

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

IN THE MATTER OF 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

B E T W E E N:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

AMERCAN CORPORATION and 1000199992 ONTARIO CORP.

Respondents

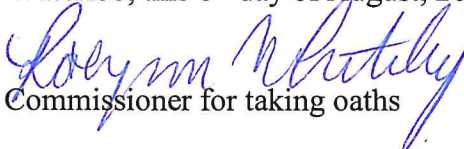
AFFIDAVIT OF SHERRI BENDER, sworn August 6, 2024

I, Sherri Bender, of the County of Oxford, Province of Ontario, MAKE OATH AND SAY:

1. I am a Law Clerk in the employ of Steven D. Gadbois, lawyer for the tenant, Tony Muoio, in this matter.
2. I advise this Honourable Court that Mr. Gadbois is on a family vacation in Europe and unavailable on August 7th for a hearing of this matter. Attached hereto as Exhibit A is a copy of the email forwarded to counsel today.
3. I further advise this Honourable Court that Mr. Gadbois was in Discoveries on July 16th when this matter was previously before the Court and he advised counsel he would not be able to attend. Attached hereto as Exhibit B is a copy of the email.

4. I further advise this Honourable Court the endorsement of July 16th adjourning this matter to August 7th was overlooked by Mr. Gadbois.
5. I make this Affidavit in support of an adjournment request of the tenant in order that Mr. Gadbois can properly respond to the Motion material filed by Owemanco Mortgage Holding Corporation.
6. I am advised by Mr. Muoio and verily believe that a copy of the Lease attached as Exhibit "O" in the Affidavit of Sohail Zayona, sworn August 1, 2024 was amended. Attached hereto as Exhibit C is a copy of the fully executed amended Lease which provides for a term of the tenancy starting on April 1, 2024 for a fixed term ending on March 31, 2028 for the prepaid in full amount of \$96,000.00.
7. On August 6th, 2024, I received from Mr. Muoio proof of payment of the lease in full together with a letter from the building manager confirming his occupancy since April 1, 2024. Attached hereto as Exhibit D and E are copies of the documentation.
8. I make this Affidavit in support of the tenant's request for an adjournment and for no other or improper purpose whatsoever.

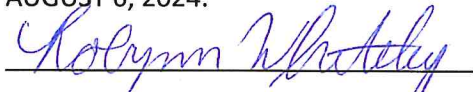
SWORN BEFORE ME at the
City of Waterloo, in the Regional Municipality
of Waterloo, this 6th day of August, 2024.


A Commissioner for taking oaths



Sherri Bender

THIS IS EXHIBIT A REFERRED TO IN THE
AFFIDAVIT OF SHERRI BENDER, SWORN
AUGUST 6, 2024.


A COMMISSIONER FOR TAKING OATHS

Robynn Alicia Jurado Whiteley, a Commissioner, etc.
Province of Ontario, for Lowes, Salmon, Cadbois & Clarke
Barristers & Solicitors
Expires August 26, 2026

Sherri Bender

From: Sherri Bender
Sent: August 6, 2024 12:05 PM
To: dpreger@dickinsonwright.com; zcooper@dickinson-wright.com
Cc: Steve Gadbois; Robynn Whiteley
Subject: Duca Financial Services Credit Union v. Amercan Corporation et al MOTION WEDNESDAY AUGUST 7, 2024 AT 11 PM - URGENT

Importance: High

Tracking:	Recipient	Delivery	Read
	dpreger@dickinsonwright.com		
	zcooper@dickinson-wright.com		
	Steve Gadbois	Delivered: 2024-08-06 12:05 PM	Read: 2024-08-06 12:27 PM
	Robynn Whiteley	Delivered: 2024-08-06 12:05 PM	

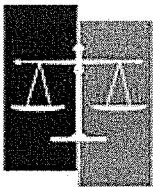
Good afternoon,

Steven Gadbois has been retained by Antonio Muoio in relation to a Motion scheduled for tomorrow morning at 11am seeking an Order setting aside the Tenancy Agreement.

Mr. Gadbois is out of the country until August 26th, 2024 with limited access to a computer and has asked me to send this email seeking an adjournment pending his return to the office and review of the documentation.

Kindly confirm you will seek an adjournment of this matter and provide dates for the return.

We look forward to hearing from you.

