

**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.**

Respondent

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 LOGPIN INVESTMENTS LIMITED, THE GOLDFARB  
CORPORATION, JEFFREY GOLDFARB AND GARY GOLDFARB**

May 15, 2025

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Gary Goldfarb

## **PART I - OVERVIEW**

1. On April 4, 2025, Logpin Investments Limited, The Goldfarb Corporation, Jeffrey Goldfarb and Gary Goldfarb (collectively, the “**Goldfarb Group**”) commenced a proceeding seeking the appointment of a Receiver by the Court and seeking an interim and interlocutory Mareva Order (the “**Mareva Proceeding**”) in respect of various parties including Sussman Mortgage Funding Inc. (“**SMFI**”), 2486976 Ontario Inc. and 1981361 Ontario Inc. (collectively, with SMFI, the “**Respondents**”). A case conference within the Mareva Proceeding was scheduled by the Goldfarb Group for April 15, 2025 to set the matter down for a hearing.
2. On April 14, 2025, a second proceeding was commenced by the Financial Services Regulatory Authority of Ontario (“**FSRA**”), seeking the appointment by the Court of B. Riley Farber Inc. (“**BRF**”) as receiver over the Respondents. FSRA attended the April 15, 2025 case conference to schedule the hearing of its receivership application. The Goldfarb Group did not proceed with their receivership application in view of FSRA’s application seeking the appointment of a Receiver, and in view of the work already done by BRF as financial advisor to SMFI. The Goldfarb Group continued with the request for Mareva relief and obtained a Mareva Order on consent on May 2, 2025.
3. On May 2, 2025, BRF was appointed as receiver (the “**Receiver**”) over all the property of the Respondents, within the application brought by FSRA. The terms of the Order appointing the Receiver were negotiated by the parties in advance utilizing the “three C’s” of the Commercial List and was granted on an unopposed basis (the “**Receivership Order**”).

4. The Goldfarb Group are the largest Investors, with approximately \$42 million of the total \$101 million of investor money with SMFI, of which approximately \$72 million is in default according to information filed by SMFI with FSRA. The Goldfarb Group therefore comprise approximately 42% of the total investor funds in this proceeding, and approximately 60% if viewed by reference to mortgages in default.
5. There are currently two motions for the appointment of representative counsel (the “**Rep Counsel Motions**”) to represent all of the investors of SMFI (the “**Investors**”), excluding “**Opt-Out Investors**”, being those investors of SMFI who opt out of being represented by representative counsel. If representative counsel (“**Rep Counsel**”) is appointed by the Court, the Goldfarb Group has advised that they would be Opt-Out Investors as they are already represented by counsel and would continue in the same manner.
6. The Rep Counsel Motions are brought by: (i) Aird & Berlis LLP (“**A&B**”) on behalf of various investors who are stated to have invested over \$12 million in the aggregate; and (ii) Paliare Roland Rosenberg Rothstein LLP (“**Paliare**”) on behalf of Gordon Starkman who has invested approximately \$200,000 but is stated to be supported by other investors such that the total is approximately \$1 million.
7. The Goldfarb Group understands that the main reasons for a request that Rep Counsel be appointed for Investors is the efficiency that it will bring in: (i) providing the Receiver with a contact to communicate with on behalf of many parties; and (ii) providing a mechanism for individual investors who wish to be represented by one counsel, to be efficiently able to do so.

8. The only issue this factum addresses with respect to the Rep Counsel Motions is the mechanism for remuneration of the fees and disbursements of Rep Counsel (the “**Fees**”) and the scope of any charge that may be granted in this proceeding to secure the Fees.
9. Subject to the Gating Issue (defined below), the Goldfarb Group takes no position on the request for the appointment of Rep Counsel or on which firm may ultimately appointed as Rep Counsel or any aspects of the role, all of which is more appropriate for input from the Investors who wish to be represented by such counsel. However, there is a gating issue that is fundamental to the interests of the Goldfarb Group and any other Opt-Out Investors: that is, (i) the Fees must not be borne by the Opt-Out Investors, and in particular by the Goldfarb Group; and therefore, (ii) any priority charge over the Respondents’ assets in favour of Rep Counsel must not attach to, or have the effect of reducing in any manner, the interests that the Opt-Out Investors are ultimately found to be entitled to (the “**Gating Issue**”).
10. Counsel to the Goldfarb Group advised the Court at the March 2, 2025 hearing that, for many reasons, a more appropriate time to consider the appointment of Rep Counsel would be after the delivery of the Receiver’s Preliminary Report (as defined in the Receivership Order). While that remains the view of the Goldfarb Group, in an effort to implement the “3 C’s” of the Commercial List and narrow the issues for the Court, counsel for the Goldfarb Group have worked with A&B and counsel for investors on the Service List to develop a form of Rep Counsel order that would be acceptable to the Goldfarb Group and the parties supporting the A&B appointment, which addresses the Gating Issue (the “**A&B Order**”). That form of order was circulated by A&B to all counsel for investors on the Service List in this proceeding on May 12, 2025.

