Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

RI FLOW LLC and NFS LEASING CANADA LTD.

Applicants

-and-

FLOW BEVERAGE CORP., FLOW WATER INC., FLOW GLOW BEVERAGES INC., FLOW BEVERAGES INC., and 2446692 ONTARIO LIMITED

Respondents

APPLICATION UNDER Section 243 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

FACTUM OF THE APPLICANTS

September 3, 2025

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PART I - OVERVIEW

1. This Application is an integral component of the Restructuring Transaction (defined herein), which the Applicants have designed with the objective of preserving Flow as a going concern in order to preserve stakeholder value. The Applicants hold the only realistic economic interest in the Debtors, and the Restructuring Transaction provides an efficient, cost-effective and certain solution that will immediately deliver desperately needed stability, financing and expertise to the business.

PART II - INTRODUCTION

2. This factum is filed by the applicants RI Flow LLC ("**RI**") and NFS Leasing Canada Ltd. ("**NFS**" and, together with RI, the "**Applicants**"). The Applicants are the senior secured creditors of the respondents Flow Beverage Corp., Flow Water Inc., Flow Beverages Inc., Flow Glow Beverages Inc., and 2446692 Ontario Limited (together "**Flow**" or the "**Debtors**").

3. The Applicants seek the appointment of Richter Inc. ("**Richter**") as receiver over the Debtors' assets, undertakings and properties (in such capacity, the "**Receiver**").

4. The Receiver is proposed to be a transitional receiver in aid of the Applicants' PPSA foreclosure over the Debtors' business, and the order sought reflects the proposed limited nature of its appointment. The Receiver will not be taking possession or control over the Debtors' property; but will be, among other things, empowered to facilitate the Restructuring Transaction through authorization to: (x) take possession of books and records, (y) consent to the PPSA foreclosure at the appropriate time, and (z) borrow funds under a super priority charge.

5. The primary role of the Receiver is to ensure an orderly transition of Flow's business to new ownership while preserving its going-concern value.

6. This Application is made with the support of the Debtors under a support agreement signed on September 1, 2025 (the "**Support Agreement**"). Over the past three years, Flow, with the assistance of experienced financial advisors, has marketed its business three times. Each process failed to yield a binding purchase or investment offer. Following the most recent unsuccessful effort, which concluded on or about August 28, 2025, the Debtors agreed to support the Applicants' proposed restructuring.

PART III - SUMMARY OF FACTS

7. The factual basis for this application is presented in the affidavit of Cliff Rucker, affirmed September 2, 2025.[1] A summary of the background facts is set out immediately below.

8. The Debtors operate a water extraction, packaging, and distribution business in Canada and the United States, with a public parent company listed on the Toronto Stock Exchange.

9. The Applicants have provided multiple secured loans to the Debtors, totaling approximately C$57.6 million CAD and US$9.9 million. These loans are supported by general security interests over all of the Debtors' assets.

10. However, the Debtors' financial condition has deteriorated since the Applicants made their initial investments – first gradually, and then suddenly – resulting in defaults on Flow's secured obligations to the Applicants. Despite engaging multiple financial advisors and running three separate sale and investment processes (in 2023, 2024, and August 2025), the Debtors failed to secure any binding offers or restructuring proposals. Their operations

[1] Affidavit of Cliff Rucker, affirmed September 2, 2024 ("**Rucker Affidavit**"), Application Record Tab 2.

have further declined, with critical supply shortages and strained vendor relationships worsening their financial distress.

11. The Applicants demanded repayment and issued notices of intention to enforce security on August 22, 2025. Those notices expired at midnight on September 2, 2025 and the Applicants are therefore permitted to enforce their security as of September 3, 2025.

12. The Support Agreement confirms the Debtors' defaults, acknowledges the validity of the Applicants' security, acknowledges the Applicants' rights to enforce their security, including the appointment of a receiver, and commits Flow to supporting the going-concern restructuring transaction described therein.

13. Unlike a more "traditional" receivership, the Applicants intend to use the proposed receivership to effect a transaction (the "**Restructuring Transaction**") pursuant to which:

    (a) the Applicants will immediately provide interim financing to the Debtors *via* borrowing certificates;

    (b) the Receiver will be empowered, pursuant to the appointment order, to consent, on behalf of the Debtors, to the Applicants foreclosing on certain of the Debtors' assets pursuant to Section 65 of the *Personal Property Security Act*, R.S.O. 1990, c. P.10 (as amended, the "**PPSA**"); and

    (c) the Applicants will effect the foreclosure in a manner that will result in a going-concern acquisition of the Debtors' business, including by offering employment (through a company incorporated to take assignment of the Applicants' debt and security) to substantially all of the Debtors' operational employees and continuing to act as a counterparty to suppliers and customers.

