

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

BETWEEN:

VECTOR FINANCIAL SERVICES LIMITED

Applicant

- and -

VILLAGE DEVELOPMENTS INC.

Respondent

---

---

**FACTUM  
(Receivership Appointment)**

---

---

March 27, 2023

**GOWLING WLG (CANADA) LLP**

Barristers & Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto ON M5X 1G5  
Fax: (416) 862-7661

**Thomas Gertner** (LSO# 67756S)

Tel: (416) 369-4618

Email: [thomas.gertner@gowlingwlg.com](mailto:thomas.gertner@gowlingwlg.com)

**Katherine Yurkovich** (LSO# 80396R)

Tel: (416) 862-4342

Email: [kate.yurkovich@gowlingwlg.com](mailto:kate.yurkovich@gowlingwlg.com)

Lawyers for the Applicant

**TO: THE SERVICE LIST**

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

BETWEEN:

VECTOR FINANCIAL SERVICES LIMITED

Applicant

- and -

VILLAGE DEVELOPMENTS INC.

Respondent

---

**FACTUM  
(Receivership Appointment)**

---

**I. OVERVIEW**

1. This Factum is filed in support of an Application by Vector Financial Services Limited (“**Vector**”) for an Order (the “**Appointment Order**”) appointing RSM Canada Limited (“**RSM**”) as receiver (in such capacity, the “**Receiver**”), without security, of the lands and premises municipally known as 485, 501 and 511 Ontario South Street, Milton, Ontario (collectively, the “**Mortgaged Property**”) pursuant to section 243 of the *Bankruptcy and Insolvency Act* (Canada)<sup>1</sup> (the “**BIA**”) and section 101 of the *Courts of Justice Act* (Ontario).<sup>2</sup>

---

<sup>1</sup> *Bankruptcy and Insolvency Act* (Canada), RSC 1985, c B-3 [“**BIA**”]

<sup>2</sup> *Courts of Justice Act* (Ontario), RSO 1990, c C43 [“**CJA**”]

## II. FACTS

2. The facts with respect to this Application are only briefly recited herein, and are set out in more detail in the Affidavit of Noah Mintz sworn March 17, 2023<sup>3</sup> (the “**Mintz Affidavit**”). Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Mintz Affidavit.

### **BACKGROUND**

3. Village Developments Inc. (“**VDI**”) is a real estate development company operating out of the Milton, Ontario region.<sup>4</sup>

4. VDI acquired the Mortgaged Property with a view to construct a 6-storey residential apartment building with a total gross floor area of approximately 279,000 square feet (the “**Development**”).<sup>5</sup>

5. Construction of the Development has not commenced in any material fashion, despite the original intention that construction begin in the spring of 2021. Delays in construction have been due to holdups in obtaining a zoning by-law amendment and site plan approval from the Corporation of the Town of Milton, amongst other things.<sup>6</sup>

6. There are currently three residential homes situated on the Mortgaged Property that are to be demolished as part of the Development.<sup>7</sup>

---

<sup>3</sup> Affidavit of Noah Mintz sworn March 17, 2023, Application Record of Vector Financial Services Limited dated March 17, 2023, Tab 2 [the “**Mintz Affidavit**”]

<sup>4</sup> **Mintz Affidavit**, para 7, Application Record, Tab 2

<sup>5</sup> **Mintz Affidavit**, para 8, Application Record, Tab 2

<sup>6</sup> **Mintz Affidavit**, paras 9-10, Application Record, Tab 2

<sup>7</sup> **Mintz Affidavit**, para 11, Application Record, Tab 2

## **COMMITMENT LETTER AND SECURITY**

7. Pursuant to a commitment letter dated as of December 8, 2021 (the “**Original Commitment Letter**”), Vector, as administrator for and on behalf of Vector and certain outside investors with registered savings plans held at Olympia Trust Company (collectively, the “**Lenders**”), agreed to advance the principal amount of \$10,000,000 to VDI.<sup>8</sup>

