

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

-and-

2668438 ONTARIO INC.

Respondent

FACTUM OF THE APPLICANT

(Application Returnable July 21, 2023)

July 14, 2023

HARRISON PENSA LLP

Barristers & Solicitors

130 Dufferin Avenue, Suite 1101

London, ON N6A 5R2

Timothy C. Hogan (LSO #36553S)

Robert Danter (LSO #69806O)

Tel: (519) 679-9660

Fax: (519) 667-3362

Email: thogan@harrisonpensa.com

rdanter@harrisonpensa.com

Lawyers for the Applicant,

The Toronto-Dominion Bank

TO: Service List

Court File No. CV-23-00701809-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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PART I – THE MOTION

The Applicant, The Toronto-Dominion Bank (the “**Bank**”) seeks the following Order, substantially in the form attached as Schedule “A” (the “**Appointment Order**”) to the Notice of Application:

- a) Appointing MNP Ltd. as Receiver (“**MNP**” or the “**Receiver**”), without security, of all of the assets, undertakings and properties of the Respondent, 2668438 Ontario Inc. (the “**Debtor**”) acquired for, or used in relation to a business or businesses carried on by the Debtor;
- b) That the time for service, filing and confirming of the Notice of Application and the Application Record be abridged and validated so that this application is properly returnable today and dispensing with further service thereof; and,
- c) Such further and other relief as to this Honourable Court may seem just.

The Position of the Bank

1. It is the Bank’s position that the present circumstances are an appropriate case for the appointment of the Receiver, including the following (all capitalized terms as defined herein):

- a) The Bank is a secured creditor of the Debtor pursuant to the GSA and has an interest in assets of the Debtor under the Lease;
- b) The Debtor defaulted under the terms of the Financing (which includes an operating facility payable on demand), as a result of, *inter alia*, the chronic and unresolved borrowing excesses, whereby the Debtor exceeded or continued to exceed the authorized credit limit of the Operating Loan and the failure to provide payments as same became due under the Financing;
- c) The Debtor has failed to cure the Defaults, and the Demands issued by the Bank have expired;
- d) In the face of the expired Demands, the Debtor is insolvent. No further terms of credit nor forbearance is available to the Debtor from the Bank. It is necessary for the protection of the Debtor's estate that a Receiver be appointed;
- e) The Bank's Security provides the Bank with the right to appoint a Receiver over all property of the Debtor, as a result of the Defaults;
- f) The Debtor is no longer operating from its head office premises, which is the last known address available to the Bank and formal communication is restricted to e-mail; and,
- g) A Receiver will also be required to preserve the property of the Debtor and complete the orderly sale of same, and to ensure that the proceeds of any such sale are applied to the Debtor's obligations. In relation to any such sale, the Appointment of Receiver is also necessary to deal with the subsequent claims to the proceeds.

PART II – FACTS/OVERVIEW

2. The Debtor is a company incorporated pursuant to the laws of the Province of Ontario, with its registered office located in the City of Brampton, Ontario, carrying on business as “Frontec Metal Fab”.

Reference: Affidavit of Kathryn Furfaro, sworn June 9, 2023, at para 2 and Exhibit “A” thereto (the “Furfaro Affidavit”).

3. Michael Gonsalves (“**Gonsalves**”) is the sole principal of the Debtor and a guarantor of the Obligations in relation to the Financing, as defined herein, to the Debtor.

Reference: Furfaro Affidavit at para 3.

4. The Debtor is insolvent, and is currently in Default (a “**Default**”, or the “**Defaults**”) of its obligations to the Bank as a result of the following:

- a) chronic and unresolved borrowing excesses, whereby the Debtor exceeded or continued to exceed the authorized credit limit of the Operating Loan (as defined below);
- b) unusual account transactions with attempts to wire funds on deposited and not cleared cheques; and,
- c) the Debtor’s failure to provide payments as same became due under the Lease Agreement.

Reference: Furfaro Affidavit at para 4.

