

**CITATION:** Chief Executive Officer of the Financial Services Regulatory of Ontario v.  
Sussman Mortgage Funding Inc. et al., 2025 ONSC 2982  
**COURT FILE NO.:** CV-25-00741044-00CL  
**DATE:** 20250520

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

**RE:** Chief Executive Officer of the Financial Services Regulatory of Ontario, Applicant

**AND:**

Sussman Mortgage Funding Inc., 2486976 Ontario Inc. and 1981361 Ontario Inc.,  
Respondents

**BEFORE:** Jane Dietrich, J.

**COUNSEL:** *Robert D. Malen* for 2114568 Ontario Inc., Alliance Homes Ltd., Alex Troop, and  
Waterways of Muskoka Ltd  
*Paul J. Daffern* for 1981361 Ontario Inc., 2486976 Ontario Inc. and Sussman  
Mortgage Funding Inc. and Sandford Sussman  
*Samuel Mosonyi*, for Ballymore Building (Innisfil) Corporation  
*Steven L. Graff, Matilda Lici*, for the Proposed Representative Counsel  
*Massimo (Max) Starnino, Evan Snyder*, for Certain Investors / Proposed  
Representative Counsel – the Starkman Group  
*Robert Kennedy*, for the Receiver, B. Riley Farber Inc.  
*George Benchetrit*, for the CEO of the Financial Services Regulatory Authority of  
Ontario  
*D. J Miller, Derek Harlan*, for Logpin Investments Limited, The Goldfarb  
Corporation, Gary Goldfarb, and Jeffrey Goldfarb  
*Teodora Obradovic* for Logpin Investments Limited, The Goldfarb Corporation,  
Gary Goldfarb, Jeffrey Goldfarb, Suzy S. Greenspan and Julianna Greenspan  
*Judy Hamilton*, for Jeffrey Citron PC and WFE Investments Corp.  
*Michael Crampton*, for Jack Tepperman, Jordana Hoppe and the Tepperman  
Family Trust  
*Pavel Masic*, for Robert Green Investors  
*Riley Brooks*, for Teresa Vincent, Laura Vincent, 2578709 Ontario Ltd. and UCA  
Branding Inc.  
*Hilary Book* for Stephen Shefsky, Rita Shefsky and Samantha Shefsky

**HEARD:** May 16, 2025

**REASONS FOR DECISION**

## Introduction

- [1] Before me are two requests to appoint representative counsel (“**Representative Counsel**”) for certain investors (“**Investors**”) who invested in mortgages brokered and administered by Sussman Mortgage Funding Inc. (“**SMFI**”).
- [2] There is no dispute that Representative Counsel should be appointed, rather the dispute centers around the approach of the two proposed Representative Counsels and therefore which of the two firms should be appointed as Representative Counsel.

## Background

### Procedural Background

- [3] On May 2, 2025, upon the application of the Financial Services Regulatory Authority of Ontario (“**FSRA**”), I appointed a B. Riley Farber Inc. as receiver (the “**Receiver**”) in this proceeding. Terms not otherwise defined herein have the meaning provided for in my endorsement of May 2, 2025.
- [4] Also on May 2, 2025, certain Investors sought an order appointing Aird & Berlis LLP (“**A&B**”) as Representative Counsel (the “**A&B Motion**”). As that motion was only served on April 29, 2025, I scheduled that motion to be heard before me on May 16, 2025.
- [5] In the intervening time, on May 9, 2025, certain other Investors delivered a motion record seeking to appoint Paliare Roland Rosenberg Rothstein LLP (“**Paliare**”) as Representative Counsel (the “**Paliare Motion**”).
- [6] Certain other investors, Logpin Investments Limited, The Goldfarb Corporation, Jeffery Goldfab and Gary Goldfarb (the “**Goldfarb Investors**”) have also filed responding material regarding the form of order sought by proposed Representative Counsel and advise they intend to opt-out of representation by any Representative Counsel. The Goldfarb Investors have approximately \$42 million invested in SMFI.

