

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

B E T W E E N:

**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES
REGULATORY AUTHORITY OF ONTARIO**

Applicant

- and -

**SUSSMAN MORTGAGE FUNDING INC., 2486976 ONTARIO INC.
and 1981361 ONTARIO INC.**

Respondents

APPLICATION UNDER SECTION 37 OF THE *MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT*, 2006, S.O. 2006, C.29, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

FACTUM OF THE APPLICANT
(Application Returnable May 2, 2025)

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TO: THE SERVICE LIST

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FACTUM OF THE APPLICANT

PART I – OVERVIEW¹

1. This factum is filed by the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario (“**FSRA**”) in support of its application for the appointment of B. Riley Farber Inc. (“**BRF**”) as receiver (the “**Receiver**”) of all of the assets, undertakings and properties of the Respondents 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

¹ Capitalized terms not defined herein have the meanings ascribed to them in the Affidavit of Antoinette Leung affirmed April 11, 2025 (the “**Leung Affidavit**”), Tab 2, Application Record.

property, rights, interests and proceeds arising from all joint venture or co-tenancy agreements entered into by the Respondents (collectively, the “**Property**”), pursuant to Section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29 (the “**MBLAA**”) and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the “**CJA**”).

2. This receivership application has been brought on an urgent basis as a result of recent and serious allegations of wrongdoing by Sussman Mortgage Funding Inc. (“**SMFI**”) that have been brought to the attention of FSRA.

3. The affidavit evidence filed on this application indicates that SMFI has, among other things:

- (a) ceased making interest payments to investors;
- (b) failed to repay investor loans;
- (c) registered mortgages for amounts less than those advanced by investors;
- (d) failed to register mortgages on properties for which investors had advanced loans;
- (e) discharged or transferred mortgages in which investors had participated, without notice to them and without repaying the corresponding loans; and
- (f) misappropriated or misdirected investor funds.

4. A court-appointed receivership is in the public interest and is just and convenient given, among other things, that:

- (a) there is a multiplicity of proceedings, including at least three separate civil actions recently commenced against SMFI, Mr. Sussman, and others;
- (b) the Goldfarbs (as defined below), who are significant investors, entered into transactions with SMFI and related parties in December 2024 and February 2025 that appear to provide them with preferential treatment over other investors, and have commenced an action seeking, among other things, declaratory relief to validate those transactions;
- (c) the Respondents have interests in active construction projects which need to be preserved for the benefit of their stakeholders; and
- (d) the Respondents have consented to the proposed draft order circulated by FSRA, which is also supported by investors who have tens of millions of dollars at risk.

5. The draft order submitted by FSRA contemplates that the proposed receiver will file a report with the Court within 30 days to provide its findings and recommendations for the benefit of all interested parties, following which a case conference would take place at which all stakeholders would have an opportunity to make submissions on appropriate next steps based on a more complete factual record with respect to the affairs of the Respondents.

PART II - FACTS

Background

6. FSRA monitors regulated mortgage brokers and brokerages to ensure they uphold the required standard of conduct and possesses the ability to take enforcement action if mortgage brokers or brokerages fail to comply with the law.

7. SMFI is a company incorporated in Ontario whose business is regulated by FSRA. SMFI is licensed as a mortgage brokerage (license #10666) and a mortgage administrator (license #11552) under the MBLAA.² As of March 31, 2025, SMFI has no licensed mortgage brokers or agents.³

8. 2486976 Ontario Inc. (“**248Co**”) and 1981361 Ontario Inc. (“**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 investor funds.⁴

9. Sandford L. Sussman (“**Sussman**”) owns 100% of the shares of, and is an officer and director of, each of the Respondents. Sussman was licensed as a mortgage agent level 2 (license #M14001182) until March 31, 2025, when his license expired. He has not applied to renew his license.⁵

10. Reporting recently provided by SMFI to FSRA indicates that:⁶

² Leung Affidavit, at para. 3; Exhibits “A” and “B” to the Leung Affidavit.

³ Leung Affidavit, at para. 6; Exhibits “A” and “D” to the Leung Affidavit.

⁴ Exhibit “L” to the Leung Affidavit; Exhibit “M” to the Leung Affidavit (the “**Goldfarb SOC**”), at paras. 31 and 32.

⁵ Leung Affidavit, at para. 6; Exhibit “D” to the Leung Affidavit.

⁶ Leung Affidavit, at para. 4; Exhibit “C” to the Leung Affidavit.

- (a) SMFI's office address is 129 Dunlop Street East, Barrie, Ontario;
- (b) 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
- (c) 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.

