

COURT OF APPEAL FOR ONTARIO

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

and

**BRIDGING FINANCE INC., BRIDGING INCOME FUND LP, BRIDGING
MID-MARKET DEBT FUND LP, SB FUND GP INC., BRIDGING
FINANCE GP INC., BRIDGING INCOME RSP FUND, BRIDGING MID-
MARKET DEBT RSP FUND, BRIDGING PRIVATE DEBT
INSTITUTIONAL LP, BRIDGING REAL ESTATE LENDING FUND LP,
BRIDGING SMA 1 LP, BRIDGING INFRASTRUCTURE FUND LP,
BRIDGING MJ GP INC., BRIDGING INDIGENOUS IMPACT FUND,
BRIDGING FERN ALTERNATIVE CREDIT FUND, BRIDGING SMA 2
LP, BRIDGING SMA 2 GP INC. and BRIDGING PRIVATE DEBT
INSTITUTIONAL RSP FUND**

Respondents

-and-

REDEMPTION REPRESENTATIVE COUNSEL

(Appellant)

-and-

**REPRESENTATIVE COUNSEL FOR THE UNITHOLDERS and
PRICEWATERHOUSECOOPERS INC. in its capacity as COURT-APPOINTED
RECEIVER AND MANAGER OF THE RESPONDENTS**

(Respondents on Appeal)

IN THE MATTER OF AN APPLICATION UNDER SECTION 129 OF THE *SECURITIES
ACT* (ONTARIO), R.S.O. 1990, c. S. 5, AS AMENDED

AMENDED NOTICE OF APPEAL

THE APPELLANTS, the Unitholders¹ located outside of the province of Quebec with Potential Redemption Claims (the “**Redemption Claimants**”), APPEAL to the COURT OF APPEAL FOR ONTARIO from the Order of Chief Justice G.B. Morawetz (the “**Motion Judge**”) dated April 12, 2023, made at Toronto.

THE APPELLANTS ASK that the Order below be set aside, and that an order be granted, as follows:

- (a) An order vacating the Order that the Potential Redemption Claims² are not entitled to any priority over General Unitholder Claims with respect to the distribution of proceeds of the Bridging Funds and that the Potential Redemption Claimants and the General Unitholder Claims shall rank *pari passu* (the “**Order**”), and substituting in its place an order that the Potential Redemption Claims are entitled to priority over General Unitholder Claims with respect to the distribution of proceeds of the Bridging Funds;
- (b) In the alternative, an order vacating the Order and remitting the matter to the Motion Judge or another judge of the Ontario Superior Court of Justice (Commercial List) for redetermination in accordance with the directions of this Honourable Court; and
- (c) Such further or other relief as the Redemption Claimants may advise, and this Honourable Court may deem just.

¹ Capitalised terms not otherwise defined herein shall have the meaning ascribed to them in the Endorsement of the Motion Judge issued April 12, 2023 (the “**Decision**”).

² “**Potential Redemption Claims**” means the claim of a Unitholder in connection with a validly exercised request to redeem units in one or more of the Bridging Funds prior to the Date of Appointment, which was not completed.

THE GROUNDS OF APPEAL are as follows:

A. Procedural Background: The Receivership Proceedings

1. Upon application by the Ontario Securities Commission (the “**Commission**”) under section 129 of the Ontario *Securities Act*, R.S.O. 1990, c. S. 5 (the “*Securities Act*”), PricewaterhouseCoopers Inc. (“**PwC**”) was appointed by order of the Ontario Superior Court of Justice (Commercial List) dated April 30, 2021 (the “**Appointment Order**” and “**Date of Appointment**”) as receiver and manager (in such capacities, the “**Receiver**”), without security, of all of the assets, undertakings, and properties of Bridging Finance Inc. (“**BFI**”), Bridging Income Fund LP (“**BIF**”), Bridging Mid-Market Debt Fund LP (“**MMF**”), SB Fund GP Inc., Bridging Finance GP Inc., Bridging Income RSP Fund (“**BIF RSP**”), Bridging Mid-Market Debt RSP Fund (“**MMF RSP**”), Bridging Private Debt Institutional LP (“**BPDI**”), Bridging Real Estate Lending Fund LP, Bridging SMA 1 LP, Bridging Infrastructure Fund LP, Bridging MJ GP Inc., Bridging Indigenous Impact Fund (“**BIIF**”) and Bridging Fern Alternative Credit Fund (“**FERN**”) (collectively, the “**Initial Respondents**”). Such proceedings are referred to herein as the “**Receivership Proceedings**”.