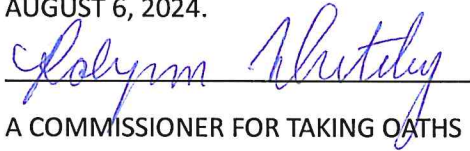


**Lowes, Salmon,
Gadbois & Clarke**

Sherri Bender,
Law Clerk to Steven D. Gadbois
500 Dutton Drive
Waterloo Ontario N2L 4C6
Phone: 519-884-0800 ext. 221
Fax: 519-884-1026
sherri@watlaw.ca
www.watlaw.ca

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited. If you have received this e-mail in error, please notify me immediately and remove the e-mail and any attachments received from your computer.

THIS IS EXHIBIT B REFERRED TO IN THE
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AUGUST 6, 2024.


A COMMISSIONER FOR TAKING OATHS

*Robynn Alicia Jurado Whiteley, a Commissioner, etc.
Province of Ontario, for Lowes Salmon, Gadbois & Clarke
Barristers & Solicitors
Expires August 26, 2026*

Sherri Bender

From: Steve Gadbois
Sent: July 14, 2024 11:17 AM
To: dmagisano@lernalers.ca; dpreger@dickison-wright.com; dpreger@dickinson-wright.com
Cc: Robynn Whiteley; Sherri Bender
Subject: RE: Amercan Corp

[REDACTED] Re-resending.

Steven Gadbois

From: Steve Gadbois
Sent: Sunday, July 14, 2024 11:13 AM
To: dmagisano@lernalers.ca; dpreger@dickison-wright.com
Cc: Robynn Whiteley <robynn@watlaw.ca>; Sherri Bender <sherri@watlaw.ca>
Subject: RE: Amercan Corp

Resending as we apparently misspelled Mr Preger's name.

Steven Gadbois

From: Steve Gadbois
Sent: Sunday, July 14, 2024 11:10 AM
To: dpreger@dickinson-wright.com; dmagisano@lernalers.ca
Cc: Robynn Whiteley <robynn@watlaw.ca>; Sherri Bender <sherri@watlaw.ca>
Subject: Amercan Corp

Good morning.

Our client is Tony Muoio who has a lease of a condominium at 1001-980 Yonge St., Toronto and is caught up in a receivership of the owner.

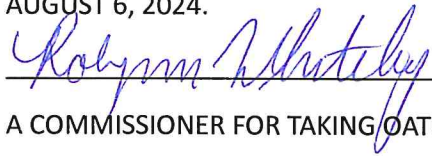
He has just become aware of a Court Hearing on Tuesday which appears to pertain to the receivership and the condominium. He has no interest in the receivership. His only interest is his lease of the condominium, which he will take steps to protect, if necessary.

At this point, we have no materials and, in any event the Hearing date is upon us and we are in previously scheduled Discoveries on Monday and Tuesday.

Steven Gadbois

P.S. we include Mr Magisano in this email as we had previously corresponded with him about the condominium.

THIS IS EXHIBIT C REFERRED TO IN THE
AFFIDAVIT OF SHERRI BENDER, SWORN
AUGUST 6, 2024.


A COMMISSIONER FOR TAKING OATHS

Robynn Alicia Jurado Whiteley, a Commissioner, etc .
Province of Ontario, for Lowes, Salmon, Gadbois & Clarke
Barristers & Solicitors
Expires August 26, 2026



**Residential Tenancy Agreement
(Standard Form of Lease)**

Note

This tenancy agreement (or lease) is required for tenancies entered into on March 1, 2021 or later. It does not apply to care homes, sites in mobile home parks and land lease communities, most social housing, certain other special tenancies or co-operative housing (see Part A of General Information).

Residential tenancies in Ontario are governed by the Residential Tenancies Act, 2006. This agreement cannot take away a right or responsibility under the Residential Tenancies Act, 2006.

Under the Ontario Human Rights Code, everyone has the right to equal treatment in housing without discrimination or harassment.

All sections of this agreement are mandatory and cannot be changed.

