

CITATION: Dream Impact Master LP v. Harlo Scarborough Junction LP, 2025 ONSC 3514
COURT FILE NO.: CV-24-732540-00CL
DATE: 20250612

ONTARIO

SUPERIOR COURT OF JUSTICE [Commercial List]

RE: DREAM IMPACT MASTER LP, by its GENERAL PARTNER, DREAM IMPACT MASTER GP INC.

Applicant

AND:

HARLO SCARBOROUGH JUNCTION LIMITED PARTNERSHIP, by its GENERAL PARTNER, HARLO SCARBOROUGH JUNCTION GP INC, HARLO CAPITAL GP/LP, by its GENERAL PARTNER, HARLO CAPITAL GP INC, FIRST OLYMPIC CAPTIAL V LP, by its GENERAL PARTNER, HARLO CAPITAL GP INC, COWIE CAPITAL PARTNERS INC, SLIWIN HOLDINGS INTERNATIONAL INC, HARLO SCARBOROUGH JUNCTION LIMITED PARTNERSHIP, by its GENERAL PARTNER, HARLO SCARBOROUGH JUNCTION GP INC., and HARLO CAPITAL GP/LP

Respondents

BEFORE: Justice Jana Steele

COUNSEL: *Daniel Murdoch & Hamza Mohamadhossen*, for the Applicant

Matthew Lerner & Evan Linn, for the Respondent Harlo Partnership

Chris Lee & Alison Kuchinsky, for the Respondents First Olympic, Cowie Capital & Sliwin Holdings International

HEARD: May 22, 2025

REASONS FOR DECISION

Overview

[1] The parties are involved in a large real estate development project centered around the Scarborough GO station (the “Project”). The parties to the application committed to invest their capital through two limited partnerships: the Harlo Scarborough Junction LP (the “Harlo Partnership”) for the first \$10 million, and the Harlo Scarborough Junction Backstop LP (the “Harlo Backstop”) for the remaining \$5 million. The parties funded an initial tranche of \$7.2 million of their first \$10 million capital commitment to the Harlo Partnership in early 2020. Debt financing was subsequently used for the Project. In late 2024, another capital call was made (the “2024 Capital Call”).

[2] The applicant, Dream Impact Master LP, by its General Partner, Dream Impact Master GP Inc. (“Dream Impact”) seeks declaratory relief that, among other things, the 2024 Capital Call that was made in November 2024 is invalid, and a declaration that Dream Impact has not committed an Event of Default. Dream Impact also seeks a declaration that the Put Notice it issued on December 3, 2024 directing the respondent Harlo Capital GP/LP, by its General Partner, Harlo Capital GP Inc. (“Harlo Capital”) to buy Dream Impact’s interest at fair market value is valid and binding.

[3] Dream Impact takes the alternative position, that if the 2024 Capital Call was valid, any default has been cured by the other parties contributing the total capital called.

[4] For the reasons set out below, I have determined that the 2024 Capital Call was valid, and Dream Impact committed an Event of Default. I have, however, determined that following the contributions by the other partners under the terms of the Harlo Partnership Agreement and the corresponding dilution of Dream Impact’s interest, there is no continuing default.

Background

[5] The Project was assembled by two real estate development companies, Harlo Capital and Republic Developments (together, the “Project Managers”).

[6] The Harlo Partnership was formed on or about November 27, 2019.

[7] The Harlo Partnership is managed by its general partner, Harlo Scarborough Junction GP Inc. (“Harlo GP”), which is also controlled by the Project Managers.

[8] Each of the Harlo Partnership and the Harlo Backstop have five limited partners: Dream Impact, First Olympic Capital V LP, by its general partner, First Olympic Capital Inc. (“First Olympic”), Cowie Capital Partners Inc. (“Cowie”), Sliwin Holdings International Inc. (“Sliwin”), and Harlo Capital (Dream Impact, First Olympic, Cowie, Sliwin, and Harlo Capital, collectively, the “Partners”).

[9] The Partners agreed to collectively contribute a minimum of \$15 million in capital to the Project: \$10 million through the Harlo Partnership and \$5 million through the Harlo Backstop. Dream Impact's portion is 45%. First Olympic, Cowie and Sliwin are responsible for 15% each. Harlo Capital's portion is 10%, in addition to being the general partner.

[10] The Harlo Partnership, the Harlo Backstop, and Republic Holdings Inc. each hold limited partner interests in the Toronto (Scarborough Junction) Limited Partnership (the "Project LP"). Dream Impact is not a limited partner in the Project LP.

