



SUPERIOR COURT OF JUSTICE

**COUNSEL SLIP/ENDORSEMENT**

COURT FILE NO.: CV-22-00684100-00CL DATE: 12 September 2022

NO. ON LIST: 04

TITLE OF PROCEEDING: **CANADIAN WESTERN BANK V 2722959 ONTARIO LTD.**

BEFORE JUSTICE: **OSBORNE**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

| Name of Person Appearing | Name of Party         | Contact Info   |
|--------------------------|-----------------------|--|
| Kaleigh Sonshine         | Canadian Western Bank | ksonshine@millertomson.com   |
| Gavin Finlayson          | Canadian Western Bank | <a href="mailto:gfinlayson@millertomson.com">gfinlayson@millertomson.com</a> |
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**For Defendant, Respondent, Responding Party, Defence:**

| Name of Person Appearing | Name of Party          | Contact Info         |
|--------------------------|------------------------|----------------------|
| Caitlin Fell             | MNP Ltd                | cfell@reconllp.com   |
| Sheldon Title            | Proposed Receiver      | Sheldon.title@mnp.ca |
| Joseph Lo Greco          | 2722959 ONTARIO LTD.   | jlogreco@lslaw.ca    |
| Ted Laan                 | Rovinelli and Eastgate | tlaan@kmblaw.com     |

**ENDORSEMENT OF OSBORNE, J.**

1. This case conference was scheduled by the Applicant to address an adjournment request by the Respondent and interim records issues.
2. This Application for the appointment of a receiver has already been scheduled to be heard on September 12, 2022 for 90 minutes, pursuant to the endorsement of Justice McEwen dated July 26, 2022.
3. Counsel for the Respondent, Mr. LoGreco, advises that he has just been retained and requires time to get up to speed on the matter, and that his co-counsel is away, with the result that the Respondent requests an adjournment of the matter until November 10.

4. Mr. Finlayson for the Applicant does not strenuously oppose an adjournment as a professional courtesy in the circumstances, but is anxious that the Applicant not be prejudiced as a result.
5. **On the consent of the parties, the September 12 date is hereby vacated and this matter will proceed on the merits on November 3, 2022 beginning at 10:00 AM.**
6. Some context is in order. The Respondent 272 is indebted to the Applicant in the amount of approximately \$625,000 plus accruing interest. 272 granted to the bank a security interest over all of its assets. The GSA provides the bank can appoint a receiver upon the occurrence of an event of default which it would appear has now occurred [no payments have been made on the credit facilities, and 272 ceased active business as of May, 2022.
7. The landlord, represented today, has locked 272 out of the premises and takes the position that it will distrain on the equipment and inventory but will hold the proceeds in trust pending consent of all parties or further order of this Court.
8. In the interim, it is agreed by all parties and I so order that If equipment and inventory is sold by the landlord, as the parties agree may be the most advantageous result, the proceeds will remain in trust as proposed by the landlord pending consent of all parties or further order of the Court.
9. There is an issue about whether the CRA may have a super priority claim. While not an issue before me today for determination, it would appear that significant amounts are owed in respect of HST remittances. Counsel for MNP, the proposed receiver, is directed to ensure that the CRA is put on notice of this application and provided with a copy of this endorsement.
10. Mr LoGreco acknowledges that the numbered company 215, the tenant of the operating premises, is an affiliate of 272 and that he has accepted service on behalf of 215 as well as 272. No further service on 215 by the Applicant is required.
11. With respect to documents, counsel for the landlord advises that many file boxes of physical books and records remain in the premises and the landlord wants them out in order that vacant possession can be offered to a new tenant. Counsel for 272 takes the position that the documents are the property of 272 and wants access to them. Counsel for the Applicant, Mr. Finlayson, supported by Ms. Fell as counsel for the proposed receiver, wants to ensure that relevant documents are preserved.
12. My objective on this preliminary appointment is to preserve the relevant documents and the status quo between and among the parties pending a hearing of the Application on the merits. Accordingly, and after much discussion with counsel for all parties and ultimately on their consent, the proposed receiver and its counsel will coordinate the collection and recovery of the documents in the leased premises and maintain those documents as far as is possible in their existing order and condition but will not undertake any review of the documents absent further order.
13. The proposed receiver will maintain custody of the documents pending consent of the parties or further order of the Court, but will allow access by the Respondents and their counsel, under supervision of the proposed receiver, to the documents in order that they may take copies of any documents they wish at their expense, and may review all documents. There may be issues of relevance and/or privilege and those are to be determined another day. For now, the key is that the documents should be preserved.
14. Counsel for all parties have agreed on the following, with which I agree and which forms part of this endorsement, to give effect to the foregoing:
  - a. MNP Ltd., in its capacity as proposed receiver ("**MNP**") of 2722959 Ontario Ltd ("**272**") and 2156775 Ontario Inc. ("**215**") shall be given immediate access during regular business hours to the premises located at each of 4544 and 4500 East Gate Parkway, Mississauga, Ontario and 5901 Tomken Road, Mississauga, ON L4W 4K3 (collectively, the "**Premises**") for the purposes of obtaining possession of all of the books and records of 272 and 215 located at the Premises (the "**Parkway Records**").
  - b. MNP shall be entitled, but not required, to take sole and exclusive possession of the Parkway Records and to remove the Parkway Records from the Premises.

