

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

CANADIAN WESTERN BANK

Applicant

- and -

2722959 ONTARIO LTD. and 2156775 ONTARIO LIMITED

Respondents

FACTUM OF THE CORPORATION OF THE CITY OF MISSISSAUGA
(Lift stay motion returnable July 24, 2023)

July 17, 2023

CITY OF MISSISSAUGA
Legal Services Division
300 City Centre Drive, 4th Floor
Mississauga, ON L5B 3C1

Colin Holland – LS#65539Q
Tel: 905-615-3200 ext. 8532
Email: colin.holland@mississauga.ca

Lawyers for The Corporation of the City
of Mississauga

TO: RECONSTRUCT LLP
Royal Bank Plaza, South Tower
200 Bay Street
Suite 2305, P.O. Box 120
Toronto, ON M5J 2J3

Caitlin Fell - LS#60091H
Tel: 416.613.8282
Email: cfell@reconllp.com

Joël Turgeon - LS#80984R
Tel: 416-613-8181
Email: jturgeon@reconllp.com

Lawyers for the Receiver, MNP LTD.

AND MNP LTD.
TO:

Sheldon Title
Email: Sheldon.title@mnp.ca

AND MILLER THOMPSON LLP
TO: Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON M5H 3S1

Gavin H. Finlayson - LS#4126D
Tel: 416-595-8619
Email: gfinlayson@millertomson.com

Kaleigh Sonshine - LS#70105T
Tel: 416-595-8166
Email: ksonshine@millertomson.com

Lawyers for the Applicant, Canadian Western Bank

AND
TO: **DEPARTMENT OF JUSTICE**
3400-130 King Street West
Tax Section, PO Box 36, Exchange Tower
Toronto, Ontario M5X 1K6

Diane H. A. Winters
Email: diane.winters@justice.gc.ca

Pat Confalone
Email: pat.confalone@justice.gc.ca

Tel: 416-973-3172
Fax: 416-973-0810

AND
TO: **DODSON LESMARK DEVELOPMENTS**
6660 Ordan Dr,
Mississauga, ON L5T 1J7

David Ball, Manager-Property
Email: david.ball@dodsonlesmark.com

AND
TO: **MOORE PROFESSIONAL CORPORATION**
57 Mill Street North Suite 307
Brampton, ON L6X 1S9

Evan Moore
Tel: 647-800-9770
Email: emoore@moorelawyers.ca

Lawyer for Velox Staffing Solutions Inc.

AND
TO: **LO GRECO STILMAN LLP**
Barristers and Solicitors
201-14845 Yonge Street
Aurora, ON L4G 6H8

Joseph F. Lo Greco - LS#355570
Tel: 416-488-4110
Fax: 416-488-0216
Email: jlogreco@lslaw.ca

Lawyers for 2722959 Ontario Ltd.

AND **KLUG LAW**
TO: Barristers and Solicitors
#30112 - 8000 Bathurst Street
Thornhill, ON L4J 0C6

Leo Klug - LS#12452U
Tel: 905-947-8771
Fax: 905-947-0529
Email: leoklug@kluglaw.ca

Lawyers for 2722959 Ontario Ltd.

AND **KEYSER MASON BALL, LLP**
TO: 3 Robert Speck Parkway, Suite 900
Mississauga, ON L4Z 2G5

Ted Laan - LS#18492Q
Tel: 905.276.0400
Email: tlaan@kmblaw.com

Lawyers for Eastgate Group Inc., and Rovinelli Holdings Ltd.

AND **INTAKE CENTRE FOR INSOLVENCY (Ontario Region)**
TO: Administrative Agreement Requests
Manager, Insolvency
Toronto Centre Tax Services Office,
Canada Revenue Agency

Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca

AND **AFFLECK GREENE MCMURTRY LLP**
TO: 365 Bay Street, Suite 200
Toronto, Canada M5H 2V1

David N. Vaillancourt
T/F: 416-360-8100
Email: dvaillancourt@agmlawyers.com

Lawyers for CJR Wholesale Grocers Ltd

AND **MINISTRY OF FINANCE**
TO: Legal Services Br.,
33 King Street West, 6th Floor
PO Box 627, Stn. A
Oshawa, ON L 1 H 8H5