2. By order of the Ontario Superior Court of Justice (Commercial List) dated May 3, 2021, PwC was appointed as Receiver of all of the assets, undertakings, and properties of each of Bridging SMA 2 LP, Bridging SMA 2 GP Inc., and Bridging Private Debt Institutional RSP Fund (“**BPDI RSP**”) (collectively with the Initial Respondents, “**Bridging**”, and with the exception of BFI, the “**Bridging Funds**”).

3. The Commission issued an order on April 30, 2021 (the “**Temporary Order**”) suspending trading in securities of the Initial Respondents (other than FERN) pursuant to subsection 127(1) of the *Securities Act*.

B. The Bridging Funds, Generally

4. BFI is a federally incorporated company, domiciled in Ontario. BFI was founded in 2013 as a privately held investment management firm that, prior to the appointment of the Receiver, offered alternative investment options to retail and institutional investors through its investment vehicles (the Bridging Funds). Bridging raised capital from investors for the purpose of making private debt loans to third-party corporate borrowers.

5. The Bridging Funds (other than BIIF, FERN, BIF RSP, MMF RSP, and BPDI RSP, which were organized as unincorporated investment trusts pursuant to Ontario law) originated loans through limited partnerships established pursuant to the *Limited Partnerships Act* (Ontario) (the “*Limited Partnerships Act*”), each of which is managed by an Ontario incorporated general partner owned by BFI. Prior to the appointment of the Receiver, BFI acted as manager of each of the Bridging Funds.

6. Investors participated through the purchase of Units of the Bridging Funds, being either limited partnership or trust units depending on the Bridging Fund invested into. Based upon information provided to the Receiver by BFI’s management, there are an aggregate of approximately 25,900 Unitholders across the 13 Bridging Funds. Many Unitholders hold Units in more than one Bridging Fund.

7. The eight Bridging Funds at issue on this appeal have substantially similar offering memoranda, trust agreements (each, a “**Trust Agreement**”), and limited partnership agreements (each, an “**LP Agreement**”). References to each of these documents in this Notice of Appeal will refer to the documents for all the Funds generally, except where the documents for one of the Funds are specifically identified.³

8. Although the LP Agreements and Trust Agreements are substantially similar, the same clauses may be located at different sections of the agreements.

9. Of the eight Bridging Funds at issue on this appeal:

- (a) Three⁴ of the Funds at issue were organized as limited partnerships pursuant to the *Limited Partnerships Act*, where limited partners purchased units in the limited partnerships; and
- (b) Five⁵ of the Bridging Funds were organized as flow through investment trusts. For the investment trusts, Unitholders would purchase units in the Fund, and the trust would in turn purchase units in the limited partnerships.

C. The Redemption Process

10. On the motion below, it was uncontroverted that:

³ With respect to the LP Agreements, for the purposes of this Notice of Appeal, reference will primarily be made to the language in the BIF LP Agreement, which represent the highest quantum of Redemption Claims in the limited partnership Funds.

⁴ BIF, MMF, and BPDJ.

⁵ BIF RSP, MMF RSP, BPDJ RSP, FERN, and BIIF.

- (a) The constating documents of the Bridging Funds generally provide that redemptions of Units may occur upon formal notice by a Unitholder;
- (b) Pursuant to the constating documents, redemptions could only be made effective as of the applicable Valuation Date following the receipt of a redemption notice, which was then defined to be the “Redemption Date” under the applicable constating documents;
- (c) While the constating documents permitted the Bridging Funds to appoint a Fund Administrator to perform registrar and transfer agent services and also to provide certain financial, record-keeping, reporting and administration services, the procedures that were generally followed by the Fund Administrator to administer redemptions were generally *not* specified or described in the Funds’ constating documents or offering memoranda; and
- (d) The discretion to accept, reject or suspend redemptions was by the constating documents granted to the General Partner, not to the Fund Administrator, nor was that discretion identified as one of the matters permitted to be delegated to the Fund Administrator by the General Partner.

11. Once a Unitholder submitted a redemption request to redeem a specified number of units, the Unitholder was not required to take any further steps, and the request is subject only to the specified discretion of the General Partner to refuse the redemption in circumstances where, in the view of the General Partner, it would be prejudicial to the partnership.

