



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV- 24-00731492-00CL

DATE: May 2, 2025

NO. ON LIST: 3

**TITLE OF PROCEEDING:** Logpin Investments Limited / The Goldfarb Corporation / Gary Goldfarb /  
Jeffrey Goldfarb / Suzy S. Greenspan / Julianna Greenspan

v.

Sanford Sussman / Sussman Mortgage Funding Inc. / 2486976 Ontario Inc.  
/ 1981361 Ontario Inc. / 2114568 Ontario Inc. / Alliance Homes Ltd. /  
Ballymore Building (Innisfil) Corp. / Waterways of Muskoka Ltd. / Mary  
Chmiel / Lori Raham / Lisa Bier

**BEFORE: JUSTICE DIETRICH, J.**

**PARTICIPANT INFORMATION**

**For Applicants:**

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**ENDORSEMENT OF JUSTICE: JANE DIETRICH J.**

**Introduction**

- [1] There are three related matters before me today in two different court file numbers.
- [2] First, the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario (“**FSRA**”) seeks an order appointing B. Riley Farber Inc. (“**BRF**”) as receiver (the “**Receiver**”) of all of the assets, undertakings and properties of the Respondents being Sussman Mortgage Funding Inc. (“**SMFI**”), 2486976 Ontario Inc. (“**248Co**”) and 1981361 Ontario Inc. (“**198Co**”) acquired for, forming part of, or used in relation to a business carried on by the Respondents, any assets or property held by the Respondents in trust for any third party, and all property, and rights, interests and proceeds arising from all joint venture or co-tenancy agreements entered into by the Respondents (collectively, the “**Property**”). With respect to the SMFI, the appointment is sought pursuant to s. 37 of the *Mortgage Brokerages, Lenders and Administrators Act*, 2006, S.O. 2006, c. 29 (the “**MBLAA**”) and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the “**CJA**”). With respect to 248Co and 198Co the appointment is sought pursuant to s. 101 of the CJA. (see CV-25-00741044-00CL)
- [3] Second, the plaintiff’s in the Goldfarb Action (defined below) seek a Maerva injunction order against Sanford Sussman. (see CV-24-00740475-00CL)

- [4] Neither of FSRA's request to appoint BRF as receiver or the request by the plaintiffs in the Goldfarb Action for a Mareva Injunction are opposed. The Respondents have consented to the Receivership Order and Mr. Sussman has consented to the Mareva injunction order.
- [5] As a third matter, certain investors who invested in mortgages brokered and administered by SMFI now bring a motion to appoint Aird & Berlis LLP as representative counsel to all investors who contracted with SMFI for the administration of mortgage investments (subject to certain opt-out rights). Although a schedule had been established for material to be served for today's hearing, the representative counsel motion was only served on April 29, 2025. Certain parties, including the plaintiffs in the Goldfarb Action, have indicated they are opposed to at least certain terms of the order sought in the representative counsel motion. I am concerned about the short notice on which that motion was served, but also appreciate that there is urgency associated with this motion. Accordingly, the motion for representative counsel to investors in CV-25-00741044-00CL is scheduled to be heard commencing at **12:00 noon on May 16, 2025 (virtually)**.
- [6] As noted below, the form of Receivership order granted today contains a provision that the Receiver is to file an initial report with 30 days with a case conference to discuss next steps to follow thereafter. That case conference in CV-25-00741044-00CL is scheduled for **June 26, 2025 at 10:00 am for 2 hours (virtually)**.

## **Background**

- [7] Serious allegations of wrongdoing by SMFI have been brought to the attention of FSRA. FSRA monitors regulated mortgage brokers and brokerages.
- [8] SMFI is a company incorporated in Ontario whose business is regulated by FSRA. SMFI is licensed as a mortgage brokerage and a mortgage administrator under the MBLAA. As of March 31, 2025, SMFI has no licensed mortgage brokers or agents.
- [9] The other two respondents, 248Co and 198Co are companies incorporated in Ontario. Each of these companies holds a 50% interest in joint ventures that are the beneficial owners of construction projects believed to have been financed by funds from investors in SMFI.
- [10] Sandford L. Sussman owns 100% of the shares of, and is an officer and director of, each of the Respondents. Mr. Sussman was licensed as a mortgage agent level 2 until March 31, 2025, when his license expired. He has not applied to renew his license.
- [11] FSRA has received reporting from SMFI indicating SMFI has 92 investors in 38 mortgages under administration, valued at \$101,148,392. Of these, 11 mortgages, valued at \$73,191,452, are in arrears; and of the mortgages under administration, 22 are qualified syndicated mortgages valued at \$23,111,237 and 17 are non-qualified syndicated mortgages valued at \$79,307,152.

