

Court File No. CV-21-00670723-00CL
ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

B E T W E E N :

PS HOLDINGS 1 LLC, PS HOLDINGS 2 LLC and PS HOLDINGS 3 LLC
Applicants

- and -

2738283 ONTARIO INC., 2738284 ONTARIO INC. and 2738285 ONTARIO
INC.

Respondents

IN THE MATTER OF THE RECEIVERSHIP OF 2738283 ONTARIO INC.,
2738284 ONTARIO INC. and 2738285 ONTARIO INC.

AND IN THE MATTER OF AN APPLICATION UNDER section 243(1) of the
Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 as amended, and section 101
of the *Courts of Justice Act*, RSO 1990, c C.43, as amended

Endorsement of Penny J. – November 10, 2021

This is an application for the appointment of a receiver. PS Holdings is the lender and has first charge security over certain property in development owned by the respondents. As of October 18, 2021, the amount of the indebtedness totalled about \$14,761,000 exclusive of enforcement costs. There are at least five other subsequent mortgages against property.

The debtors have been in default since July 30, 2020 when certain repayment obligations were not met. That default continues today.

In further breach of their covenants, the debtors have placed additional unauthorized charges on the property.

All of the technical requirements for the appointment of a receiver have been met. This is not in dispute. The debtors admit they are in default and that they do not have the capacity to pay their obligations. They further admit that the terms of their loan agreements permit the full range of remedies, including the appointment receiver on default.

Mr. Larsen's last minute affidavit documents many unsuccessful efforts to refinance. He decided it was necessary to sell the property. His affidavit also

documents efforts in this regard. Although he has entertained a variety of potential purchasers and conditional offers, those offers “usually fell by the wayside after the purchaser did its due diligence”.

The day before the hearing of this application, Mr. Larsen provided a copy of an agreement of purchase and sale with the closing of January 22, 2022. *During* the appointment before the court, counsel for the debtors, Mr. Bogle, delivered to applicant’s counsel the affidavit from Mr. Larsen, which was subsequently provided to the court. The hearing was adjourned for several hours to permit the applicants (and the court) to review this material. Mr. Larsen’s affidavit explains the 11th hour agreement to sell. While he admits that he knows next to nothing about the purchaser, he points out that this offer is not conditional on due diligence. The offer would, if it closed, provide more than adequate cash to pay the debtors’ creditors. On this basis, the debtors seek an adjournment of the receivership application until after January 22, 2022.

This request is opposed by the applicants.

The request for an adjournment is denied. The application for the appointment of a receiver is granted.

While I do not doubt Mr. Larsen’s *bona fide* belief that this deal will be different, I am not satisfied on the evidence that his belief is warranted. The applicants have been more than patient. They have afforded the debtors every opportunity to refinance or find a buyer for well over a year. The debtors admit they have run of money. They are desperate. The requested adjournment would involve waiting another three months. The 11th hour agreement to purchase is with a company “to be incorporated”. It is a fair inference that that company will have no other assets. Accordingly, it must be assumed that the buyer will be in no position to make good on its obligations in the event it does not close. The deposit represents only about 1% of the purchase price. Nothing is known about the buyer’s ability to finance the proposed sale, other than it required, as part of the deal, a vendor takeback mortgage. Further, there is a lengthy title search provision (until January 13, 2022) to enable the purchaser to satisfy itself, among other things, that the “present use [of the property] may be lawfully continued”. This is a property with ongoing rezoning applications outstanding.

In the circumstances, there is a significant risk that the proposed agreement of purchase and sale will not close, leaving the applicants to pursue their remedies

with even greater arrears and with even more complications associated with realizing on their security. For these reasons, the adjournment is denied.

The technical requirements for the appointment are met. It is just and convenient in the circumstances to appoint a receiver. The application is granted. The applicants shall provide me with a clean PDF copy of the order(s) sought.

A handwritten signature in blue ink, appearing to read "Ray 3.", followed by a period.