



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-23-00702801-00CL

DATE: 21 July 2023

NO. ON LIST: 4

TITLE OF PROCEEDING: **CANADIAN WESTERN BANK v.
1000179473 ONTARIO INC. ET AL.**
BEFORE JUSTICE: **MADAM JUSTICE STEELE**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Laura Culleton	Lawyer for the Applicant, Canadian Western Bank	laurac@chaitons.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Malik Eftikhar (Self-Represented)	For the Respondents, 1000179473 Ontario Inc. and 2724393 Ontario Inc.	lhawan.ca@gmail.com

ENDORSEMENT OF JUSTICE STEELE:

1. This is an application by Canadian Western Bank for an order appointing a receiver over the assets of the respondents, 1000179473 Ontario Inc (“1000”) and 2724393 Ontario Inc. (“272” and collectively with 1000, the “Debtors”).
2. Malik Eftikhar, the sole director and officer of both of the Debtors, attended the proceedings and indicated he was not opposing the application.
3. For the reasons set out below, the receiver is appointed.

4. 1000 owns land municipally known as 269 Erie Street East, Stratford, ON. 1000 operated a gas station and convenience store on the property.
5. 272 owns lands municipally known as 181 Brant Road, St. George, ON. 272 operated a gas station and convenience store on the property.
6. The Bank made loans totaling approximately \$5.6 million to the Debtors.
7. The Bank has the following security for the loans made to 1000:
 - a. A charge/mortgage in the principal amount of \$3.69 million registered on title to the Stratford Property; and
 - b. A General Security Agreement.
8. The Bank has the following security for the loans made to 272:
 - a. A charge/mortgage in the principal amount of \$3.65 million registered on title to the St. George Property;
 - b. A general security agreement; and
 - c. A general security agreement granted by 1000.
9. There are other creditors that have interests in the properties that are subordinate to the Bank.
10. On June 21, 2023, the Bank received a notice that the insurance premiums were in arrears in respect of the St. George Property and that coverage under the policy would cease effective July 11, 2023.
11. On June 26, 2023, the Bank demanded payment from the Debtors and delivered notices of intention to enforce its security under the *Bankruptcy and Insolvency Act*.

Is it just or convenient for the Court to appoint a receiver over the Debtors' property?

12. Pursuant to s. 243 of the BIA, the Court has the power to appoint a receiver where it is “just or convenient” to do so. In determining whether it is just or convenient to make the appointment, the Court must have regard to all of the circumstances, including the nature of the property and the rights and interests of all parties: *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007, at para. 24, citing *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 40 C.B.R. (3d) 274 (Ont. Gen. Div.), at para. 10
13. Under the terms of the charges and general security agreements, the Debtors agreed to certain remedies if there was a default. Among other remedies, the Debtors agreed that the Bank was entitled to appoint a receiver or apply to the Court to appoint a receiver.
14. Where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant seeking the appointment of the receiver is relaxed. Generally, the appointment of a receiver is an extraordinary equitable remedy. However, the Courts do not regard the remedy in this way where the relevant security documents permit the appointment. This is because the applicant is seeking to enforce a term of an agreement that both parties made: *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866, at para. 27, *Hands-On Capital Investments Inc. v. DMCC Holdings Inc.*, April 19, 2023 (Ont. S.C.J.), at para. 48.

15. As noted above the Debtors owe approximately \$5.6 million to the Bank. The Bank has made demand on the loans, which have not been repaid. 1000 has not made any required payments under the loan since May 2023 and 272 has not made the payments that were due June 1 and July 1, 2023.
16. I agree with the Bank that it is just and convenient in the circumstances to appoint a receiver for the reasons set out at para. 28 of the applicant's factum, including that the Debtors have ceased business operations (see para. 21 of the affidavit of Rod Randall), there is no insurance in place for one of the properties, and the Debtors agreed to the appointment of a receiver upon their default under the contract terms.
17. Order attached.

A handwritten signature in blue ink, appearing to be "J. Lee", is located in the lower right quadrant of the page. The signature is written in a cursive style with a horizontal line through the middle.