Email: insolvency.unit@ontario.ca

AND **THE REGIONAL MUNICIPALITY OF PEEL**
TO: 10 Peel Centre Drive, 5th Floor, Suite A
Brampton, ON L6T 4B9

Jennifer Bruce - LS#61320L
Email: jennifer.bruce@peelregion.ca

Jayne Corcoran
Email: jayne.corcoran@peelregion.ca

Tel: 905-791-7800 ext. 4367
Fax: 905-791-6992

Lawyers for The Regional Municipality of Peel

AND **BOGHOSIAN + ALLEN LLP**
TO: 65 Queen Street West, Suite 1000
Toronto, ON M5H 2M5

David G. Boghosian - LS#28922P
Tel.: 416-367-5558
Email: dgb@boglaw.ca

Lawyers for The Regional Municipality of Peel, Nanndo
Iannicca, Elaine Gilliland, Steven Fantin, Bill Ford and
Khawer Rauf

TABLE OF CONTENTS

OVERVIEW	1
PART I – FACTS.....	2
PART II – ISSUES	7
PART III – LAW AND ARGUMENT	8
PART IV – ORDER REQUESTED	18

OVERVIEW

1. This is a motion for a partial lift of a stay of proceedings involving 2722959 Ontario Ltd. (“272 Ontario”) and 2156775 Ontario Limited (“215 Ontario,” and with 272 Ontario, the “D’Angelo Respondents”), with proposed conditions. The Corporation of the City of Mississauga (the “City”) and the Regional Municipality of Peel (“Peel”) oppose this motion.
2. The D’Angelo Respondents seek this lift of a stay of proceedings in, among other actions, Court File No. CV-21-00003036-0000 (“CV-3036”). The City and Peel are defendants in this action. The City is not a defendant in the other actions for which a stay lift is requested.
3. The D’Angelo Respondents have failed to provide any evidence of material prejudice if the stay is not lifted. Any potential success by 215 Ontario against the City in CV-3036 will not materially change its breach of lease or its significant debt. The D’Angelo Respondents fail to provide any reason why CV-3036 must proceed now, and why it must be resolved in advance of the dozens of litigation claims against them. This is fatal to their motion. In addition, the conditions proposed by the D’Angelo Respondents to lift the stay are remarkably prejudicial as against the City and Peel.
4. The relative balancing of prejudice in lifting the stay, on the terms dictated, overwhelmingly supports a decision to dismiss this motion.

PART I – FACTS

5. The City is a lower-tier municipality. Peel is an upper-tier municipality.

Affidavit of Louise Cooke, sworn April 11, 2023 (“LC Affidavit”), para 3, Responding Motion Record of the City.

6. Peel levies fees to parties to which it supplies certain services (e.g., water use). Peel is responsible to measure use, set fees, and to assess charges with respect to the provision of its services.

LC Affidavit, para 4, *supra*.

7. The City plays no part in assessing charges for water, waste water, storm water, or sewer services provided to Peel residents.

LC Affidavit, para 22, *supra*.

8. The City levies and collects taxes against real property to fund the services it provides its constituent population. The City is authorized by statute to add unpaid service fees from Peel to the tax roll of the real property receiving those services. These fees are deemed taxes.

LC Affidavit, para 5, *supra*.

9. CV-3036 relates to the overdue tax account of Rovinelli Construction Inc. (“Rovinelli”), owed to the City. Rovinelli is the owner of an industrial building known municipally as 4500 Eastgate Parkway, in Mississauga, Ontario.

LC Affidavit, para 6, *supra*.

10. 215 Ontario is a corporation and was at the material times the tenant of Rovinelli at this property.

LC Affidavit, para 7, *supra*.

11. Beginning in 2019, 215 Ontario, in the operation of its business as a drink manufacturer, accrued significant overdue water, wastewater, storm water, and sewer services fees from Peel for its operations at 4500 Eastgate Parkway. Those overdue fees were transferred to Rovinelli's tax account for this property, and have continued, in large part, to go unpaid.

LC Affidavit, para 8, *supra*.

12. 215 Ontario issued CV-3036 in protest of service fees charged by Peel. It also brought the action in protest of the interest and late payment fees and bailiff fees levied by the City against Rovinelli.

LC Affidavit, para 9, *supra*.

13. Rovinelli owed tax arrears for 4500 Eastgate Parkway in the sum of \$4,222,480.36 as of March 6, 2023.

LC Affidavit, para 10, *supra*.

