



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-22-00684100-00CL DATE: November 3rd 2022

NO. ON LIST: 2

TITLE OF PROCEEDING: **CANADIAN WESTERN BANK v 2722959 ONTARIO LTD. Et al**

BEFORE JUSTICE: **OSBORNE**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
LoGRECO, JOSEPH	2722959 ONTARIO LTD. and 215	jkigreco@lslaw.ca
LAAN, TED ROLAND	EASTGATE GROUP INC. ROVINELLI HOLDINGS LTD.	tlaan@kmbllaw.com

For Other, Self-Represented: RECIEVER

Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT OF JUSTICE OSBORNE:

1. The Applicant, Canadian Western Bank [CWB] seeks the appointment of a non-possessory investigative receiver.
2. In July, Justice McEwen had originally scheduled this Application to be heard on September 12. By endorsement on that date, I adjourned the application to today's date at the request of the Respondents.
3. The matter proceeded today on a full record.
4. Mr. LoGreco confirmed at the outset of the hearing that he appears today on behalf of both the Respondent 2722959 Ontario Ltd. [272] and its affiliated company, 2156775 Ontario Limited [215].
5. The landlords are represented in Court today and, as stated in my Endorsement of September 12, have locked the tenant out of the premises and continue to hold the equipment and inventory pending consent of all parties or further order of this Court.
6. I also directed that the CRA, which may have a priority claim in respect of HST remittances, be put on notice of this return date, and the Proposed Receiver confirms that was done. Ms. Fell for the Proposed Receiver advised that the CRA does not oppose the relief sought and will monitor these proceedings if a receiver is appointed.
7. Today, CWB seeks the appointment of MNP Ltd. as receiver, without security, of all of the assets, undertakings and properties - not only of the Respondent, 272, but also the related entity 215 to the extent that assets or property were required for or used in relation to the business carried on by 272.
8. 215 is not a party. CWB submits that the Court has the discretion to appoint a receiver nonetheless pursuant to section 101 of the CJA.
9. As noted above, Mr. LoGreco appears, as he did previously, as counsel for both of those parties. He confirmed on September 12 that no further service by CWB was necessary on 215 as reflected in my Endorsement of that date.
10. There is no issue that they are related and affiliated entities as submitted by CWB and admitted by their counsel. In addition, the affidavit of Mr. Frank D'Angelo sworn October 18, 2022 on which the Respondent relies confirms that he is the President, Director and sole shareholder of 215 as well as being the Operational General Manager of the Respondent 272 [see para. 1].
11. The Affidavit further confirms that 215 and 272 operate together, interchangeably and as one, operating as D'Angelo Brands [see para. 3]. The business is referred to as the singular D'Angelo Brands which Mr. D'Angelo confirms got the loan from CWB [para 5], commenced an action against CWB and an officer of the bank [para 6], and the Affidavit references the entity in the singular form throughout, including with respect to inventory, finished goods, manufacturing equipment and "the full structure of D'Angelo Brands operation" [para 12].
12. In short, 272 and 215 operate as one. It may be relevant for future steps in this proceeding to distinguish between the two. For today's purposes, however, they operate as one, directed and controlled by the same individual and represented by the same counsel.
13. As further described below, it is for practical purposes impossible to distinguish between the two, which assets [including equipment and inventory] is owned by which entity, and there are relevant intercompany transactions and asset transfers between these two entities as described at paragraph 63 and Exhibit W of the D'Angelo Affidavit. It is largely for these reasons that the Applicant seeks the receivership in respect of both entities.
14. Rule 5.03 provides that every person whose presence is necessary to enable the court to adjudicate effectively and completely on the issues in a proceeding shall be joined as a party to the proceeding.
15. Rule 5.03(4) gives this Court the power to order that any person who ought to have been joined as a party or whose presence as a party is necessary to enable the court to adjudicate effectively and completely on the issues in the proceeding shall be added as a party. I am satisfied for the reasons set out above that 215 is a necessary party and I order that it be added as a party respondent.
16. The substantive issue is whether it is just and convenient to appoint a receiver in the circumstances.

