

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

TRIPLE-I CAPITAL PARTNERS LIMITED

Applicant

-and-

12411300 CANADA INC.

Respondent

**AFFIDAVIT OF AVI FREEDLAND SWORN August 8, 2022**

I, Avi J. Freedland, of the City of Toronto, make oath and say as follows;

1. I am a lawyer at Atkinson Law Professional Corporation, lawyers for the Respondent and, as such, have direct knowledge of the matters hereinafter deposed to, except where based upon information and belief, in which case I have stated the source of such information and verily believe such matters to be true.

**Brief Synopsis**

2. As will be elaborated in the following paragraphs, this Court imposed an obligation on the Respondent to pay the Applicant \$267,421.18 (the “**Funds**”) on August 1, 2022. However, as was apparently not contemplated by the parties, August 1, 2022, was a civic holiday and payment could not be made on that date. Counsel for the Respondent was also on vacation from August 2, 2022, to August 5, 2022, with limited access to email. When counsel for the Respondent was made aware that payment had not been made to the Applicant by the prescribed date, counsel for the Respondent immediately arranged a wire, and payment was made to the Applicant in the full amount on August 4, 2022. The Respondent therefore

respectfully requests that this court vary the Order (defined below) to allow for payment to be made on August 4, 2022, rather than August 1, 2022. Attached hereto as **Exhibit A** is a copy of the wire confirmation payment detail report displaying that the Funds were paid to the Applicant in full on August 4, 2022.

3. I am advised by Michael Amurjuev, counsel for the second mortgagee on the property at issue in this matter, that the second mortgagee fully supports the Respondent's position. I am advised that there are no other significant creditors other than the Applicant and the second mortgagee.

### **Facts**

4. On or about July 22, 2022, Justice Cavanagh granted the Applicant's application to appoint Crowe Soberman Inc. (the "**Receiver**") as receiver and manager of the Respondent's real and personal property (the "**Order**"). However, the Order prescribed that the Receiver not exercise their powers for 60 days from the date of the Order, provided that certain conditions, set out in paragraph 30 of the Order were met.
5. The conditions set out under paragraph 30 of the Order included that on or before August 1, 2022 the debtor shall (1) pay all arrears of mortgage interest being the sum of \$189,247.32; (2) repay the Applicant \$53,173.86 plus simple interest of 12.5% calculated from May 10, 2022 to August 1, 2022; and (3) pay the Applicant \$25,000 for its legal fees. The total amount owed to the Applicant under these conditions was \$267,421.18. Attached hereto as **Exhibit B** is a copy of the Order.
6. On or about August 2, 2022, Aram Simovonian, counsel for the Applicant ("**Mr. Simovonian**") wrote to Ryan Atkinson, Counsel for the Respondent ("**Mr. Atkinson**") and advised that payment had not been made to the Applicant as prescribed by the Order and acknowledged that he believed that Mr. Atkinson "is away this week." Attached hereto as **Exhibit C** is a copy of the email correspondence from Mr. Simovonian dated August 2, 2022.

7. Our office made efforts to contact Mr. Atkinson and he was able to access his email on August 4, 2022. Mr. Atkinson wrote to Mr. Simovonian and advised that Mr. Simovonian was correct in that Mr. Atkinson was out of the office and had limited access to his email. The same day, on August 4, 2022, Mr. Atkinson released full payment of the Funds to the Applicant. Attached hereto as **Exhibit D** is a copy of the email correspondence from Mr. Atkinson dated August 4, 2022.
8. On or about August 4, 2022, Kevin Sherkin, counsel to the Receiver (“**Mr. Sherkin**”), wrote to Mr. Atkinson, stating that Mr. Atkinson failed to deliver the Funds as required by the Order and that Receiver’s position was that the Respondent was in receivership unless the Order was varied or changed. The same day, Mr. Atkinson wrote to Mr. Sherkin stating that he had been away on vacation, that the Funds had been delivered in full, and suggesting that the Receiver could attend before a justice of the Commercial List to advance the Receiver’s position if they disagreed with the Respondent’s position. Attached hereto as **Exhibit E** is a copy of the correspondence between Mr. Sherkin and Mr. Atkinson dated August 4, 2022.
9. On or about August 5, 2022, Mr. Sherkin wrote to Mr. Atkinson stating, among other things, that the Applicant would remain in receivership until the Order was varied or changed. Attached hereto as **Exhibit F** is a copy of the correspondence stated in this paragraph.
10. On or about August 5, 2022, Mr. Atkinson informed Mr. Sherkin that the Respondent would be booking an appointment before Justice Cavanagh to request a variance of the Order. Attached hereto as **Exhibit G** is a copy of the email correspondence between Mr. Sherkin and Mr. Atkinson dated August 5, 2022.
11. I verily believe it is in the interests of justice to vary the Order as proposed by the Respondent and that no party would be prejudiced by the proposed variance.
12. I make this affidavit in support of the Respondent’s position to vary the Order and for no other nor improper

purpose.