14. Frank D'Angelo, the principal of 215 Ontario, has acknowledged that 215 Ontario and 272 Ontario are now defunct, non-operational companies. He also admits that 215 Ontario has amassed "significant expenses and debt."

Affidavit of Frank D'Angelo, sworn April 27, 2023, paras 6, 15, and 16, Supplementary Motion Record of Moving Parties.

15. 215 Ontario shuttered its business and was evicted from 4500 Eastgate Parkway in or around May or June 2022. It no longer operates or generates revenue.

LC Affidavit, para 11, *supra*.

Security for Costs Motion

16. The City and its bailiff investigated the debts and commitments of 215 Ontario. As of October 2022, the City and the bailiff had good reason to believe that 215 Ontario had debts and commitments that totalled nearly \$136 million, including overdue rent to Rovinelli, a Canada Revenue Agency (“CRA”) super-priority debt, claims for suppliers and employee wages, PPSA registrations, Peel service fees, and matters reported to the Credit Bureau.

LC Affidavit, para 12, *supra*.

Affidavit of Harry Greber, sworn October 28, 2022, para 38, Exhibit “A” to LC Affidavit (“HG Affidavit”).

17. The City scheduled a motion for security for costs returnable February 23, 2023. The Region of Peel scheduled an identical motion, returnable the same date.

LC Affidavit, para 12, *supra*.

18. The motions for security for costs were adjourned *sine die* due to the stay of proceedings ordered by Justice Osborne in the within application.

LC Affidavit, para 15, *supra*.

Receivership

19. The within receivership application relates to an unpaid secured loan advanced by Canadian Western Bank to 272 Ontario in the amount of \$625,000.00.

LC Affidavit, para 21, *supra*.

20. The court materials filed by the receiver, MNP Ltd., confirm two 215 Ontario debts flagged in the City's security for costs motion:

a) Rent and additional rental arrears owed to Rovinelli in the amount of \$4,971,496.72 (inclusive of tax roll additions at 4500 Eastgate Parkway) plus costs. 215 Ontario has not paid rent at 4500 Eastgate Parkway from April 2020 onwards; and

b) A CRA debt for HST remittals in the amount of \$7,642,938.31.

LC Affidavit, para 16-19, *supra*.

21. The receivership application materials also confirm that the principals 215 Ontario Inc. operate this corporation in conjunction with 272 Ontario. The two corporations operate together, interchangeably, and as one. The corporations represent themselves singularly as "D'Angelo Brands."

LC Affidavit, para 20, *supra*.

22. The application materials include an undated past-due aging report, and a payables list for major suppliers as of "January 31" for 272 Ontario. The past-due aging report identifies debts that total \$12,092,958.49. These debts include Region

of Peel service charges for 215 Ontario, Enersource electrical service charges for 4500 Eastgate Parkway, and rent overdue to Rovinelli (identified as Eastgate Group Inc.) for the rental of 4500 Eastgate Parkway.

LC Affidavit, para 22, *supra*.

Receiver's First Report

23. The Receiver, for its part, has confirmed that the CRA debt for HST remittances is \$7,878,260.57 as of December 1, 2022.

First Report of the Receiver, dated May 3, 2023, paras 39, Exhibit "A" to Affidavit of Jayme Corcoran Saunders, sworn May 11, 2023, Supplementary Motion Record of the Regional Municipality of Peel ("Receiver First Report").

24. The Receiver has also identified 16 Ministry of Labour ("MOL") Orders to Pay issued to 215 Ontario, with respect to wages, vacation pay, termination pay, and severance pay owing. These total \$273,906.53. These may also constitute deemed trust claims with super priority ranking.

Receiver First Report, paras 40-41, *supra*.

25. The Receiver also reviewed financial statements and documents provided by 215 Ontario, and determined that it has been operating with consistent yearly net losses between January 1, 2016, and February 4, 2021, with losses over \$14 million in 2017 and over \$16 million in 2020. In 2018, 215 Ontario began stretching payment of its accounts payable, which included defaulting on its HST remittances.

Receiver First Report, paras 26-27, *supra*.

26. The Receiver also confirmed that 215 Ontario's deficit as of February 4, 2021, was \$134,725,811. This included accounts payable and accruals of \$22,248,477 and \$120,789,038 due to shareholders.

Receiver First Report, para 28, *supra*.