The Obligations to the Bank and Security Held

5. As of May 19, 2023, the Debtor was indebted to the Bank in the amount of \$1,783,676.11,

plus accruing interest and the Bank's continuing costs of enforcement including legal and professional costs (the "**Obligations**"), in respect of certain financing advanced to the Debtor pursuant to the terms of a Demand Operating Facility Agreement dated October 26, 2020 (the "**Letter Agreement**") and a Master Equipment Lease No. T000005973 dated April 6, 2021 (the "**Lease Agreement**").

Reference: Furfaro Affidavit, at para 6 and Exhibits "B" and "C" thereto.

6. The credit facilities established by the Letter Agreement are:

- a) Operating Loan: payable on demand, with a maximum credit limit of \$300,000.00, upon which the sum of \$556,773.72 was owing as at May 19, 2023 (the "**Operating Loan**").

Reference: Furfaro Affidavit, at para 7.

7. The Lease Agreement included the following schedules:

- a) Leasing Schedule No. 21004920 dated April 6, 2021;
- b) Leasing Schedule No. 21006300 dated April 23, 2021;
- c) Leasing Schedule No. 22111510 dated August 8, 2022; and,
- d) Leasing Schedule No. 23000320 dated January 9, 2023.

(6 (a) and 7 (a) - (d) collectively, the "**Financing**").

Reference: Furfaro Affidavit, at para 8.

8. The Operating Loan is payable on demand.

Reference: Furfaro Affidavit, at para 9.

9. As consideration for the Financing, the Debtor requested and did receive a Guarantee dated

October 29, 2020, from Gonsalves, unlimited in sum (the “**Guarantee**”).

Reference: Furfaro Affidavit, at para 10.

10. The Financing is secured by, *inter alia*, the following:

a) General Security Agreement from the Debtor dated October 29, 2020 (the “**GSA**”);
and,

b) Specific security pursuant to the Lease Agreement, including with respect to:

- i. New 2020 Acme Model LP6025D Fiber Laser Cutting Machine c/w accessories and all attachments, Serial Number 65086;
- ii. New 2020 Bobcat M0369-S76 T4 Skid Steer c/w all attachments and accessories, Serial Number B4CD11935;
- iii. New 2022 Revolution Machine Tools 20 HP, 150 Ton Hydraulic Precision Press Brake and all attachments and accessories, Serial Number 19122430111;
- iv. New 2022 Masteel MIWH-180, Double Cylinder Hydraulic Ironworker c/w all attachments and accessories, Serial Number 61007436; and,
- v. New 2022 Inanlar Prestige, Hydraulic Press Brake CNC HAP 640 30/25 c/w attachments and accessories

(collectively, the “**Equipment**”)

(collectively, the “**Security**”).

Reference: Furfaro Affidavit, at para 11 and Exhibits “D” thereto.

The Bank’s Security Interest in The Personal Property of the Debtor

11. The GSA secures all personal property of the Debtor. Pursuant to the Lease Agreement, the Bank holds a purchase-money security interest in the Equipment. The Bank has registered

Financing Statements as against the Debtor pursuant to the provisions of the *Personal Property Security Act* (Ontario) to perfect its security interest in the personal property of the Debtor secured under the GSA and the Lease Agreement.

Reference: Furfaro Affidavit, at paras 12-15, and Exhibit "E" thereto.

Defaults and Demands

12. The Debtor is insolvent, and has defaulted under the Financing, as set out above, which defaults continue.

Reference: Furfaro Affidavit, at para 17.

13. The Bank became concerned as to the operations of the Debtor's bank accounts as a result of:

- a) On March 30, 2023, a chargeback of \$216,000 as a result of a cheque deposited into the account returned non-sufficient funds upon which the Debtor drew cheques; and,
- b) On March 31, 2023, a chargeback of \$119,000 as a result of a cheque deposited into the account returned non-sufficient funds upon which the Debtor drew cheques.

Reference: Furfaro Affidavit, at para 18.

