

#### SUPERIOR COURT OF JUSTICE

# **COUNSEL SLIP**

COURT FILE NO.:	CV-23-00698447-00CL	DATE:	MAY 8, 2023	

NO. ON LIST: 2

TITLE OF PROCEEDING: CANADIAN WESTERN BANK v. INDEX HOLDING GROUP INC. et al

**BEFORE JUSTICE: PENNY** 

### **PARTICIPANT INFORMATION**

## **For Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
JEREMY BORNSTEIN	Counsel for the Applicant,	jbornstein@cassels.com
STEPHANIE FERNANDES	Canadian Western Bank	sfernandes@cassels.com

## **For Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info

## **For Other:**

Name of Person Appearing	Name of Party	Contact Info
LISA CORNE	Counsel for the Proposed	lcorne@dickinson-wright.com
	Receiver, MNP Ltd.	
	(Jerry Henechowicz)	

#### **ENDORSEMENT OF JUSTICE PENNY:**

The CWB applies for the appointment of a receiver. The application is on notice and is not opposed.

Section 243 of the BIA authorizes the Court to appoint a receiver on an application by a secured creditor over the property of an insolvent person. Subsection 243(1.1) of the BIA requires that a notice of intention to enforce security as required by section 244 of the BIA is delivered to the insolvent person prior to such application.

There is no dispute that these requirements have been met. CWB is the primary secured creditor of the respondents pursuant to the security and has standing to bring this application. The applicant delivered Index NITEs on January 18, 2023 and April 12, 2023. The 10-day notice periods have expired. Accordingly, the technical requirements have been met.

MNP is qualified to act as Receiver in accordance with subsection 243(4) of the BIA and has provided its consent to act.

Section 101 of the CJA and subs. 243(1) of the BIA each permit the appointment of a receiver where it is "just or convenient".

Considering the circumstances, it is just and convenient for this court to appoint the Receiver over the property of the respondents for the following reasons:

- (a) the indebtedness is now approximately \$8.1 million and remains outstanding;
- (b) defaults have occurred and are continuing under the relevant agreements;
- (c) the Applicant is entitled to the appointment of a receiver pursuant to the terms of its security;
- (d) the Respondents executed a consent as a condition for CWB entering into the forbearance agreement and pursuant to the terms of the forbearance agreement, the consent is unconditional;
- (e) the Respondents have been unable to complete a sale of their property or obtain replacement financing to repay the indebtedness;
- (f) numerous registrations of subordinate liens against certain Respondents without CWB's consent;
- (g) CWB has lost all confidence in the Respondents' ability to operate their business in a manner that protects CWB's collateral and maintains its value; and
- (h) the appointment of a receiver will facilitate a transparent marketing of the property for the benefit of CWB and other creditors.

Order to issue in the form signed by me this day.

Penny J.