- c. 272 and 215, and their directors, officers and third-party consultants shall forthwith advise MNP of the existence and whereabouts of any books and records, including financial statements, accounts receivable and inventory lists that are not located at the Premises, including any information that is stored or is otherwise contained on a computer or other electronic storage, and shall provide access to MNP of such books and records (the “**Off Premises Records**”, together with the Parkway Records, the “**Receiver Held Records**”). MNP shall be entitled to take possession, whether via hardcopy or electronically, of the Off Premises Records.
- d. For the purposes of taking possession of any electronic records, the directors, officers and third-party consultants of 272 and 215 shall provide MNP with assistance in gaining access to such electronic records as MNP may in its discretion, may require including providing MNP with any and all access codes, account names and account numbers that may be required to gain access to the information.
- e. MNP shall be entitled, but not required, to take possession of and retain the Receiver Held Records pending further order of the Court and shall assume possession of the books and records on an as is, where is basis, without any duty or obligation to catalogue or otherwise organize the Receiver Held Records.
- f. 272 and 215, including their directors, officers or shareholders shall immediately provide to MNP read-only access to all bank accounts held in the name of 272 and 215.
- g. 272 and 215 shall not sell, transfer, gift, convey or otherwise dispose or destroy any of their property or assets, including any of their books and records and any monies or accounts receivable of either 272 or 215 shall be deposited in the bank accounts of 272 and 215 and not in any other bank account.
- h. To the extent Eastgate Group Inc. and Rovinelli Holdings Ltd. sell the equipment at the Premises, the proceeds of sale of such equipment shall be kept in trust by counsel to Eastgate Group Inc., and Rovinelli Holdings Ltd., pending further order of the Court.
- i. Counsel to 272 and 215 shall be permitted to attend at the offices of MNP at 111 Richmond St W Suite 300, Toronto, ON M5H 2G4 on not less than 24 hours written notice and during normal business hours, for the purposes of reviewing any books and records of 215 and 272 in the possession of MNP (the “**Receiver Held Records**”) and shall be entitled to make copies of the Receiver Held Records at the expense of 272, 215 or Mr. D’Angelo. Other than counsel to 272 and 215, no party shall have access to the Receiver Held Records or the contents thereof without further Order of the Court.
- j. MNP shall not be liable for any action or inaction in carrying out the terms of this endorsement, other than for gross negligence or wilful misconduct.
- k. MNP may apply to the Court for advice and directions in carrying out the terms of this endorsement, including its economic and practical feasibility, and may consult with counsel to the Applicant regarding the costs and practical feasibility of obtaining possession of the Parkway Records.
- l. The application shall be adjourned from September 12, 2022, to November 3, 2022, which date shall be preemptory on the Respondent.

Owen, J.