14. A review of the cheques deposited to the Debtor's account that led to the chargebacks noted above caused the Bank concern as they appeared to be signed with a signature similar to the signatory on the Debtor's account at the Bank.

Reference: Furfaro Affidavit, at para 19.

15. The chargebacks noted above led to an overdraft position of \$245,000.

Reference: Furfaro Affidavit, at para 20.

16. The Bank did provide the Debtor time to repay its obligations, first requesting payment on April 13, 2023, with payment by May 11, 2023, and subsequently on April 14, 2023 and May 10, 2023.

Reference: Furfaro Affidavit, at para 21 to 23, and Exhibits “F” to “H” thereto.

17. The Debtor failed and/or refused to pay the Obligations following receipt of the Bank’s requests.

Reference: Furfaro Affidavit at para 24.

18. On May 10, 2023, the Bank retained Adam Moskowitz (“**Moskowitz**”) of Platinum Asset Services to inspect the Equipment. Moskowitz spoke with a representative of the Debtor that advised that Gonsalves had a stroke and was out of the country. Further, since COVID-19, the business operated by the Debtor was mobile, and the Equipment was moved from job site to job site, which was currently in Thunder Bay, Ontario.

Reference: Furfaro Affidavit at para 25.

19. On May 16, 2023, the Bank emailed the Debtor, which summarized the conversation between Moskowitz and the Debtor’s representative and advised that in the absence of a fulsome response to the Bank and access to the Debtor’s equipment being provided to the Bank’s agent, the Bank will proceed to take steps to protect its interest, including issuing demands for payment and the requisite notices.

Reference: Furfaro Affidavit at para 26 and Exhibit “I” thereto.

20. As a result of the Defaults, the Bank delivered to the Debtor a demand for payment and a Notice of Intention to Enforce Security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”), each dated May 19, 2023, with respect to the indebtedness then owing (the “**Demand**”). All statutory notice periods in relation to the Demand have expired.

Reference: Furfaro Affidavit, at para 27, and Exhibit “J” thereto.

21. As the Guarantee was payable on demand, on May 19, 2023, the Bank also issued a demand for payment to Gonsalves (the “**Guarantor Demand**”).

Reference: Furfaro Affidavit, at para 28, and Exhibit “K” thereto.

22. On May 22, 2023, counsel for the Bank received an email from Peter Nalli (“**Nalli**”), on behalf of Gonsalves, advising, among other things, to no longer try to contract Gonsalves unless a Statement of Claim is being served and that Gonsalves is in recovery.

Reference: Furfaro Affidavit, at para 29 and Exhibit “L” thereto.

23. On May 23, 2023, counsel for the Bank emailed Nalli, advising that the Bank has the clear right to inspect the Equipment, and the Debtor’s refusal to cooperate was a substantial concern to the Bank. Further, the Bank is relying on the Demand and Guarantor Demand (collectively, the “**Demands**”), and is reserving all rights. To which the response was “Please do not contact me again. See you in court”.

Reference: Furfaro Affidavit, at para 30 and Exhibit “M” thereto.

24. On May 26, 2023, Matthew Lem of MNP attended 287 Deerhurst Dr., Unit A, Brampton, Ontario, the reported address of the Debtor, and was advised by the owner of the premises

that the Debtor had vacated the premises in November 2022, and did not pay rent for 3 months, totalling about \$50,000.00.

Reference: Furfaro Affidavit, at para 31.

25. The Debtor and Gonsalves have failed and/or refused to cooperate with the Bank on an inspection of the Equipment or provide payment for the amount of their Obligations following the receipt of the Demands.

Reference: Furfaro Affidavit, at para 32.

26. The Bank received a letter from Economical Insurance ("**Economical**") dated May 30, 2023, addressed to the Debtor, which notified the Debtor that Economical was cancelling its property insurance policy for the non-payment of premium. The insurance cancellation was effective as of June 16, 2023, resulting in various leased equipment no longer being insured, including equipment subject to the Bank's Lease Agreement and Security.