### SMFI & the Receivership

- [7] Serious allegations of wrongdoing by SMFI were brought to the attention of FSRA. FSRA monitors regulated mortgage brokers and brokerages in Ontario.
- [8] 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.
- [9] 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 registered for amounts less than those advanced by investors, mortgages not registered on properties for which investors funds

were advanced, mortgages in which investors had participated being discharged or transferred without notice to investors or repayment of the investors' funds and misappropriated or misdirected investor funds.

- [10] FSRA's request to appoint a Receiver was not opposed, and the Respondents consented to the appointment. As noted above, on May 2, 2025, I granted the requested Receivership Order. That order provides, among other things, 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 is scheduled for June 26, 2025.

## Issues

- [11] The issues to be decided on this motion are:

1. Should Representative Counsel be appointed;
2. If so, which Representative Counsel should be appointed; and
3. Are the terms of the Order sought appropriate?

## Analysis

### Issue 1: Should Representative Counsel be appointed?

- [12] No one opposes the appointment of Representative Counsel in this case. Rather, as discussed below, it is the terms of the appointment order and the identity/proposed plan of Representative Counsel that are in issue.
- [13] This Court's jurisdiction to appoint representative counsel is found in Rules 10.01 and 12.07 of the *Rules of Civil Procedure* R.R.O. 1990, Reg. 194 and s. 101 of the *Courts of Justice Act* R.S.O. 1990, c. C.43.
- [14] This Court has previously exercised its discretion in receivership proceedings to appoint representative counsel on behalf of vulnerable stakeholders and order that their legal and other professional fees be paid by the debtor's estate. These cases include, *WestLB AG, Toronto Branch v. The Rosseau Resort Developments Inc.*, Court File No. CV-09-8201-00CL, Endorsement of the Honourable Madam Justice Pepall dated August 20, 2009; *Ontario Securities Commission v. Portus Alternative Asset Management Inc.*, 2006 CanLII 8882 (ON SC); *Ontario Securities Commission v. Norshield Asset Management (Canada) Ltd.*, Court File No. 05-CL-5965, Order of the Honourable Mr. Justice C.L. Campbell dated February 7, 2006; *Grosvenor Park Media Fund LP v. Arc Productions Ltd. et al.*, Court File No. 16-CV-1 I472-00CL, Order of the Honourable Justice Newbould dated August 19, 2016; *In the Matter of Hi-Rise Capital Ltd. et al.*, Court File No. CV-19-616261-00CL, Order of the Honourable Mr. Justice Hainey dated March 21, 2019.
- [15] When considering the appointment of representative Counsel in the context of a proceeding under the *Companies' Creditors Arrangement Act* R.S.C., 1985, c. C-36 (the "CCAA"), Pepall J. (as she then was) in *Re CanWest Publishing Inc.*, 2010 ONSC 1328 (CanLII), 65 C.B.R. (5th) 152, enumerated the following list of factors to be considered the Court:

- the vulnerability and resources of the group sought to be represented;
- any benefit to the companies under CCAA protection;
- any social benefit to be derived from representation of the group;
- the facilitation of the administration of the proceedings and efficiency;
- the avoidance of a multiplicity of legal retainers;
- the balance of convenience and whether it is fair and just, including to the creditors of the Estate;
- whether representative counsel has already been appointed for those who have similar interests to the group seeking representation and who is also prepared to act for the group seeking the order; and
- the position of other stakeholders and the Monitor.

