

**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 SUBSECTION 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 RECEIVER  
(motion returnable October 28, 2025)**

October 24, 2025

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## **PART I – OVERVIEW**

1. B. Riley Farber Inc. (“**B. Riley**”), in its capacity as the court-appointed receiver (the “**Receiver**”) without security, of the Property (as defined in an Order of the Honourable Justice Dietrich dated July 25, 2025 (the “**Amended and Restated Receivership Order**”)) of Sussman Mortgage Funding Inc. (“**SMFI**”), 2486976 Ontario Inc. (“**248**”), and 1981361 Ontario Inc. (“**178**”, and together with 248 and SMFI, the “**Respondents**”) submits this factum in support of its motion returnable October 28, 2025, for an Order (the “**Charge and Fee Order**”), among other things: increasing the Receiver’s Charge (as defined in the Amended and Restated Receivership Order) to \$1,650,000; approving the Receiver’s activities; and approving the fees and disbursements of the Receiver and its counsel. The Charge and Fee Order should be granted. The increase in the Receiver’s Charge reflects costs incurred to date, as well as the Receiver’s estimate of the costs to advance a number of proposed steps in the proceedings, including the realization strategies for various Properties, designing a claims process, and completing the Investigation (as defined in the Second Report) into the Respondents’ financial records.

2. Capitalized terms used herein but otherwise undefined have the respective meanings given to them in: the First Report of B. Riley Farber Inc., in its capacity as Receiver, dated June 2, 2025 (the “**First Report**”); the Supplemental Report to the First Report dated June 25, 2025 (the “**First Supplement**”); the Second Supplemental Report to the First Report, dated July 23, 2025 (“**Second Supplement**”); the Third Supplement to the First Report, dated August 11, 2025 (the “**Third Supplement**”); the Second Report of the Receiver, dated October 15, 2025 (the “**Second Report**”); and the Supplement to the Second Report, dated October 24, 2025 (the “**Second Report Supplement**”), as applicable.



## **PART II – THE FACTS**

3. On May 2, 2025, pursuant to an Order of the Honourable Justice Dietrich (the “**Receivership Order**”), B. Riley was appointed as Receiver.<sup>1</sup>

4. On July 25, 2025, the Honourable Justice Dietrich granted the Amended and Restated Receivership Order providing for, among other things, a Receiver’s Charge of up to the maximum principal amount of \$850,000 for the reasonable fees and expenses of the Receiver and its counsel, Dentons Canada LLP (“**Dentons**”) at their standard rates and charges.<sup>2</sup>

5. On October 3, 2025, Justice Dietrich issued an endorsement which increased the limit set out in paragraph 18 of the Amended and Restated Initial Order to \$950,000.

6. The Receiver has completed its preliminary investigation and filed with the Court the First Report, First Supplement, Second Supplement, Third Supplement, the Second Report, and the Second Report Supplement (collectively, the “**Reports**”), and for the reasons stated therein, particularly including the need to advance the realization plan for the Property for the benefit of all stakeholders, the Receiver brings this motion to, among other things, increase the Receiver’s Charge to \$1,650,000.

## **PART III – THE ISSUES**

7. The issues before this Honourable Court are whether the Court should:

- (a) increase the Receiver’s Charge to \$1,650,000;

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<sup>1</sup> Receivership Order, dated May 2, 2025, Appendix “A” to the First Report, Receiver’s Motion Record (“**MR**”), Tab 2A.

<sup>2</sup> Amended and Restated Receivership Order at para 18, MR, Tab 2C.

- (b) approve the Reports and the Receiver's activities set out therein; and
- (c) approve the fees and disbursements of the Receiver and its legal counsel,  
Dentons.

## **PART IV – LAW & ARGUMENT**

### **The Receiver's Charge Should Be Increased**

8. The Receiver was appointed pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act*<sup>3</sup> (the “**MBLAA**”), (in respect of SMFI), and pursuant to section 101 of the *Courts of Justice Act*<sup>4</sup> (the “**CJA**”) (in respect of all of the Respondents).