8. The Original Commitment Letter was subsequently amended pursuant to:

- (a) An amending agreement dated as of January 14, 2022 (the “**First Amendment**”);
- (b) An amending agreement dated as of February 1, 2022 (the “**Second Amendment**”);
- (c) An amending agreement dated as of February 10, 2022 (the “**Third Amendment**”);  
and
- (d) An amending agreement dated as of September 26, 2022 (the “**Fourth Amendment**” together with the Original Commitment Letter, the First Amendment, the Second Amendment and the Third Amendment, the “**Commitment Letter**”).<sup>9</sup>

9. As security for its indebtedness and liability to the Lenders pursuant to the Commitment Letter, among other things, VDI provided the Lenders with a first charge / mortgage in the principal amount of ten million dollars (\$10,000,000) (the “**Vector Mortgage**”) and a general security agreement in respect of all of the personal property of VDI related to the Mortgaged Property dated as of January 26, 2022 (the “**GSA**”).<sup>10</sup>

---

<sup>8</sup> Mintz Affidavit, para 12, Application Record, Tab 2

<sup>9</sup> Mintz Affidavit, para 13, Application Record, Tab 2

<sup>10</sup> Mintz Affidavit, para 14, Application Record, Tab 2

10. The Vector Mortgage represents a first charge mortgage against the Mortgaged Property.<sup>11</sup> Pursuant to the GSA, Vector additionally holds a first ranking security interest over all personal property of VDI in respect of the Mortgaged Property.<sup>12</sup>

11. As of February 22, 2023, VDI was indebted to Vector in the amount of \$10,391,309.44 (the amount owing to Vector from VDI from time to time, the “Indebtedness”).<sup>13</sup>

### **OTHER REGISTRATIONS AGAINST THE MORTGAGED PROPERTY**

12. In addition to the Vector Mortgage, there are four subordinate mortgages registered against title to the Mortgaged Property as follows:

- (a) A second ranking mortgage in the principal amount of \$1,640,000 in favour of Jason Waxman, and certain other individuals and numbered companies;
- (b) A third ranking mortgage in the principal amount of \$912,500.00 in favour of Société en Commandite MVMT Capital;
- (c) A fourth ranking mortgage in the principal amount of \$1,620,580 in favour of Avondale Capital Inc. such charge having been transferred to 2459437 Ontario Inc. on April 14, 2022; and
- (d) A fifth ranking mortgage in the principal amount of \$1,000,000 in favour of 1846836 Ontario Inc. (“**184**”).

(collectively, the “**Subordinate Mortgages**”).<sup>14</sup>

---

<sup>11</sup> **Mintz Affidavit**, para 16, Application Record, Tab 2

<sup>12</sup> **Mintz Affidavit**, para 20, Application Record, Tab 2

<sup>13</sup> **Mintz Affidavit**, para 39, Application Record, Tab 2

13. Each of the Subordinate Mortgages are subject to either (a) a subordination and standstill agreement with the Lenders under which priority is granted to the Vector Mortgage; and / or (b) a postponement in favour of the Vector Mortgage registered on title to the Mortgaged Property.<sup>15</sup>

#### **VDI'S FAILURE TO REPAY THE LOAN ON THE MATURITY DATE**

14. The Commitment Letter contemplates a maturity date of February 10, 2022 (the “**Maturity Date**”).<sup>16</sup>

15. On February 10, 2023, VDI breached the Commitment Letter by failing to repay the balance owing to the Lenders on the Maturity Date (the “**February Payment Default**”).<sup>17</sup>

16. Following the passing of the Maturity Date, Vector issued a default notice to VDI, advising VDI of the February Payment Default and providing VDI with an additional day to pay amounts due and owing. This amount was not paid within the extended time period.<sup>18</sup>