11. Counsel for the Goldfarb Group has also engaged in discussions with Paliare to understand their position on the Gating Issue. The form of order included in Paliare's Motion Record dated May 9, 2025 does not currently contemplate a priority charge in favour of Paliare or provide a mechanism for the payment of Paliare's Fees, and therefore does not address the Gating Issue. This issue is critical to the position to be taken on the appointment of Rep Counsel, submissions as to the form of Order sought and the ability of Opt-Out Investors to be able to determine their position from the outset and opt-out of any representation by Rep Counsel.
12. Accordingly, the Goldfarb Group respectfully requests that any order appointing Rep Counsel make clear that Opt-Out Investors will not be prejudiced by having their interest in the assets of the Respondents available to cover the Fees of Rep Counsel for other Investors who choose to be represented in that manner, in addition to paying their own fees to the counsel of their choosing.

## **PART II - THE FACTS**

### ***Background***

13. 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 *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29.<sup>1</sup>

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<sup>1</sup> Affidavit of Antoinette Leung affirmed April 11, 2025 (the "**Leung Affidavit**") at para 3, Tab 2 of the Motion Record of FSRA dated April 11, 2025 (the "**FSRA Motion Record**").

14. 2486976 Ontario Inc. and 1981361 Ontario Inc. are companies incorporated in Ontario, each of which is a joint venture participant in real estate projects financed through SMFI mortgages.<sup>2</sup>
15. FSRA states that SMFI has 92 investors in 38 mortgages under administration, the face value of which is \$101,148,392, of which 22 are qualified syndicated mortgages valued at \$23,111,237 and 17 are non-qualified syndicated mortgages valued at \$79,307,152.<sup>3</sup>
16. Of the 38 mortgages, 11 of them are in arrears, the face value of which is \$73,191,452.<sup>4</sup>
17. The Goldfarb Group is the largest investor and is owed approximately \$42 million by SMFI.<sup>5</sup>
18. Prior to the Application being brought, the Goldfarb Group brought an application for, among other things, a *Mareva* order over SMFI and Sandford Sussman (“**Sussman**”). On May 2, 2025, a *Mareva* order was granted by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) over the property and assets of Sussman.<sup>6</sup> This step benefits and protects all Investors, with the costs of such steps having been incurred solely by the Goldfarb Group.

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<sup>2</sup> Leung Affidavit at Exhibit “L”, Tab 2 of the FSRA Motion Record.

<sup>3</sup> Leung Affidavit at para 4, Tab 2 of the FSRA Motion Record.

<sup>4</sup> Leung Affidavit at para 4, Tab 2 of the FSRA Motion Record.

<sup>5</sup> Affidavit of Dannalyn Salita sworn May 12, 2025 (“**Salita Affidavit**”) at Exhibit “A”, Tab 1 of the Responding Motion Record of the Goldfarb Group dated May 25, 2025 (the “**Responding Record**”).

<sup>6</sup> [Mareva Order dated May 2, 2025.](#)

19. On May 2, 2025, FSRA's Application was heard and the Court granted the Receivership Order.<sup>7</sup>

***A&B Rep Counsel Motion***

20. On April 29, 2025, A&B delivered a motion record seeking to appoint A&B as Rep Counsel to the Investors. The form of order included in the A&B Motion Record included as a term of their proposed appointment that A&B be entitled to a charge in the amount of \$100,000 on the assets of the Respondents to secure their Fees.
21. On May 2, 2025, the Court adjourned the motion brought by A&B until May 16, 2025.<sup>8</sup>
22. Following the adjournment, TGF has been corresponding with A&B and all counsel for investors on the Service List ("**Investor Counsel**"), including by letter dated May 6, 2025 (the "**May 6 Letter**"). The May 6 Letter sought to narrow the issues on A&B's motion and asked A&B to advise if it was the intention that "any priority charge over the Respondents' assets in favour of Representative Counsel is solely in relation to the interests of those Investors that Representative Counsel represents, and does not purport to extend to the interests of any Opt-Out Investors? That appears to be what you were addressing in paragraph 14 of the Order but is not reflected in a similar manner in paragraphs 11, 13, 16 and 20."<sup>9</sup>

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<sup>7</sup> [Receivership Order dated May 2, 2025](#).