- [16] These factors are also appropriate to consider in the context of a receivership proceeding.
- [17] In these proceedings, there are nearly one hundred Investors who invested in mortgages brokered and administered by SMFI pursuant to terms and conditions of various investor agreements, with dozens of Investors alleging that SMFI has breached or is currently breaching those agreements.
- [18] Although it expected that certain larger investors, like the Goldfarb Investors, will opt-out of representation, other investors have invested smaller amounts (in the range of \$25,000 to \$1 million).
- [19] These investors are directly exposed to losses on their investments in SMFI. Requiring each Investor to obtain their own counsel to ensure that their interests are protected in respect of these proceedings would lead to inefficiency, and increased costs (costs that for many may simply be unaffordable or uneconomical on an individual basis).
- [20] The appointment of Representative Counsel in this case is also intended to avoid a multiplicity of legal retainers. By representing the Investors as a group, Representative Counsel will be more effectively able to advocate for the Investors' collective interests and work with the Receiver and other stakeholders to ensure that the Investors' interests are fairly protected.
- [21] The appointment of Representative Counsel will also make this proceeding more efficient, by reducing the overall cost of the receivership. Representative Counsel will become the point of contact for all Investors who do not opt-out and can assist the Receiver with the task of communicating with those nearly 100 Investors.
- [22] In my view, it is not premature to appoint Representative Counsel. Many investors are reaching out to proposed Representative Counsel with questions. Other investors have reached out to separate counsel who have appeared on this motion to support the appointment of Representative Counsel. It is also important that Representative Counsel be engaged now as it is expected the Receiver will provide its initial report quite soon, as noted above.

- [23] It may be that after the Receiver's initial report is released, considerations regarding the role of Representative Counsel may change, but that can be addressed at that time as needed, and in the meantime Representative Counsel can begin fielding inquiries from the Investors and get up to speed.
- [24] The Receiver also supports the appointment of Representative Counsel at this time.
- [25] Accordingly, I am of the view that the appointment of Representative Counsel is appropriate.

Issue 2: Which Representative Counsel should be appointed?

- [26] Courts have considered competing applications to appoint representative counsel in other insolvency proceedings. See for example, See *Quadriga Fintech Solutions Corp. (Re)*, 2019 NSSC 65 [**Quadriga**] at para 9, 11-12 and 45 and see the Endorsement of Justice Osborne dated May 5, 2025, in *Hudson's Bay Company (Re)*, appending at Schedule "A" the Honourable Herman Wilton-Siegel's report in respect of the appointment of representative counsel. In distilling the considerations by the Court in these cases, the following factors have been taken into account:
- a. Experience of counsel (including if relevant, by jurisdiction and language);
  - b. Proposed approach to the role and how that accords with the objectives of effective communication and efficiency;
  - c. Proposed breadth of proposed representation and extent of counsel's mandate to act; and
  - d. Potential conflicts;
- [27] The assessment is somewhat subjective as it requires a consideration of the approach to the issues of efficiency, communication and cost effectiveness. There are strengths and weaknesses in different proposals and legitimate debates about which strategies might be most effective in particular circumstances: see *Quadriga* at para 45.
- [28] Both firms that have been put forward here are eminently qualified counsel. No one who appeared on this motion took any issue with the qualifications of either A&B or Paliare to perform of the role of Representative Counsel. A number of Investors express support for either A&B or for Paliare – however most indicated either would be appropriate. As counsel to one investor expressed, although he had a soft preference for Paliare, he was of the view that both counsels were qualified.
- [29] The material filed and submissions made by both A&B and Paliare indicate that Investor Committees would be established with the input from the Receiver to ensure diverse representation of Investors on the committee.
- [30] The proposed approach of A&B and Paliare to the role, however, varies.