17. On February 16, 2023, Vector, through its enforcement counsel, issued a formal demand letter to VDI and Mr. Debattista, demanding repayment of all amounts owing under the Commitment Letter by no later than February 27, 2023 (the “**Demand Letter**”). The Demand Letter additionally enclosed a notice of intention to enforce security pursuant to section 244 of the BIA for VDI (the “**NITES**”).<sup>19</sup>

---

<sup>14</sup> Mintz Affidavit, para 17, Application Record, Tab 2

<sup>15</sup> Mintz Affidavit, para 18, Application Record, Tab 2

<sup>16</sup> Mintz Affidavit, para 22, Application Record, Tab 2

<sup>17</sup> Mintz Affidavit, para 23, Application Record, Tab 2

<sup>18</sup> Mintz Affidavit, para 24, Application Record, Tab 2

<sup>19</sup> Mintz Affidavit, para 25, Application Record, Tab 2

## **VDI BREACHES OF THE FORBEARANCE AGREEMENT**

18. On or around February 21, 2023, Vector advised Mr. Debattista that Vector would consider entering into a formal forbearance agreement with VDI, provided such agreement contain the following terms (the “**Forbearance Terms**”):

- (i) VDI would prepay a reserve equivalent to three months interest (the “**Initial Reserve**”) to be applied against payments due to Vector under the Commitment Letter; and
- (ii) Vector would agree to forbear from taking any further steps to enforce on the security granted by VDI, including the Vector Mortgage and the GSA, until May 10, 2023 (the “**Forbearance Period**”) at which time the Indebtedness would be required to be repaid in full.<sup>20</sup>

19. Counsel to Vector subsequently sent VDI’s counsel a draft forbearance agreement, containing, among other things, the Forbearance Terms (the “**February 22 Draft Forbearance Agreement**”). The February 22 Draft Forbearance Agreement required that VDI pay the Initial Reserve by no later than February 23, 2023.<sup>21</sup>

20. Following the exchange of the February 22 Draft Forbearance Agreement, Mr. Debattista advised Vector that VDI would not be in a position to pay the Initial Reserve until March 3, 2023, and requested that the draft forbearance agreement include an optional extension of the Forbearance Period to August, 2023, provided payment of a further reserve in the amount of \$337,500.00 was made by May 3, 2023 (the “**Extension Reserve**”).<sup>22</sup>

---

<sup>20</sup> **Mintz Affidavit**, para 27, Application Record, Tab 2

<sup>21</sup> **Mintz Affidavit**, para 28, Application Record, Tab 2

<sup>22</sup> **Mintz Affidavit**, para 29, Application Record, Tab 2



21. On or around February 28, 2023, Vector advised VDI that it was prepared to proceed with the concept of an Extension Reserve, and requested that VDI have its counsel revise the February 22 Draft Forbearance Agreement accordingly.<sup>23</sup>

22. On March 6, 2023, following multiple requests from Vector's counsel, Vector received a revised draft of the forbearance agreement (the "**March 6 Draft Forbearance Agreement**"), incorporating a provision for the Extension Revision and amending the timing for payment of the Initial Reserve to March 7, 2023 (the "**Initial Reserve CP**").<sup>24</sup>

23. On March 7, 2023, Vector, VDI and Mr. Debattista executed a finalized forbearance agreement (the "**Forbearance Agreement**"), following which VDI's counsel advised counsel to Vector that he expected to have the Initial Reserve in his trust account on March 8, 2023.<sup>25</sup>

24. On March 8, 2023, counsel to Vector followed up with counsel to VDI with respect to payment of the Initial Reserve, reminding VDI's counsel that under the terms of the Forbearance Agreement, the Initial Reserve CP was required to be paid on March 7, 2023.<sup>26</sup>

25. Shortly thereafter, Vector received correspondence from Mr. Debattista, advising Vector that VDI would not pay Vector the Initial Reserve until March 14, 2023, contrary to both the statements of VDI's counsel and the terms of the Forbearance Agreement.<sup>27</sup>

26. In response, counsel to Vector wrote to counsel to VDI, notifying it that VDI had failed to satisfy the Initial Reserve CP, which had not been waived by Vector, and that