[11] On or about October 1, 2020, the following agreements were entered into:

- The Amended and Restated Limited Partnership Agreement of Harlo Scarborough Junction Limited Partnership (the "Harlo Partnership Agreement");
- The Amended and Restated Limited Partnership Agreement of Toronto Scarborough Junction Limited Partnership (the "Project Agreement"); and
- The Harlo Scarborough Junction Backstop Limited Partnership Agreement (the "Harlo Backstop Agreement").

[12] The Project's original business plan (the "Business Plan") was attached to each of the Project Agreement, the Harlo Partnership Agreement, and the Harlo Backstop Agreement.

[13] The Business Plan estimated:

- Total Project costs of approximately \$106 million to complete the assembly, closing and re-zoning of the Project;
- Equity funding of \$15 million (the total capital commitments from the Harlo Partnership and the Harlo Backstop);
- The Project would be sold in March 2023; and
- Financing costs would total approximately \$12.8 million, primarily from interest required to service the Atrium Loan and a vendor take-back mortgage on one parcel of land.

[14] In 2020, the parties collectively funded an initial tranche of \$7.2 million of their \$10 million minimum capital commitment to the Harlo Partnership. The Harlo Partnership Agreement reflects the initial capital contributions that were made by the Partners in section 4.1 and Schedule A.

[15] Dream Impact's minimum commitment to the Harlo Partnership was \$4.5 million. Of that capital commitment, Dream Impact paid \$3.24 million in 2020, leaving \$1.2 million in unfunded capital contribution to the Harlo Partnership.

[16] On or about March 14, 2022, the limited partners of the Project LP, the Harlo Partnership, and the Harlo Backstop passed a resolution to approve certain amendments to the Business Plan (the "Amended Business Plan"). Among other things, these amendments to the Business Plan:

- Increased maximum funding available by about \$48.8 million;
- Increased the Project budget by approximately \$21.6 million, including additional costs for site plan approval, environmental risk assessment, record of site condition, and projected interest costs on the Atrium Loan; and
- Extended the Project time horizon from March 2023 to March 2025.

[17] In July 2022, Dream Impact's initial investment of \$3.24 million was returned in full using some of the proceeds of an advance from the Atrium Loan.

[18] The refinancing increased the Atrium Loan to a maximum of \$95 million.

[19] Interest on the Atrium Loan floats monthly at prime plus 4.5%, and the loan matured on June 1, 2025. The final advance on the Atrium Loan was made in November 2024.

[20] A capital call was made on November 15, 2024. Capital was required to service the Atrium Loan.

[21] Dream Impact refused to fund the \$720,000 it had been requested to fund further to its capital commitment on the basis that the 2024 Capital Call was not issued in accordance with the Amended Business Plan. The other Partners made their capital contributions.

[22] On December 3, 2024, Jeffrey Kimel, on behalf of the Harlo GP, delivered a default notice to Dream Impact.

[23] Later that same day, Dream Impact delivered a Put Notice under the Harlo Partnership Agreement, demanding the purchase of its interest in the Project at fair market value. The Harlo Partnership Agreement contemplates that if there is a "Dispute" regarding a "Major Decision" (which includes any material change to the Business Plan), Dream Impact may deliver a Put Notice to Harlo Capital.

[24] On December 4, 2024, Dream Impact commenced the application.

[25] On December 23, 2024, the Harlo GP notified Dream Impact that the other Partners of the Harlo Partnership had funded Dream Impact's share of the called capital under section 4.7 of the Harlo Partnership Agreement, and that accordingly, Dream Impact's interest had been diluted.

Analysis

[26] The issues before the court require contract interpretation. The Supreme Court of Canada has confirmed that “the interpretation of contracts has evolved towards a practical, common-sense approach not dominated by technical rules of construction”: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] S.C.R. 633, at para. 47. In *Prism Resources Inc. v. Detour Gold Corporation*, 2022 ONCA 326, 162 O.R. (3d) 200, at para. 16, citing *Weyerhaeuser Company Limited v. Ontario (Attorney General)*, 2017 ONCA 1007, 77 B.L.R. (5th) 175, at para. 65, the Court of Appeal for Ontario indicated that when interpreting a contract, the court should:

- Determine the intention of the parties in accordance with the language they have used in the written document, based upon the “cardinal presumption” that they have intended what they have said;
- Read the text of the written agreement as a whole, giving the words used their ordinary and grammatical meaning, 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;
- Read the contract in the context of the surrounding circumstances known to the parties at the time of the formation of the contract. The surrounding circumstances, or factual matrix, include facts that were known or reasonably capable of being known by the parties when they entered into the written agreement, such as facts concerning the genesis of the agreement, its purpose, and the commercial context in which the agreement was made. However, the factual matrix cannot include evidence about the subjective intention of the parties; and
- Read the text in a fashion that accords with sound commercial principles and good business sense, avoiding a commercially absurd result, objectively assessed.