12. Upon the arrival of the Redemption Date, the constating documents and offering memoranda (which are generally incorporated by reference into the constating documents) of the Bridging Funds at issue generally provide that *“the redemption price of the Unit being redeemed, until paid, shall be deemed to be a liability of the Partnership”*.

i. The LP Agreements Redemption Process

13. The redemption process pursuant to the LP Agreements can be summarized as follows:

- (a) the limited partner submits a request for redemption (section 5.1(a));
- (b) the applicable “Redemption Date” is the first Valuation Date at least 30 days (or 90 days where such period was amended) after the request for redemption is submitted (sections 1.1 and 5.1(a));
- (c) the redemption proceeds are valued as of the Redemption Date (section 5.1(a)); and
- (d) as of the Redemption Date the LP Agreements required that redemption proceeds be paid not later than 30 days following the Redemption Date (section 5.1(c)), which requirement was not subject to any subsequent action or approval of the Fund Administrator.

14. Consistent with the foregoing, certain of the LP Agreement offering memoranda also provide that *“the redemption price of the Unit being redeemed, until paid, shall be deemed to be a liability of the Partnership”*.

15. Once a limited partner submitted a redemption request, the limited partner was not required to take any further steps, nor was any process or timetable for General Partner acceptance provided for or required by the constating documents, as the redemption was said to become a liability of

the limited partnership on the Redemption Date, and was subject only to the General Partner exercising its specified discretion to refuse the redemption prior to the Redemption Date.

16. The liability to limited partners created by a redemption is distinguished from a return of contribution by the express terms of the LP Agreements. This distinction is made clear in section 10.1(f) of the LP Agreements, which provide that the limited partners have no right to request a return of their contribution except upon dissolution.

ii. The BIF RSP Trust Agreement Redemption Process

17. The BIF RSP investment trust was a flow-through investment vehicle, and in respect of redemptions, adopted the same terms as the BIF LP Agreement.

18. The process for an investment trust Unitholder to redeem their units is set out at sections 4.3(c) and 6.1 of the BIF RSP Trust Agreement, which together provide that a Unitholder shall be entitled to redeem their units, and “*require payment*”, on a Valuation Date, after which time the redemption price “*shall be deemed to be a liability of the Fund...*”.

19. Section 6.3(a) of the BIF RSP Trust Agreement provides that, following a redemption, the Unitholder shall cease to have any further rights with respect to such Units except to payment of the redemption price.

20. The offering memorandum for the BIF RSP, referenced in section 6.1 of the BIF RSP Trust Agreement, is consistent with the BIF RSP Trust Agreement, and provides that Units will be redeemed on the applicable Valuation Date, and the redemption amount will be paid as soon as is practicable and in any event within 30 days following the Valuation Date upon which such redemption is effective.

iii. BIIF, FERN, MMF RSP & BPDI RSP Trust Agreement Redemptions Process

21. The BIIF, FERN, MMF RSP, and BPDI RSP trusts are governed by the same master trust agreement (the “**Master Trust Agreement**”). The Master Trust Agreement contains a near identical process for redeeming a unitholder’s units to the BIF RSP Trust Agreement. Article 4.1 sets out the “Right to Redeem Units”, Article 4.3 provides for the “Method of Redemption”, and Article 4.4 provides for “Payment for Units Redeemed”.

22. Article 4.3 of the Master Trust Agreement specifically provides that “*no redemption requests after the cut-off time for redemptions on such Valuation Date (as set out in the Disclosure Documents) shall be fulfilled in whole or in part until all redemption requests received prior to such cut-off (and not withdrawn) have been fulfilled in whole*”.

iv. Summary: The Redemption Process

23. The redemption process for each of the Bridging Funds at issue can accordingly be summarized as follows:

- (a) The constating documents of the Bridging Funds generally provide that redemption of Units may occur upon formal notice by a Unitholder;
- (b) Redemptions could only be made effective as of the applicable Valuation Date following the receipt of a redemption notice, which was generally defined to be the “Redemption Date” under the constating documents;

- (c) Absent a positive action of the general partner to limit or reject the redemption request being exercised prior to the Redemption Date the redemption became an enforceable obligation of the applicable Fund; and
- (d) The required redemption notice period for the Bridging Funds was typically 30 days in advance of a Valuation Date. However, in December 2020, Bridging took steps to amend (the “**Amendments**”) the LP and Trust Agreements, as applicable, to increase the required notice period for redemptions from 30 to 90 days for each of BIF, BIF RSP, MMF, MMF RSP, and BIIF.