Complaints Received by FSRA

11. FSRA has recently received complaints from SMFI investors, which include allegations that:⁷

- (a) interest payments have stopped;
- (b) their loans have not been repaid;
- (c) mortgages were registered for amounts less than those advanced by investors;
- (d) mortgages were not registered on properties for which investors funds were advanced;
- (e) mortgages in which investors had participated were discharged or transferred without notice to investors or repayment of the investors' funds;
- (f) SMFI misappropriated or misdirected investor funds.

⁷ Leung Affidavit, at paras. 8-14; Exhibits "F"- "H" to the Leung Affidavit.

12. On April 1, 2025, FSRA received a copy of a letter sent from BRF to investors in which it indicated (among other things) that SMFI was facing financial difficulties in relation to its syndicated mortgage investment loans, and that SMFI had retained BRF to conduct a review of its mortgage portfolio to (a) provide a full accounting of each mortgage and the funds invested and owing to various investors, and (b) advise SMFI on the best path forward to resolve its obligations.⁸

13. In light of the complaints received and the letter from SMFI to investors, FSRA staff contacted SMFI and BRF to request certain tombstone information regarding SMFI's mortgage portfolio. BRF, on behalf of SMFI, provided a response on April 3, 2025.⁹

14. FSRA also entered into an undertaking with SMFI to govern its operations, requiring SMFI to act 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. Reporting timelines in the undertaking have since been extended given the pending receivership application.¹⁰

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.¹¹

⁸ Leung Affidavit, at para. 15; Exhibit "I" to the Leung Affidavit.

⁹ Leung Affidavit, at para. 16; Exhibit "J" to the Leung Affidavit.

¹⁰ Leung Affidavit, at para. 17; Exhibit "K" to the Leung Affidavit.

¹¹ Leung Affidavit, at para. 19; Exhibits "M" and "N" to the Leung Affidavit.

The Goldfarbs' Claim

16. On April 14, 2025, Logpin Investments Limited (“**Logpin**”), The Goldfarb Corporation and related parties (collectively, the “**Goldfarbs**”) commenced an action against Sussman, SMFI, 248Co and 198Co, among others (collectively, the “**Sussman Defendants**”), seeking, among other things, damages, declaratory relief and a *Mareva* injunction.¹²

17. In that action, the Goldfarbs allege (among other things) that:

- (a) 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;
- (b) the proceeds from those discharges were not paid to the Goldfarbs;
- (c) 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
- (d) the funds were ultimately misappropriated or misdirected.¹³

18. The Goldfarbs also acknowledge entering into a series of agreements with the Sussman Defendants, including certain transactions with 248Co and 198Co (the “**Assignment Transactions**”) pursuant to Assignment of Co-Tenancy Interest and Cash Flow Agreements dated December 30, 2024 and February 5, 2025, respectively (collectively, the “**Assignment**

¹² Leung Affidavit, at para. 19; Exhibit “M” to the Leung Affidavit, Goldfarb SOC, at para. 28-29.

¹³ Exhibit “M” to the Leung Affidavit, Goldfarb SOC, at paras. 28-29.

Agreements”). Under the Assignment Agreements, 248Co and 198Co assigned to Logpin their respective co-tenancy and cash flow interests in connection to properties described in Joint Venture Agreements dated January 19, 2016 and April 5, 2018.¹⁴

19. The Assignment Transactions appear to provide the Goldfarbs with preferential treatment over other SMFI investors.¹⁵

Securing the Respondents’ Books and Records

20. On April 16, 2025, Chaitons LLP sent an email to counsel for investors and other parties in attendance at the April 15, 2025 case conference in this proceeding indicating that BRF would be attending SMFI’s premises to image its network, including accounting and mortgage software, emails and saved files, and to secure the paper records by relocating them to a separate, padlocked storage unit.¹⁶

21. 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.¹⁷

PART III - ISSUES

22. The issues to be considered on this application are:

- (a) whether section 37 of the MBLAA applies to permit the appointment of the Receiver over the Respondents;

¹⁴ Exhibit “M” to the Leung Affidavit, Goldfarb SOC, at paras. 37-45.

¹⁵ Leung Affidavit, at para. 19.

¹⁶ Affidavit of Amy Casella sworn April 24, 2025 (the “**Casella Affidavit**”), at para. 2; Exhibit “B” to the Casella Affidavit.

¹⁷ Exhibit “C” to the Casella Affidavit.

- (b) whether it is in the public interest under the MBLAA and/or just and convenient under the CJA to appoint the Receiver over the Property;
- (c) whether BRF is the appropriate party to be appointed as the Receiver; and
- (d) whether the proposed Court-ordered charge granted to the Receiver and its counsel (the “**Receiver’s Charge**”) should also apply to the assets held in trust by the Respondents on behalf of syndicated mortgage lenders (the “**Trust Assets**”).