- [31] A&B describes their proposed approach as providing up-front transparency. A&B proposes to represent the Investors' interest within the receivership proceeding including (a) advising Investors with respect to the Receiver's initial report, the business and affairs of the Respondents and relevant mortgages; (b) filing and preparing material in this proceeding; (c) negotiating resolutions, as appropriate with respect to this application or motions brought within it; (c) bringing motions within the proceeding; and (d) performing such other actions as approved by the Court.
- [32] The order proposed by A&B provides that Representative Counsel will be entitled to be paid its reasonable legal fees and disbursements, which are subject to court approval. As well, Representative Counsel would be granted a charge to secure its fees and expenses in the amount of \$150,000 (the "**Representative Counsel Charge**"). The Representative Counsel Charge is proposed to only attach to the interest of the Investors who are not Opt-Out Investors. As well, A&B proposes that its fees be paid from distributions to Investors who are not Opt-Out Investors.
- [33] The A&B proposed order also provides that Investors would need to opt-out in writing by May 27, 2025 (although amendments to that date were discussed during the hearing).
- [34] In contrast to the A&B proposed mandate, Paliare describes its approach as 'wait and see'. Paliare proposes that its mandate would be to represent the Investors in the Receivership Proceeding and, subject to further court order to the contrary, any corollary proceedings in respect of claims of the Investors. Initially the mandate would be limited to what the proposed draft order refers to as (a) an Investigation Mandate (including receiving and reviewing information from the receiver, investigating and identifying claims, developing a process to prosecute and monetize claims, communicating and responding to inquiries from Investors, and establishing rules for the Investor Committee; and (b) an Urgent Proceedings Mandate (including taking steps to preserve or avoid prejudice to claims of Investors).
- [35] Paliare proposes in that its fees and compensation be addressed later. For the Urgent Proceedings Mandate, compensation is proposed to be addressed later on a *quantum meruit* basis. For the Investigation Mandate it is proposed that no compensation would be provided if it is not advantageous that Representative Counsel be involved in realization of monetization of claims, but otherwise it is not clear what Representative Counsel's compensation would be – however the costs of all mailings, advertisements or other material to be distributed is proposed to be directly borne by the Receiver.
- [36] Paliare also proposes that Representative Counsel would move for advice and directions regarding the future mandate of the Investor Committee including compensation of Representative Counsel or termination of Representative Counsel within 45 days or such other prior ordered by the Court.
- [37] No potential conflicts which would impact on either A&B or Paliare's ability to act as Representative Counsel were raised before me.
- [38] When I consider all of the above, I prefer the approach of A&B for the following reasons:

- (a) In these circumstances, I am of the view that is more appropriate to confine the mandate of Representative Counsel to within the Receivership Proceedings at this point in time. It may be that it is appropriate for Representative Counsel to pursue additional claims in the future, however, if and when that is appropriate the corresponding terms of that expanded mandate (and potential for additional opt-outs for such mandate) can be addressed on an informed basis at that time; and
- (b) The fee structure proposed by A&B is determined up front and is not objected to by any stakeholder. This certainty is important. In this regard, the Goldfarb Investors expressed objection to many of terms of the draft order provided by Paliare. Even if the form of order requested by Paliare was approved at this time additional litigation in 45 days would be possible if not probable. The form of order, including the proposed fee structure, proposed by A&B was not the subject of any objection and does not necessitate a further appearance.

[39] I also note that A&B advised the court, and it is expected, that they will perform the mandate in a cost-efficient manner having regard to investor interest and potential recovery. Even prior to its appointment, A&B has already taken steps to commence a bankruptcy application against SMFI on behalf of one Investor in order to ensure applicable look back periods for reviewable transactions for all Investors are crystallized.

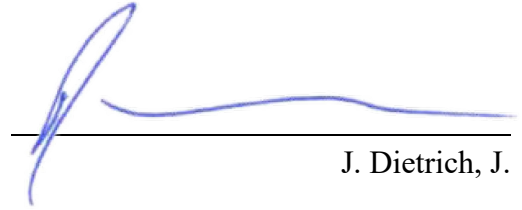
[40] Accordingly, A&B Motion is granted, subject to comments below regarding the form of order requested. The Paliare Motion is dismissed.

### Issue 3 Are the terms of the Order sought appropriate?

[41] Generally, the terms of the draft Order proposed by A&B are appropriate. However, the order is to be amended to ensure that:

- (a) the timeline for the opt-out process is clear. This is to include (i) a notice contemplated in para 18 of the draft Order being provided by the Receiver to all known Investors no later than May 22, 2025; and (ii) Investors then having until June 6, 2025, or otherwise with the written consent of Representative Counsel or further order of the Court to opt out; and
- (b) the Investor Committee will be selected, with the input of the Receiver, to ensure that representation from a diverse range of Investors is included on the committee. Further, membership on the Investor Committee may change from time to time to ensure diverse and appropriate representation.

[42] Counsel may email a revised form of the draft order to the Commercial List Office for my review and signature.



A handwritten signature in blue ink, consisting of a large, stylized initial 'J' followed by a long, horizontal, wavy line.

J. Dietrich, J.

**Date:** May 20, 2025