Was the 2024 Capital Call valid, and, if so, did Dream Impact default?

[27] Dream Impact seeks a declaration that the 2024 Capital Call was invalid under the Harlo Partnership Agreement and in contravention of s. 8(a) of the *Limited Partnerships Act*, R.S.O. 1990, c. L.16, which provides that a general partner has no authority to “do any act in contravention of the partnership agreement”.

[28] The Harlo Partnership submits that the relevant terms of the Harlo Partnership Agreement requiring the Partners to contribute capital when called (up to the amount committed by the partner) are clear. Olympic Capital, Cowie and Sliwin take the same position.

[29] Section 4.5 of the Harlo Partnership Agreement sets out the capital calls provision. It provides that the Harlo GP may request that the Partners contribute to the capital of the Harlo Partnership (up to their committed amounts):

4.5 Capital Calls

- a) Subject to Sections 4.6, 4.7, 4.8 and 4.9, the General Partner may at any time and from time to time during the term of the Partnership, for the purpose of funding the Partnership Business,¹ request in writing (a “**Capital Call**”), that each of the Limited Partners contribute to the capital of the Partnership a specified amount (the “**Called Amount**”) in proportion to their respective Capital Contribution Percentage and not to exceed any Limited Partner’s Unfunded Capital Contribution.²
- b) The date (the “**Call Date**”) upon which the Limited Partners are required to contribute their Called Amount to the Partnership shall be no earlier than ten (10) Business Days following delivery of the Capital Call. The Limited Partners shall contribute to the Partnership the Called Amount specified in the Capital Call in Canadian dollars on or before the Call Date.
- c) A Capital Call shall specify:
 - i. the Call Date;
 - ii. the Called Amount; and

¹ Under the Harlo Partnership Agreement, “Partnership Business” means to hold a limited partnership interest in Toronto (Scarborough Junction) Limited Partnership and a limited partnership interest in Harlo/Republic GP/LP, and all activities ancillary and incidental thereto.

² Under the Harlo Partnership Agreement, “Unfunded Capital Contribution” means, in respect of each Limited Partner at any particular time, the amount, if any, by which such Limited Partner’s Commitment at such time, exceeds such Limited Partner’s Capital Contributions at such time.

- iii. the purpose for which the capital is expected to be used and whether such capital is an Unfunded Capital Contribution or an Excess Capital Contribution.

[30] As noted above, the 2024 Capital Call was made on November 15, 2024.

[31] The 2024 Capital Call met all the specified requirements in section 4.5(c) of the Harlo Partnership Agreement.

[32] Dream Impact did not contribute the called capital.

[33] The Harlo Partnership notes that the only restriction on capital calls in the Harlo Partnership Agreement is in section 4.9, which provides:

4.9 Restriction on Capital Calls

Notwithstanding anything contained herein, and for greater certainty, no Limited Partner shall at any time be required to contribute to the Partnership, whether pursuant to any Capital Call or otherwise, an amount in excess of the Unfunded Capital Contribution and the failure of any Limited Partner at any time to contribute capital in excess of its Unfunded Capital Contribution shall not be considered to be [a] default by such Limited Partner.

[34] Because Dream Impact did not contribute to the Harlo Partnership following the 2024 Capital Call, the Harlo Partnership takes the position that Dream Impact defaulted under the Harlo Partnership Agreement, triggering the default provisions set out in section 4.6 and 4.7 of the Harlo Partnership Agreement.

[35] Sections 4.6 and 4.7 of the Harlo Partnership Agreement are reproduced in Appendix A.

[36] An “Event of Default” occurs under the Harlo Partnership Agreement if there is any “Payment Default” by any Partner. A “Payment Default” is defined as follows:

“Payment Default” means the failure of any Limited Partner to contribute to the Partnership its Unfunded Capital Contribution of a Called Amount on or before the Call Date and to remedy such default within three (3) Business Days after receipt of a written notice of such default.

[37] I agree with the Harlo Partnership that the Harlo Partnership Agreement is clear on its face. The 2024 Capital Call was made in accordance with the agreement, Dream Impact failed to fund the called capital and an Event of Default under the Harlo Partnership Agreement occurred.

[38] Despite the clear wording of the Harlo Partnership Agreement, Dream Impact argues that the 2024 Capital Call was not valid. Dream Impact relies on an elevated position with respect to the Business Plan and Amended Business Plan.

[39] Dream Impact submits that the Amended Business Plan does not include equity as one of its funding sources and, therefore, the Harlo GP had no contractual basis to issue a capital call absent a further revision to the Amended Business Plan. However, as detailed further below, the correspondence between the parties at the time the Business Plan was amended shows that the parties turned their mind to this issue.

