

Cv17-11742-000

Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF AN APPLICATION  
pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as  
am., section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and the *Personal  
Property Security Act*, R.S.O. c. P.10

BETWEEN:

DAVINCI CAPITAL PARTNERS INC. in its capacity as trustee of  
DAVINCI CAPITAL PRIVATE DEBT FUND

Applicant

-and-

THE CUSTOM FACTORY CANADA INC. and ANTONIO PETOSA

Respondents

**NOTICE OF APPLICATION OF DAVINCI CAPITAL PARTNERS INC. IN ITS  
CAPACITY AS TRUSTEE OF DAVINCI CAPITAL PRIVATE DEBT FUND FOR  
APPOINTMENT OF A RECEIVER OVER CUSTOM FACTORY CANADA INC.  
ASSETS**

TO THE RESPONDENT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The  
claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on March \_\_, 2017, at 10:00am,  
before a judge presiding over the Commercial List at 330 University Avenue, 8th Floor,  
Toronto, Ontario, M5G 1R7, or as soon thereafter as possible.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step  
in the application or to be served with any documents in the application, you or an Ontario  
lawyer acting for you must forthwith prepare a notice of appearance in Form 38A  
prescribed by the Rules of Civil Procedure, serve it on the applicants' lawyer, or, where  
the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of  
service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: Mar 22, 2017

Issued by:   
Local registrar

330 University Avenue  
Toronto, ON M5G 1R7

**TO: THE CUSTOM FACTORY CANADA INC.**  
c/o Antonio Petosa  
62 Cartwright Avenue  
Toronto, ON M6A 1T9

**AND TO: ANTONIO PETOSA**  
62 Cartwright Avenue  
Toronto, ON M6A 1T9

**AND TO: MICHAEL ISCOVE**  
25 Broadway Avenue, Suite 1503  
Toronto, ON M4P 1T7 Canada

**AND TO: ALLEN & ALLEN  
BARRISTERS AND SOLICITORS**  
350 Wellington Street West, Suite 205  
Toronto, Ontario, M5V 3W9

Tel: 416.865.0303  
Fax: 416.865.1241

Lawyers for Harris Jordan Investments Ltd. (landlord)

**AND TO: SCHWARTZ LEVILSKY FELDMAN INC. (bankruptcy trustee)**  
Suite 1500, 2300 Yonge Street, Box 2434  
Toronto, ON M4P 1E4

**AND TO: PATRIOT EQUIPMENT FINANCE INC.**  
300 – 10 Milner Business Court  
Scarborough, ON M1B3C6

## APPLICATION

Davinci Capital Partners Inc. in its capacity as trustee of Davinci Capital Private Debt Fund (the "Applicant") will make an application to a Judge of the Superior Court of Justice presiding over the Commercial List on the \_\_\_\_ day of \_\_\_\_\_, 2017 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order, substantially in the form attached as **Schedule "A"**, which order shall, *inter alia*:
  - (a) Abridge and validate the time for service of the Notice of Application and the materials filed in support of the application;
  - (b) Declare that the stay of proceedings against the Respondent Custom Factory Canada Inc. imposed by section 69.3(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") does not operate in respect of the Applicant so that the Applicant is authorized to commence this application against CFC;
  - (c) Appoint Link & Associates Inc. as Receiver (the "Receiver"), without security, of all of the assets, undertakings and properties of CFC for the immediate investigation into and preservation of the assets, undertakings and properties of CFC, including all proceeds thereof (the "Property"); and,
  - (d) Provide for the Applicants' costs of this application and a priming charge on the Property as security for the Receiver's and Applicant's counsel's fees and disbursements to a maximum of \$100,000.00;
2. Such further and other relief as this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

3. The Applicant is a secured creditor of CFC and enjoys security over all of CFC's assets, undertakings and property pursuant to a Security Agreement entered into on or around February 17, 2017.
4. On or about February 17, 2017, the Applicant and CFC entered into a loan agreement (the "**Agreement**") secured by collateral set out in the Agreement and Security Agreement.
5. The Applicant advanced \$237,877.00 to CFC pursuant to the Agreement (the "Advance").
6. The Applicant duly registered its security pursuant to the *Personal Property Security Act*, R.S.O. 1990, c. P.10.
7. CFC has defaulted under the Agreement by, *inter alia*, shutting down its operations, defaulting on its lease, making bulk conveyances of inventory/collateral of the Applicant and making a voluntary assignment into bankruptcy.
8. CFC and Petosa have engaged in an apparent fraud to the detriment of the Applicant by obtaining the Advance under false pretenses and immediately upon receipt of the Advance shuttering CFC's doors and spiriting away all of its assets.
9. The Applicant has serious concerns that the assets of CFC are in jeopardy and believes that the appointment of a receiver is necessary for the protection of both CFC's estate and the Applicant's interest as a secured creditor.
10. The continued operation of the stay of proceedings imposed by section 69.3(1) of the *BIA* vis-à-vis CFC would cause material prejudice to the Applicant.
11. The apparent fraud perpetrated against the Applicant is a sound reason for lifting the stay imposed by section 69.3(1) of the *BIA*.
12. Sections 69.3(1), 69.4, 178(1) and 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

13. Sections 97 and 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43.
14. Rules 1.04, 2.03, 3.02, 14, 38 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990 Reg 194.
15. Such further and other grounds as this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) the Affidavit of Mark Irwin sworn March 19, 2017;
- (b) the Consent of Link & Associates Inc. to its appointment as Receiver; and
- (c) such further and other material as this Honourable Court may permit.

March 20, 2017

**REGENT LAW P.C.**

600-200 Elgin Street  
Ottawa, ON K2P 1L5

Tel: 613.319.9997

Fax: 416.943.6270

Ryan E. Flewelling, LSUC #49009W

Lawyers for the Applicant

DAVINCI CAPITAL PARTNERS INC. et al

Applicants

-and-

THE CUSTOM FACTORY CANADA INC. et al.

Respondents

*A17-11742-0022*  
Court File:.....

ONTARIO  
SUPERIOR COURT OF JUSTICE

Proceedings commenced at Toronto

NOTICE OF APPLICATION

REGENT LAW  
PROFESSIONAL CORPORATION  
Barristers & Solicitors  
200 Elgin Street, Suite 600  
Ottawa, ON K2P 1L5

Ryan E. Flewelling  
Pavle Masic *62275 F (LSC #)*  
Tel: (613) 319-9997  
Fax: (416) 493-6270

Lawyers for the Applicants