---

<sup>23</sup> Mintz Affidavit, para 30, Application Record, Tab 2

<sup>24</sup> Mintz Affidavit, paras 31-32, Application Record, Tab 2

<sup>25</sup> Mintz Affidavit, paras 33-35, Application Record, Tab 2

<sup>26</sup> Mintz Affidavit, para 35, Application Record, Tab 2

<sup>27</sup> Mintz Affidavit, para 36, Application Record, Tab 2

accordingly, Vector intended to seek the appointment of a receiver over the Mortgaged Property.<sup>28</sup>

27. To date, payment of the Initial Reserve has not been made by VDI, nor has Vector waived compliance with the Initial Reserve CP.<sup>29</sup>

### **PART III. ISSUES**

28. The issue to be determined by the Court in respect of this Application is whether it is just or convenient for the Court to appoint RSM as Receiver over the Mortgaged Property?

### **PART IV. THE LAW**

#### **Technical Requirements to Appoint a Receiver Have Been Met**

29. Vector submits that the technical requirements for the appointment of a receiver under both the BIA and CJA have been met.

30. Vector is a secured creditor of VDI in respect of the Mortgaged Property and is therefore entitled to bring an application under section 243 of the BIA. As required under sub-section 243 (1.1) of the BIA, Vector issued the NITES. The notice period under the NITES expired on February 27, 2023.<sup>30</sup>

31. RSM is qualified to act as Receiver in accordance with the requirements of sub-section 243(4) of the BIA and has consented to serving as Receiver in these proceedings.<sup>31</sup>

---

<sup>28</sup> **Mintz Affidavit**, para 37, Application Record, Tab 2

<sup>29</sup> **Mintz Affidavit**, para 38, Application Record, Tab 2

<sup>30</sup> **BIA**, *supra* note 1, sections 243 and 244; **Mintz Affidavit**, paras 25, 45, Application Record, Tab 2

<sup>31</sup> **BIA**, *supra* note 1, sub-section 243(4); Supplemental Affidavit of Kimberly Reid sworn March 27, 2023, para 4, Supplemental Application Record of Vector Financial Services Limited dated March 27, 2023, Tab 1, Exhibit “A” RSM Canada Limited

## **It Is Just and Convenient To Appoint the Receiver**

32. Pursuant to sub-section 243(1) of the BIA, the Court may, on application by a secured creditor, appoint a receiver where it considers it to be just or convenient to do so:

### **Court may appoint a receiver**

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.<sup>32</sup>

33. Sub-section 101(1) of the CJA similarly provides for the appointment of a receiver by interlocutory order where the appointment is "just and convenient":

### **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.<sup>33</sup>

---

Consent to Act as Receiver

<sup>32</sup> BIA, *supra* note 1, section 243

<sup>33</sup> CJA, *supra* note 2, sub-section 101(1)

34. In *Freure Village*, Justice Blair (as he was then), found that, in deciding if the appointment of a receiver is just or convenient, the Court must have regard to *inter alia* the nature of the property and the rights and interest of all parties in relation thereto, which includes a secured creditor under its security.<sup>34</sup>

35. Among other things, the following may be considered by a Court in determining whether or not it is just or convenient to appoint a receiver:

- (a) the potential costs of the receiver;
- (b) the relationship between the debtor and the creditor;
- (c) the likelihood of preserving and maximizing the return on the subject property; and
- (d) the best way of facilitating the work and duties of the receiver.<sup>35</sup>

36. Generally speaking, the appointment of a receiver is “an extraordinary remedy”. That being said, where a secured creditor is seeking the appointment of a receiver and its credit documents specifically afford it the right to appoint a receiver the appointment of a receiver is not an “extraordinary remedy”. The rationale for this relaxed standard is that, in such circumstances, as Justice Morawetz (as he then was), remarked in *Sherco Properties*: “the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties”.<sup>36</sup>

