



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-24-00719692-00CL

DATE: MAY 21, 2024

NO. ON LIST: 7

TITLE OF PROCEEDING: BUSINESS DEVELOPMENT BANK OF CANADA v. 1000088317  
ONTARIO INC.

BEFORE: JUSTICE KIMMEL

**PARTICIPANT INFORMATION**

**For Applicant:**

Name of Person Appearing	Name of Party	Contact Info
Andre Ducasse	Counsel for the Applicant, Business Development Bank of Canada	aducasse@solowaywright.com

**For Respondent:**

Name of Person Appearing	Name of Party	Contact Info

**For Other:**

Name of Person Appearing	Name of Party	Contact Info
Samantha Hans	Counsel for the Bank of Montreal	shans@airdberlis.com

**ENDORSEMENT OF JUSTICE KIMMEL:**

- [1] Business Development Bank of Canada ("BDC") seeks to appoint MNP Ltd. ("MNP") as a receiver of the assets, undertakings, and properties of the respondent, 1000088317 Ontario Inc. (the "Debtor").

- [2] BDC is the Debtor's primary secured creditor. It holds a mortgage over the property municipally known as 11553 Tenth Line, Halton Hills, Ontario (the "Real Property") as security for amounts due and payable under its Loan Agreement with the Debtor that was last amended in December 2021 and by which BDC loaned \$18 million to the Debtor. The Mortgage was registered on January 26, 2022.
- [3] The Debtor is now two (2) months in arrears on BDC's loan, which arrears currently total \$209,360.30. As of May 1, 2024, the Debtor's indebtedness to BDC totaled \$17,765,351.69 (exclusive of further accrued interest, fees, disbursements, costs and HST).
- [4] The Real Property is a commercial property from which a trucking freight delivery and logistics business was operated by affiliated companies, True North Freight Solutions Inc. ("True North") and North Shore Logistics Inc. ("North Shore", and together with True North, the "Operating Companies"), which have guaranteed the Debtor's indebtedness to BDC and have provided General Security Agreements over their assets in favour of BDC as well. The Bank of Montreal ("BMO") advanced funds to the Operating Companies which are also secured by their assets.
- [5] BDC's security interest granted by the GSA was perfected by registration pursuant to the PPSA on January 24, 2022. A search of the *Personal Property and Security Act* R.S.O. 1990 c.P10 ("PPSA") registry confirms that as of April 28, 2024, in addition to BDC, there is one other secured creditor with a PPSA registration, being BMO, with a registration dated February 13, 2023.
- [6] Pursuant to the Priority Agreement between BDC and BMO, BDC holds first-ranking security with respect to the Debtor's assets including the Real Property (and BMO has a subordinated interest therein), and BMO holds first-ranking security with respect to the assets of the Operating Companies (and BDC has a subordinated interest therein).
- [7] BMO sought and has been granted orders in respect of its indebtedness, including:
- a. BMO was granted on April 12, 2024 an interim receivership order by Steele J. appointing BDO Canada Limited ("BDO") as an interim receiver. This interim receivership order included the Operating Companies and the Debtor, but it expired by its own terms on May 13, 2024.
  - b. On May 6, 2024, BMO petitioned each of the Operating Companies into bankruptcy.
  - c. On May 16, 2024, Osborne J. granted an order appointed BDO as receiver of the Operating Companies.
- [8] There is no apparent connection between the Debtor, or the Real Property that stands as security for the BDC indebtedness, to Toronto. However, given that there is some overlap between this proceeding and the earlier receivership and bankruptcy proceedings commenced by BMO, and the possibility of some required co-ordination in the future, I allowed this application to proceed before me on the Toronto Commercial List.
- [9] The potential for overlapping security interests, and the existence of other stakeholders is the justification that has been offered by EDC for requesting a court appointed receiver, rather than it simply appointing a private receiver as its security no doubt entitles it to do.

- [10] BDC only recently discovered that the Operating Companies ceased carrying on business. It is their business that is expected to generate revenues to service the BDC loan. BDC is justifiably concerned and desirous of protecting and maintaining its security for itself and other interested stakeholders. There are other secured creditors (such as BMO) and it is expected that there will be other creditors including possibly some priority payables in respect of HST claims.
- [11] On April 23, 2024, BDC issued formal demands for repayment of the indebtedness owing to it by the Debtor and a notice of intention to enforce security pursuant to s. 244 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3 ("BIA"). BDC's demands and the notice of intention to enforce expired on May 3, 2024 and the indebtedness remains outstanding to date. BDC is contractually entitled pursuant to the terms of its loan agreement and security.
- [12] While it is not automatic that a default under a mortgage is in and of itself always justification for the appointment of a receiver, it may be appropriate in situations where the security documentation itself provides for the appointment of a receiver. In such circumstances, the extraordinary nature of the remedy is less essential to the inquiry and irreparable harm need not be established. See *BCIMC Construction Fund Corporation et al. v The Clover on Yonge Inc.*, 2020 ONSC 1953 at paras. 42-44. See also *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CanLII 8258 ONSC and *Bank of Montreal v. Sherco Properties Inc.*, 2013 ONSC 723.
- [13] In this case, where EDC is contractually entitled to the appointment of a receiver, the loan is in default, the 10-day period following the s. 244 BIA Notice of Intention to enforce has expired, there has already been an interim receiver appointed in respect of this Debtor and a permanent receiver appointed in respect of the affiliated Operating Companies, I find it to be just and convenient for the court to assist in the orderly liquidation of a debtor's estate through the appointment of a receiver under section 101 of the *Courts of Justice Act* ("CJA"), section 243 of the BIA, and section 67 of the PPSA.
- [14] Counsel for BDC provided me with a copy of the order and endorsement of Osborne J. in the BMO receivership application involving the Operating Companies. Many of the same defaults and justifications as were considered in that case for the appointment of a receiver apply here. I do not intend to canvass them all again as the relevant parties are familiar with that endorsement. I adopt the additional reasoning in that endorsement insofar as it applies here.
- [15] The proposed receiver, MNP, is known to the court and is qualified to act as such. MNP has consented to act. The Debtor and other secured creditors were served. No one appeared or indicated in advance any opposition to this application. The Debtor has not responded to any of the numerous attempts by BDC to communicate with it about the outstanding amounts owing to BDC.
- [16] This receivership application will continue concurrently with the ongoing receivership and bankruptcy proceedings initiated by BMO. The parties should co-ordinate where appropriate and keep each other apprised of the court appearances in these various proceedings.
- [17] The terms of the draft order proposed by the Applicant are largely consistent with the Model Order of the Commercial List. They are also largely consistent with the receivership order granted by Osborne J., with appropriate modifications.

[18] Order to go in accordance with these reasons, and in the form signed by me today. The order has immediate effect without the necessity of issuance and entry.

A handwritten signature in cursive script that reads "Kimmel J." with a period at the end.

KIMMEL J.