[40] Dream Impact also argues that there were further issues after the 2022 amendment to the Business Plan that necessitated a further amendment to the Amended Business Plan. Dream Impact submits that by January 2024, the Amended Business Plan could not be met because of the increased cost of the land interest. Specifically, monthly interest costs on the Atrium Loan

increased significantly from about \$124,000 in June 2022 to as high as \$735,000 in September 2024. However, the parties all knew that the Atrium Loan had a floating interest rate that, by its terms, would result in increased monthly costs when interest rates increased. Accordingly, when interest rates rose significantly so did the monthly costs to service the loan.

[41] As noted by First Olympic, Cowie, and Sliwin, the Business Plan does not mention capital calls, nor does the Amended Business Plan. They submit that the position taken by Dream Impact elevates the absence of a statement in the Amended Business Plan that capital calls could be made to a prohibition on capital calls, ignoring the actual text in the relevant agreement governing capital calls. They further note that the Business Plan does not speak to the operations of the partnership, capital calls, what capital contributions to the partnership may be used or called for, or in any way restrict the operations of the Harlo Partnership or the Harlo GP.

[42] Dream Impact submits that the three agreements signed on October 1, 2020 are relevant to the issues before the court: the Project Agreement, the Harlo Partnership Agreement, and the Harlo Backstop Agreement. Dream Impact submits that the three agreements are intended to work together to provide the structure and arrangement through which the Project would be developed and funded. Mr. Lepper (the CFO of Harlo Capital) confirmed on cross-examination that the three agreements were “all being set up to work together in order to fund the project.”

[43] With regard to the Project Agreement, Dream Impact is not a party³, although Dream Impact is referenced therein.

[44] Dream Impact relies on the principle reiterated in the recent Court of Appeal decision that “[u]nder the related contracts principle, where more than one contract is entered into as part of an overall transaction, the contracts must be read in light of each other to achieve interpretive accuracy and give effect to the parties’ intentions”: *Ottawa (City) v. ClubLink Corporation ULC*, 2021 ONCA 847, 159 O.R. (3d) 255, at para. 54.

[45] Dream Impact relies on certain provisions of the Harlo Partnership Agreement and the Project Agreement in advancing its position.

[46] With regard to the Harlo Partnership Agreement:

- An “Ordinary Resolution” is required to be passed in respect of certain actions. An “Ordinary Resolution” must be approved by at least Harlo Capital and Dream Impact.

³ The parties to the Project Agreement are Harlo/Republic GP/LP, the Harlo Partnership, the Harlo Backstop, and Republic Holdings Inc.

- The “Partnership Business” means “to hold a limited partnership interest in Toronto (Scarborough Junction) Limited Partnership and a limited partnership interest in Harlo/Republic GP/LP, and all activities ancillary and incidental thereto.
- The purposes of the Harlo Partnership “shall be to undertake the Partnership Business and to conduct such other business as the Limited Partners unanimously agree.”
- Section 4.5(a) provides that the Harlo Partnership GP can issue Capital Calls “for the purpose of funding the Partnership Business.”
- The “Major Decisions” set out in section 8.4 of the Harlo Partnership Agreement require an Ordinary Resolution, (i.e., approval by Harlo Capital and Dream Impact), including (f) “any material change to the Business Plan that was presented to Dream LP on or about the date hereof.”
- Any decision in respect of those matters requiring an Ordinary Resolution, as defined in the Project Agreement is also a “Major Decision” requiring the approval by Harlo Capital and Dream Impact.
- If there is a dispute between Harlo Capital and Dream Impact with respect to a Major Decision, Dream Impact has the right to deliver a Put Notice to Harlo Capital, pursuant to which Harlo Capital is required to buy Dream Impact’s partnership interest at fair market value.

[47] The Harlo Backstop Agreement contains provisions that are substantially similar to those relied on by Dream Impact in the Harlo Partnership Agreement.

[48] The Project Agreement refers to the “Business Plan” for the Project, which is defined as “the pro forma cash flow and budget for the Project dated October 1, 2020 attached as Schedule G.” The Project Agreement also refers to capital calls. It provides in section 8.1(b) that the Project General Partner shall request, “in accordance with the Business Plan as and when set out therein” Capital Calls to the Harlo Partnership and the Harlo Backstop (up to \$10 million and \$5 million respectively).

[49] Under section 12.5 of the Project Agreement, certain actions cannot be taken unless approved by an Ordinary Resolution of the limited partners [Harlo/Republic GP/LP, the Harlo Partnership, the Harlo Backstop, and Republic Holdings Inc.]. One of the actions requiring an Ordinary Resolution of the limited partners is “any material change to the Business Plan”.

[50] Dream Impact’s position is that there ought to have been an Ordinary Resolution pursuant to the Project Agreement and the Harlo Partnership Agreement to amend the Business Plan before any capital call could be made.