14. The Debtors are hopelessly insolvent, with asset values far below the outstanding debt, leaving the Applicants as the only stakeholders with an economic interest in the business. The Applicants have also consulted other secured creditors and suppliers, which are not expected to oppose the transaction. Given the failed sale processes, escalating operational crises, and the need for a structured transition, the Applicants believe the appointment of a Receiver on the terms of the proposed appointment order is in the best interests of all stakeholders.

15. To the extent that further, specific facts are germane to the issues before the Court, such facts are presented in the "law and argument" section below.

16. All capitalized but undefined words have definition given to them in the Rucker Affidavit.

PART IV - STATEMENT OF ISSUES

17. There are four primary questions before this Honourable Court:

(a) whether it is just or convenient to appoint the Receiver;

(b) whether this court has jurisdiction to grant the proposed order in respect of Flow Beverages Inc., a Delaware corporation;

(c) whether the Receiver should be authorized to assign the Debtors into bankruptcy (following completion of the Restructuring Transaction); and

(d) whether the sealing order should be granted.

18. The Applicants submit that each of the above questions should be answered in the affirmative.

PART V - LAW AND ARGUMENT

A. The appointment of the Receiver is just, convenient and appropriate

19. This Court has the power to appoint a receiver or a receiver and manager under section 243(1) of the BIA and section 101 of the CJA.[2]

20. Section 243(1) of the BIA provides that on application by a secured creditor, a court may appoint a receiver to, *inter alia*, take possession over the assets of an insolvent person and exercise any control that the court considers advisable over that property and over the insolvent person's business, again where it is "just or convenient".[3] Similarly, the CJA enables the court to appoint a receiver where such appointment is "just or convenient".[4]

21. In determining whether it is "just or convenient" to appoint a receiver under either statute, Ontario courts have applied the decision of Justice Blair (as then he was) in *Freure Village*. Here, His Honour confirmed that, in deciding whether the appointment of a receiver is just or convenient, the court "…must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto," which includes the rights of the secured creditor under its security.[5]

22. This Court has set out a number of factors, not as a checklist, but as a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient. These factors are presented in Schedule "A" hereto.

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2 BIA, section 243(1); CJA, s. 101
3 BIA, section 243(1)
4 CJA, s. 101
5 *Bank of Nova Scotia v. Freure Village of Clair Creek* (1996), 40 C.B.R. (3d) 274, [1996] O.J. No. 5088 at para 10 (Gen. Div. [Comm. List]) [*Freure Village*].

23. Critically, as in the case at bar, when the rights of the secured creditor under its security includes a specific right to appointment of a receiver, the burden on the applicant seeking the relief is relaxed. As stated by Justice Osborne in *iSpan Systems LP* (His Honour relying upon the decision of Chief Justice Morawetz in *Elleway Acquisitions*):

> "Where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: while the appointment of a receiver is generally an extraordinary equitable remedy, the courts do not so regard the nature of the remedy where the relevant security permits the appointment and as a result, the applicant is merely seeking to enforce a term of an agreement already made by both parties [citations omitted]."[6]

24. Courts have found that it is unfair to hold a secured creditor "…to remain without control of the process […] when the contracts to which the Debtor agreed give the Receivership Applicants a right to control the process through a receivership."[7]

25. The Applicants have a contractual right to appoint a receiver.[8] In addition to this right, the appointment of the Receiver is both just and convenient for the following reasons:

(a) the Debtors support the appointment of the Receiver;

(b) the appointment of the Receiver will facilitate the interim financing of the Debtors' going concern operations while the foreclosure process is completed, which financing will permit payroll obligations to be satisfied, and contractual counterparties to be paid;

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[6] *iSpan Systems LP*, 2023 ONSC 6212 at para 31.
[7] *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.* 2020 ONSC 1953 at para 71.
[8] See the NFS GSAs attached as **Exhibit "U"** to the Rucker Affidavit and the RI Flow GSAs attached as **Exhibit "BB"** to the Rucker Affidavit.