Reference: Supplementary Affidavit of Kathryn Furfaro, sworn July 14, 2023, at paras 3 and 4, and Exhibit "A" thereto (the "Supplementary Furfaro Affidavit").

27. The Bank is unaware of the location of the Debtor's personal property, including the Equipment.

Reference: Supplementary Furfaro Affidavit, at para 11.

The Appointment of a Receiver

28. The Obligations due pursuant to the Demand have not been paid. The ten (10) day period under section 244 of the BIA has expired. The Debtor in default of the Financing. The Bank is

unwilling to provide any further forbearance or credit to the Debtor. The Bank is in a position to appoint a receiver over the assets and property of the Debtor as secured by the Bank's Security, pursuant to section 243 of the BIA.

Reference: Furfaro Affidavit, at paras 33 and 34.

29. The GSA grants the Bank the right to appoint a Receiver over all personal property of the Debtor, as a result of the Defaults of the Debtor under the Financing.

Reference: Furfaro Affidavit, at paras 35 to 37.

30. MNP has consented to act as Receiver, should this Honourable Court so appoint it.

Reference: Furfaro Affidavit, at para 43.

PART III – ISSUES, LAW AND ARGUMENT

Issues

31. The issues before this Court, and addressed below, are:

- a) Does this Court have jurisdiction to appoint the Receiver?
- b) Should this Court appoint the Receiver?
- c) If this Court decides to appoint the Receiver, then are the terms of the Receivership Order appropriate in the circumstances of this receivership?

(a) This Court has jurisdiction to appoint the Receiver

32. Subsection 243(5) of the BIA provides that an application under subsection 243(1) of the BIA is to be filed in a court having jurisdiction in the judicial district of the "locality of the debtor", which is defined in section 2 of the BIA.

BIA, s. 2, Schedule “B”; BIA, s. 243(5), Schedule “B”.

33. The Debtor is an Ontario corporation with its registered office in Brampton, Ontario. The business carried on by the Debtor that is subject to the proposed receivership includes premises located in Brampton, Ontario. The locality of the Debtor is, therefore, Ontario, and this application is properly brought before the Ontario Superior Court of Justice (Commercial List).

34. Subsection 243(4) of the BIA provides that only a trustee, as defined in section 2 of the BIA, may be appointed under subsection 234(1) of the BIA.

BIA, s. 2, Schedule “B”; BIA, s. 243(4), Schedule “B”.

35. MNP is a trustee as defined in the BIA, and therefore, satisfies the requirements for appointment pursuant to the BIA.

(b) This Court should appoint the Receiver

36. Section 244(1) requires that a secured creditor provide an insolvent person with the requisite advance notice of its intention to enforce security.

BIA, s. 244(1), Schedule “B”.

37. The Applicant sent the Demand together with its Notice of Intention to Enforce Security pursuant to such section of the BIA, to the Debtor on May 19, 2023, and this application is being heard on a date that is after the date on which any applicable notice periods expired.

38. Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended (the “**CJA**”) provides for the appointment of a receiver by this Court where it is “just and convenient”.

Section 243(1) of the BIA also provides that, on an application by a secured creditor, this Court may appoint a receiver if it considers it to be just and convenient to do so to: (a) take possession over the assets of an insolvent person; (b) exercise any control that the Court considers advisable over the property and business; or (c) take any other action that the Court considers advisable.

CJA, s. 101, Schedule “B”; BIA, s. 243(1) and 243(2), Schedule “B”.

