

**CANADIAN IMPERIAL BANK OF COMMERCE**

Applicant

-and-

**1340182 ONTARIO LIMITED AND KAZEMBE & ASSOCIATES PROFESSIONAL CORPORATION**

Respondents

**AIDE MEMOIRE – of the Responding Party, Arthur Bryan**

**Background**

- Canadian Imperial Bank of Commerce (“**CIBC**”), has brought an Application seeking an Order appointing MNP Ltd., as a Receiver over all property, assets and undertakings of 1340182 Ontario Limited (“**Real Estate Co**”) and Kazembe & Associates Professional Corporation (“**K&A OpCo**”)
- Arthur Bryan is not opposed to the appointment of a Receiver with regard to K&A OpCo. However, Mr. Bryan is opposed to the proposed appointment of a Receiver with regard to Real Estate Co.
- Real Estate Co, is the registered owner of the property municipally known as 1888 Wilson Avenue Toronto, Ontario (“**Property**”). K&A OpCo operates its law practice out of the Property.
- Arthur Bryan is a secured creditor of Real Estate Co, pursuant to a mortgage registered against the Property for the face amount of \$200,000 (“**Bryan Mortgage**”)
- The Bryan Mortgage was initially registered on August 18, 2018. Mr. Bryan was a long-standing client of Courtney Kazembe, a licensed solicitor in the Province of Ontario and the sole shareholder, director and controlling mind of Real Estate Co and K&A Op Co. The Bryan Mortgage relates to funds which were lent by Mr. Bryan to Mr. Kazembe, K&A OpCO, and Real Estate Co., which was secured by the Bryan Mortgage.
- Mr. Kazembe and K&A OpCO improperly discharged the Bryan Mortgage on February 13, 2019, without authority or without any payment to Arthur Bryan, and without Mr. Bryan’s knowledge. Mr. Kazembe and K&A OpCO re-registered the Bryan Mortgage on August 19, 2023, in third position behind a charge/mortgage registered in favour of CIBC (which was registered in 2019).

**CIBC’s Application and Mr. Bryan’s Opposition to Appointing a Receiver over Real Estate Co.**

- CIBC’s application was issued on April 26, 2023, and unilaterally scheduled to be returnable on May 11, 2023. The Application Record was couriered to Mr. Bryan on the afternoon of Friday, April 28, 2023 (at the time, Mr. Bryan was unrepresented). Prior to this, CIBC had not advised Mr. Bryan of its intent to bring its Application, had not canvassed his availability for the hearing, and had not otherwise communicated with him, whatsoever, with me.
- The proposed terms of Receivership over Real Estate Co. include the prioritization of uncapped Receiver fees, and Receiver Counsel Fees, over mortgages secured against the Property. Mr. Bryan is very concerned that if this relief is granted, it will significantly erode or completely wipe out his equity in the Property, and ability to recover from the damages caused by his lawyer’s malfeasance.

**CIBC Refuses Reasonable Request for Short Adjournment of Unilaterally Scheduled Hearing**

- On Sunday, April 30, 2023, counsel for Mr. Bryan wrote to CIBC and advised that, inter alia:

- Mr. Bryan intended to oppose the appointment of a receiver over Real Estate Co.; and
- A telephone discussion be held between counsel and failing a resolution, an adjournment should be sought to allow for the scheduling of the Application steps.
- On Tuesday, May 2, 2023, counsel for Mr. Bryan wrote a letter to CIBC and advised:
  - Mr. Bryan would consent to a judicial sale of the Property;
  - Re-requested an adjournment to the May 11, 2023 Application Date; and
  - Proposed a Timetable for a responding record, cross-examinations, the exchange of facta, and the hearing of the Application, all within the month of May, 2023.
- Counsel for CIBC responded the same day, and with regard to the adjournment request, wrote, inter alia: *“as I’m sure comes as no surprise, CIBC will not consent to an adjournment and intends to proceed with its receivership application on the 11<sup>th</sup>. In our view, your firm has been engaged on this matter since the 28<sup>th</sup> and has had more than ample opportunity (and continues to have ample time) to file any responding materials should you wish to do so.”*

**Mr. Bryan’s Proposal to take Possession, List, and Sell Property for capped fees of \$30,000**

- On May 3, 2023, counsel for Mr. Bryan wrote another letter, on a “with prejudice basis” – which included a Draft Order with proposed terms for sale. In short, it was proposed that Mr. Bryan would be responsible for the legal steps necessary to take possession of the Property, evict any occupiers/tenants, list, and sell the Property. It was proposed that counsel’s legal fees be capped at \$30,000, exclusive of HST and disbursements for appraisals and real estate commissions (with the \$30,000 fee ranking in priority to the mortgages). From the sales proceeds, the amount owing to the first mortgagee would be paid, and the remaining sales proceeds, net of required closing costs, would be paid into court. In the event that the actual costs exceeded \$30,000, Mr. Bryan would be responsible for the overage.
- The letter also made clear that if either of the other mortgagees (including CIBC) was willing to undertake the work with a \$30,000 cap, Mr. Bryan was content for them to do so.

**After Mr. Bryan serves Responding Material, CIBC immediately seeks Adjournment**

- As a result of CIBC refusing to adjourn its unilaterally scheduled Receivership Application, Mr. Bryan was obligated to file responding material by May 4, 2023. Mr. Bryan filed both a Responding Motion Record as well as a Factum. Despite CIBC’s insistence on maintaining the May 11, 2023 motion date (and Mr. Bryan’s explicit request to schedule the exchange of facta), CIBC has not served a moving factum.
- Shortly after being served with Mr. Bryan’s Responding Record and Factum, CIBC’s counsel wrote to Mr. Bryan’s counsel, advising that now CIBC required an adjournment, given that Mr. Bryan had responded to the Application.
- To date, CIBC has not responded to Mr. Bryan’s offer that either he (or CIBC or the first mortgagee), carry out the sale with legal fees capped at \$30,000.
- Mr. Bryan is not opposed to adjourning the hearing to permit CIBC to file a factum, and Mr. Bryan to file a subsequent factum. However, Mr. Bryan reserves his rights to seek all costs, including costs thrown away.