Sworn remotely by Avi J. Freedland at the city of Toronto, before me on the 8<sup>th</sup> day of August 2022 in accordance with O.Reg. 431/20, Administering Oath or Declaration Remotely.



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Commissioner for Taking Affidavits



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*Avi J. Freedland*

Court File No. CV-22-00684372-00CL

TRIPLE-I CAPTIAL PARTNERS LIMITED  
Applicant

and

1241130 CANADA INC.  
Respondent

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**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**PROCEEDING COMMENCED**

at Toronto, Ontario

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**AFFIDAVIT**

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**ATKINSON LAW  
PROFESSIONAL CORPORATION**  
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*Lawyers for the Respondent*

*This Exhibit " A " referred to in  
the Affidavit of Avi Freedland  
sworn before me on this 8th day of  
August 2022.*

A handwritten signature in black ink, appearing to be 'A. Freedland', written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*



**Payment Detail Report | 10017401 | Atkinson Law Professional Corp**

Aug 4, 2022 1:18:51 PM

**Payment**

ID: 61857431  
Payment Type: Wire  
Status: Entered  
Entry Method: Freeform  
File Name:  
Template:  
Value Date: 08/04/2022  
Tran Date: 08/04/2022  
Credit Amount: 267,421.18 CAD  
Debit Amount: 267,421.18 CAD  
Exchange Rate:  
Contract ID:  
Customer Ref: Atkinson Law  
Charges: BEN

**Debit Account**

Number: 018222708612  
Name: ATKINSON LAW  
Type: Deposit  
Bank: CIBC

**Originator Information**

Name: ATKINSON LAW PROFESSIONAL  
Address 1:  
Address 2:  
Address 3:  
Country: CA

**Beneficiary**

Name: Scalzi Professional Corporation in  
Address 1: 20 Caldari Road, Unit 2  
Address 2: Vaughan, ON L4K 4N8  
Address 3:  
Country: CA  
Account: 5016439

**Beneficiary Bank**

Account Type: Other  
Bank Code: 000412232  
Bank: THE TORONTO-DOMINION BANK  
Address 1: 493 PARLIAMENT ST  
Address 2:  
Address 3: TORONTO  
Country: CA

**Audit Information**

	<u>User ID</u>	<u>Company</u>	<u>Timestamp</u>
Entered:	93052211	10017401	Aug 4, 2022 1:18:40 PM



**Payment Detail Report | 10017401 | Atkinson Law Professional Corp**

Aug 4, 2022 1:18:51 PM

**Report Totals**

<b>Wires</b>		<b>Total Debits</b>		<b>Total Credits</b>	
		<u>Amount</u>	<u>Payments</u>	<u>Amount</u>	<u>Payments</u>
Wires	(CAD to CAD)	267,421.18 CAD	1		



*This Exhibit "B" referred to in  
the Affidavit of Avi Freedland  
sworn before me on this 8th day of  
August 2022.*

A handwritten signature in black ink, appearing to be 'A. Freedland', written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*



served as appears from the affidavit of service of Aram Simovonian sworn July 21, 2022, and on reading the consent of Crowe Soberman Inc. to act as the Receiver,

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Crowe Soberman Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the **"Property"**).

### **RECEIVER'S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor (the **"Business"**) including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the Business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the Business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or

applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$150,000, provided that the aggregate consideration for all such transactions does not exceed \$300,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the

Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Property, or otherwise related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or



regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH THE RECEIVER**

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post**

**Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

14. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor’s behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

## **LIMITATION ON THE RECEIVER'S LIABILITY**

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

## **RECEIVER'S ACCOUNTS**

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a

charge (the “**Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver’s Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **SERVICE AND NOTICE**

21. **THIS COURT ORDERS** that the Guide Concerning Commercial List E-Service (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL

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22. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

23. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

24. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

25. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

26. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

27. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

28. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

29. **THIS COURT ORDERS** that the Receiver, its counsel and counsel for the Applicant may serve or distribute this Order, or any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the creditors or any other stakeholders or interested parties of the Debtor and its advisors (if any). For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 8100-2-175 (SOR/DORS).