27. The Receiver further confirmed that 215 Ontario's equipment at 4500 Eastgate Parkway was sold at auction by Sterling Bailiffs for a net sum of \$370,600.45, in accordance with the court order approving this receivership. Rovinelli's lawyer is holding these funds in trust pending further direction.

Receiver First Report, para 30, *supra*.

28. Finally, the Receiver's opinion is that there is unlikely any substantial value in 215 Ontario's accounts receivables.

Receiver First Report, para 32, *supra*.

PART II – ISSUES

29. The sole issue on this motion, from the City's perspective, is whether this Honourable Court should grant a lift of stay in CV-3036 on the terms proposed.

PART III – LAW AND ARGUMENT

30. The City states that this Honourable Court should not grant the lifting of the stay. The relative prejudice, and the totality of the circumstances, confirm that the stay of proceedings should remain in place. This is true for three reasons:
- a) 215 Ontario's action against the City, CV-3036, has no merit;
 - b) Any potential success by 215 Ontario against the City in CV-3036 will not materially change its breach of lease or significant debts—i.e., 215 Ontario suffers no prejudice by allowing the stay to remain in place; and
 - c) The City and Peel will suffer prejudice if the stay is lifted on the terms proposed.

A Lifting of Stay is Not Routine. The Moving Party Must Show Real Prejudice.

31. In a receivership, and when presented with a motion to lift a stay of proceedings, the Court must consider the totality of the circumstances and the relative prejudice to both sides. The interest of all affected parties should be balanced. The request to lift a stay must be placed in its context: the scheme of a receivership is to allow for the orderly disposition and administration of the assets of the company in receivership.

[Hunert-Faga v Faga, 2013 ONSC 5161 at para 15.](#)

[Romspen Investment Corp v Courtice Auto Wreckers Ltd, 2017 ONCA 301 at paras 30, 70.](#)

[Scanwood Canada Ltd, Re, 2011 NSSC 189 at para 27.](#)

32. It is the moving party's onus to prove compelling reasons to lift the stay. The moving party must provide objective, quantitative evidence that it will suffer material prejudice if the stay is not lifted. Delay alone is not material prejudice.

[Toronto Dominion Bank v Ty \(Canada Inc\), 2003 CarswellOnt 1371 at para 22 \(Sup Ct J\).](#)

33. A lifting of a stay of proceedings is not a routine matter. The onus is on the applicant to establish sound reasons to lift the stay. If the proposed action has little prospect of success, it would be difficult to find sound reasons to lift the stay.

[Ma. Re, 2001 CarswellOnt 1019 \(CA\), para 3.](#)

D'Angelo Brands's action against the City has no merit

34. The D'Angelo Respondents have adduced no evidence of wrongdoing against the City in this motion. There is no evidence of extraordinary facts or wrongdoing that support lifting the stay on the terms proposed.
35. Even if this Honourable Court were inclined to review the merits of D'Angelo Brands's action against the City in CV-3036, a cursory review of the applicable evidence and law demonstrate that there are no merits.
36. D'Angelo Brands claims the following against the City in its Statement of Claim in CV-3036:
- a) A request for an order removing any tax lien filed against 4500 Eastgate Parkway, and requiring the City accept a charge against all equipment located at 4500 Eastgate Parkway in the amount of \$3 million;
 - b) An accounting and disclosure of charges;

- c) A reduction of all interest fees related to overdue Peel charges; and
- d) A reduction of all bailiff fees related to overdue Peel charges.

37. The City responds as follows, respectively:

- a) The *Municipal Act, 2001*, includes a complete statutory code of procedure for the collection of municipal tax arrears. With all due respect, this Honourable Court does not have jurisdiction to remove tax arrears certificates, to cancel arrears, or to substitute anything for security over land. This court has confirmed its inability to interfere in municipal tax collection procedures in *Hamilton Wentworth Credit Union Ltd (Liquidator of) v Courtcliffe Parks Ltd*, when it reviewed the *Municipal Tax Sales Act*—now Part XI of the *Municipal Act, 2001*.

Hamilton Wentworth Credit Union Ltd (Liquidator of) v Courtcliffe Parks Ltd, 1995 CarswellOnt 374 (Ct J (Gen Div), Com List), paras 37, 39, 40, City Abbreviated Book of Authorities, Tab 1.

