

BMO

v.

1254044 ONTRACIO LIMITED
et al.

① This is a Motion by MNP, the court-appointed receiver, for directions regarding the completion by the receiver of a sale transaction for the fueling station and assets located at 5470 Walker Road, Windsor ("Property").

(2)

(2) I agree with The Receiver's recommendation that it should be directed by the Court to terminate the sale agreement pursuant to the Assignment Condition contained in the sale agreement because the BMO first Mortgage on the property was assigned to 232 Ontario.

(3) I do not accept Mr. Klainman's submission that the assignment is "in substance" a sale

& 207 Ontario for the following reasons.

④ The Assignment Condition was included in the Sale Agreement for the purpose of permitting the Second Mortgagees & protect their interest and the purchaser was well aware of this.

⑤ The purchaser agreed & the inclusion of the Assignment Condition and assumed the risk that it presented & the completion of the sale

(4)

Transaction.

⑥ Terminating the Sale Agreement results in a related account for BMO and the second mortgage.

⑦ The Assignment Condition only requires that the BMO Mortgage be assigned before closing to one or more of the second mortgages. That condition has been met.

⑧ I do not find that the assignment is in substance an "end run"

(5)

and the court approved
sales process by 207
Ontario. It is exactly
what the purpose of the
Assignment Condition was—
to protect the interests
of the Second Mortgagee.

(9) This is further supported
by the uncontradicted
evidence of the Second
Mortgagee that they
sourced 207 Ontario as
a financier on their
own and the assignment
was not precipitated
by 207 Ontario.

(6)

(10) For all of these reasons
I accept The Receiver's
recommendation and
direct that it terminate
The Sale Agreement.

Haining J.

November 3, 2020