9. The Receiver was appointed as, among other reasons, it was in the public interest and just and convenient to do so. The Court granted the Receiver's Charge as, without the Receiver's Charge extending over the assets held by the Respondents, there would be no security for the Receiver or the Receiver's counsel.

10. When determining whether it is appropriate to increase a receiver's charge, courts have looked to jurisprudence involving section 11.52 of the *Companies' Creditors Arrangement Act* (Canada) (“**CCAA**”), which permits a charge over a debtor's property in respect of the fees and expenses of the monitor and its counsel.<sup>5</sup>

11. Pursuant to section 11.52 of the CCAA, the Court will consider a number of factors in granting an administration charge, including: (a) the size and complexity of the businesses being restructured; (b) the proposed role of the beneficiaries of the charge; (c) whether there is an

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<sup>3</sup> S.O. 2006, c. 29, [s. 37](#).

<sup>4</sup> R.S.O. 1990, c.C.43, [s.101](#).

<sup>5</sup> RSC, 1985, c. C-36, [s. 11.52](#).

unwarranted duplication of roles; (d) whether the quantum of the proposed charge appears to be fair and reasonable; (e) the position of the secured creditors likely to be affected by the charge; and (f) the position of the monitor.<sup>6</sup>

12. *Emmanuel Village Residence Inc. v 1250 Weber Street East*<sup>7</sup> (“**Emmanuel Village**”), involved a receivership under the CJA (as opposed to under the *Bankruptcy and Insolvency Act*,<sup>8</sup> (the “**BIA**”) or in connection with CCAA proceedings). In *Emmanuel Village*, Justice Newbould noted that administration charges are routinely granted in connection with receivership proceedings. Justice Newbould considered the relevant factors of the test pursuant to section 11.52 of the CCAA when determining whether to increase the “administration charge” (as it was termed in *Emmanuel Village*) within a receivership proceeding. The Court did not consider the factors listed at (b) and (f) above, being an assessment of the proposed role of the beneficiaries of the charge or the position of the monitor, as there is no monitor in a receivership.<sup>9</sup>

13. Accordingly in determining whether to increase the Receiver’s Charge, the Court should consider:

- (a) the size and complexity of the businesses being restructured;
  - (b) whether there is an unwarranted duplication of roles;
  - (c) whether the quantum of the proposed charge appears to be fair and reasonable;
- and

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<sup>6</sup> *Canwest Publishing Inc.*, 2010 ONSC 222 at para [54](#).

<sup>7</sup> *Emmanuel Village Residence Inc. v Ontario (Attorney General)*, 2016 ONSC 5661, at para [36](#) (“**Emmanuel**”).

<sup>8</sup> [R.S.C., 1985, c. B-3](#).

<sup>9</sup> *Emmanuel*, *supra* note 7 at para [36](#).

(d) the position of the stakeholders likely to be affected by the charge.

14. The Receiver submits that it is appropriate for this Court to exercise its discretion to grant the increased Receiver's Charge for the reasons below.

**a) Increase of Size and Complexity**

15. Pursuant to section 3(f) of the Amended and Restated Receivership Order, the Receiver was authorized to, among other things, review and investigate:

- (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 joint venture agreements included in the Property.<sup>10</sup>

16. As set forth in the Reports, the Receiver conducted a preliminary investigation into the transactions related to SMFI's syndicated mortgage loan portfolio, which led to the conclusion that significant additional work was required to: (a) reconcile Investor accounts; (b) investigate potential reviewable transactions; (c) explore options and determine the best options to optimize and maximize recoveries from the Projects for the benefit of all Investors; and (d) formulate a claims process and suitable scheme of distribution, taking into account the complexities and challenges created by the nature of the information systems and record keeping. These conclusions reflect the complexity underlying the proceedings.