1. Parties to the Agreement

Residential Tenancy Agreement between:

Landlord(s)

- 1. Landlord's Legal Name
AmerCan Corporation

Add a Landlord (+)

Note:

See Part B in General Information

and Tenant(s)

1. Last Name Mucio	First Name Tony
2. Last Name	First Name
3. Last Name	First Name
4. Last Name	First Name

Add a Tenant (+)

2. Rental Unit

The landlord will rent to the tenant the rental unit at:

Unit (e.g., unit 1 or basement unit) 1001	Street Number 960	Street Name Yonge Street
City/Town Toronto	Province Ontario	Postal Code M4W 3V8

Number of vehicle parking spaces and description (e.g., indoor/outdoor, location)
1 garage parking

The rental unit is a unit in a condominium.

Yes No

If yes, the tenant agrees to comply with the condominium declaration, by-laws and rules, as provided by the landlord.

3. Contact Information

Address for Giving Notices or Documents to the Landlord

Unit 2	Street Number 179	Street Name Marlborough Street	PO Box
City/Town Boston		Province MA	Postal Code/ZIP Code 02116

Both the landlord and tenant agree to receive notices and documents by email, where allowed by the Landlord and Tenant Board's Rules of Procedure.

Yes No

If yes, provide email addresses:

The landlord is providing phone and/or email contact information for emergencies or day-to-day communications:

Yes No

If yes, provide information:

Note:

See Part B and E in General Information

4. Term of Tenancy Agreement

This tenancy starts on: 2024/04/01

Date (yyyy/mm/dd)

This tenancy agreement is for: (select an option below and fill in details as needed)

a fixed length of time ending on: 2026/03/31

Date (yyyy/mm/dd)

a month tenancy

other (such as daily, weekly, please specify):

Note:

The tenant does not have to move out at the end of the term. See Parts C and D in General Information.

5. Rent

a) Rent is to be paid on the _____ (e.g., first, second, last) day of each (select one):

Month

Other (e.g., weekly) prepaid in full

b) The tenant will pay the following rent:

Base rent for the rental unit

Parking (if applicable)

Other services and utilities (specify if applicable):

Total Rent (Lawful Rent)

Add Service or Utility (+)

\$ 96,000.00
- \$ 5,000.00

\$ 96,000.00
- \$ 5,000.00

M

This is the lawful rent for the unit, subject to any rent increases allowed under the Residential Tenancies Act, 2006. For example, the landlord and tenant may agree to a seasonal rent increase for additional services of air conditioning or a block heater plug-in. This amount does not include any rent discounts (see Section 7 and Part G in General Information).

c) Rent is payable to:
Fangsey Wang

d) Rent will be paid using the following methods:
cash

Note:


The tenant cannot be required to pay rent by post-dated cheques or automatic payments, but can choose to do so.

e) If the first rental period (e.g., month) is a partial period, the tenant will pay a partial rent of \$ _____ on _____
Date (yyyy/mm/dd) . This partial rent covers the rental of the unit from _____ to _____
Date (yyyy/mm/dd) Date (yyyy/mm/dd)

f) If the tenant's cheque is returned because of non-sufficient funds (NSF), the tenant will have to pay the landlord's administration charge of \$ _____ plus any NSF charges made by the landlord's bank.

Note:

The landlord's administration charge for an NSF cheque cannot be more than \$20.00

does not apply 

6. Services and Utilities

The following services are included in the lawful rent for the rental unit, as specified:

Gas	Yes	<input checked="" type="checkbox"/>	No		
Air conditioning	Yes	<input checked="" type="checkbox"/>	No		
Additional storage space	Yes	<input checked="" type="checkbox"/>	No		
On-Site Laundry	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/> No Charge	<input type="checkbox"/> Pay Per use
Guest Parking	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/> No Charge	<input type="checkbox"/> Pay Per use
Other	Yes	<input checked="" type="checkbox"/>	No		
Other	Yes	<input checked="" type="checkbox"/>	No		
Other	Yes	<input checked="" type="checkbox"/>	No		

Add Service (+)

Provide details about services or list any additional services if needed (if necessary add additional pages):



The following utilities are the responsibility of:

Electricity	✓ Landlord	Tenant
Heat	✓ Landlord	Tenant
Water	✓ Landlord	Tenant

If the tenant is responsible for any utilities, provide details of the arrangement, e.g. tenant sets up account with and pays the utility provider, tenant pays a portion of the utility costs (if necessary add additional pages):

7. Rent Discounts

Select one:

There is no rent discount.

or

The lawful rent will be discounted as follows:

Provide description of rent discount (if necessary add additional pages):

Note:

See Part G in General Information for what types of discounts are allowed.