D. The Administration of the Redemption Process

24. Fundserv, an investment exchange that manages trades and fund transactions, was widely used by Bridging Fund investors to purchase or sell units in the Bridging Funds. When a Unitholder submitted a redemption request on Fundserv, Fundserv would acknowledge the redemption order on the date of its submission and also record the applicable Valuation Date.

25. Independently and separate from the clear process for a Unitholder to redeem their Units pursuant to the constating agreements and offering memoranda, SS&C, the Fund Administrator appointed by Bridging, followed its own internal process in recording and administering redemption requests. While the effective date of a duly requested and accepted redemption would be the applicable Valuation Date, the redemption would not (and could not) be priced until the NAV was calculated for such Valuation Date, which typically occurred approximately three to four weeks following such Valuation Date. The Fund Administrator then internally recorded the redemption as being “contracted” after the amount payable in relation to the specific redemption was known.

26. The foregoing redemption administrative procedures were not specified or described in the Funds' constating documents or offering memoranda, nor do the terms "contracted" or "non-contracted" appear in any of the constating documents.

27. Accordingly, the Unitholders with Potential Redemption Claims do not accept that any such procedures are relevant or determinative as to when a requested redemption became a vested and binding liability of the Fund. The constating agreements govern.

E. The Bridging Funds Only Rejected Redemptions on Two Occasions

28. Only on two occasions, each in 2020, did the Bridging Funds at issue suspend or reject redemptions. Aside from these two occasions, redemption requests were never suspended or rejected.

F. The Unfulfilled Redemptions

29. On April 30, 2021, the Commission issued the Temporary Order suspending all trading in securities of the Bridging Funds with the exception of BPDI RSP and FERN.

30. At approximately 4:00 p.m. on April 30, 2021, the Appointment Order was issued, appointing the Receiver over the affairs of Bridging and for each of the Bridging Funds except for BPDI RSP. The Receiver's appointment was extended to BPDI RSP on May 3, 2021 and was continued by an Order issued May 14, 2021. None of the Limited Partnerships or Trusts have been formally dissolved or declared bankrupt.

31. Also on April 30, 2021 (the date of the Appointment Order), redemptions having a Valuation Date of March 31, 2021 were processed and paid. In rejecting that Redemption

Claimants have priority over General Unitholder Claims, the Motion Judge “*recognize[d] that this result may be perceived as providing a windfall to Unitholders where redemption requests were completed shortly before the granting of the Appointment Order. The timing of these requests turn out to be most fortunate for these Unitholders as their return was based on a NAV calculation shortly before the receivership proceeding*”.

32. It is the position of the Redemption Claimants that redemption requests having an April 30, 2021 Valuation Date had similarly vested prior to the issuance of the Temporary Order and Appointment Order, as the constating documents indicate that the redemption occurs on the Valuation Date, and not at a specified time. The NAV can still be calculated, and based on the constating agreements, Redemption Claims ought to be paid in priority to General Unitholder Claims with respect to the distribution of proceeds of the Bridging Funds.

33. Certain Unitholders had provided notice of their intention to redeem Units prior to April 30, 2021. Some of these Redemption Claimants had Redemption Dates on April 30, 2021 (or before April 30, 2021 if the Amendments discussed above were invalid) and others had a Redemption Date after April 30, 2021 (the “**Unfulfilled Redemption Requests**”).

34. The Receiver estimates that there are Unfulfilled Redemption Requests for approximately 2.2 million Units (across all Bridging Funds) in the aggregate amount of approximately \$218.8 million.

G. The Appointment of Representative Counsel

35. By Order of the Ontario Superior Court of Justice (Commercial List) dated September 27, 2021, Bennett Jones LLP was appointed as representative counsel to the Unitholders in the Bridging Funds.

36. Pursuant to an Amended and Restated Order of the Ontario Superior Court of Justice (Commercial List) dated October 6, 2022: (a) Aird & Berlis LLP was appointed as Redemption Representative Counsel for those Unitholders located outside of Quebec with Potential Redemption Claims; (b) Woods LLP was appointed as Quebec Representative Counsel for those Unitholders located within Quebec with Potential Statutory Rescission Claims⁶ and/or Potential Redemption Claims; and (c) Miller Thomson LLP was appointed as Misrepresentation Representative Counsel for those Unitholders located outside of Quebec with Potential Statutory Rescission Claims.