17. Initially, stakeholders asked the Receiver to defer a detailed review of this Respondents' records and focus on developing the realization strategy. The Receiver believes it is now

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<sup>10</sup> Amended and Restated Receivership Order at para 3, MR, Tab 2C.

appropriate to complete the financial review (referred to as the “Investigation” in the Second Report).

18. The Receiver also believes these proceedings are now at an appropriate stage to design a claims process to allow Investors to prove claims against the estate. The Receiver is of the view that it will be useful to complete the financial review before beginning the work to assess claims.<sup>11</sup>

19. Since its appointment, the Receiver has also taken the necessary steps to advance the receivership administration including:<sup>12</sup> realizing on certain residential mortgages and developing realization strategies for the remaining Active Mortgages as detailed in the Second Report;<sup>13</sup> considering options to investigate avenues for recovery; and corresponding with key stakeholders, including the CRA, Goldfarb Group, Representative Counsel and former employees, among others.<sup>14</sup>

20. As detailed in the Second Report, considerable work has gone into advancing the realization strategy related to numerous projects, mortgages and land, including without limitation: Alliance Project; the Ballymore Project; the Waterways Project; Heritage Village; Raseta Lands; the Subramaniam Mortgages; and the Bidmead Mortgage.

21. The Receiver has proposed a continued course of action that is reasonable and appropriate in the circumstances following discussions with Representative Counsel and other stakeholders.

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<sup>11</sup> *Ibid* at para 22.

<sup>12</sup> Second Report at para 2, MR, Tab 2 (“**Second Report**”).

<sup>13</sup> *Ibid* at para 23.

<sup>14</sup> [First Report Supplement](#) at paras 10-12.

This course of action necessitates continued involvement of the Receiver. For these reasons an increase to the Receiver's Charge is appropriate.<sup>15</sup>

**b) No unwarranted duplication of roles**

22. Each of the proposed beneficiaries of the Receiver's Charge is performing unique functions without duplication of roles. B. Riley is acting as Receiver in these proceedings and will oversee the realization plan. Dentons is acting as counsel to the Receiver.

**c) The Quantum of the Proposed Charge is Fair and Reasonable**

23. The quantum of the proposed increase to the Receiver's Charge is fair and reasonable, given the work done to date and the work that is anticipated to advance the receivership administration, including the realization process, the Investigation and any claims process. The Receiver has consulted with Representative Counsel and to the Goldfarb Group and provided an estimate of fees to support the proposed increase.

**d) Position of the Affected Stakeholders**

24. The Receiver has discussed the proposed course of action with Representative Counsel and counsel to the Goldfarb Group. To date no one has indicated any opposition to the Receiver's request.

**The Receiver's Activities and Fees Should Be Approved**

25. The role of the Court on a motion to pass accounts is to evaluate them on the basis of the overriding principle of reasonableness. The following factors set out by the Court of Appeal in *Confectionately Yours Inc. (RE)*, provide guidance on how to evaluate the quantum of fees:

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<sup>15</sup> *Ibid* at para 39.

- (a) the nature, extent and value of the assets handled;
- (b) the complications and difficulties encountered;
- (c) the degree of assistance provided by the debtor company, its officers or its employees;
- (d) the time spent, the receiver's knowledge, experience and skill;
- (e) the diligence and thoroughness displayed;
- (f) the responsibilities assumed;
- (g) the results of the receiver's efforts; and
- (h) the cost of comparable services when performed in a prudent and economical manner.<sup>16</sup>

26. Justice Osborne recently noted:

While the above factors, including time spent, should be considered, value provided should predominate over the mathematical calculation reflected in the hours times hourly rate equation. The focus of the fair and reasonable assessment should be on what was accomplished, not on how much time it took. The measurement of accomplishment may include consideration of complications and in difficulties encountered in the receivership (Diemer, at para. 45).<sup>17</sup>

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<sup>16</sup> *Confectionately Yours Inc. (Re)*, 2002 CanLII 45059 (ON CA), at para [45](#).