[51] Dream Impact points to the recent decision of *Tridelta Investment Counsel Inc. v. GTA Mixed-Use*, 2023 ONSC 5099, aff'd 2024 ONCA 746 to support its position. In *Tridelta*, Kimmel J. found that a general partner's capital call was invalid as the general partner did not follow the precondition required under the governing limited partnership agreement. Specifically, the general partner was required to first seek debt financing prior to issuing a capital call. Because the general partner did not first seek debt financing, Kimmel J. found, at para. 98, that the capital calls were made "prematurely, without satisfying the requirement ... and were therefore invalid".

[52] I agree with the Harlo Partnership that *Tridelta* is distinguishable. In that case, the limited partnership agreement specified the order in which the partnership was to obtain funds, being "first, to the greatest extent possible, by borrowing from a reputable financial institution," and second, a capital call: at para. 92. At para. 93, Kimmel J. notes that the general partners did not make any attempts to borrow from a reputable financial institution before making the capital call, which was to be the "second source of funding".

[53] In the instant case there is no precondition in the Harlo Partnership Agreement to the making of a capital call so long as it is "for the purpose of funding the Partnership Business". The language used in section 4.5 of the Harlo Partnership Agreement provides that the "General Partner may at any time and from time to time during the term of the Partnership" call capital (up to the respective committed amounts). The Harlo Partnership Agreement does not require an amendment to the Business Plan before a capital call can be made.

[54] While I understand that "related" agreements are to be read together, in this case, the Harlo Partnership Agreement is clear on its face. The partnership needed more money to fund the increased interest payments on the Atrium Loan. The 2024 Capital Call was made further to the clear and unequivocal terms of the agreements. All the Partners except Dream Impact contributed when requested. There were changes to the Business Plan made in 2022. However, when the Business Plan was amended, there were no changes made to the capital commitments of the various parties.

[55] Although I am satisfied that the terms of the Harlo Partnership Agreement are clear, the communications entered into by the parties at the time the Business Plan was amended also support the Harlo Partnership's position. Specifically, the parties turned their minds to the issue of further capital calls when the changes to the Business Plan were negotiated.

[56] When the changes to the Business Plan were negotiated, Dream Impact agreed that the capital commitments in the Harlo Partnership Agreement and Harlo Backstop Agreement would remain in place:

- On or about March 14, 2022, Mr. Lepper (for Harlo Capital) wrote to Mr. Cleghorn (of Dream Impact) to provide the first draft of the documents to amend the Business Plan and increase the Atrium Loan. The first correspondence stated that "the remaining but

uncalled equity available to the project will be \$7.8 million” (consisting of the remaining \$2.8 million from the Harlo Partnership and \$5 million from the Harlo Backstop);

- On or about March 21, 2022, Mr. Cleghorn asked Harlo to agree to a resolution that no further capital would be called;
- Mr. Lepper responded on March 22, 2022 refusing Mr. Cleghorn’s request: “Given there is still some uncertainty as to the timing of a final rezoning as well as the ultimate direction the project will take, we think it is best to leave the capital commitments in place.”
- Mr. Cleghorn agreed in his response: “We agree to keep the structure as-is and we are fine keeping the unfunded commitments in the agreements, we just wanted to add language to the resolution acknowledging that the current and revised business plan contemplates the project being fully funded by debt, which is the case.” Mr. Cleghorn included proposed revisions to the draft resolution with his email. The proposed revisions included a resolution which set out the following: “It is acknowledged and agreed that the Business Plan (as amended) contemplates the Project being fully funded by debt, without the requirement for equity from the Limited Partners.”
- Mr. Lepper rejected the addition of Mr. Cleghorn’s proposed language in the resolution.
- Mr. Cleghorn confirmed that he agreed with the removal of the “fully funded by debt” language in the draft resolution, stating: “We chatted internally and we are okay omitting the reference to no equity in the resolution but would still like to have the budget and S&U. Can you send the S&U that will be included?”
- Mr. Lepper responded: “We really appreciate you working with us on that point.”

[57] The documents were executed without any reference to the additional Project costs being financed with debt. The capital commitments remained in place.

[58] The communications between Mr. Lepper and Mr. Cleghorn at the time that the Business Plan was amended support the position of Harlo Capital and the other Partners (other than Dream Impact), that the parties turned their mind to the issue of whether to change the capital commitment requirements at the time the Business Plan was amended and decided not to do so. The correspondence between the parties is objective evidence of the parties’ intentions at the time. The parties negotiated the issue of whether capital may be used in addition to debt funding and agreed that the remaining uncalled equity of \$7.8 million commitments would remain in place.