(c) the stay of proceedings in the appointment order will facilitate the stabilization of the Debtors' relationships with counterparties, which is needed and important for preserving going concern value;

(d) the appointment of a Receiver follows three recent out-of-court marketing processes for Flow's business, all of which indicate that Flow's Indebtedness to the Applicants substantially exceeds the going concern value of Flow's business;

(e) the Applicants have obtained a liquidation appraisal current as of February 2025,[9] which indicates that the value of the Debtors' tangible assets is, in the best-case scenario, less than the Indebtedness;

(f) the Receiver will have the power (but not the obligation) to consent, on behalf of the Debtors, to the proposed foreclosure, which could expedite the Restructuring Transaction;

(g) conversely, the appointment order does not prohibit any party in receipt of the Applicants' foreclosure notice from exercising its right to object; and

(h) the Restructuring Transaction to be facilitated by the Receiver is intended to maintain the employment of most of the Debtors' employees (especially at the hourly wage/operational level) and both of their existing business lines.

B. This Court has jurisdiction to include FBI under the Appointment Order

26. FBI is a corporation incorporated under the laws of Delaware.

[9] Confidential Appendix "A" to the Application Record.

27. FBI is 100% owned by Flow Water Inc.

28. FBI owns the Debtors' American water source, located in Virginia.

29. In order to preserve the integrity of the proposed Restructuring Transaction, which requires foreclosing on all desired collateral in the same moment in time, FBI is named as a Respondent to this Application and is proposed to be a Debtor under the Appointment Order.

30. Section 243(1)(c) of the BIA and section 101(2) of the *Courts of Justice Act* (Ontario) ("**CJA**") together provide jurisdiction for this Court to include FBI as a Debtor under the Appointment Order.

31. Section 243(1)(c) of the BIA states:

> 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:
>
> […]
> (c) take any other action that the court considers advisable.

32. Section 101(2) provides as follows:

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

33. In *KEB Hana Bank v Mizrahi*[10] Justice Osborne held that:

[10] *KEB Hana Bank as Trustee et al. v. Mizrahi Commercial (The One) LP et al*., 2023 ONSC 5881

> [J]urisdiction is found in both section 243(1)(c) of the *BIA* which authorizes the Court to take any other action that the Court considers advisable, as well as section 101(2) of the *CJA* which gives the Court jurisdiction to appoint a receiver on such terms as are considered just…I draw additional comfort from the observation of the Supreme Court of Canada that the very expansive wording of section 243(1)(c) of the *BIA* has been interpreted as giving judges the broadest possible mandate in insolvency proceedings to enable them to react to any circumstances that may arise in relation to court ordered receiverships.[11]

34. It is just, convenient, and advisable to include FBI as a Debtor. Because foreclosure immediately extinguishes the relevant indebtedness once completed, it is critical that a foreclosure involving collateral across multiple entities, such as the Restructuring Transaction, occur simultaneously. Including FBI as a Debtor permits such a simultaneous foreclosure to occur by ensuring that the Receiver has identical powers in respect of every entity in the Flow business.

35. In *White Oak Commercial Finance, LLC v. Nygård Holdings*, the Court of Queen's Bench of Manitoba included American debtor entities under a receivership order granted pursuant to section 243(1) of the BIA and section 55 of the *Courts of Queen's Bench Act* (Manitoba).[12] Section 55 of the Courts of Queen's Bench Act is the Manitoba equivalent to section 101 of the CJA.

C. The Receiver should be authorized to bankrupt any Debtor following completion of the Restructuring Transaction

36. The Applicants request authorization of the Receiver to make an assignment in bankruptcy of any Debtor entity following the completion of the Restructuring Transaction.

37. This requested relief is not uncommon and has been granted by this Court in other

[11] *KEB Hana Bank as Trustee et al. v. Mizrahi Commercial (The One) LP et al*., 2023 ONSC 5881 at para 54 and 55, citations omitted.

[12] *White Oak Commercial Finance, LLC v. Nygård Holdings*, 2020 MBQB 58.

receivership proceedings. In *RBC v. Gustin*, the Ontario Superior Court of Justice confirmed that it has the authority to empower a receiver to file an assignment in bankruptcy on behalf of a debtor company.[13]

38. It is well-settled that it is within this Court's jurisdiction to authorize a receiver to file an assignment in bankruptcy or consent to a bankruptcy order.[14]

39. Further, the Applicants are in a position where they could seek a creditor-driven bankruptcy order against the Debtors. The Debtors have committed an act of bankruptcy pursuant to Section 42(1)(j) of the *BIA* – *i.e.*, the failure to meet their liabilities generally as they come due – by failing to satisfy the Applicants' demand for payment when due.

40. Accordingly, the Applicants are well-positioned to bring a bankruptcy application against the Debtors. For this reason, it is appropriate to authorize the Receiver to make an assignment in bankruptcy on behalf of any Debtor.