39. Where the loan agreement and related transaction documents contemplate the appointment of a receiver, this Court may have regard to the principles summarized by Justice Newbould in *RMB Australia Holdings Limited v. Seafield Resources Ltd.*:

28 In determining whether it is “just or convenient” to appoint a receiver under either the BIA or CJA, Blair J., as he then was, in *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 40 C.B.R. (3d) 274 (Ont. Gen. Div. [Commercial List]) stated that in deciding whether the appointment of a receiver was just or convenient, the court must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto, which includes the rights of the secured creditor under its security. He also referred to the relief being less extraordinary if a security instrument provided for the appointment of a receiver:

While I accept the general notion that the appointment of a receiver is an extraordinary remedy, it seems to me that where the security instrument permits the appointment of a private receiver — and even contemplates, as this one does, the secured creditor seeking a court appointed receiver — and where the circumstances of default justify the appointment of a private receiver, the “extraordinary” nature of the remedy sought is less essential to the inquiry. Rather, the “just or convenient” question becomes one of the Court determining, in the exercise of its discretion, whether it is more in the interests of all concerned to have the receiver appointed by the Court or not.

29 See also *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 (Ont. S.C.J. [Commercial List]), in which Morawetz J., as he then was, stated:

...while the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties. See *Textron Financial Canada Ltd. v. Chetwynd Motels Ltd.*, 2010 BCSC 477, [2010] B.C.J. No. 635 at paras. 50 and 75 (B.C. S.C. [In Chambers]); *Freure Village*, supra, at para. 12; *Canadian*

Tire Corp. v. Healy, 2011 ONSC 4616, [2011] O.J. No. 3498 at para. 18 (S.C.J. [Commercial List]); *Bank of Montreal v. Carnival National Leasing Limited and Carnival Automobiles Limited*, 2011 ONSC 1007, [2011] O.J. No. 671 at para. 27 (S.C.J. [Commercial List]).

[RMB Australia Holdings Limited v. Seafeld Resources Ltd., 2014 ONSC 5205 \(CanLII\), paras. 28-29.](#)

40. The existence of a contractual right to appoint a receiver in the loan agreement and related transaction documents is key and transforms the appointment of a receiver from an extraordinary remedy to relief that is granted more as a matter of course, especially in cases in which the circumstances further support such an appointment. That is the case here.

41. With this lower burden, the following additional “just or convenient” factors identified by Justice Farley in *Confederation Life Insurance Co. v. Double Y Holdings Inc.* may be considered:

- a) The lenders’ security is at risk of deteriorating;
- b) There is need to stabilize and preserve the Debtor’s business;
- c) Loss of confidence in the Debtor’s management; and,
- d) Positions and interests of other creditors.

***Confederation Life Insurance Co. v. Double Y Holdings Inc.*, 1991 CarswellOnt 1511 (Ont. S.C.J. (Commercial List)) [“*Confederation Life*”], paras. 19-24, Tab 1 of the Applicant’s Book of Authorities.**

42. It is not essential that the moving party/secured creditor establish that it will suffer irreparable harm if a receiver/manager is not appointed.

***Swiss Bank Corporation (Canada) v. Odyssey Industries Incorporated* (1995), 30 C.B.R. (3d) 49 at paragraph 28, Tab 2 of the Applicant’s Book of Authorities.**

43. When the above *Confederation Life* factors are applied to this case, the Applicant submits that the burden to appoint a receiver has been met and that such appointment is just and convenient in the circumstances:

- a) ***The Debtor contractually agreed to the appointment of a receiver.*** The loan agreements and the related transaction documents among the Applicant and the Debtor expressly entitle the Applicant to appoint a receiver under certain circumstances, including the present circumstances. The Applicant now exercises these entitlements, subject to this Court's authority.
- b) ***The loan agreement is in default.*** As set out above, events of default have occurred and are continuing under the loan agreement and the related transaction documents. The Applicant has demanded on the indebtedness. The Applicant provided the Debtor with statutory notice of their intention to enforce security, and the applicable notice periods have elapsed.
- c) ***The lenders' security is at risk of deteriorating.*** The Security largely consists of portable equipment, which has not been located by the Applicant, and as a result, neither the Applicant nor its agents have been able to inspect same. Further, there has been a cancellation of insurance, due to the Debtor's nonpayment of premiums, resulting in various pieces of equipment being uninsured. If anything would happen to the Equipment, the Applicant's realizable value of the Security would significantly diminish as a result.
- d) ***The Debtor's business needs to be stabilized and preserved.*** A receiver will be able to take the necessary steps to preserve the Security, including conducting an orderly sale process that will generate recoveries for creditors. If the Security is not

preserved, there will be further negative consequences. The Debtor's liquidity crisis will continue to worsen in the absence of action.

