



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-22-00684100-00CL

DATE: 24-JUL-2023

NO. ON LIST: 2

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

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Madeleine Dusseault	Canadian Western Bank	mdusseault@millerthomson.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Colin Holland	The City of Mississauga	colin.holland@mississauga.ca
David Boghosian and George M. Pakozdi	The Regional Municipality of Peel	dgb@boglawn.ca ; gpakozdi@boglawn.ca
Jennifer Lee	Eastgate Group Inc. and Rovinelli Holdings Ltd.	jlee@kmblaw.com
Leo Klug	2722959 Ontario Ltd.	leoklug@kluglaw.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Joel Turgeon	The Receiver, MNP	jturgeon@reconllp.com

ENDORSEMENT OF JUSTICE STEELE:

- [1] The respondents, 2722959 Ontario Ltd. (“272”) and 2156775 Ontario Limited (“215”, and together with 272 the “Respondents” or “D’Angelo Brands”) seek an order lifting the stay of proceedings imposed by this Court in respect of three actions against the Regional Municipality of Peel (“Peel”). The Corporation of the City of Mississauga (“Mississauga”) is a defendant in one of the actions. Five individual elected officials and employees of Peel are named as defendants in another of the actions.
- [2] The order sought is opposed by Peel and Mississauga.
- [3] The Receiver does not take a position as long as the Respondents’ estates are not negatively affected, other than requesting certain provisions in the order if the Court is inclined to grant the order. Canadian Western Bank also does not take any position, provided that the Receiver’s terms are adopted if the respondents’ order is granted. Peel and Mississauga oppose the requested terms.
- [4] For the reasons set out below, the motion is dismissed.

Background

- [5] In or about February 2022, 272 continued to carry on the business of 215 (the D’Angelo Brands business).
- [6] Frank D’Angelo is the President and CEO of 215 and the Senior General Manager of 272.
- [7] Canadian Western Bank commenced proceedings against the Respondents. CWB brought an application to appoint a receiver.
- [8] In or about November 2022, MNP Ltd. was appointed as an investigatory, non-possessory receiver of the assets of the Respondents. Section 13 of the Order contains the stay:

THIS COURT ORDERS that no Proceeding against or in respect of 272, 215, or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of 272, 215, or the Property are hereby stayed and suspended pending further Order of this Court, save and except, pending further Order of this Court, the action *2722959 Ontario Inc. et al v. Canadian Western Bank et al*, bearing Court File No. CV-22-00001968-0000.

- [9] The three actions that the Respondents seek to continue relate to water charges and surcharges, and a water disconnection or disconnections by Peel, among other things.
- [10] The first action against Peel, commenced in August 2020, is for breach of contract, negligence, bad faith, and breach of statutory duties arising out of alleged excessive wastewater charges levied against 215.
- [11] The second action, commenced in August 2021, claims that certain minutes of settlement and a Release signed by 215 and Peel be set aside and requests an accounting of water charges and surcharges, among

other things. The second action adds Mississauga and claims that the tax lien should be removed and discharged from the tax rolls.

- [12] The third action encompasses the first two actions and includes a claim alleging abuse of public office by an official. The third claim also names four Peel employees as defendants. 215 alleges that the three of the employees acted in bad faith and were negligent in their reviewing, investigating, and inspecting the wastewater discharge readings. 215 alleges that the fourth employee, who was responsible for billing practices and invoices, knew that the invoices were incorrect and excessive.
- [13] The pleadings in all three claims are complete. There have been motions brought, including one by Peel for security for costs, which are covered by the stay.

Should the stay be lifted?