PART IV – LAW AND ARGUMENT

Section 37 of the MBLAA

23. Subsection 37(1) of the MBLAA permits FSRA to apply to the Court for an order appointing, among other things, a trustee or receiver of property that is in the possession or control of a licensee or person or entity that FSRA believes, on reasonable grounds, is or was required to have a license under the MBLAA.¹⁸

24. Subsection 37(2) of the MBLAA authorizes the Court to make such an order where the Court is satisfied that it is in the public interest to do so. Subsection 37(2) also authorizes the Court to impose such conditions on the appointment as the Court considers appropriate.¹⁹

¹⁸ *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29 (“**MBLAA**”), [s. 37\(1\)](#).

¹⁹ MBLAA, [s. 37\(2\)](#).

25. This Court has, in numerous instances, appointed a receiver under section 37 of the MBLAA.²⁰

26. The MBLAA is consumer protection legislation, the purpose of which is to protect the public. Any consideration of the nature and scope of a public interest power should be animated by the purposes of the enabling statute.²¹

27. Similar public interest concerns animate 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.²²

28. Where there is evidence of regulatory breaches and evidence that the value and integrity of assets purchased with investor funds have been compromised, Justice Morawetz (as he then was) held that it is in lenders' best interests to appoint a receiver so that such lenders are provided with independent, verifiable review and analysis, and so that such lenders receive "*treatment they can rely upon.*"²³

²⁰ [*Chief Executive Officer of the Financial Services Regulatory Authority of Ontario v First Swiss Mortgage Corp.*, Superior Court of Justice \(Ontario\), Commercial List, Endorsement of Steele J., dated March 27, 2023.](#); [*Superintendent of Financial Services v Building & Development Mortgages Canada Inc.*, Superior Court of Justice \(Ontario\), Commercial List, Appointment Order of Hainey J., dated April 20, 2018.](#); [*The Superintendent of Financial Services v Textbook Student Suites \(525 Princess Street\) Trustee Corporation et al.*, Superior Court of Justice \(Ontario\), Commercial List, Unofficial Transcription of the Endorsement of Newbould J., dated October 27, 2016.](#)

²¹ [*Kuang v Ontario \(Superintendent Financial Services\)*, 2009 ONFST 19](#) at para 31; [*Henderson v Ontario \(Superintendent Financial Services\)*, 2008 ONFST 7](#) at para 22; [*Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario \(Securities Commission\)*, 2001 SCC 37](#) at para 41

²² *Securities Act*, R.S.O. 1990, c S.5, s. 129; [*Ontario Securities Commission v Sextant Strategic Opportunities Hedge Fund LP*, 2009 CanLII 38503](#) at paras 55-56 (CanLII) [*Sextant*].

²³ [*Sextant*](#), *supra* note 20

Section 101 of the CJA

29. The CJA enables the Court to appoint a receiver and manager where such appointment is just or convenient.²⁴

30. In considering whether the appointment of a receiver and manager is just or convenient, the Court is asked 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.²⁵

Appointing the Receiver is in the Interest of the Public, and is Just and Convenient

31. SMFI was licensed as a mortgage brokerage and administrator under the MBLAA.²⁶

32. 248Co and 198Co are wholly owned by Sussman, who was licensed as a mortgage agent under the MBLAA until March 31, 2025. 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 investor funds.²⁷

33. The allegations against SMFI and Sussman, supported by evidence as contained in the Application Record filed by FSRA, disclose (among other things) that:²⁸

- (a) interest payments to investors have ceased;

²⁴ *Courts of Justice Act*, R.S.O. 1990, c C.43, [s. 101\(1\)](#).

²⁵ [Bank of Nova Scotia v Freure Village of Clair Creek](#), 40 CBR (3d) 274 at para 10 (ONSC).

²⁶ Leung Affidavit, at para. 3.

²⁷ Exhibit “L” to the Leung Affidavit; Exhibit “M” to the Leung Affidavit, Goldfarb SOC, at paras. 31 and 32.

²⁸ Leung Affidavit, at paras. 9-14, 19; Exhibits “M” and “N” to the Leung Affidavit; Casella Affidavit, at para. 2; Exhibit “A” to the Casella Affidavit.

- (b) investor loans have not been repaid;
- (c) SMFI registered mortgages for amounts less than those advanced by investors;
- (d) SMFI failed to register mortgages on title to properties for which investors had made loans;
- (e) SMFI discharged or transferred mortgages in which investors had participated without notifying the investors and without repaying their loans; and
- (f) SMFI misappropriated or misdirected funds received in connection with these mortgages.

34. An urgent court-appointed receivership over the Respondents is in the public interest and is just and convenient given, among other things, that:

- (a) there is a multiplicity of proceedings, including at least three separate actions commenced against SMFI and Sussman;²⁹
- (b) the transactions entered into between SMFI and the Goldfarbs in December 2024 and February 2025 appear to provide the Goldfarbs with preferential treatment over other investors;³⁰

²⁹ Leung Affidavit, at para. 19; Exhibits “M” and “N” to the Leung Affidavit; Casella Affidavit, at para. 2; Exhibit “A” to the Casella Affidavit.