#### **THE STAY OF THIS ORDER**

30. **THIS COURT ORDERS** that the exercise of the Receiver's powers as set out above are stayed for sixty (60) days from the date of this Order ("**Stay Period**"), provided that, the following terms are met:

- (a) On or before August 1, 2022, the Debtor shall pay all arrears of mortgage interest being the sum of \$189,247.32;
- (b) On or before August 1, 2022, the Debtor shall repay the Applicant/Moving Party the sum of \$53,173.86 plus simple interest of 12.5% calculated from May 10, 2022 to August 1, 2022;

- (c) On or before August 1, 2022, the Debtor shall pay to the Applicant/Moving Party \$25,000 as a partial payment for the legal fees, expenses and costs of the Applicant, the Receiver, and counsel for the Receiver;
- (d) The Debtor shall allow the Applicant/Moving Party, and its consultants, servants and employees, to attend the mortgaged premises located at 237B Advance Blvd. Brampton, ON L6T 4TJ between the hours of 9:00 a.m. and 5:00 p.m. on July 25, 2022 to inspect the premises and the chattels and equipment located therein;
- (e) The Debtor shall redeem the mortgage and pay to the Applicant/Moving Party its allowable fees, charges and expenses.

31. **THIS COURT ORDERS** that the Stay Period shall terminate and shall be lifted and this Order shall have full force and effect on the earlier of:

- (a) A breach of or noncompliance with the terms set out in paragraph 30 during the Stay Period; or
  - (b) The sixty-days day (60) day of the Stay Period, being September 20, 2022.
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**TRIPLE-I CAPITAL PARTNERS LIMITED**  
Applicant

and **12411300 CANADA INC**  
Respondent

Court File No.: CV-22-00684372-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE -  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER  
(appointing Receiver)**

**SCALZI PROFESSIONAL CORPORATION**

868A Eglinton Avenue West  
Toronto, Ontario M6C 2B6

**Carmine Scalzi** (LSO #: 52379S)

Tel: (416)-548-7989

Fax: (416) 548-7969

[cscalzi@scalzilaw.com](mailto:cscalzi@scalzilaw.com)

Lawyers for the Applicant

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**Gary M. Caplan** (LSO #: 19805G)

Tel: (416) 596-7796

[gcaplan@mcr.law](mailto:gcaplan@mcr.law)

Agents for Scalzi PC





*This Exhibit " C " referred to in  
the Affidavit of Avi Freedland  
sworn before me on this 8th day of  
August 2022.*

A handwritten signature in black ink, appearing to be 'A. Freedland', written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*

---

**From:** [aram.simovonian@scalzilaw.com](mailto:aram.simovonian@scalzilaw.com) <[aram.simovonian@scalzilaw.com](mailto:aram.simovonian@scalzilaw.com)>  
**Sent:** August 2, 2022 4:09 PM  
**To:** [avi@atkinsonlaw.ca](mailto:avi@atkinsonlaw.ca)  
**Cc:** [gcaplan@mcr.law](mailto:gcaplan@mcr.law); 'Carmine Scalzi' <[cscalzi@scalzilaw.com](mailto:cscalzi@scalzilaw.com)>; [ryan@atkinsonlaw.ca](mailto:ryan@atkinsonlaw.ca)  
**Subject:** RE: Triple-I Capita1 v. 12411300 Canada In- endorsement / 01898

Hello, Avi:

Please see below as I think Ryan is away this week.

Thanks,

--

**Aram Simovonian**

Lawyer



20 Caldari Road, Unit #2

Concord, ON L4K 4N8

E: [aram.simovonian@scalzilaw.com](mailto:aram.simovonian@scalzilaw.com)

P: 416.548.7989

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---

**From:** [aram.simovonian@scalzilaw.com](mailto:aram.simovonian@scalzilaw.com) <[aram.simovonian@scalzilaw.com](mailto:aram.simovonian@scalzilaw.com)>  
**Sent:** August 2, 2022 3:23 PM  
**To:** [ryan@atkinsonlaw.ca](mailto:ryan@atkinsonlaw.ca)  
**Cc:** [gcaplan@mcr.law](mailto:gcaplan@mcr.law); 'Carmine Scalzi' <[cscalzi@scalzilaw.com](mailto:cscalzi@scalzilaw.com)>

**Subject:** RE: Triple-I Capita1 v. 12411300 Canada In- endorsement / 01898

Hi, Ryan:

Please advise if the payment has been made as we have nothing in our trust account as of yet.

The Order and our Trust Account information is attached for ease of reference.