8. Rent Deposit

Select one:

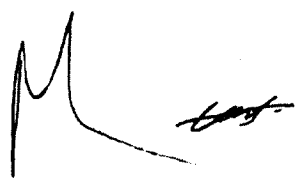
A rent deposit is not required.

or

The tenant will pay a rent deposit of \$ _____. This can only be applied to the rent for the last rental period of the tenancy.

Note:

This amount cannot be more than one month's rent or the rent for one rental period (e.g., one week in a weekly tenancy), whichever is less. This cannot be used as a damage deposit. The landlord must pay the tenant interest on the rent deposit every year. See Part H in General Information.



9. Key Deposit

Select one:

A key deposit is not required.

or

The tenant will pay a refundable key deposit of \$ _____ to cover the cost of replacing the keys, remote entry devices or cards if they are not returned to the landlord at the end of the tenancy.

If a refundable key deposit is required, provide description and number of keys, access cards and remote entry devices:

Note:

The key deposit cannot be more than the expected replacement cost. See Part H in General Information.

10. Smoking

Under provincial law, smoking is not allowed in any indoor common areas of the building. The tenant agrees to these additional rules on smoking:

Select one:

None

or

Smoking rules

Provide description of smoking rules (if necessary add additional pages):

Note:

In making and enforcing smoking rules, the landlord must follow the Ontario Human Rights Code. See Parts M and S in General Information.

11. Tenant's Insurance

Select one:

There are no tenant insurance requirements.

or

The tenant must have liability insurance at all times. If the landlord asks for proof of coverage, the tenant must provide it. It is up to the tenant to get contents insurance if they want it.

12. Changes to the Rental Unit

The tenant may install decorative items, such as pictures or window coverings. This is subject to any reasonable restrictions set out in the additional terms under Section 15.

The tenant cannot make other changes to the rental unit without the landlord's permission.



13. Maintenance and Repairs

The landlord must keep the rental unit and property in good repair and comply with all health, safety and maintenance standards.

The tenant must repair or pay for any undue damage to the rental unit or property caused by the willful or negligent conduct of the tenant, the tenant's guest or another person who lives in the rental unit.

The tenant is responsible for ordinary cleanliness of the rental unit, except for any cleaning the landlord agreed to do.

Note:

See Part J in General Information.

14. Assignment and Subletting

The tenant may assign or sublet the rental unit to another person only with the consent of the landlord. The landlord cannot arbitrarily or unreasonably withhold consent to a sublet or potential assignee.

Note:

There are additional rules if the tenant wants to assign or sublet the rental unit. See Part P in General Information.

15. Additional Terms

Landlords and tenants can agree to additional terms. Examples may include terms that:

- Require the landlord to make changes to the unit before the tenant moves in, and
- Provide rules for use of common spaces and/or amenities.

These additional terms should be written in plain language and clearly set out what the landlord or tenant must or must not do to comply with the term. If typed, the additional terms should be in a font size that is at least 10 points.

An additional term cannot take away a right or responsibility under the *Residential Tenancies Act, 2006*.

If a term conflicts with the *Residential Tenancies Act, 2006* or any other terms set out in this form, the term is void (not valid or legally binding) and it cannot be enforced. Some examples of void and unenforceable terms include those that:

- Do not allow pets (however, the landlord can require the tenant to comply with condominium rules, which may prohibit certain pets),
- Do not allow guests, roommates, any additional occupants,
- Require the tenant to pay deposits, fees or penalties that are not permitted under the *Residential Tenancies Act 2006* (e.g., damage or pet deposits, interest on rent arrears), and
- Require the tenant to pay for all or part of the repairs that are the responsibility of the landlord.

See General Information for more details.

The landlord and tenant may want to get legal advice before agreeing to any additional terms.

Select one:

There are no additional terms.

or

This tenancy agreement includes an attachment with additional terms that the landlord and tenant agreed to.

16. Changes to this Agreement

After this agreement is signed, it can be changed only if the landlord and tenant agree to the changes in writing.

Note:

The *Residential Tenancies Act, 2006* allows some rent increases and requires some rent reductions without agreement between the landlord and tenant. See Part I in General Information.

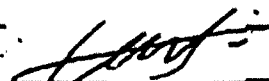


17. Signatures

By signing this agreement, the landlord(s) and the tenant(s) agree to follow its terms. The landlord(s) or tenant(s) can sign this lease electronically if they both agree.