H. The Order Under Appeal: The Unitholder Priority Motion

37. A Unitholder Priority Motion was scheduled before the Motion Judge in the Receivership Proceedings returnable on November 16 and 17, 2022, for the purpose of determining the following issue:

Whether the holders of valid Potential Redemption Claims and/or Potential Statutory Rescission Claims (collectively referred to as “**Potential Priority Claims**”) are entitled

⁶ “**Potential Statutory Rescission Claims**” means the claim of a Unitholder against the relevant Bridging Fund pursuant to section 130.1(1)2 of the *Securities Act* and the corresponding securities legislation in other provinces and territories for amounts contributed by way of subscription into the Bridging Funds within the 180 day period (or 120 days, as applicable) prior to the Date of Appointment, based on misrepresentations made in the offering memoranda of the applicable Bridging Fund, without regard to whether a Unitholder relied on such misrepresentation, and includes the corresponding claims of Unitholders in British Columbia and Quebec, or Unitholders in Alberta who purchased Units under an “accredited investor” exemption, who were granted contractual rights of rescission by Bridging that are the same as, or similar to, those provided for under section 130.1(1)2 of the *Securities Act*.

to any priority over General Unitholder Claims⁷ with respect to the distribution of proceeds of the Bridging Funds.

I. The Motion Judge's Findings

38. On April 12, 2023, the Motion Judge released the Decision on the Unitholder Priority Motion. The Motion Judge found that:

- (a) the Potential Redemption Claims are not entitled to any priority over General Unitholder Claims with respect to the distribution of proceeds of the Bridging Funds, and the Potential Redemption Claimants and the General Unitholder Claims shall rank *pari passu* with respect to the distribution of proceeds of the Bridging Funds (the Order under appeal); and
- (b) the Potential Statutory Rescission Claims are entitled to priority over General Unitholder Claims with respect to the distribution of proceeds of the Bridging Funds.

39. The Redemption Claimants bring this appeal of the Motion Judge's Order as summarized in (a) above.

40. In finding that the Potential Redemption Claims are not entitled to any priority over General Unitholder Claims, the Motion Judge's key findings are that:

- (a) The redemption requests of the Redemption Claimants had not been accepted or completed as at the Date of the Appointment (paras. 105 and 137 of Decision);

⁷ "General Unitholder Claims" means the claims of Unitholders against the Bridging Funds which are not Potential Statutory Rescission Claims or Potential Redemption Claims.

- (b) In order to achieve priority status, the redemption process must have been fully completed. In this case, the Motion Judge found that it was not (para. 145 of the Decision);
- (c) There are no circumstances under the applicable documents in which Bridging is required to accept redemption requests with respect to the Bridging Funds (para. 141 of the Decision);
- (d) That Bridging's books and records reflected net contracted but unpaid redemption requests at zero dollars on the Date of Appointment, which "*reflects the reality that no redemption requests were accepted or completed at the time the Appointment Order was granted*" (para. 142 of the Decision);
- (e) In administering the affairs of Bridging, the Receiver has to take into account the manner in which the Bridging business operations were actually conducted (citing [*Cash Store Financial Services \(Re\)*, 2014 ONSC 4326](#) at paras. [3-6](#), [122](#) aff'd [2014 ONCA 834](#)) (para. 143 of the Decision);
- (f) In arguing for priority status over General Unitholders who had not provided Notice of Intention to Redeem Units as of the Date of Appointment, the Potential Redemption Claimants seek an outcome that in essence requires the Receiver to make a retroactive adjustment to the records of Bridging, so as to complete redemption requests after the fact (para. 144 of the Decision); and
- (g) Redemption Claimants "*may have claims against Bridging based on breach of contract, but that does not impact on the question before the court, namely whether*

they are entitled to priority over the General Unitholders” (para. 145 of the Decision).

J. Errors Made by the Motion Judge

41. In the absence of an extricable error of law or a palpable and overriding error of fact, deference is owed to the Motion Judge’s decision.

42. Here, the Motion Judge made several errors in concluding that the Potential Redemption Claims are not entitled to any priority over General Unitholder Claims with respect to the distribution of proceeds of the Bridging Funds.