<sup>17</sup> *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, 2023 ONSC 3400, at para [26](#).

27. The Court has also recognized a presumption that court-appointed officers will be entitled to recover their actual costs, absent evidence of extraordinary circumstances.<sup>18</sup>

28. The activities of the Receiver described in the Reports were necessary and undertaken in good faith pursuant to the Receiver's duties and powers, and in each case, were in the best interests of the stakeholders generally. The Receiver has, at all times, carried out its duties with appropriate care, skill, and diligence.

29. The Receiver's diligence and efforts have resulted in comprehensive realization strategies for various Properties for the benefit of all stakeholders and will assist the Receiver in now advancing a claims process and completing the Investigation.

30. The Receiver and its counsel have separately accounted for the fees and disbursements incurred in this matter. The fees were incurred at the respective party's standard rates, and are fair, reasonable and justified in the circumstances. Further, the fees and disbursements sought accurately reflect the work done by the Receiver and its counsel in connection with the receivership.

31. The Receiver respectfully submits that the Receiver's activities as outlined in the Reports, and its fees and disbursements and those of its legal counsel, Dentons, as detailed in the Second Report should be approved.<sup>19</sup>

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<sup>18</sup> *Sub-Prime Mortgage Corp. v. Phoenix Apartments Ltd.*, 2010 ONSC 6535, at para. [17](#).

<sup>19</sup> *Second Report*, *supra* note 13 at para 90, MR, Tab 2.




**PART V – ORDER SOUGHT**

32. For the reasons set out above, the Receiver requests that this Honourable Court grant the Order, including the relief sought in its Notice of Motion, dated October 15, 2025.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

October 24, 2025

A handwritten signature in blue ink that reads "Dentons Canada LLP". The signature is written in a cursive, flowing style.

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**DENTONS CANADA LLP**  
*Lawyers for the Receiver*

**SCHEDULE “A”**  
**LIST OF AUTHORITIES**

1. *Canwest Publishing Inc.*, [2010 ONSC 222](#)
2. *Emmanuel Village Residence Inc. v Ontario (Attorney General)*, [2016 ONSC 5661](#)
3. *Confectionately Yours Inc. (Re)*, [2002 CanLII 45059 \(ON CA\)](#)
4. *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, [2023 ONSC 3400](#)
5. *Sub-Prime Mortgage Corp. v. Phoenix Apartments Ltd.*, [2010 ONSC 6535](#)

I certify that I am satisfied as to the authenticity of every authority.

October 24, 2025



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**SCHEDULE “B”**  
**RELEVANT STATUTES, RULES ETC,**

***MORTGAGE BROKERAGES AND LENDERS ADMINISTRATION ACT, 2006, SO 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”).

**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.

**Period of appointment**

(3) The court shall specify the period of the appointment in the order, but if the court makes the order on an application without notice, the period of the appointment shall not exceed 15 days.

**Same**

(4) If an order is made without notice, the Chief Executive Officer may apply to the court within 15 days after the date of the order to continue the order or for such other order as the court considers appropriate.

**Powers of appointee**

(5) The appointee has the powers specified in the order and, if so directed by the court, has the authority to wind up or manage the affairs of the designated person.

**Effect of appointment**

(6) When an order is made, the directors of the designated person are no longer entitled to exercise the powers that are given to the appointee; when the appointee is discharged by the court, the directors become entitled to exercise those powers once again.

**Fees and expenses**

(7) The appointee’s fees and expenses are in the discretion of the court.

### **Variation or discharge of order**

(8) The court may vary or discharge an order made under this section.

### **COURTS OF JUSTICE ACT, R.S.O. 1990, CHAPTER 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.

### **Terms**

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

### **COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

### **Court may order security or charge to cover certain costs**

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of,

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
- (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

**Priority**

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

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

- and -

**SUSSMAN MORTGAGE FUNDING INC., et al.**

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

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