In any event, the equipment was sold at auction pursuant to the receivership order, generating proceeds of \$370,600.45. This is approximately 9% of the current tax debt. There are also a series of security agreements registered over the equipment, which may now attach to the sale proceeds. Rovinelli may also have priority over the proceeds as it distrained the equipment. In short, 215 Ontario's offer of a charge is meaningless.

PPSA Report, September 28, 2022, Exhibit J to HG Affidavit, Exhibit A to LC Affidavit, pp 111-141 of Responding Motion Record of the City.

- b) The City provided a detailed accounting of all charges added to the tax roll and all bailiff fees levied in its Statement of Defence in CV-21-00003036-0000.

Statement of Defence, delivered on or about September 23, 2021, Exhibit B to HG Affidavit, Exhibit A to LC Affidavit, pp 39-56 of Responding Motion Record of the City.

- c) All late payment and interest fees are levied pursuant to the *Municipal Act, 2001*. D'Angelo Brands complains of interest charges at 1.25% per month—this rate is set pursuant to s. 345 of the *Municipal Act, 2001*.

Municipal Act, 2001, SO 2001, c 25, s 345, Schedule “B”.

- d) Similarly, the *Municipal Act, 2001* empowers the City to use a collection agency to recover tax debt. The statute also empowers the collection agency to recover its costs of collecting the debt.

Municipal Act, 2001, SO 2001, c 25, s 304, Schedule “B”.

215 Ontario Will Suffer No Prejudice if the Stay of Proceedings Remain in Place

38. 215 Ontario has tendered no evidence of prejudice if the stay is not lifted. It cannot, because it will suffer no prejudice if the stay of proceedings remains in place. Lifting the stay, and allowing 215 Ontario to advance its litigation against the City, would not affect its significant debt load (which is acknowledged), cure its breach of lease, or allow it to resume operations.

39. 215 Ontario is facing debt collection from multiple creditors. The Receiver has confirmed accounts payable and accruals of \$22,247,477, and \$120,789,038 due to shareholders. These debts include two super priority debts that combined exceed \$8.1 million; approximately two dozen claims from various suppliers, staffing companies, and other creditors; bank debt; debts reported to the Credit Bureau; a debt owed to the provider of hydro at 4500 Eastgate Parkway; and a debt for overdue rent. 215 Ontario's overall deficit was \$134,725,811 as of February 4, 2021.
40. 272 Ontario—which has intermingled debts with 215 Ontario—has also acknowledged debts that total approximately \$12 million.
41. The City is not a creditor of 215 Ontario. The municipal tax debt is owed by Rovinelli. From 215 Ontario's perspective, the municipal tax debt is contingent—a debt owed by Rovinelli that Rovinelli may in turn assert against 215 Ontario.
42. 215 Ontario's debt to Rovinelli for rent at 4500 Eastgate Parkway was valued at \$4,971,496.72 as of September 2, 2022. This sum includes approximately \$2.8 million in tax roll additions. This leaves a balance of approximately \$2.1 million just for unpaid rent from April 2020 to the end of the tenancy.
43. For the sake of argument, if 215 Ontario succeeded in cancelling all tax debt owed by Rovinelli, 215 Ontario would only partially decrease—but not eliminate—its debt to Rovinelli. 215 Ontario would still be in breach of lease.

44. There is no result possible to 215 Ontario in advancing CV-3036 against the City that will materially change its failure to pay rent to Rovinelli or its default of lease obligations. There is no result possible that will allow 215 Ontario to resume business operations at 4500 Eastgate Parkway.
45. There is no reason why Rovinelli's debt to the City or 215 Ontario's debt to Rovinelli need to be resolved before others. Allowing this would actually afford a priority to Rovinelli that no other 215 Ontario creditor has—and would run contrary to the scheme of the receivership.
46. 215 Ontario has not claimed a damages award against the City. Even if 215 Ontario could collect damages against the City, the super-priority debts to the CRA and MOL would eclipse any amounts that could be recovered by 215 Ontario. Any amounts that could be recovered would also presumably be collected for the benefit of creditors with security over 215 Ontario's accounts.
47. 215 Ontario would be unable to use any recovered amounts to materially affect its operations or meaningfully address its \$134 million deficit. 215 Ontario suffers no prejudice by allowing the stay to remain in place, and by allowing the receivership process to run its course.
48. Receiverships are designed to allow for an orderly disposition and administration of assets. The secured receiver has no direct interest in the tax debt, nor would it benefit from a decrease in Rovinelli's tax debt. This Receivership does not benefit from the lift of stay.

