable terms include those that:

- Do not allow pets (however, the landlord can require the tenant to comply with condominium rules, which may prohibit certain pets),
- Do not allow guests, roommates, any additional occupants,
- Require the tenant to pay deposits, fees or penalties that are not permitted under the *Residential Tenancies Act 2006* (e.g., damage or pet deposits, interest on rent arrears), and
- Require the tenant to pay for all or part of the repairs that are the responsibility of the landlord.

See General Information for more details.

The landlord and tenant may want to get legal advice before agreeing to any additional terms.

Select one:

There are no additional terms.

or

This tenancy agreement includes an attachment with additional terms that the landlord and tenant agreed to.

### 16. Changes to this Agreement

After this agreement is signed, it can be changed only if the landlord and tenant agree to the changes in writing.

**Note:**

The *Residential Tenancies Act, 2006* allows some rent increases and requires some rent reductions without agreement between the landlord and tenant. See Part I in General Information.

## 17. Signatures

By signing this agreement, the landlord(s) and the tenant(s) agree to follow its terms. The landlord(s) or tenant(s) can sign this lease electronically if they both agree.

Unless otherwise agreed in the additional terms under Section 15, if there is more than one tenant, each tenant is responsible for all tenant obligations under this agreement, including the full amount of rent.

### Landlord(s):

Name	Signature	Date (yyyy/mm/dd)
Fanseay Wang		2024/03/25


[Add a Landlord \(+\)](#)


[Remove a Landlord \(-\)](#)

### Tenant(s):

Name	Signature	Date (yyyy/mm/dd)
Tony Muoio		2024/03/25

Name	Signature	Date (yyyy/mm/dd)
		

Name	Signature	Date (yyyy/mm/dd)
		

Name	Signature	Date (yyyy/mm/dd)
		

[Add a Tenant \(+\)](#)

[Remove a Tenant \(-\)](#)

### Note:

All of the landlords and tenants listed on the first page in Section 1 (Parties to the Agreement) must sign here. The landlord must give a copy of this agreement to the tenant within 21 days after the tenant signs it.

# Appendix B

**From:** [David P. Preger](#)  
**To:** [Steve Gadbois](#); [dmagisano@lerners.ca](mailto:dmagisano@lerners.ca); [dpreger@dickison-wright.com](mailto:dpreger@dickison-wright.com)  
**Cc:** [Robynn Whiteley](#); [Sherri Bender](#)  
**Subject:** Re: Amercan Corp  
**Date:** Sunday, July 14, 2024 3:20:57 PM

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Steve, Tuesday's appearance is merely a scheduling appearance to obtain a date for a hearing of my client's motion to lift the stay of proceedings and to set aside the tenancy agreement.

Please arrange to have another member of your firm attend or, alternatively, provide me with a list a dates in August when you are available to argue the motion. Once we have a date for the hearing, we can work backwards to establish a timetable for the exchange of material and cross-examinations, if any. Thanks,

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**From:** Steve Gadbois <[sgadbois@watlaw.ca](mailto:sgadbois@watlaw.ca)>  
**Sent:** Sunday, July 14, 2024 11:17:00 AM  
**To:** [dmagisano@lerners.ca](mailto:dmagisano@lerners.ca) <[dmagisano@lerners.ca](mailto:dmagisano@lerners.ca)>; [dpreger@dickison-wright.com](mailto:dpreger@dickison-wright.com) <[dpreger@dickison-wright.com](mailto:dpreger@dickison-wright.com)>; David P. Preger <[DPreger@dickinson-wright.com](mailto:DPreger@dickinson-wright.com)>  
**Cc:** [Robynn Whiteley](mailto:robynn@watlaw.ca) <[robynn@watlaw.ca](mailto:robynn@watlaw.ca)>; [Sherri Bender](mailto:sherri@watlaw.ca) <[sherri@watlaw.ca](mailto:sherri@watlaw.ca)>  
**Subject:** RE: Amercan Corp

This is the dance of the macabre. Re-resending.

Steven Gadbois

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**From:** Steve Gadbois  
**Sent:** Sunday, July 14, 2024 11:13 AM  
**To:** [dmagisano@lerners.ca](mailto:dmagisano@lerners.ca); [dpreger@dickison-wright.com](mailto:dpreger@dickison-wright.com)  
**Cc:** [Robynn Whiteley](mailto:robynn@watlaw.ca) <[robynn@watlaw.ca](mailto:robynn@watlaw.ca)>; [Sherri Bender](mailto:sherri@watlaw.ca) <[sherri@watlaw.ca](mailto:sherri@watlaw.ca)>  
**Subject:** RE: Amercan Corp

Resending as we apparently misspelled Mr Preger's name.

Steven Gadbois

---

**From:** Steve Gadbois  
**Sent:** Sunday, July 14, 2024 11:10 AM  
**To:** [dpregor@dickinson-wright.com](mailto:dpregor@dickinson-wright.com); [dmagisano@lerners.ca](mailto:dmagisano@lerners.ca)  
**Cc:** [Robynn Whiteley](mailto:robynn@watlaw.ca) <[robynn@watlaw.ca](mailto:robynn@watlaw.ca)>; [Sherri Bender](mailto:sherri@watlaw.ca) <[sherri@watlaw.ca](mailto:sherri@watlaw.ca)>  
**Subject:** Amercan Corp

Good morning.

Our client is Tony Muoio who has a lease of a condominium at 1001-980 Yonge St., Toronto and is caught up in a receivership of the owner.

He has just become aware of a Court Hearing on Tuesday which appears to pertain to the receivership and the condominium. He has no interest in the receivership. His only interest is his

lease of the condominium, which he will take steps to protect, if necessary.

At this point, we have no materials and, in any event the Hearing date is upon us and we are in previously scheduled Discoveries on Monday and Tuesday.

Steven Gadbois

P.S. we include Mr Magisano in this email as we had previously corresponded with him about the condominium.

**DUCA FINANCIAL SERVICES CREDIT UNION LTD.**  
Applicant

-and- **AMERICAN CORPORATION et al**  
Respondents

Court File No. CV-24-00718071-00CL

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PROCEEDING COMMENCED AT  
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**AIDE MEMOIRE**

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Lawyers for Owemanco Mortgage Holding Corporation