- [14] The only issue before the Court is whether the stay should be lifted.
- [15] As set out in *Ma v. Toronto-Dominion Bank*, 24 C.B.R. (4th) 68, at para. 2, the court may lift the stay if it is satisfied (a) that the creditor is likely to be materially prejudiced by the continued operation of the stay, or (b) it is equitable on other grounds to lift the stay. The onus is on the moving party. It is not “a routine matter.” The Court must be satisfied that sound reasons are present in order to lift the automatic stay: *Ma*, at para. 3.
- [16] In the instant case it is not a creditor that seeks the lifting of the stay. It is the Respondents. The Respondents provided detailed submissions on the actions that they wish to continue against Peel, Mississauga and the individual defendants. It is clear that the respondents want to lift the stay because they want to continue these actions.
- [17] There is no evidence that a creditor is likely to be materially prejudiced by the continued operation of the stay. Frank D’Angelo’s evidence is that if the Court should award damages to 215, they would be used to pay the substantial debts of 215, which Mr. D’Angelo estimates is “in excess of \$10 million” (para. 8, affidavit of Mr. D’Angelo, April 27, 2023). However, 215’s accountant reported that the total debt owing is approximately \$134 million. Although the Respondents submit that some of this debt is related party shareholder loans that will be forgiven, there is no evidence as to who the shareholders are and whether they are willing to forgive this debt. The Respondents also submit that Mr. D’Angelo wants to get the creditors paid off and that he will subordinate his security. However, there is no evidence from Mr. D’Angelo that he is willing to subordinate his security. Mr. D’Angelo does, however, state that he brings this motion for the benefit of the creditors and to recoup for himself after the creditors are paid (para. 10, affidavit of Mr. D’Angelo, April 27, 2023).
- [18] The Respondents have not provided evidence as to the prejudice if the stay remains in place until the receivership is complete. As noted by Mississauga, once the receivership ends all parties can pursue litigation as they see fit. Delay on its own does not establish material prejudice: *Toronto Dominion Bank v. Ty (Canada Inc)*, 2003 CarswellOnt 1371 at para. 22(c), where the Court stated:

The stay should not be lifted where the only effect in the refusal to lift the stay is to delay the moving party. The court should also take into account the effect of the lifting of the stay on the administration of the estate and the prejudice to other stakeholders.

- [19] This is an investigatory, non-possessory receivership. These actions were commenced in 2020 and 2021. There may be delay, but based on the record before me, that is the impact on the moving party of not lifting the stay.
- [20] As noted above, the Order sought by the Respondents contains language that the Receiver and CWB require in order to not oppose this motion. Specifically:
2. THIS COURT ORDERS that the Stay be and is hereby lifted for the sole purpose of allowing the continuation of [the three actions] (collectively, the “215 Actions”), provided however that any judgment or order made in the 215 Actions against either of the Respondents herein shall remain subject to the Stay and the Receivership Order.
3. THIS COURT ORDERS that the Respondents herein shall not use or allow others to use any of their Property (as defined in the Receivership Order) to pay or secure payment of any Order made in the 215 Actions against one or both of the Respondents herein, including, but not limited to, any Order for costs or any Order for security for costs, without a further Order of the Court in the within proceeding. (emphasis added)
- [21] Peel and Mississauga submit that the requested order is prejudicial, as they will be unable to recoup costs or obtain an order for security for costs against the Respondents. The requested language does not preclude the Court making a costs order, or the Court ordering costs or security for costs against Mr. D’Angelo, if the Court determines that is appropriate.
- [22] In addition, Peel and Mississauga submit that the language in paragraph 2 is sufficiently broad that the Respondents would not have to comply with production orders or undertakings orders, among other things. However, the Receiver stated that the intent of paragraph 2 is not to shield the Respondents from procedural requirements, such as discoveries.
- [23] I am not satisfied that the Respondents have other equitable grounds to lift the stay. The Respondents want to continue the actions and are delayed from doing so because of the stay. As noted, delay on its own is not a reason to lift the stay.
- [24] This is a somewhat unique motion, as it is not a creditor seeking to lift a stay so that an action may proceed against the debtor. In this case, the debtors are asking the Court to lift a stay so that the debtors can continue certain actions. However, there was no suggestion that a different test applied than that set out in *Ma*. Based on the record before me, and for the reasons set out above, I am not satisfied that the Respondents have met the onus.
- [25] Motion dismissed.