[59] Dream Impact argues that the above correspondence is extrinsic evidence excluded by the parol evidence rule. In *Sattva*, at para. 57, the Supreme Court of Canada noted that the surrounding circumstances “must never be allowed to overwhelm the words of the agreement.” The Court further stated, at para. 60, that “[t]he parol evidence rule does not apply to preclude evidence of the surrounding circumstances. Such evidence is consistent with the objectives of finality and certainty because it is used as an interpretative aid for determining the meaning of the written words chosen by the parties, not to change or overrule the meaning of those words.”

[60] As noted above, I am satisfied that the email correspondence between the parties at the time that the Business Plan was amended is objective evidence of the circumstances surrounding the amendments. As noted by the Court of Appeal for Ontario in *Ungar v. MOD Developments*, 2024 ONCA 298, at para. 41, evidence of “surrounding circumstances” is not inadmissible as a result of the parol evidence rule. Further, although I am satisfied that there is no ambiguity in the Harlo Partnership Agreement related to the Business Plan, if there were any such ambiguity, the email correspondence would be admissible to help resolve such ambiguity.

[61] For Dream Impact to now say that the capital commitments ought to have been included in the Business Plan amendments for the Harlo Partnership to make the 2024 Capital Call is entirely inconsistent with the correspondence between the parties at the time the resolution was negotiated.

[62] Accordingly, I am satisfied that the 2024 Capital Call was valid and by failing to contribute in accordance with the capital call, Dream Impact defaulted under the Harlo Partnership Agreement.

Was the Put Notice valid?

[63] Because the 2024 Capital Call that was made on November 15, 2024 was valid, there was not a “Dispute” with respect to a “Major Decision” pursuant to which Dream Impact could deliver a Put Notice.

[64] The Put Notice was not valid.

After Dream Impact’s interest in the Harlo Partnership was diluted, is there a continuing Event of Default?

[65] After Dream Impact failed to contribute the called capital, the other Partners funded the amount Dream Impact was supposed to pay to the Harlo Partnership further to section 4.7 of the Harlo Partnership Agreement. Dream Impact’s interest was diluted as a result.

[66] First Olympic, Cowie and Sliwin state that they did not intend to cure Dream’s default. They state that they made their payment further to section 4.7 of the Harlo Partnership Agreement, which provides that the contributions were being made on their own behalf and with a

corresponding increase in each of their capital contribution percentage. Their position is that Dream Impact's default continues.

[67] I interpret the Harlo Partnership Agreement as having different consequences in section 4.6 and section 4.7. When the Partners made their election to fund under section 4.7, this provision and the consequences set out therein apply.

[68] Dream Impact's position is that the purpose of the 2024 Capital Call was to fund the Harlo Partnership, which was accomplished when the other Partners elected to contribute funds under section 4.7 of the Harlo Partnership Agreement. Dream Impact's interest was diluted, and the other Partners' interests were increased. Dream Impact submits that, as a result, the 2024 Capital Call and the related Event of Default are at an end.

[69] Dream Impact points to a recent case of the High Court of England and Wales, Chancery Division. In *Grant & Ors v. FR Acquisitions Corporation (Europe) Ltd & Anor (Re Lehman Brothers International (Europe))*, [2022] EWHC 2532 (Ch.), the High Court, in interpreting an International Swaps and Derivatives Association contract involving a company's event of default after having entered into administration, concluded, at para. 119, that the test to determine whether an event of default continues to exist is "whether the identified event or state of affairs which constituted the Event of Default is continuing, rather than whether creditors' rights have been significantly and permanently altered or continue to be affected by the administration."

[70] In the instant case, the other Partners decided to fund under section 4.7 of the Harlo Partnership Agreement. Had they instead elected to make a loan to the partnership under section 4.6(a)(iv)(A), Harlo would have been able to cure the default. However, by electing under s. 4.6(a)(iii) to fund under section 4.7 of the Harlo Partnership Agreement, the result is that the partners that fund receive an increased capital percentage of the Harlo Partnership and Dream Impact's holdings are diluted.

[71] Dream Impact submits that an interpretation of the Harlo Partnership Agreement that permanently places a limited partner in default cannot be favoured over an interpretation that addresses the underlying issues and allows the parties to continue the functioning of their business relationship.

[72] The Harlo Partnership relies on section 4.6 and submits that Dream Impact's default is not cured under the terms of the Harlo Partnership Agreement. Under section 4.6(a)(ii) of the Harlo Partnership Agreement, "the Defaulting Limited Partner shall have no right to receive any allocation of income, gain or losses or to receive any distribution of funds from the Partnership until such Event of Default is fully remedied and all amounts for which the Defaulting Limited Partner may be liable have been fully satisfied."