---

<sup>34</sup> **Bank of Nova Scotia v. Freure Village on Clair Creek**, [1996] OJ No 5088 (QL), 40 CBR (3d) 274 (ONSC (Commercial List)), paras 10-12 [“*Freure Village*”]

<sup>35</sup> **Elleway Acquisitions Limited v. The Cruise Professionals Limited**, 2013 ONSC 6866 (Commercial List)), paras 28, 30 and 34 [“*Elleway*”]; **Freure Village**, *supra* note 34, para 12

<sup>36</sup> **Bank of Montreal v. Sherco Properties Inc.**, 2013 ONSC 7023 (Commercial List), para 42; **Elleway**, *supra* note 35, para 27

37. Vector's credit documents with VDI explicitly provide for the appointment of a receiver. To this effect, such a right is specifically included in the Vector Mortgage and the GSA, each of which were agreed to by VDI.<sup>37</sup>

38. In *Atlas Healthcare*, this Court held that where a secured creditor has bargained for the contractual right to have a receiver appointed, there must be a good reason to deprive the creditor of that contractual right.<sup>38</sup>

39. In *Freure Village*, the Court held that an important consideration in deciding whether or not to appoint a receiver is whether an appointment by the Court is necessary to enable the receiver to carry out its work and duties more efficiently.<sup>39</sup>

40. Due to the significant number of mortgages registered against title to the Mortgaged Property, a court appointed receiver acting in a fiduciary capacity with respect to all interested parties, as opposed to a privately appointed receiver, will be in a better position to liquidate the Mortgaged Property and distribute the proceeds therefrom for the benefit of all mortgagees, while addressing any priority issues that may arise.

41. Vector submits that in accordance with the test and factors outlined above, it is both just and convenient to appoint RSM as Receiver over the Mortgaged Property, as:

- (a) the Maturity Date under the Commitment Letter expired on February 10, 2023;<sup>40</sup>

---

<sup>37</sup> **Mintz Affidavit**, Exhibit C, **Vector Mortgage**, Section 27, Application Record, Tab 2C; **Mintz Affidavit**, Exhibit D, **GSA**, Section 9, Application Record, Tab 2D

<sup>38</sup> **Romspen Investment Corporation v. Atlas Healthcare (Richmond Hill) Ltd. et al** 2018 ONSC 7382 (Commercial List), para 100

<sup>39</sup> **Freure Village**, *supra* note 34, para 11

<sup>40</sup> **Mintz Affidavit**, paras 22, 41, Application Record, Tab 2

- (b) Vector at all times has acted reasonably, in this respect, it provided VDI with additional time to repay the Indebtedness, despite the passage of the Maturity Date, and agreed to enter into the Forbearance Agreement with VDI;<sup>41</sup>
- (c) the Indebtedness is due and owing to Vector, and Vector has lost faith in the ability of VDI to repay the Indebtedness in the near term in light of, among other things, VDI's failure to repay the Indebtedness on the Maturity Date, and the failure of VDI to pay the Initial Reserve when required under the Forbearance Agreement;<sup>42</sup>
- (d) Vector's credit documents specifically provide Vector with the right to seek the appointment of the Receiver;<sup>43</sup> and
- (e) the appointment of the Receiver will create a transparent marketing process for the sale of the Mortgaged Property and a clear way forward for the repayment of amounts owed to Vector in respect of the Mortgaged Property and any other creditors with an interest in the Mortgaged Property, including the subsequent mortgagees.<sup>44</sup>

## **PART V. CONCLUSION AND RELIEF SOUGHT**

42. The Lender's loan to VDI has matured, and VDI has failed repay the Indebtedness on the Maturity Date as required under the Commitment Letter.