<sup>8</sup> [Endorsement of Justice J. Dietrich dated May 2, 2025 at para 5](#).

<sup>9</sup> Salita Affidavit at Exhibit "A", Tab 1 of the Responding Record.

23. On May 9, 2025, counsel for the Goldfarb Group delivered a further letter to all Investor Counsel (the “**May 9 Letter**”) stating that, for the purposes of the May 9 Letter, counsel would assume that it is the intention of parties seeking or supporting the appointment of Rep Counsel that the Fees incurred by Rep Counsel in representing Investors would not be borne by any Opt-Out Investors, and that Investors do not expect Opt-Out Investors to be responsible for paying any portion of the Fees of Investors who choose to be represented by Rep Counsel (referred to in the letter as the “**Gating Assumption**”, and defined in this Factum as the “Gating Issue”).<sup>10</sup>
24. The May 9 Letter stated that if the Gating Assumption was correct and the language in the form of order appointing Rep Counsel made that clear, it was expected that the appointment of Rep Counsel could proceed on an unopposed basis.<sup>11</sup> The May 9 Letter enclosed the Goldfarb Group’s markup of the form of order, along with a redline to the version contained in the A&B Motion Record.<sup>12</sup>
25. On May 12, 2025, A&B sent an email to TGF and all Investor Counsel attaching the revised form of order they would be seeking, which was substantively the same as the markup enclosed with the May 9 Letter. A&B asked the Investor Counsel to confirm if they had a different view on the form of order by the end of that day.<sup>13</sup>

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<sup>10</sup> Salita Affidavit at Exhibit “B”, Tab 1 of the Responding Record.

<sup>11</sup> Salita Affidavit at Exhibit “B”, Tab 1 of the Responding Record.

<sup>12</sup> Salita Affidavit at Exhibit “B”, Tab 1 of the Responding Record.

<sup>13</sup> Salita Affidavit at Exhibit “C”, Tab 1 of the Responding Record.



26. On May 12, 2025, TGF responded to A&B's email earlier that day to all Investor Counsel confirming that no investor counsel copied or their client takes issue with the revised form of order that A&B circulated.<sup>14</sup>
27. As a result, the Goldfarb Group does not oppose the A&B motion to be appointed as Rep Counsel, if the form of any Order reflects the Gating Issue as negotiated among counsel for the Investors.

***Paliare Rep Counsel Motion***

28. On May 9, 2025, Paliare brought a separate motion to be appointed as Rep Counsel in this proceeding.<sup>15</sup>
29. The Paliare motion seeks the appointment of Paliare as Rep Counsel for a preliminary, "look-see" engagement to represent Investors during the investigation phase of the receivership.<sup>16</sup>
30. If appointed, Paliare's motion requests that the fees payable to Paliare be determined by the Court consistent with the following guidelines:
- (a) Paliare would not receive payment for services it renders in furtherance of the Investigation Mandate (as defined in the Starkman Affidavit) where, following the delivery of the Receiver's preliminary report, the Court determines that it is not

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<sup>14</sup> Salita Affidavit at Exhibit "D", Tab 1 of the Responding Record.

<sup>15</sup> Notice of Motion dated May 9, 2025, Tab 1 of the Paliare Motion Record.