Unless otherwise agreed in the additional terms under Section 15, if there is more than one tenant, each tenant is responsible for all tenant obligations under this agreement, including the full amount of rent.

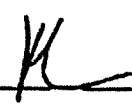
Landlord(s):

Name	Signature	Date (yyyy/mm/dd)
Fareasy Wang, ASO of AmeriCan Corp.		2024/03/25

Add a Landlord (+)

Remove a Landlord (-)

Tenant(s):

Name	Signature	Date (yyyy/mm/dd)
Tony Mucio		2024/03/25
Name	Signature	Date (yyyy/mm/dd)
Name	Signature	Date (yyyy/mm/dd)
Name	Signature	Date (yyyy/mm/dd)

Add a Tenant (+)

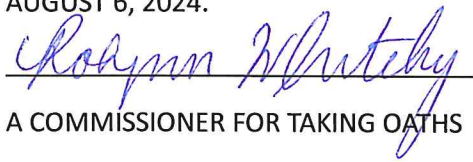
Remove a Tenant (-)

Note:

All of the landlords and tenants listed on the first page in Section 1 (Parties to the Agreement) must sign here. The landlord must give a copy of this agreement to the tenant within 21 days after the tenant signs it.



THIS IS EXHIBIT D REFERRED TO IN THE
AFFIDAVIT OF SHERRI BENDER, SWORN
AUGUST 6, 2024.


A COMMISSIONER FOR TAKING OATHS

Robynn Alicia Jurado Whiteley, a Commissioner, etc.
Province of Ontario, for Lowes, Salmon, Gadbois & Clarke
Barristers & Solicitors
Expires August 26, 2026

RECEIPT

AmerCan Corporation

1001-980 Yonge Street,
Toronto, ON
M4W 3V8

Received from

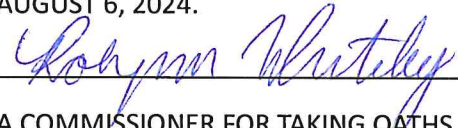
Tony Muoio
3219 Yonge Street,
Suite 205
Toronto, ON
M4N 2L3

Confirmation of payment

Receipt #: 0002403156
Payment Date: 28-Mar.,2024
Payment Amount:
CAD 96,000

Transaction #	From Date	Fee Description	Amount
2403156	01-April-2024	Prepaid rental 1001-980 Yonge (01 April, 2024- 31 March,2028)	CAD 96,000.00

THIS IS EXHIBIT E REFERRED TO IN THE
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A COMMISSIONER FOR TAKING OATHS

Robynn Alicia Jurado Whiteley, a Commissioner, etc.
Province of Ontario, for Lowes Salmon, Gadhbois & Clarke
Barristers & Solicitors
Expires August 26, 2026

From: **Management (MTCC1173)** <management@mtcc1173.ca>
Date: Fri, Aug 2, 2024 at 4:47 PM
Subject: Re: Regarding Condo 1001,
To: tony.development@gmail.com <tony.development@gmail.com>
CC: Lama Abuhattab <lama@iconpm.ca>

To Whom It May Concern,

This letter is to confirm that Antonio Muoio is a tenant residing in unit 1001 at The Ramsden, located at [980 Yonge Street, Toronto, ON M4W 3V8](#). Mr. Muoio has been living in the condo full-time since April 1, 2024.

Thank you,

June

June Arnold
Property Manager

MTCC 1173 – The Ramsden
[980 Yonge Street](#)
[Toronto ON M4W 3V8](#)
P: 647-341-0991
E: Management@MTCC1173.ca
Concierge Desk: 416-960-0649

DUCA FINANCIAL SERVICES CREDIT UNION LTD.
Plaintiff

-and-

AMERICAN CORPORATION ET AL
Defendants

Court File No. CV-24-00718071-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO REGION

AFFIDAVIT OF SHERRI BENDER, SWORN
AUGUST 6, 2024

LOWES, SALMON, GADBOIS & CLARKE
Dutton Professional Centre
500 Dutton Drive
Waterloo ON N2L 4C6

Steven D. Gadbois (LSO# 34090L)
Tel: 519-884-0800 ext. 225
Fax: 519-884-1026E: sgadbois@watlaw.ca

Lawyers for the Tenant, Tony Muoio

File Number: 12131

RCP-F 4C (September 1, 2020)