49. The D'Angelo Respondents state that the City intends to use the Receivership to bring an end to CV-3036. This is not true, and there is no evidence to support this allegation. In normal circumstances, the receivership will proceed to its natural conclusion, at which time the stay of actions will be lifted. There is no basis to suggest the within receivership will not play out in this fashion.
50. Similarly, the D'Angelo Respondents state they will "suffer significant damages" if they are not allowed to lift the stay. Again, there is no basis for this statement. 215 Ontario and 272 Ontario are both defunct, non-operational corporations. There is no business interest to damage.

The Proposed Lift of Stay is Prejudicial as Against The City and Peel

Second Paragraph

51. The second paragraph of the proposed order lifts the stay, provided 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." In short, no judgment or order against the D'Angelo Respondents has any effect so long as the stay remains in effect.
52. The ambit of the second paragraph would include any order to dismiss, produce a complete affidavit of documents, attend discoveries, observe deadlines, answer questions at an examination responsively, answer undertakings, or pay costs.

53. Phrased differently, the second paragraph provides 215 Ontario *carte blanche* throughout the stay period to run its litigation in dereliction of the *Rules of Civil Procedure* and court oversight, without consequence.
54. Conversely, the City and Peel would remain bound by all obligations set out in the *Rules of Civil Procedure*, and with all terms of court orders imposed against them.
55. The terms of the proposed second paragraph are, with all due respect, entirely perverse to an orderly and fair adjudication of the actions on their merits.

Third Paragraph

56. The third paragraph allows 215 Ontario to make payment pursuant to a cost order, or to post security for costs, only if the Court in the receivership application approves it.
57. The first and glaring deficiency with this paragraph is that it is either redundant or it contradicts the terms of the second paragraph. The second proposed paragraph provides immunity to 215 Ontario from any court order or judgment, inclusive of an order to pay costs. Either 215 Ontario does not have to pay costs awards while the stay is in effect (if the second paragraph is observed), or not all orders are stayed against 215 Ontario (if the third paragraph is observed).
58. The other deficiency with the third paragraph—assuming the second paragraph was struck—is that it imposes a prejudicial burden on the City and Peel. In order

for the City or Peel to collect a costs award or to have security posted for costs, it would have to prove entitlement twice—once in the action(s) against them and then again in the receivership application. This would require two motion records, two court attendances, and the possibility of two facta and multiple cross examinations. This places a prejudicial and onerous burden on the City and Peel—one that 215 Ontario would not face if it sought a costs order against the City or Peel.

59. The proposed order also imposes a significant burden on the courts, and the real potential for wasting judicial resources. Any request for a cost award or security for costs would have to be vetted by two judges. It is entirely possible the first judge's decision, made after careful deliberation, would be rendered moot by a second judge.
60. The spectre of duplicative proceedings is more worrisome in the context of a security for costs motion. To avoid posting security for costs, an insolvent corporate plaintiff must prove that "justice demands that the action proceed without it posting security for costs." If the third paragraph was in effect, the application court would then review and decide whether to enact a successful order upon effectively identical criteria. 215 Ontario would have "two kicks at the can"—with the real possibility of duplicative hearings and inconsistent decisions.

[1615574 Ontario Inc et al v Hodgson et al, 2021 ONSC 8409 at para 17.](#)

61. In general terms, the third paragraph also undermines the importance of costs orders. It is trite that costs are an important tool in the hands of the court to

influence the way that parties conduct themselves and to prevent abuse of the court's process. More specifically, costs are ordered to deter frivolous actions and defences, to discourage inappropriate behaviour, and to discourage unnecessary steps that unduly prolong the litigation.

[1465778 Ontario Inc v 1122077 Ontario Ltd, 2006 CarswellOnt 6582 at para 26.](#)

[394 Lakeshore Oakville Holdings Inc v Misek, 2010 ONSC 7238 at para 10.](#)

62. Troubling is the possibility that a court in CV-3036 will take steps to sanction 215 Ontario taking frivolous positions, committing inappropriate behavior, or in unduly delaying litigation, and that a judge in the receivership application might absolve 215 Ontario to protect the orderly disposition of the receivership.
63. The City and Peel would be subject to none of the same protections afforded to 215 Ontario, as proposed by the draft order.