<sup>16</sup> Affidavit of Gordon Starkman sworn May 9, 2025 (the "**Starkman Affidavit**") at para 21, Tab 2 of the Motion Record of Paliare dated May 9, 2025 (the "**Paliare Motion Record**").

necessary or advantageous to Investors for Rep Counsel to be involved in the realization and liquidation of Investors' claims; and

- (b) Paliare would be entitled to payment in the event that it is called upon to provide services in respect of the Urgent Proceedings Mandate (as defined in the Starkman Affidavit), but these fees would be determined by the Court, having regard to the value of the services provided and on the basis of a reasonable fee-for-service rate to be determined by the Court, and having regard to the availability of funds in the receivership estate.<sup>17</sup>

- 31. TGF and Paliare have engaged in discussions regarding Paliare's position on the Gating Issue. The form of order included in Paliare's Motion Record dated May 9, 2025 does not currently contemplate a priority charge in favour of Paliare (and therefore the intended scope of it) or provide a mechanism for the payment of Paliare's Fees, and therefore does not address the Gating Issue. This issue is critical to the position to be taken on the appointment of Rep Counsel, submissions as to the form of Order sought and the ability of Opt-Out Investors to be able to determine their position from the outset and opt-out of any representation by Rep Counsel.

### **PART III - ISSUES**

- 32. There is only one issue that this Factum addresses:

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<sup>17</sup> Starkman Affidavit at para 21, Tab 2 of the Paliare Motion Record.

- (a) whether any order appointing Rep Counsel should make clear that the Opt-Out Investors will not be responsible for the Fees of Rep Counsel, which are incurred on behalf of Investors who choose to be represented by such Rep Counsel.

#### **PART IV - LAW & ARGUMENT**

**(a) THE OPT-OUT INVESTORS SHOULD NOT BEAR THE FEES OF REP COUNSEL**

- 33. The Goldfarb Group acknowledges the Court's jurisdiction to appoint Rep Counsel in a receivership proceeding. Such appointments are based on the facts of each case and what is equitable in the circumstances. It is essential to the Goldfarb Group that any order appointing Rep Counsel in this case be clear that the Opt-Out Investors will not bear any portion of the Fees of Rep Counsel, and that any priority charge will not extend to and therefore reduce the Opt-Out Investors' interest in the assets of the Respondents.
- 34. The form of order that has been negotiated with A&B and counsel for Investors who support A&B's appointment addresses the Gating Issue, and accordingly the Goldfarb Group does not oppose such order.
- 35. The Court must be satisfied that any security or charge granted in favour of Rep Counsel is necessary for the effective participation of representative counsel in the proceedings.<sup>18</sup>
- 36. In considering this issue, the Court will consider the following factors:
  - (a) the size and complexity of the business;

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<sup>18</sup> *Urbancorp Inc., (Re)* 2016 ONSC 5426 [*Urbancorp*] at [para 14](#).

- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an 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 the position of the court officer.<sup>19</sup>

37. In *Urbancorp*, the Court appointed Dickinson Wright as representative counsel for purchasers of residential units in housing developments, however, the Court refused to make a blanket order that the firm's fees and disbursements be paid from the estate or secured by a charge. Instead, the Court granted an order providing that representative counsel was entitled to be paid its fees and disbursements "**from the distributions to be made to those purchasers who choose to be represented by Dickenson Wright**".<sup>20</sup>

38. This is exactly the position of the Goldfarb Group. Any order appointing Rep Counsel in this proceeding should be on the same basis as occurred in *Urbancorp*.

39. In making the order appointing representative counsel in *Urbancorp*, the Court noted the following factors:

- (a) that any funding or charge has to be fair to all stakeholders;
- (b) that it is inappropriate to have funding provided from an estate that would be solely in the interest of one group of stakeholders;

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<sup>19</sup> *Urbancorp*, *ibid* at [para 14](#), citing *Re Canwest Publishing Inc*, 2010 ONSC 222 at [para 54](#).

<sup>20</sup> *Urbancorp*, *ibid* at [para 28](#).

- (c) funding the purchasers' lawyers would not assist in maximizing the assets in the liquidation proceeding;
- (d) it is likely the interests of all purchasers will not be similar; and
- (e) estate funds should be spent for the benefit of the estate as a whole, and not for the benefit of one group whose interests may be contrary to the interests of the estate as a whole.<sup>21</sup>

40. After summarizing these considerations, the Court's conclusion was that granting an order that the fees be paid by the estate from the distributions to be made to the purchasers who opted in would align the interests of whichever purchasers wanted to be represented by representative counsel and would be fair to all stakeholders.<sup>22</sup>

41. Similarly, in *Mountain Equipment Co-Operative (Re)*, the British Columbia Supreme Court refused to grant a charge in favour of representative counsel seeking to be appointed to represent former employees of the company.<sup>23</sup> In that case, the debtor company argued the proposed charge was unnecessary and would adversely affect the company's other stakeholders, including its other unsecured creditors.<sup>24</sup>

42. Relying on *Urbancorp*, the court in *MEC* found that it would be inappropriate to allow funding that was solely in the interest of one group of stakeholders [in this case, those

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<sup>21</sup> *Urbancorp*, *ibid* at [paras 18-24](#).

