SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-24-720368-00CL **DATE:** June 12, 2024

NO. ON LIST: 4

TITLE OF PROCEEDING: **MILESTONE DISTRIBUTION 2024 LTD. v. MILESTONE GRANITE & MARBLE LTD.**

BEFORE JUSTICE: **JUSTICE W.D. BLACK**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT OF JUSTICE W.D. BLACK:

[1] This was an application by Milestone 2024 Ltd. (the "Applicant") for an order appointing Albert Gelman Inc. (the "Receiver"), as receiver over the assets, undertakings and properties of Milestone Granite & Marble LTD. (the "Debtor"), and for approval of a stalking horse sale process to market the Debtor's business.

[2] The Debtor is a family business, importing and supplying custom marble and granite for construction projects.

[3] It is operated by Frank Arlotta and Laura Moscone. Mr. Arlotta and Ms. Moscone also own and control the Applicant, which is the senior secured lender of the Debtor.

[4] The Debtor is said to be in financial distress for a number of reasons, including residual pressures of the pandemic and related market challenges. There are also what the Applicants describe as "familial conflicts between the shareholders". Those familial conflicts have led to litigation in which Anthony and Nina Marrese, through their corporation MMG Stone Fabrication Ltd. ("MMG"), have sued the Debtor, Mr. Arlotta, Ms. Moscone, and Falcon Enterprises Corp. ("Falcon"), a management company operated by Mr. Arlotta and Ms. Moscone alleging oppression.

[5] The fact that this oppression claim is underway is the only factor that gave me any pause in reviewing the materials. Having regard to Penny J.'s recent decision is *MIlborne v. Kepinski*, 2024 ONSC 1825, there are circumstances in which it would not be appropriate to superimpose a receivership onto ongoing shareholder litigation.

[6] However, the case before me is readily distinguishable from *Milborne*, in terms of the state of financial affairs of the Debtor and the motivation for the proposed receivership and, consistent with those observations, Mr. Marrese was in attendance at the hearing before me, and specifically confirmed that he (and presumably MMG, which was not otherwise in attendance or represented before me), is not opposed to the relief sought.

[7] As noted, the Debtor's circumstances justify the order that the Applicants ask me to make.

[8] Group of Six Enterprises Ltd. ("Six"), a holding company owned by Mr. Arlotta and Ms. Moscone, owns 59% of the shares of the Debtor.

[9] Ms. Moscone has also personally advanced funds to the Debtor to support its operations.

[10] The Debtor has entered into promissory notes with Ms. Moscone, Falcon and Six, (the "Notes" or, individually "Note"), each of which were assigned to the Applicant on February 29, 2024. Six loaned the Debtor $171,000 pursuant to a Note dated May 3, 2023 bearing interest at the rate of prime plus three percent (3%).

[11] Ms. Moscone loaned the Debtor $31,900 pursuant to another Note dated May 3, 2023, bearing interest at the same rate as the promissory note from Six.

[12] Falcon loaned the Debtor $489,373 pursuant to a Note dated August 30, 2019. That Note bears no interest until default.

[13] As security for the indebtedness, liabilities and obligations owed by the Debtor to the Applicant, the Debtor granted general security agreements in favour of Six, Falcon and Ms. Moscone dated May 3, 2023 and August 30, 2029 (the "GSAs").

[14] The GSAs provide that, in the event of default, the holder of the GSA is entitled, among other measures, to appoint a receiver.

[15] The Applicant purchased the indebtedness of the Debtor pursuant to three "Assignment of Indebtedness and Security Agreements" executed on February 29, 2024, between the Applicant and each of the Assignors, and received the Assignors' right, title and interest under the security held and registered against the Debtor's property. The Applicant registered the assignment of the security under the *Personal Property Security Act* (Ontario) on April 8, 2024.

[16] On May 25, 2024, the Applicant made formal demand for payment of $906,881.58 and advised of its intention to enforce its security under the *Bankruptcy and Insolvency Act*, giving the Debtor until April 5, 2024, to pay the indebtedness.

[17] Since the Applicant's demand letter, the Debtor has made no payments relative to the outstanding indebtedness, and interest and costs continue to accrue. The Applicant is thus entitled to appoint a receiver pursuant to its security and s. 243 of the BIA. Albert Gelman Inc, a licensed insolvency trustee has consented to act as receiver.

[18] The Applicant has also developed a stalking horse process in collaboration with the Receiver, the basis of which is a Stalking Horse Asset Purchase Agreement (the "APA").

[19] The proposed sale process, backstopped by the APA, contemplates the acquisition of all assets and undertakings of the Debtor on an "as is, where is" basis and proposes the Applicant assume all of the Debtor's relevant obligations (to the Business Development Bank of Canada, under a lease for warehouse and office premises, and to the Debtor's employees). There is no break fee associated with the APA.

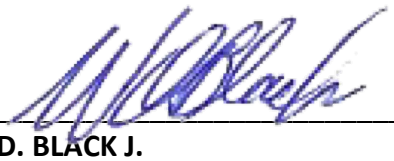
[20] The sale process is proposed to commence immediately (as of Friday June 14, 2024), and requires binding offers to be received by July 16, 2024.

[21] I am satisfied that it is just and convenient in all of the circumstances, including the absence of any opposition to the relief sought, to grant the order sought by the Applicant, and I do so.

[22] I also find the proposed stalking horse process to be reasonable and useful in the current circumstances, and find that the proposed sale process aligns with the factors outlined by the Court of Appeal for Ontario in *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727.

[23] I have also reviewed the Receiver's pre-filing report, which I find is consistent with and supports the relief sought.

[24] For these reasons, I grant the order sought (and uploaded to Caselines by the Applicant).



W.D. BLACK J.

DATE: JUNE 12, 2024