³⁰ Leung Affidavit, at para. 19; Exhibit “M” to the Leung Affidavit.

- (c) the Respondents have consented to the proposed draft order circulated by FSRA, which is also supported by investors who have tens of millions of dollars at risk;³¹ and
- (d) 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.

35. The immediate appointment of a receiver with the powers and on terms set out in the draft order submitted by FSRA is clearly necessary for the protection of the Property and in the best interests of their investors and other stakeholders.

BRF is the Appropriate Receiver

36. BRF is familiar with the circumstances of the Respondents and the arrangements with their investors and other stakeholders.³²

37. At FSRA's request, BRF has taken steps to image SMFI's network, including accounting and mortgage software, emails and saved files, and to secure the paper records for SMFI's syndicated mortgage business.³³

38. No party has objected to BRF's appointment as receiver.

³¹ Casella Affidavit, at para. 2; Exhibit "D" to the Casella Affidavit.

³² Leung Affidavit, at paras. 15; Exhibit "I" to the Leung Affidavit.

³³ Exhibit "C" to the Casella Affidavit.

The Receiver's Charge Should Apply to the Trust Assets

39. 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.³⁴

40. 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. Assuming that it is in the public interest and it is just and equitable to appoint the Receiver for the benefit of the Respondents' assets and/or to manage and preserve the Respondents' assets, it should also follow that it is in the public interest and is just and equitable for the Receiver's Charge to apply over the Trust Assets.

PART V – RELIEF SOUGHT

41. For the reasons set out above, FSRA respectfully submits that this Court should grant an order appointing BRF as Receiver on the terms of the proposed order being sought.

³⁴ [*Ontario Securities Commission v Consortium Construction Inc* \(1992\), 9 OR \(3d\) 385 at paras 8-10 \(ONCA\); *Eron Mortgage Corp v Eron Mortgage Corp* \(1998\), 53 BCLR \(3d\) 24 at paras 30-32 \(BCSC\).](#)

I certify the authenticity of every authority cited in this factum.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of April, 2025.



CHAITONS LLP

**Lawyers for the Chief Executive
Officer of the Financial Services
Regulatory Authority of Ontario**

SCHEDULE “A”
AUTHORITIES

Table of Authorities

Title	Pinpoints
Cases	
<i>Kuang v Ontario (Superintendent Financial Services)</i>, 2009 ONFST 19	31
<i>Henderson v Ontario (Superintendent Financial Services)</i>, 2008 ONFST 7	22
<i>Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)</i>, 2001 SCC 37	41
<i>Ontario Securities Commission v Sextant Strategic Opportunities Hedge Fund LP</i>, 2009 CanLII 38503	55-56
<i>Bank of Nova Scotia v Freure Village of Clair Creek</i>, 40 CBR (3d) 274	10
<i>Ontario Securities Commission v Consortium Construction Inc</i>, 9 OR (3d) 385	8-10
<i>Eron Mortgage Corp v Eron Mortgage Corp</i>, 53 BCLR (3d) 24	30-32
Other	
<u>Chief Executive Officer of the Financial Services Regulatory Authority of Ontario v First Swiss Mortgage Corp., Superior Court of Justice (Ontario), Commercial List, Endorsement of Steele J., dated March 27, 2023.</u>	
<u>Superintendent of Financial Services v Building & Development Mortgages Canada Inc., Superior Court of Justice (Ontario), Commercial List, Appointment Order of Hainey J., dated April 20, 2018.</u>	
<u>The Superintendent of Financial Services v Textbook Student Suites (525 Princess Street) Trustee Corporation et al., Superior Court of Justice (Ontario), Commercial List, Unofficial Transcription of the Endorsement of Newbould J., dated October 27, 2016.</u>	

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Mortgage Brokerages, Lenders and Administrators Act, 2006, S.O. 2006, c. 29

Appointment of receiver, etc.

37 (1) The Chief Executive Officer 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 (the “designated person”). 2006, c. 29, s. 37 (1); 2018, c. 8, Sched. 17, s. 2.

Order

(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. 2006, c. 29, s. 37 (2).

Courts of Justice Act, R.S.O. 1990, c. C.43

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms

(2) An order under subsection (1) may include such terms as are considered just.

Securities Act, R.S.O. 1990, c. S.5

Appointment of receiver, etc.

129 (1) The [Commission](#) may apply to the Superior Court of Justice for an order appointing a receiver, receiver and manager, trustee or liquidator of all or any part of the property of any person or company. 1994, c. 11, s. 375; [2006, c. 19](#), Sched. C, s. 1 (1).

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**FACTUM OF THE CHIEF EXECUTIVE OFFICER OF
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