Thank you,

--

**Aram Simovonian**

Lawyer



20 Caldari Road, Unit #2

Concord, ON L4K 4N8

E: [aram.simovonian@scalzilaw.com](mailto:aram.simovonian@scalzilaw.com)

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---

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sworn before me on this 8th day of  
August 2022.*

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*Commissioner for Taking Affidavits (or as may be)*

**From:** [Ryan Atkinson](mailto:Ryan.Atkinson@scalzilaw.com)  
**To:** [aram.simovonian@scalzilaw.com](mailto:aram.simovonian@scalzilaw.com); [Avi Freedland](mailto:Avi.Freedland@mcr.law)  
**Cc:** [gcaplan@mcr.law](mailto:gcaplan@mcr.law); "Carmine Scalzi"; [Kate Stavropoltseva](mailto:Kate.Stavropoltseva@mcr.law)  
**Subject:** RE: Triple-I Capita1 v. 12411300 Canada In- endorsement / 01898  
**Date:** August 4, 2022 2:45:14 PM  
**Attachments:** [Wire Confirmation.pdf](#)  
[image002.png](#)

---

Hello Aram,

Yes I am away from the office this week and have had no access to email. I have now been made aware that the funds were previously paid into our trust account, and therefore I have now released the funds to Scalzi Professional Corporation in Trust in the amount of 267,421.18. Please see attached wire transfer confirmation form.

I trust the foregoing is satisfactory. I will again be without access to email shortly. Thank you for understanding.

All the Best,  
Ryan Atkinson

---

**From:** [aram.simovonian@scalzilaw.com](mailto:aram.simovonian@scalzilaw.com) <[aram.simovonian@scalzilaw.com](mailto:aram.simovonian@scalzilaw.com)>  
**Sent:** August 2, 2022 4:09 PM  
**To:** [Avi Freedland](mailto:Avi.Freedland@atkinsonlaw.ca) <[avi@atkinsonlaw.ca](mailto:avi@atkinsonlaw.ca)>  
**Cc:** [gcaplan@mcr.law](mailto:gcaplan@mcr.law); 'Carmine Scalzi' <[cscalzi@scalzilaw.com](mailto:cscalzi@scalzilaw.com)>; [Ryan Atkinson](mailto:Ryan.Atkinson@atkinsonlaw.ca) <[ryan@atkinsonlaw.ca](mailto:ryan@atkinsonlaw.ca)>  
**Subject:** RE: Triple-I Capita1 v. 12411300 Canada In- endorsement / 01898

Hello, Avi:

Please see below as I think Ryan is away this week.

Thanks,

--

**Aram Simovonian**  
Lawyer



20 Caldari Road, Unit #2  
Concord, ON L4K 4N8  
E: [aram.simovonian@scalzilaw.com](mailto:aram.simovonian@scalzilaw.com)  
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F: 416.548.7969

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August 2022.*

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*Commissioner for Taking Affidavits (or as may be)*

**From:** [Ryan Atkinson](#)  
**To:** [Sherkin, Kevin](#)  
**Cc:** [gcaplan@mcr.law](#); "[Carmine Scalzi](#)"; [Hans Rizarri](#); [aram.simovonian@scalzilaw.com](#); [Faheim, Monica](#); [Martins, Michelle](#); [Avi Freedland](#); [Kate Stavropoltseva](#)  
**Subject:** RE: your emails of today [MTDMS-Legal.FID11474081]  
**Date:** August 4, 2022 7:35:03 PM  
**Attachments:** [image001.png](#)

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I am on vacation, these are the only two weeks of the year that I hope to enjoy with my family without interruption. The funds have been delivered in full. You can attend before Justice Cavanaugh or any other Justice on the Commercial List to advance your position if you so desire.

For now, stay away from our client and his property and do not waste anymore of my time.

Good day.

---

**From:** Sherkin, Kevin <ksherkin@millerthomson.com>  
**Sent:** August 4, 2022 6:17 PM  
**To:** Ryan Atkinson <ryan@atkinsonlaw.ca>  
**Cc:** [gcaplan@mcr.law](#); 'Carmine Scalzi' <cscalzi@scalzilaw.com>; [Hans Rizarri](#) <[Hans.Rizarri@crowesoberman.com](#)>; [aram.simovonian@scalzilaw.com](#); [Faheim, Monica](#) <[mfahmeim@millerthomson.com](#)>; [Martins, Michelle](#) <[mmartins@millerthomson.com](#)>  
**Subject:** your emails of today [MTDMS-Legal.FID11474081]

Ryan

I have been provided a copy of the correspondence between you and Mr. Caplan..

