



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00719135-00CL

DATE: May 16, 2024

NO. ON LIST: 4

TITLE OF PROCEEDING: DUCA FINANCIAL SERVICES CREDIT UNION LTD. v. 9630 ISLINGTON INC.

BEFORE: JUSTICE CAVANAGH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Lisa S. Corne	Lawyer for the Applicant, DUCA Financial Services Credit Union Ltd.	lcorne@dickinsonwright.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Gerry Borean	Lawyer for Claimant, SRN Lien	gborean@parenteborean.com

ENDORSEMENT OF JUSTICE CAVANAGH:

- [1] DUCA Financial Services Credit Union Ltd. (“DUCA”) brings this application for an order appointing MNP Ltd. as receiver and manager of all the assets, undertakings and properties of the Respondent 9630 Islington Inc. (the “Debtor”).
- [2] The Debtor, although duly served with the application materials and given notice of the date and time of this hearing, did not appear.
- [3] DUCA is a Canadian credit union which advanced credit facilities to the Debtor to assist in the development of a five-story condominium project with 89 residential units (the

“Project”) at the property municipally known as 9630 Islington Ave., Woodbridge, Ontario (the “Property”).

- [4] The Debtor is a corporation incorporated pursuant to the laws of Ontario. The Debtor is the registered owner of the Property.
- [5] DUCA advanced a secured demand loan in the aggregate principal amount of \$6,328,517 to the Debtor to finance the construction of the Project on the terms and conditions set out in a commitment letter dated June 30, 2022, as amended by an Amendment to Mortgage Loan Commitment dated February 9, 2023 and an Amendment to Mortgage Commitment dated October 26, 2023 (collectively, the “Commitment”).
- [6] As security for the loan, DUCA obtained the following security:
- a. a charge/mortgage of land in the principal amount of \$7 million registered on July 28, 2022 on title to the Property;
 - b. an Assignment of Rents registered on July 28, 2022 on title to the Property; and
 - c. a General Security Agreement dated July 15, 2022 granted by the Debtor.
- [7] The General Security Agreement and Mortgage each provide that in the event of a default by the Debtor, DUCA is entitled to appoint a receiver.
- [8] On October 19, 2023, SRN Architects Inc. registered a construction lien in the amount of \$297,824.90 on title to the Property, resulting in a breach by the Debtor of its obligations to DUCA under the terms of the loan commitment. On June 12, 2024, DUCA made formal demand for payment by the Debtor of its indebtedness and issued a Notice of Intention to Enforce its security pursuant to section 244 of the *Bankruptcy and Insolvency Act*.
- [9] Following the Debtor’s request for additional time to attempt to sell or refinance the Property, DUCA agreed to forbear from enforcing its security against the Debtor and the Property on the terms about in a Forbearance Agreement dated March 27, 2024.
- [10] An “Event of Default” within the meaning of this term in the Forbearance Agreement has occurred. Pursuant to the Forbearance Agreement (Articles 7 and 8), upon the occurrence of an Event of Default, the debtor consents to the appointment of a receiver by the Court.
- [11] As of April 9, 2024, \$6,532,057.54 remains due and owing by the Debtor to DUCA, not including legal fees or forbearance fees.
- [12] Pursuant to section 243(1) of the *BIA* and section 101 of the *Courts of Justice Act*, the Court may appoint a receiver where it is “just or convenient” to do so.

[13] I am satisfied that it is just and convenient for a receiver to be appointed over the assets of the Debtor for the following reasons:

- a. the Debtor is in default under the loan commitment, security, and Forbearance Agreement;
- b. notwithstanding the issuance of demand for payment, and the expiry of the statutory notice period under section 244 of the *BIA*, the Debtor has failed to repay the loan;
- c. DUCA accommodated the Debtor's request for additional time to refinance or sell the Property and, nevertheless, these efforts appear to have failed;
- d. the mortgage, GSA and forbearance agreement each contain contractual entitlements to appoint a receiver upon default. The Property is subject to a subordinate mortgage in favour of Intact Insurance Company;
- e. there is a construction lien registered on title to the Property.

[14] I am satisfied that a court-appointed receiver will ensure that the interests of all stakeholders are considered and facilitate a fair and transparent marketing and sale process for disposition of the Property, and distribution of the proceeds in accordance with legal priorities.

[15] Order to issue in form of Order signed by me today.