- e) ***The Applicant has lost confidence in the Debtor's management.*** The Applicant has made efforts to explore alternatives to a receivership, without success. The Applicant has justifiably lost confidence in the management of the Debtor due to the events described in the Furfaro Affidavit, including failing to provide the Applicant various information, as requested, to ensure the Applicant's security is not at risk of deteriorating.
- f) ***Position and interests of other Creditors.*** The Applicant is not the only creditor of the Debtor. As at the date of this Factum, no creditor has opposed the receivership application. The Receiver will be able to properly and equitably deal with the interests of creditors other than the Applicant. A receivership provides parties with an effective forum in which to deal with any issues, including any competing claims, that may arise in respect of the Debtor and its property.

44. As at the date of this Factum, the Applicant is not aware of any restructuring efforts by the Debtor that stands any reasonable chance of success.

(c) The Terms of the Receivership Order are Appropriate

45. The terms of the proposed Receivership Order are substantially the same as the terms of the Commercial List's model receivership order, and the modifications to same are indicated in the blacklined copy provided.

Blackline of the draft Order against the Model Receivership Order; Application Record, Tab 1, Schedule "A-2".

PART IV – ORDER REQUESTED

46. For the reasons set forth herein and in the Application Record, it is respectfully submitted that the appointment of a receiver is just and convenient and is necessary for the protection of the estate of the Debtor and the interests of the Bank and other stakeholders.

47. The Bank respectfully requests that this Honourable Court grant the Appointment Order substantially in the form attached as Schedule "A" to the Notice of Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of July, 2023



HARRISON PENZA ^{LLP}
Barristers & Solicitors
130 Dufferin Avenue, Suite 1101
London, ON N6A 5R2

Timothy C. Hogan (LSO #36553S)
Robert Danter (LSO #69806O)

Tel: (519) 679-9660
Fax: (519) 667-3362
Email: thogan@harrisonpensa.com
rdanter@harrisonpensa.com

Solicitors for the Applicant,
The Toronto-Dominion Bank

SCHEDULE "A"**LIST OF AUTHORITIES**

1. *RMB Australia Holdings Limited v. Seafield Resources Ltd.*, 2014 ONSC 5205 (CanLII);
2. *Confederation Life Insurance Co. v. Double Y Holdings Inc.*, 1991 CarswellOnt 1511 (Ont. S.C.J. (Commercial List));
3. *Swiss Bank Corporation (Canada) v. Odyssey Industries Incorporated* (1995), 30 C.B.R. (3d) 49.

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Bankruptcy and Insolvency Act, RSC 1985, c B-3

Court may appoint receiver

243. (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

Definition of receiver

(2) Subject to subsections (3) and (4), in this Part, receiver means a person who

- (f) is appointed under subsection (1); or
- (g) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
 - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or
 - (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of receiver — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition *receiver* in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of disbursements

(7) In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

Advance notice

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or
- (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

No advance consent

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

Exception

(3) This section does not apply, or ceases to apply, in respect of a secured creditor

(a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or

(b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

Idem

(4) This section does not apply where there is a receiver in respect of the insolvent person.

Courts of Justice Act, RSO 1990, c. C-43.

Injunctions and receivers

101. (1) In the Superior Court of Justice, an interlocutory or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

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PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE APPLICANT

HARRISON PENZA LLP

Barristers & Solicitors

130 Dufferin Avenue, Suite 1101

London, ON N6A 5R2

Timothy C. Hogan (LSO #36553S)

Robert Danter (LSO #69806O)

Tel : (519) 661-6725

Fax: (519) 667-3362

Email: thogan@harrisonpensa.com

rdanter@harrisonpensa.com

Lawyers for the Applicant,
The Toronto-Dominion Bank