17. The test for the appointment of a receiver pursuant to section 243 of the BIA or section 101 of the CJA is not in dispute. Is it just and convenient to do so?
18. In making a determination about whether it is, in the circumstances of a particular case, just and convenient to appoint a receiver, the Court must have regard to all of the circumstances, but in particular the nature of the property and the rights and interests of all parties in relation thereto. These include the rights of the secured creditor pursuant to its security. (See *Bank of Nova Scotia v. Freure Village on the Clair Creek*, 1996 CanLII 8258).
19. 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 is lessened: while the appointment of a receiver is generally an extraordinary equitable remedy, the courts do not so regard the nature of the remedy where the relevant security permits the appointment and as a result, the applicant is merely seeking to enforce a term of an agreement already made by both parties. (See *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 7101 at para. 27).
20. There are also examples of situations where a receiver has been appointed for the purposes of gaining access to the books and records of the company (see *DeGroot v. DC Entertainment Corp. et al*, 2013 ONSC 7101 at para. 52). I recognize that in that case, unlike here, the plaintiff had established a strong *prima facie* case of fraud. However, a number of observations of the Court in that case, including that there had been serious breaches of the agreements and the court had little faith in the defendants producing the records, were relevant to the analysis.
21. The draft order sought by the Applicant CWB contemplates a very limited scope receivership, which is appropriate in the circumstances where D'Angelo Brands is not an operating business at this point in time. The requested powers of the receiver, if appointed, would include the ability to monitor receipts and disbursements of 272 and 215, and the right to access all information, computers, databases or documents, including but not limited to banking statements and records and to take possession of and preserve any records or documents found at the premises.
22. The other specific powers sought are set out at paragraph three of the draft order. Essentially, they are directed towards giving the Receiver the ability to investigate the intercompany transactions referred to above with a view to informing the Receiver about the recoverable assets, and the liabilities of these entities.
23. Some observations are in order. First, Mr. LoGreco for the Respondents concedes, fairly, and there is no issue, that the funds were advanced by way of loan to CWB, that they have not been repaid according to the terms of the loan documentation, that demands have been made, and that the loan documentation gives CWB the contractual right to appoint a receiver in the circumstances.
24. The Respondents do take the position that the funds advanced of approximately \$625,000 were intended to be a first advance on a materially larger loan facility, and the failure or refusal of the bank to advance further funds was a contributing factor to the demise of the operating business of the Respondents. That is for another day.
25. Second, the Respondents do not object to CWB getting virtually all of the records, documentation and investigative powers sought in the draft receivership order. On the contrary, they take the position that a receivership is not necessary in part because all of the information and records has already been provided. In his submissions, Mr. LoGreco was clear that there were no records, banking or business, of 215 or 272 that were being withheld or which the Respondents or either of them were refusing to turn over. He was equally clear that the accountant for the Respondents would be directed to cooperate.
26. Ms. Fell for the Proposed Receiver took the position that in fact, there were and remain a significant number of records, documents and banking information which have been requested and which have not been forthcoming.
27. The state of the records is fully described in the First Report of the Proposed Receiver. As observed in my Endorsement of September 12, by which I directed that the Proposed Receiver take possession of and preserve some 464 boxes of records, the Proposed Receiver did get those but it appears that the

documents located at 4544 Eastgate had literally been thrown down the stairs with the result that it is now a massive undertaking to discern what documents are actually there and how they fit together. A photograph taken by the Receiver as of September 14, 2022 is attached to the First Report as Appendix B. Other documents, including those at the property at 4500 Eastgate were organized and filing cabinets and were collected and boxed in an organized manner.

28. However, several categories of a significant number of potentially relevant documents, including all internal employee emails relating to the finance and management of the business, have still not been produced.
29. In the circumstances, I am satisfied that an order is needed, to ensure the production of documents and information to which no objection is said to be taken, although they have not been produced. If in fact it turns out that most of the relevant records have been produced and the others are produced readily and cooperatively, the activities of the Receiver will be even more limited.
30. Indeed, at the end of the day, the principal objection to the appointment of a Receiver by the Respondents, is really twofold.
31. First, the Respondents argue that a Receivership will unnecessarily increase cost. As submitted by the Applicant, however, the costs can and should be controlled since the Receiver is not taking possession of the premises or any operating business, and costs can be addressed another day if and as necessary.
32. Second, and this is the main argument advanced by the Respondents, they submit, as expressly stated in their factum: “the reason that CWB is seeking the appointment of the Receiver is to control the lawsuit and to gain an advantage over such lawsuit.”
33. The lawsuit referred to is an action commenced by 272, D’Angelo and Runaghan [the principal of 272] on June 21, 2022 against the bank and one of its employees in which those plaintiffs seek damages of \$280 million for losses they allege were suffered as a result of the bank’s failure or refusal to advance additional loan funding.
34. The difficulty with that argument is that the proposed receivership will expressly not stay that action. Nor does it give the moving party here [CWB] any control over the lawsuit as alleged or at all. To be clear, nothing in the proposed receivership affects that action in any way.
35. It was suggested in submissions to me that the documents now in the possession of the Proposed Receiver [i.e., the contents of the approximately 464 boxes of documents thrown on the floor] may contain documents over which 272 and/or 215 wish to assert solicitor client privilege. They are free to do that.
36. This court regularly approves protocols if necessary, and where the parties cannot agree on a protocol themselves, as I would expect the parties to be able to do so here, the court can impose one. Presumably, that would involve terms such that the documents could be reviewed by 272 and 215 and/or their counsel, in a controlled environment such that the documents are preserved, and if the parties cannot reach an agreement on whether the claim for privilege is appropriate, the documents can be sealed, not reviewed, and the issue of privilege determined.
37. For all of the above reasons, I am satisfied that it is just and convenient to appoint a receiver in respect of both 272 and 215, operating collectively as D’Angelo Brands, on the non-possessory investigative terms as contemplated in the draft order. MNP is an appropriate party and that firm is so appointed. The Court expects the cooperation of the Respondents with the Receiver including assistance in locating and providing additional documents, whether electronic or hard copy, with the assistance and involvement of their bankers and accountants as necessary.
38. The Applicants are directed to upload to CaseLines as soon as possible a clean copy of the draft order, as a separate document, for my review and signing. That order will be effective immediately without the necessity of issuing and entering.

Olson, J.