C. **The proposed sealing order should be granted**

41. The Applicants seek a temporary sealing order in respect of Confidential Appendix "A" to the Motion Record (the "**Confidential Appendix**").

42. The Confidential Appendix contains a recent appraisal of the Debtors' material assets (the "**Appraisals**").

[13] *RBC v Gustin*, 2019 ONSC 5370 at para 15.

[14] *Bank of Montreal v Owen Sound Golf and Country Club*, 2012 ONSC 557 at para 7.

43. Pursuant to the CJA, this Court has the discretion to order any document filed in a civil proceeding be treated as "confidential", sealed and not form part of the public record.[15]

44. The test to determine whether a sealing order should be granted, as set out by the Supreme Court of Canada in *Sierra Club of Canada v Canada (Minister of Finance)*, as modified in *Sherman Estate*, is as follows:

(a) whether court openness poses a serious risk to an important public interest;

(b) the order is necessary to prevent risk to an important interest because reasonably alternative measures will not prevent the risk; and

(c) whether the benefits of the confidentiality order outweigh the negative effects.[16]

45. The Supreme Court of Canada has explicitly recognized commercial interests, such as preserving confidential information, as an "important public interest" for the purposes of this test.[17]

46. The Confidential Appendix contains commercially sensitive information that, if publicly disclosed and the Restructuring Transaction does not close, could negatively impact the Debtors' liquidation value by effectively setting a price ceiling.

47. Sealing is necessary to protect this important public interest, and there is no reasonable alternative measure to prevent this risk.

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[15] s 137(2), CJA.

[16] *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 at para 53; *Sherman Estate v. Donovan*, 2021 SCC 25 at paras 38 and 43.

[17] *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 at para 55; *Sherman Estate v. Donovan*, 2021 SCC 25 at paras 41-43.

48. The negative effects of this sealing order are limited because the sealing order will automatically expire upon completion of the Restructuring Transaction.

49. The benefits to Flow's stakeholders of protecting the Debtors' liquidation value outweigh the public interest in disclosure of the appraisal before the Restructuring Transaction closes.

D. ORDER REQUESTED

50. For each of the foregoing reasons, the Applicants respectfully request that this Honourable Court grant the order sought.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of September, 2025.

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SCHEDULE "A"

Factors relevant to the "just or convenient" analysis [*Kingsett Mortgage Corp. v. Mapleview Developments Ltd., et al.*, 2024 ONSC 1983, paras 24-25]:

(a) whether irreparable harm might be caused if no order is made;

(b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;

(c) the nature of the property;

(d) the apprehended or actual waste of the debtor's assets;

(e) the preservation and protection of the property pending judicial resolution;

(f) the balance of convenience to the parties;

(g) the fact that the creditor has a right to appointment under the loan documentation;

(h) the enforcement of rights under a security instrument;

(i) the principle that the appointment of a receiver should be granted cautiously;

(j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;

(k) the effect of the order upon the parties;

(l) the conduct of the parties; (m) the length of time that a receiver may be in place;

(n) the cost to the parties; and

(o) the likelihood of maximizing return to the parties; and (p) the goal of facilitating the duties of the receiver.[18]

[18].

SCHEDULE "B"
LIST OF AUTHORITIES

1. *Bank of Nova Scotia v. Freure Village of Clair Creek* (1996), 40 C.B.R. (3d) 274, [1996] O.J. No. 5088
2. *Re:iSpan Systems LP*, 2023 ONSC 6212
3. *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc*. 2020 ONSC 1953
4. KEB Hana Bank as Trustee et al. v. Mizrahi Commercial (The One) LP et al., 2023 ONSC 5881
5. *White Oak Commercial Finance, LLC v. Nygård Holdings*, 2020 MBQB 58
6. *RBC v Gustin*, 2019 ONSC 5370
7. *Bank of Montreal v Owen Sound Golf and Country Club*, 2012 ONSC 557
8. *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41.
9. *Sherman Estate v. Donovan*, 2021 SCC 25

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

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date September 3, 2025

Gregory Azeff, Patrick Corney and
Matthew Cressatti

SCHEDULE "C"
RELEVANT STATUTES

***Bankruptcy and Insolvency Act*, R.S.C., 1985, C. B-3, as amended**

Section 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

Section 243(1.1)

(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.

Section 243(6)

(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.

Section 244

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*, R.S.O. 1990, c. C.43, as amended**

Section 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.

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

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Proceeding Commenced at
Toronto

FACTUM
(APPLICATION RETURNABLE SEPTEMBER 3, 2025)

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