



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00719841-00CL

DATE: May 28, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: BANK OF MONTREAL v. ROLL X CARRIERS INC. et al

BEFORE: JUSTICE CAVANAGH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Poliak, Maya	Lawyer for Bank of Montreal	maya@chaitons.com
Culleton, Laura	Lawyer for Bank of Montreal	laurac@chaitons.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Chandra, Sudha	Lawyer for ROLL X CARRIERS INC., 14379373 CANADA INC., 2315269 ONTARIO INC., Respondents	chandralawoffice@gmail.com

ENDORSEMENT OF JUSTICE CAVANAGH:

- [1] The Applicant seeks an order appointing MNP Ltd. as receiver of the property, assets and undertaking of the Respondents pursuant to section 243 of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act*.
- [2] This application first came before me on May 14, 2024 at a scheduling appointment. The Applicant stressed the urgency of the application. Counsel for the Respondents was out of the country and asked to adjourn the scheduling appointment. Counsel for the Respondents

took that position that there was no urgency to this application. I adjourned the scheduling appointment to today.

- [3] On May 24, 2024, I was advised that counsel for the Respondents had advised counsel for the Applicant that the business of Roll X Carriers has shut down and the assets are gone. Counsel asked to use the time scheduled for the scheduling appointment to ask for an urgent order appointing a receiver. I arranged to add additional time to the appointment.
- [4] The Respondents filed an affidavit from Khurran Shahzad Awan in response to this application.
- [5] At the hearing today, I heard submissions for counsel for the Applicant and counsel for the Respondents with respect to the merits of this application. I am satisfied that the application is urgent and that there be no injustice if the application were heard today. If the application were to be delayed, there is possible prejudice to the Applicant, given that the business of Roll X has stopped operating and the assets cannot be located.
- [6] Roll X carried on business as a transportation and logistics company. The Applicant is the senior secured lender of Roll X and holds a general security interest against Roll X's assets. In addition to the Applicant, there are approximately 19 other creditors who registered notices of security interests against trucks and vehicles in the possession of Roll X.
- [7] Roll X and the Applicant entered into a forbearance agreement dated November 11 00, 2023 pursuant to which Roll X consented to the appointment of a receiver in the event of default. The forbearance agreement provides, among other things, that it is an event of default if Roll X fails to repay the indebtedness owed to the Applicant on or before the expiration of the forbearance period on April 30, 2024. Roll X failed to do so.
- [8] The evidence is that on May 10, 2024, the Applicant's process server attended at the location where Roll X was carrying on business and was advised that it had not been carrying on business from that location for three months. The process server attended at the Respondents' registered addresses, all of which appear to be personal residences.
- [9] On May 22, 2024, the Applicant was advised by Roll X's legal counsel that it has ceased carrying on business. The Applicant, through counsel, inquired as to the location of Roll X's assets. By email dated May 23, 2024, counsel for the Respondents responded that there are no assets.
- [10] I have reviewed the affidavit of Mr. Awan. There is no evidence that calls into question the validity of the forbearance agreement. There is no evidence in this affidavit that shows that Roll X is carrying on business and that its assets are identified and secure.

- [11] Roll X failed to pay its outstanding debt to the Applicant by April 30, 2024. As of that date, the Respondents continued to be indebted to the Applicant in the amount of \$2,413,843.56 for principal and interest, exclusive of fees.
- [12] In making the determination of whether it is just or convenient to appoint a receiver, the Court must have regard to all of the circumstances including the nature of the property and the rights and interests of all parties in relation to the property. The burden on an applicant is lessened when the terms of the secured creditor's security include the right to appoint a receiver. The nature of appointing a receiver is not as extraordinary or equitable where the relevant security documents permit the appointment of a receiver.
- [13] I am satisfied that it is just and convenient for a receiver to be appointed for the following reasons:
- a. the Respondents owe in excess of \$2.4 million to the Applicant;
 - b. the Respondents transferred USD \$318,000 to a related company for reasons other than operating purposes;
 - c. the Respondents have failed to continue to make deposits to their operating accounts with the Applicant;
 - d. the Respondents consented to the appointment of a Receiver as part of the Forbearance Agreement;
 - e. the Respondents have admitted, through counsel, that they are no longer carrying on business and have not advised the Applicant where their assets are located;
 - f. there appears to be no prospect of payment being made to the Applicant absent the appointment of a receiver.
- [14] Order to issue in form of Order signed by me today.