The order was clear as to what was to happen and by when. We wrote you a number of times without the courtesy of a reply. If you failed to deliver the funds that is on you and your firm and in my view you should be reporting yourself to Lawpro( however that's your call). The receiver as officer of the court as well as I do not have the power to change the clear terms of the Order.. Your client is in receivership. The duties upon a receiver are clear as is the order. We are required to continue to abide by those duties and the order unless and until we are repaid or the varied or changed . I hope we make ourselves clear . Note our client and our firm continue to spend sizable expenses and time to fulfill our obligations

**KEVIN D. SHERKIN**

Providing services on behalf of a Professional Corporation  
**Partner**

**Miller Thomson LLP**

Scotia Plaza  
40 King Street West, Suite 5800  
P.O. Box 1011  
Toronto, Ontario M5H 3S1  
**Direct Line:** +1 416.597.6028



Fax: +1 416.595.8695  
Email: [ksherkin@millerthomson.com](mailto:ksherkin@millerthomson.com)  
[millerthomson.com](http://millerthomson.com)



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---

*Commissioner for Taking Affidavits (or as may be)*

---

**From:** Sherkin, Kevin <[ksherkin@millerthomson.com](mailto:ksherkin@millerthomson.com)>

**Sent:** August 5, 2022 10:49 AM

**To:** Ryan Atkinson <[ryan@atkinsonlaw.ca](mailto:ryan@atkinsonlaw.ca)>

**Cc:** [gcaplan@mcr.law](mailto:gcaplan@mcr.law); 'Carmine Scalzi' <[cscalzi@scalzilaw.com](mailto:cscalzi@scalzilaw.com)>; Hans Rizarri <[Hans.Rizarri@crowesoberman.com](mailto:Hans.Rizarri@crowesoberman.com)>; [aram.simovonian@scalzilaw.com](mailto:aram.simovonian@scalzilaw.com); Faheim, Monica <[mfaheim@millerthomson.com](mailto:mfaheim@millerthomson.com)>; Martins, Michelle <[mmartins@millerthomson.com](mailto:mmartins@millerthomson.com)>; Avi Freedland <[avi@atkinsonlaw.ca](mailto:avi@atkinsonlaw.ca)>; Kate Stavropoltseva <[kate@atkinsonlaw.ca](mailto:kate@atkinsonlaw.ca)>

**Subject:** RE: your emails of today [MTDMS-Legal.FID11474081]

Mr. Atkinson

While the circumstances are unfortunate it does not change the current landscape and obligations imposed on our client by the court order . As you know a ton of work goes into the beginnings of a receivership . I wrote you three times on Wednesday without a reply. Please provide a number of things. Evidence of the date of receipt of the funds from the Debtor as all we have seen it the date the debtor sent payment to Mr. Scalzi's firm which is a number of days after the required date of the Order. Regardless time is ticking date by which the mortgage has to be paid off. Until the Order is changed as officers of the court both Mr. Rizarri and I have a continuing duty to comply with our obligations and continue to move matters forward with the receivership . Assuming you did have the funds on the date in question, Provided you or your client pays the costs thrown away of all counsel and the receiver which is ongoing we would likely not oppose such a motion however that would be for the presiding judge on a motion to decide.. As I stated before, I urge you to contact lawpro as costs continue to mount and you are looking into the tens of thousands of dollars.. The law requires you to move swiftly to potentially correct this and I remind you that technically the funds sitting in Mr. Scalzi's account would form part of the estate..

I await your advice

## **KEVIN D. SHERKIN**

Providing services on behalf of a Professional Corporation

**Partner**

### **Miller Thomson LLP**

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40 King Street West, Suite 5800

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**Direct Line:** +1 416.597.6028

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[millerthomson.com](http://millerthomson.com)

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August 2022.*

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---

*Commissioner for Taking Affidavits (or as may be)*

**From:** [Ryan Atkinson](#)  
**To:** [Sherkin, Kevin](#)  
**Cc:** [Gary Caplan](#); ["Carmine Scalzi"](#); [Hans Rizarri](#); [Aram Simovonian](#); [Faheim, Monica](#); [Martins, Michelle](#); [Avi Freedland](#); [Kate Stavropoltseva](#)  
**Subject:** Re: your emails of today [MTDMS-Legal.FID11474081]  
**Date:** August 5, 2022 6:49:27 PM  
**Attachments:** [image001.png](#)  
[image217119.PNG](#)

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We are booking a chambers appointment with Justice Cavanaugh, and none of the creditors, other than your client, agree with your position. We will be seeking costs of any unnecessary appearances. The second mortgagee will attend the chambers appointment if necessary, in full support of our client's position. Stop emailing us unless you have something of consequence to discuss.

All the Best  
Ryan Atkinson

---