<sup>22</sup> *Urbancorp*, *ibid* at [para 28](#).

<sup>23</sup> [2020 BCSC 2037](#). [*MEC*].

<sup>24</sup> *MEC*, *ibid* at [para 63](#).

without separate counsel to represent them] and that estate funds should be spent for the benefit of the estate as a whole.<sup>25</sup>

43. Further, the court noted that only those employees who ultimately needed to rely on representative counsel would benefit from the use of estate assets and found that this was unreasonable, particularly since the funds may be spent to increase those few employees' slice of the pie to the detriment of others who do not utilize the estate-funded representation.<sup>26</sup>
44. In this case, the relevant factors support the approach taken by the Court in *Urbancorp*, which has been reflected in the A&B Order, including:
- (a) the Goldfarb Group are the largest investors in SMFI and are owed approximately \$42 million by SMFI;
  - (b) the Goldfarb Group will be Opt-Out Investors;
  - (c) any funding or charge has to be fair to all stakeholders and not just the Investors who choose to be represented by a common Rep Counsel;
  - (d) it would be inequitable for the Investors represented by Rep Counsel to have recourse to the interests of the Goldfarb Group (and other Opt-Out Investors) in the assets of the Respondents to pay for their legal representation when the Opt-Out Investors are not using estate resources to fund their representation and are responsible for paying their own counsel;

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<sup>25</sup> MEC, *ibid* at [para 63](#).

<sup>26</sup> MEC, *ibid* at [para 65](#).

- (e) in the event that Rep Counsel sought to bring preference claims or otherwise on behalf of the Investors against the Opt-Out Investors, the Opt-Out Investors cannot be forced to pay any portion of the costs of prosecuting claims against themselves;
  - (f) in the event that any Opt-Out Investor sought to bring a preference claim or otherwise against any specific Investor, all Investors represented by Rep Counsel should not be burdened with the cost of having their interest in the assets of the Respondents reduced through Rep Counsel's defence of a preference claim that relates to one Investor alone;
  - (g) it is fair and equitable for the Fees to be paid from the distributions made from the estate to the Investors who have used the services of the Rep Counsel that has given rise to such Fees (and not the Opt-Out Investors); and
  - (h) the A&B Order confirms that if A&B is appointed as Rep Counsel, its Fees will be paid when proceeds become available for distribution in respect of the Investors' interests in the assets of the Respondents, and that such amounts when paid to Rep Counsel shall be treated as payments made to the Investors from the Investors' interests in the assets of the Respondent.
45. It is respectfully submitted that, if the Court determines that Paliare should be appointed as Rep Counsel, the form of order appointing Paliare must be clear in providing that Paliare can only look to the interest of the Investors they represent in respect of the assets of the Respondents for payment of their Fees, and not also the interest of the Opt-Out Investors in the assets of the Respondents.

**PART V - RELIEF REQUESTED**

46. For all the foregoing reasons, the Goldfarb Group requests that any order made by this Court appointing Rep Counsel provide that the fees and disbursements paid to Rep Counsel and any priority charge in favour of Rep Counsel shall relate solely to the interests of the Investors that they represent, and not that of the Opt-Out Investors.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 15<sup>th</sup> day of May, 2025.



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**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. [\*Urbancorp Inc., \(Re\)\* 2016 ONSC 5426.](#)
2. [\*Re Canwest Publishing Inc.\*, 2010 ONSC 222.](#)
3. [\*Mountain Equipment Co-Operative \(Re\)\*, 2020 BCSC 2037.](#)

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

Date     May 15, 2025



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Derek Harland

**SCHEDULE “B”  
RELEVANT STATUTES**

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

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

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**ONTARIO  
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Proceeding commenced at Toronto

**FACTUM OF LOGPIN INVESTMENTS LIMITED,  
THE GOLDFARB CORPORATION, JEFFREY  
GOLDFARB AND GARY GOLDFARB**

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