Conclusion

64. The relative balancing of prejudice in lifting the stay, on the terms dictated, overwhelmingly supports a decision to dismiss this motion. The D'Angelo Respondents' motion is fatally flawed, as they have provided no evidence of material prejudice if the stay is not lifted. Delay in pursuing a claim is insufficient as per *Toronto Dominion Bank v Ty (Canada Inc)*.

65. Typically lift stay motions are brought by creditors against parties undergoing a receivership. In this scenario, it is the company subject to the receivership that is attempting to pursue its choice of litigation, while enjoying the full benefit of the stay of its creditors' actions. The D'Angelo Respondents are attempting to get a "head start" rather than allowing the receivership to run its natural course. This is improper, and grounds to dismiss this motion.

PART IV – ORDER REQUESTED

66. The City respectfully requests an Order dismissing the D'Angelo Respondents' motion with costs of this motion payable to the City.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of July, 2023.



CITY OF MISSISSAUGA

Legal Services Division
300 City Centre Drive, 4th Floor
Mississauga, ON L5B 3C1

Colin Holland – LS#65539Q
Tel: 905-615-3200 ext. 8532
Email: colin.holland@mississauga.ca

Lawyers for the Corporation of the City of
Mississauga

SCHEDULE "A" – LIST OF AUTHORITIES REFERRED TO

1. *Hauert-Faga v Faga*, 2013 ONSC 5161
2. *Romspen Investment Corp v Courtice Auto Wreckers Ltd*, 2017 ONCA 301
3. *Scanwood Canada Ltd, Re*, 2011 NSSC 189
4. *Toronto Dominion Bank v Ty (Canada Inc)*, 2003 CarswellOnt 1371 (Sup Ct J)
5. *Ma, Re*, 2001 CarswellOnt 1019 (CA)
6. *Hamilton Wentworth Credit Union Ltd (Liquidator of) v Courtcliffe Parks Ltd*, 1995 CarswellOnt 374 (Ct J (Gen Div), Com List))
7. *1615574 Ontario Inc et al v Hodgson et al*, 2021 ONSC 8409
8. *1465778 Ontario Inc v 1122077 Ontario Ltd*, 2006 CarswellOnt 6582
9. *394 Lakeshore Oakville Holdings Inc v Misek*, 2010 ONSC 7238

SCHEDULE "B" – RELEVANT STATUTORY EXCERPTS

Municipal Act, 2001, SO 2001, c 25

Use of collection agency

304 If a municipality uses a registered collection agency in good standing under the *Collection and Debt Settlement Services Act* to recover a debt, including taxes, payable to the municipality, the collection agency may also recover its reasonable costs of collecting the debt but those costs shall not exceed an amount approved by the municipality.

Late payment charges

345 (1) A local municipality may, in accordance with this section, pass by-laws to impose late payment charges for the non-payment of taxes or any instalment by the due date. 2001, c. 25, s. 345 (1).

Penalty

(2) A percentage charge, not to exceed 1 1/4 per cent of the amount of taxes due and unpaid, may be imposed as a penalty for the non-payment of taxes on the first day of default or such later date as the by-law specifies. 2001, c. 25, s. 345 (2).

Interest

(3) Interest charges, not to exceed 1 1/4 per cent each month of the amount of taxes due and unpaid, may be imposed for the non-payment of taxes in the manner specified in the by-law but interest may not start to accrue before the first day of default. 2001, c. 25, s. 345 (3).

Deemed taxes

(4) Charges imposed under subsections (2) and (3) are deemed to be part of the taxes on which the charges have been imposed. 2001, c. 25, s. 345 (4).

CANADIAN WESTERN BANK v. 2722959 ONTARIO LTD. et al.

Court File No. CV-21-00684100-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

Proceeding commenced at **Toronto**

**FACTUM OF THE CORPORATION OF THE
CITY OF MISSISSAUGA**

(Lift stay motion returnable July 24, 2023)

CITY OF MISSISSAUGA

Legal Services Division
300 City Centre Drive, 4th Floor
Mississauga, ON L5B 3C1

Colin Holland – LS#65539Q

Tel: 905-615-3200 ext. 8532

Email: colin.holland@mississauga.ca

Lawyers for The Corporation of the City of
Mississauga