[73] The Harlo Partnership notes that section 4.6(a)(iv)(C) of the agreement provides that payments by the non-defaulting partners in the defaulting partner's place are "subject to the Defaulting Limited Partner curing the Capital Call Default." However, s. 4.6(a)(iv)(C) relates to circumstances where the other partners loan funds to the partnership, not where the other partners elect to contribute under s. 4.7. Where a loan is made, the defaulting partner could still cure the default. However, where section 4.7 applies, the consequence is that the defaulting partner is diluted by the capital contribution of the other contributing partners.

[74] The problem with the position taken by the Harlo Partnership and the other Partners is that if a Partner defaults and another limited partner contributes the necessary capital under section 4.7 (as opposed to making a loan under s. 4.6), the defaulting partner would be indefinitely marginalized. There would be nothing the defaulting partner could do at such time to remedy the default and the defaulting partner would lose all rights "to receive any allocation of income, gain or losses or to receive any distribution of funds" under the Harlo Partnership Agreement. This does not seem commercially reasonable. The Event of Default related to Dream Impact's failure to contribute the necessary capital. The other partners elected under section 4.7 of the Harlo Partnership Agreement to make Dream Impact's defaulting payment. As noted above, the consequence of failing to contribute and other partners electing to contribute instead is a dilution of the defaulting partner's interest. When Dream Impact defaulted, the other Partners made the contribution and Dream Impact's interest was accordingly diluted.

[75] I am satisfied that there is not a continuing Event of Default.

Disposition and Costs

[76] I declare that:

- (i) the 2024 Capital Call to Dream Impact of November 15, 2024 was valid,
- (ii) by not funding the called capital, Dream Impact committed an Event of Default,
- (iii) the Put Notice was not valid and binding; and
- (iv) there is no continuing Event of Default following the other Partners advancing Dream Impact's share of the 2024 Capital Call pursuant to section 4.7 of the Harlo Partnership Agreement.

[77] The parties had informed the court of their agreement on costs in the event that one party was wholly successful. The responding parties were primarily successful. However, the court agreed with the applicant's alternate position that there was no continuing Event of Default. The parties are asked to resolve the issue of costs. If they are unable to do so within 30 days, they may

reach out to the Commercial List office to schedule a case conference with me to set out a process for submissions.

J. Steele J.

Released: June 12, 2025

Schedule A

Default Provisions in the Harlo Partnership Agreement

4.6 Default

The following provisions are applicable on the occurrence of an Event of Default:

(a) If a Limited Partner (a “**Defaulting Limited Partner**”) commits an Event of Default then, without prejudice to any other right, remedy or recourse which the Partnership, the other Limited Partners or the General Partner may have, the General Partner (or in the event that Harlo LP is the Defaulting Limited Partner, the non-defaulting Limited Partners) shall decide to:

(i) pursue and enforce all rights and remedies the Partnership may have against such Defaulting Limited Partner with respect thereto, including a lawsuit to collect the overdue amount;

(ii) determine that the Defaulting Limited Partner shall have no right to receive any allocation of income, gain or losses or to receive any distribution of funds from the Partnership until such Event of Default is fully remedied and all amounts for which the Defaulting Limited Partner may be liable have been fully satisfied;

(iii) offer to Limited Partners (other than Defaulting Limited Partners) (“**Non-Defaulting Partners**”), by notice in writing (the “**Default Purchase Notice**”) the opportunity to purchase the Limited Partner Interest of such Defaulting Limited Partner at such time (the “**Defaulting Partners’ Interest**”) at a purchase price equal to the Default Purchase Price, pro rata in accordance with the Capital Contribution Percentage of the Non-Defaulting Partners calculated without taking into account any Default Interest, and to the extent that one or more Non-Defaulting Partners declines such offer, the General Partner shall by a further Default Purchase Notice offer to the Non-Defaulting Partners accepting such offer the opportunity to purchase such remaining Defaulting Partners’ Interest pro rata in accordance with the Capital Contribution Percentage of the Non-Defaulting Partners that accept the offer; any Limited Partners wishing to purchase and such Limited Partners Interest shall give notice in writing to the General Partner within five (5) Business Days of receipt of the Default Purchase Notice, and the further Default Purchase Notice, if applicable, in which case the Limited Partners that provided such notice shall purchase such Limited Partner Interest in accordance with the terms of this Section 4.6(a)(iii) and otherwise on such other terms set forth in Section 10.6 and 10.7;

(iv) in respect of a Payment Default only, not later than five (5) Business Days following the Call Date, the General Partner shall deliver to each Limited Partner written notice of

the identity of each Limited Partner who has contributed its Called Amount and the identity of each Limited Partner who has not contributed its Called Amount (the “**Capital Call Default Notice**”) and:

(A) each of the Non-Defaulting Partners shall have the opportunity (but not the obligation) to lend to the Partnership all or a portion of the amount of the Capital Call Default (an “**Excess Advance**”);

(B) if more than one of the Non-Defaulting Partners wishes to make the Excess Advance, then each such Non-Defaulting Partner shall advance a portion of such Excess Advance equal to the proportion which its Capital Contributions bears to the total Capital Contributions of all of the Non-Defaulting Partners who wish to do so or as they may otherwise mutually agree; if there is only one Non-Defaulting Partner, then such Non-Defaulting Partner shall be entitled to make the whole Excess Advance to the Partnership;

(C) subject to the Defaulting Limited Partner curing the Capital Call Default, the payments to be made under this Section 8.3(a)(iv) shall be made within ten (10) days of delivery of the Capital Call Default Notice;

(D) the Excess Advances shall be loaned to the Partnership in order to fund the Capital Call Default Notice at a rate of interest equal to the Default Interest, to a maximum of that amount or calculated at a rate which would not be prohibited by applicable law, regulation, order, rule or direction which prohibits or restricts the charging, receipt or retention of interest or other amounts at the rates and amounts set forth herein in excess of the maximum rates or amount stipulated in such law, regulation, order, rule or direction, in which case, such amount or rate shall be deemed to have been adjusted *nunc pro tunc* to not more than the maximum amount or rate;

(v) cancel the remaining balance of such Defaulting Limited Partner’s Unfunded Capital Contribution and such Defaulting Limited Partner shall not be permitted to make further capital contributions to the Partnership in the event of such cancellation.

(b) The Defaulting Limited Partner shall indemnify and hold harmless the General Partner, the Partnership and each of the other Limited Partners in respect of any Losses sustained or incurred in connection with or arising as a result of such Event of Default.

(c) The General Partner shall set off against any distribution that would otherwise be made to a Defaulting Limited Partner pursuant to this Agreement, the amount of any Losses sustained or incurred by the Partnership as a result of such Defaulting Limited Partner’s Event of Default.

(d) Whenever the vote, consent or decision of the Limited Partners is required or permitted pursuant to this Agreement, any Defaulting Limited Partner shall not be entitled to participate in such vote or consent, or to make such decision, and such vote, consent or decision shall be made as if such Defaulting Limited Partner were not a Limited Partner. Notwithstanding this prohibition, any such vote, consent or decision shall be binding upon such Defaulting Limited Partner.

(e) No consent of any Limited Partner shall be required as a condition precedent to any transfer or other disposition of a Defaulting Limited Partner's Interest pursuant to this Section 4.6.

4.7 Dilution on Payment Default of Unfunded Capital Contribution

With respect to any Payment Default, any Non-Defaulting Partner may elect by notice to the General Partner to make the payment of the Defaulting Limited Partner's Capital Contribution not as a loan to the Partnership pursuant to Section 4.6(a)(iv)(A) but as a Capital Contribution on its own behalf, in which case, on the date of such Capital Contribution by such Non-Defaulting Partner (i) the Capital Contribution Percentage of such Non-Defaulting Partner shall be deemed to have increased to a percentage equal to the sum of (A) its Capital Contribution Percentage immediately prior to such date, and (B) the product of (1) One Hundred and Twenty-Five Percent (125%), and (2) a fraction, the numerator of which is the amount of the payment made by such Non-Defaulting Partner that was not made by the Defaulting Limited Partner and the denominator of which is the amount of all Capital Contributions paid by all of the Limited Partners to such date, including such payment, and (ii) the Capital Contribution Percentage of the Defaulting Partner shall be deemed to have decreased by an amount equal to the amount that such Non-Defaulting Partner's Capital Contribution Percentage is increased pursuant to this Section 4.7. An example of dilution is set out in Schedule B.

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DATE: 20250612

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

DREAM IMPACT MASTER LP, by its GENERAL PARTNER, DREAM IMPACT MASTER GP INC.

Applicant

AND:

HARLO SCARBOROUGH JUNCTION LIMITED PARTNERSHIP, by its GENERAL PARTNER, HARLO SCARBOROUGH JUNCTION GP INC, HARLO CAPITAL GP/LP, by its GENERAL PARTNER, HARLO CAPITAL GP INC, FIRST OLYMPIC CAPITAL V LP, by its GENERAL PARTNER, HARLO CAPITAL GP INC, COWIE CAPITAL PARTNERS INC, SLIWIN HOLDINGS INTERNATIONAL INC, HARLO SCARBOROUGH JUNCTION LIMITED PARTNERSHIP, by its GENERAL PARTNER, HARLO SCARBOROUGH JUNCTION GP INC., and HARLO CAPITAL GP/LP

Respondents

ENDORSEMENT

J. Steele J.

Released: June 12, 2025