---

<sup>41</sup> **Mintz Affidavit**, paras 24, 27, 28, 30, 33 Application Record, Tab 2

<sup>42</sup> **Mintz Affidavit**, paras 44, Application Record, Tab 2

<sup>43</sup> **Mintz Affidavit**, para 40, Application Record, Tab 2

<sup>44</sup> **Mintz Affidavit**, para 47, Application Record, Tab 2

43. The appointment of the Receiver at this time will facilitate the realization of the Mortgaged Property in a transparent and court-supervised process to the benefit of all of VDI's stakeholder, including the Lenders and the mortgagees holding the Subsequent Mortgages.

44. For the reasons set out above, Vector requests that the Court grant the Receivership Order in the form sought by Vector.

**RESPECTFULLY SUBMITTED** this 27<sup>th</sup> day of March, 2023.



---

**Thomas Gertner/ Katherine Yurkovich**

Lawyers for Vector Financial Services Limited

## SCHEDULE “A”

### LIST OF AUTHORITIES

1. [\*Bank of Nova Scotia v Freure Village on Clair Creek et al.\*](#), [1996] OJ No 5088 (QL), 40 CBR (3d) 274 (ONSC (Commercial List))
2. [\*Elleway Acquisitions Limited v The Cruise Professionals Limited.\*](#), 2013 ONSC 6866 (Commercial List)
3. [\*Bank of Montreal v Sherco Properties Inc.\*](#), 2013 ONSC 7023 (Commercial List)
4. [\*Romspen Investment Corporation v Atlas Healthcare \(Richmond Hill\) Ltd. et al.\*](#), 2018 ONSC 7382 (Commercial List)



## **SCHEDULE “B”**

### **TEXT OF STATUTES, REGULATIONS & BY-LAWS**

#### **Bankruptcy and Insolvency Act, RSC, 1985, c B-3**

##### **Court may appoint receiver**

**243 (1)** Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

##### **Restriction on appointment of receiver**

**243 (1.1)** In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

(a) the insolvent person consents to an earlier enforcement under subsection 244(2); or

(b) the court considers it appropriate to appoint a receiver before then.

##### **Definition of receiver**

**243 (2)** Subject to subsections (3) and (4), in this Part, receiver means a person who

(a) is appointed under subsection (1); or

(b) is appointed to take or takes possession or control — of all or substantially all of the

inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under

(i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

### **Definition of receiver — subsection 248(2)**

**243 (3)** For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

### **Trustee to be appointed**

**243 (4)** Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

### **Place of filing**

**243 (5)** The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

### **Orders respecting fees and disbursements**

**243(6)** If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver’s claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

### **Meaning of disbursements**

**243 (7)** In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

#### **Advance notice**

**244 (1)** A secured creditor who intends to enforce a security on all or substantially all of

(a) the inventory,

(b) the accounts receivable, or

(c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

#### **Period of notice**

**(2)** Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

#### **No advance consent**

**(2.1)** For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

#### **Exception**

**(3)** This section does not apply, or ceases to apply, in respect of a secured creditor

(a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or

(b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

## **Idem**

(4) This section does not apply where there is a receiver in respect of the insolvent person.

## **Courts of Justice Act, RSO 1990, c C43**

### **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**

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

**VECTOR FINANCIAL SERVICES LIMITED**

- and -

**VILLAGE DEVELOPMENTS INC.**

Applicant

Respondent

**APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. c-43, as amended**

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

PROCEEDING COMMENCED AT TORONTO

**FACTUM**

**GOWLING WLG (CANADA) LLP**

Barristers & Solicitors

1 First Canadian Place,

100 King Street West, Suite 1600

Toronto ON M5X 1G5

Tel: 416-862-7525

Fax: 416-862-7661

**Thomas Gertner (LSO# 67756S)**

Tel: 416-369-4618

Email: [thomas.gertner@gowlingwlg.com](mailto:thomas.gertner@gowlingwlg.com)

**Katherine Yurkovich (LSO# 80396R)**

Tel: 416-862-4342

Email: [kate.yurkovich@gowlingwlg.com](mailto:kate.yurkovich@gowlingwlg.com)

*Lawyers for the Applicant*