- [12] FSRA has received complaints from SMFI investors, which include not only that interest payments have stopped and loans have not been repaid, but also that there were certain additional irregularities. These include, mortgages were registered for amounts less than those advanced by investors, mortgages were not registered on properties for which investors funds were advanced, mortgages in which investors had participated were discharged or transferred without notice to investors or repayment of the investors' funds and SMFI that misappropriated or misdirected investor funds.
- [13] BRF, who had been engaged by SMFI to conduct a review its mortgage portfolio, sent a letter to investors in SMFI dated April 1, 2025 advising of BRF's engagement to provide a full accounting of each mortgage and the funds invested and owing to various investors, and to advise SMFI on the best path forward to resolve its obligations.
- [14] In early April, FSRA engaged with SMFI and BRF and obtained an undertaking from SMFI to govern its operations in the interests of investors by taking all reasonable actions with respect to the mortgages under administration consistent with its obligations as a trustee and fiduciary, to provide certain information to FSRA, and to cease taking on new business.
- [15] At least three separate actions have been commenced by SMFI investors against SMFI, Sussman and other related parties. These proceedings include allegations of, among other things, breach of contract, negligence, breach of fiduciary duty, breach of trust, unjust enrichment, fraud and misrepresentation.
- [16] One of the actions (the “**Goldfarb Action**”), was commenced on April 14, 2025 by Logpin Investments Limited, The Goldfarb Corporation and related parties (collectively, the “**Goldfarbs**”) against Mr. Sussman, SMFI, 248Co and 198Co, among others (collectively, the “**Sussman Defendants**”), seeking, among other things, damages, declaratory relief and a Mareva injunction.
- [17] The plaintiffs in the Goldfarb Action, among other things, allege that after SMFI ceased making interest payments on their loans, the Goldfarbs began investigating their mortgage investments and discovered that several of the underlying mortgages had been discharged or transferred by the Sussman Defendants without notice to them, the proceeds from those discharges were not paid to the Goldfarbs, the Sussman Defendants received repayment of the principal amounts, discharged the mortgages, concealed these facts, and continued making interest payments to give the impression that the mortgages remained in place, and the funds were ultimately misappropriated or misdirected.
- [18] FSRA also raises issues, including potential preference related claims, arising from certain transactions entered into on December 30, 2024 and February 5, 2025 between the Goldfarb Plaintiffs and certain of the Respondents. Under those transactions, which were documented by Assignment Agreements, 248Co and 198Co assigned to certain of the Goldfarb Plaintiffs their respective co-tenancy and cash flow interests in connection to properties.

[19] On April 17, 2025, BRF attended at SMFI's premises to preserve the physical and electronic books and records of SMFI relating to its syndicated mortgage loan business.

## Issues

[20] There are two issues to be determined today:

1. Should BRF be appointed as Receiver over the Property of the Respondents and if so, whether the terms of the receivership order proposed by the Lender appropriate; and
2. Should the Maeva Injunction as against Mr. Sussman be granted?

## Analysis

### Issue 1: Appointment of Receiver

[21] The MBLAA provides in s. 37(1) and (2) that:

(1) The Chief Executive Officer [of FSRA] may apply to the Superior Court of Justice for an order appointing a receiver, receiver and manager, trustee or liquidator of property that is in the possession or under the control of a licensee or person or entity who the Chief Executive Officer believes, on reasonable grounds, is or was required to have a licence.

(2) If the court is satisfied that the appointment is in the public interest, the court may make the appointment and may impose such conditions as the court considers appropriate.

[22] The purpose of the MBLAA is the protection of the public interest. Similar public interest concerns underly receivership orders made under the *Securities Act* (Ontario). In this analogous context, this Court has held that where there is a history of mismanagement, no evidence of a tangible alternative resolution, evidence that lenders' interests will not be served by maintaining the status quo and evidence that the debtor is not in a better position than a receiver to protect lenders' interests, appointing a receiver is appropriate: see *Ontario Securities Commission v Sextant Strategic Opportunities Hedge Fund LP*, 2009 CanLII 38503 [Sextant] at paras 55-56.