43. In particular, the Motion Judge made an extricable error of law, to be reviewed on a correctness standard, by:

- (a) acknowledging the contractual provisions governing redemptions, but then failing to analyze their effect, or take into consideration in his analysis the clear language of such provisions, including the provisions which provide that a redemption request became an enforceable liability on the Valuation (Redemption) Date;
- (b) failing to apply the appropriate principles of contractual interpretation and to properly, accurately, and fully consider the constating documents as a whole and the context in which the constating documents were made, which caused him to disregard relevant provisions of the constating documents and offering memoranda governing redemptions, and resulted in his interpretation of the constating documents based on post-contractual internal practices of the Fund Administrator

appointed by Bridging, and which is inconsistent with the clear language of the constating documents themselves; and

- (c) failing to apply the provisions of section 24 of the *Limited Partnerships Act* by treating redemption claims payable as liabilities under the applicable LP Agreements and Trust Agreements as *pari passu* to potential future claims for the return of contributions by Unitholders.

44. In basing his conclusion on the Fund Administrator's subsequent conduct and internal practices, the Motion Judge allowed his view of the factual matrix to overwhelm and contradict the clear language of the constating documents, thereby ignoring a principle of contractual interpretation that the factual matrix must never overwhelm the words of a contract.

45. In concluding that the redemption process must have been "fully completed" in order for Redemption Claims to achieve priority status, the Motion Judge effectively concluded that a redemption notice is of no effect until the redemption proceeds are paid. In so concluding, the Motion Judge failed to interpret the constating documents of the Bridging Funds as a whole, and instead, incorrectly arrived at his conclusion by finding that the Redemption Claims were not "accepted, priced, contracted, or paid out" as at the Date of Appointment. Such conclusion is inconsistent with, and rendered meaningless, the language of the constating documents and the offering memoranda of the Bridging Funds which generally provide that a Unitholder shall be entitled to redeem their units on a Valuation Date, after which time the redemption price "*shall be deemed to be a liability of the Fund...*".

46. In the case of the Master Trust Agreement, the Motion Judge failed to reference whatsoever, or address in his analysis, Article 4.3, which provides that "*no redemption requests*

after the cut-off time for redemptions on such Valuation Date (as set out in the Disclosure Documents) shall be fulfilled in whole or in part until all redemption requests received prior to such cut-off (and not withdrawn) have been fulfilled in whole".

47. In concluding that the Potential Redemption Claims are not entitled to any priority over General Unitholder Claims with respect to the distribution of proceeds of the Bridging Funds, the Motion Judge incorrectly elevated the rights of Unitholders who had not submitted redemption requests as at the Date of Appointment, and who did not have a vested future benefit or certain future claim. Such conclusion is in direct contravention of section 4.3 and section 10.1(f) of the LP Agreements, the latter of which provides that "*except upon dissolution of the Partnership.....no Limited Partner shall request a reimbursement of the capital contributed by it to the Partnership*", which provision does not apply to redemptions.

48. The Motion Judge further made an extricable error of law in failing to recognize the effect of s. 10.1(c)(ii) of the LP Agreement and section 24 of the *Limited Partnerships Act*, which requires payment of the liabilities of the Partnership, which redemption claims are specified to be as of the Redemption Date, prior to any distribution to Unitholders who are not Redemption Claimants.

49. The Motion Judge's interpretation of the constating documents is in violation of the bedrock principle of contractual interpretation that the text of a written agreement is to be read as a whole, in a manner that gives meaning to all of its terms and avoids an interpretation that would render one or more of its terms ineffective.

50. Finally, the Motion Judge erred in law in his reliance on [*Cash Store Financial Services \(Re\)*, 2014 ONSC 4326](#) at paras. [3-6](#), [122](#) aff'd [2014 ONCA 834](#)), in which case the motion judge

found that the parties to the contract at issue had subsequently modified the relationship from that which was set out in the initial contract. No such finding was made by the Motions Judge here, and accordingly, the Motion Judge made an extricable error of law by allowing the factual matrix to contradict the words of the constating documents and offering memoranda themselves.

51. The grounds set out in the Notice of Appeal filed by Quebec Representative Counsel, and such further and other grounds of appeal as the Appellants may advise and the Court of Appeal may permit.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS as follows:

52. The Order appealed from is a final order of the Superior Court of Justice that may be appealed as of right to the Court of Appeal;

53. Leave is not required;

54. Section 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended; and

55. Rule 61.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194.

May 11, 2023

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TO: SERVICE LIST

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Applicant

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Respondents

Court of Appeal File No. COA-23-CV-0514
Court File No. CV-21-00661458-00CL

COURT OF APPEAL FOR ONTARIO
PROCEEDING COMMENCED AT TORONTO

AMENDED NOTICE OF APPEAL

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