



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00698764-00CL DATE: 21 July 2023

NO. ON LIST: 6

TITLE OF PROCEEDING: BANK OF MONTREAL v. 2243080 ONTARIO INC. ET AL.

BEFORE JUSTICE: KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
C. Staples (Mr.)	Bank of Montreal	chris@chaitons.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
J. Rosenstein	2243080 ONTARIO INC. & 2496287 ONTARIO INC.	jrosenstein@rosensteinlaw.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE KIMMEL:

1. This applicant Bank of Montreal ("BMO") seeks to appoint MNP Ltd. as the receiver ("Receiver") of the present and future property, assets and undertaking of the two corporate respondents, 2243080 Ontario Inc. ("224") and 2496287 Ontario Inc. ("249") (collectively the "Companies") under s. 243(1) of the *Bankruptcy and Insolvency Act* (the "BIA") and s. 101 of the *Courts of Justice Act*.
2. 224 owns and operates two gas stations with convenience stores on properties owned by 224, one being an Ultramar branded station, located at 9279 Hwy. 11, Cumberland Beach, Ontario ("Cumberland") and the other an Esso branded station at 8824 Hwy. 17 E., Warren, Ontario ("Warren"). 224 owns the properties on which the gas stations are operated. The Cumberland gas station has not been operational since the fall of 2022.
3. 249 owns and operates one Esso branded gas station on property owned by 249 at 2260 Hwy. 7 E., Pickering, Ontario ("Pickering"). 249 owns the Pickering property.
4. The Bank has advanced mortgage and operating loans to 224 and 249 secured by mortgages against the properties described above and by general security agreements. These loans are in default. 224 is indebted to the Bank in a total amount of approximately \$4.2 million in principal. 249 is currently indebted to the Bank in a total amount of approximately \$2.35 million (in principal).
5. With interest, the current loan balances total \$4,441,017 for 224 (including \$267,337 in unpaid interest) and \$2,337,880 for 249 (including \$39,666 in unpaid interest), for a total debt owing of approximately \$6.8 million. The respondents have long since ceased making any payments to the Bank or depositing money to their accounts. The loans and security are cross-collateralized. The Bank's security provides for the appointment of a receiver.
6. The bank has been very accommodating since the initial defaults in January 2022, including having agreed to a standstill agreement in September 2022 and a forbearance agreement in December of 2022 that was extended by further agreement in February 2023 until May 1, 2023.
7. After the Companies had still failed to meet the standstill conditions, BMO delivered its demands for payment and BIA Notices of Intention to enforce security in November 2022, but nonetheless agreed to forbear in December 2022 and agreed to extend the forbearance agreement in February of 2023 which extension afforded the Companies until May 1, 2023 to meet the required conditions for repayment of the outstanding debt. The Companies had still not met the agreed upon conditions by May 1, 2023 and this application was commenced.
8. In the context of the first forbearance agreement, the Companies signed consents to the appointment of a receiver and manager.
9. The Bank is unquestionably entitled to the appointment of the Receiver under s. 243 of the BIA and authorities cited in the applicant's factum (see paragraphs 33-40). The contractual rights of the Bank under its general security agreements and mortgages, the persistent defaults, the Bank's prior indulgences, the demands and statutory notices, the fact that two of the properties are operating gas stations and that one is a former gas station (all of which can be expected to have environmental considerations to contend with in the context of any sale or refinancing) and the other factors identified in the record all support this conclusion, and the respondents do not seriously contest it. The only issue by way of opposition that has been raised by the respondents is whether it is just and convenient to do so at this time.
10. Since the application was commenced, and after the first adjournment that was granted at the request of the respondents, the Companies have now come to the court with evidence filed this week about two highly conditional agreements of purchase and sale in respect of the Warren and Cumberland properties and a conditional term sheet for a prospective financing in respect of the Pickering property (from an undisclosed lender).

11. While the Bank says that these agreements are too conditional and too late, there is some chance that the Companies might be able to close them and repay their debts to the Bank. The evidence suggests that the properties may have equity beyond the current indebtedness to the Bank. If the Bank is not underwater yet, then the cost of the Receiver (and there undoubtedly will be a cost) will reduce the remaining equity in the properties for the Companies. It is for this reason that I concluded that the Companies should be given one last chance to repay their indebtedness to the Bank before a receivership order comes into effect, but on very strict terms and conditions and with added safeguards and protections for the Bank in the interim. The Bank has no obligation to agree to a partial discharge of any of its security, so the three proposed transactions will need to be coordinated and all three will have to be successfully completed.
12. Given all the work that has been done, and what remains to be done by the respondents for them to avoid the receivership, I have determined that the appropriate way to proceed is to grant the requested receivership order but to stay or suspend it until the earlier of September 30, 2023 or a trigger date that will be determined by various events that could transpire in the interim that could render it impossible for any of the three currently proposed transactions to be completed (including, without limitation, that a firm financing commitment for the Pickering property will need to be in place by no later than August 4, 2023).
13. I have asked counsel to draft the terms of these triggering events to be incorporated into an order (or endorsement) for my consideration. Various additional safeguards and protections for the Bank were also discussed and are to be incorporated into this revised order (or endorsement), the default of which would also constitute triggering events. The intention is that if the triggering events occur the Bank will be able to act on the signed receivership order without having to come back to court.
14. If the parties are able to reach agreement on the wording of these items to be drafted then they may submit a consent draft order (and/or endorsement) to me for consideration through the commercial list office. If they are unable to come to a final agreement on the terms, they may request a 30-minute case conference before me sometime during the week of July 24, 2023. I approve them being added to the end of my list one day that week if there is no time available in the normally scheduled day.



KIMMEL J.