[23] The Court also has authority under s. 101 of the CJA to appoint a receiver or receiver and manager where it is just or convenient to do so. It is solely under s. 101 of the CJA that the appointment of a receiver is sought with respect to 248Co and 198Co.

[24] In considering whether the appointment of a receiver and manager is just or convenient, the Court is to consider the nature of the property and the rights and interests of the parties, including the potential costs, the relationship between the debtors and the creditors, the likelihood of maximizing the return on and preserving the subject property and the best

way of facilitating the work and duties of the receiver and manager: see *Bank of Nova Scotia v Freure Village of Clair Creek*, 40 CBR (3d) 274 at para 10.

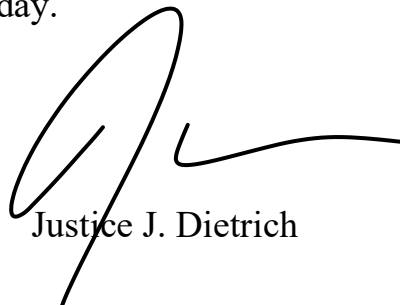
- [25] In the present circumstances, I am satisfied that the appointment of a receiver over the property of SMFI is in the public interest and that the appointment of a receiver over the property of all of the Respondents is just and convenient.
- [26] As noted above, the respondents have consented to the appointment and no person opposes that relief. There is evidence that payments to investors are overdue, interest payments have ceased and that there are irregularities (as described above) with respect to the registration, discharge and transfer of mortgages and the misappropriation or misdirection of funds.
- [27] Multiple actions have been commenced and a court-supervised process will facilitate the preservation and protection of the Respondents' assets in an orderly, efficient and transparent process, for the benefit of all stakeholders. It will also permit the investigation of potentially preferential transactions.
- [28] Based on the jurisprudence, I am satisfied that the Court can make an order covering trust property in a receivership, although such should be done sparingly: see *Ontario (Securities Commission) v. Consortium Construction Inc.*, 1992 CarswellOnt 176, 11 C.P.C. (3d) 352 (ONCA). However, given the circumstances, I am satisfied that this is a situation where the Court should exercise its discretion to do so. In particular, without the Receiver's Charge extending over the trust assets held by the Respondents, it is unclear to what pool of funds, if any, the Receiver or the Receiver's counsel could look to for remuneration in the present case. Where the assets to be protected in a receivership are trust assets, and where the work done in the receivership is of benefit to the trust assets or necessary for the management and preservation of the trust assets, as in the present case, it is appropriate for those trust assets to meet the expenses of the receivership.
- [29] BRF is familiar with the circumstances of the Respondents and the arrangements with their investors and other stakeholders. BRF is qualified to act as receiver and has consented to do so. No party objects to BRF's appointment.
- [30] The terms of the proposed receivership order are in large part based on the Commercial List model receivership order. With the amendments discussed at the hearing today, the form of order is appropriate in the circumstances. As noted above, it includes that receiver will review and investigate the following matters and report to the Court and stakeholders within 30 days with a case conference to take place thereafter: (a) transactions related to the syndicated mortgage loans brokered by SMFI and the disposition of any proceeds; (b) the status and realizable value of the underlying mortgages; and (c) the status and realizable value of the Respondents' interests in the Sussman-related joint venture agreements.

- [31] The test for a Mareva Injunction is set out in *Sibley & Associates LP v. Ross*, 2011 ONSC 2951 at para 11. The form of order now sought by the plaintiffs in the Goldbarb Action has been limited to a Mareva Injunction against Mr. Sussman. Mr. Sussman has consented to the form of Order requested and no other party has objected.
- [32] The form of draft order requested is based, in large part, on the Commercial List Model Form with revisions that address the receivership and other matters which have been agreed to be the parties.
- [33] Although the undertaking to damages was not previously filed, it has now been provided to the Court and uploaded on Case Center.
- [34] Based on the record before me, I am satisfied that the order now requested, with the amendments as discussed during the hearing, should issue.
- [35] Given the interplay between the receivership proceeding and the Mareva injunction, it was agreed during the hearing that information obtained through the Mareva injunction is to be shared with the Receiver and with other counsel to investors. Given the motion to appoint representative counsel to the other investors is to be heard on May 16, 2025, there may not be substantive information to share prior to that time, but communication between counsel is expected with respect to this information, including with counsel to the proposed representative counsel.

## **Disposition**

- [36] Orders to go in the forms signed by me this day.

May 2, 2025



Justice J. Dietrich