

SUPERIOR COURT OF JUSTICE – ONTARIO

7755 Hurontario Street, Brampton ON L6W 4T6

RE: The Toronto-Dominion Bank, applicant

AND:

STEVENS OMNI INC, respondent
SOFLEX LOGISTICS INC, respondent

BEFORE: Justice Emery

COUNSEL: HOGAN, Timothy C, for the applicant
Email: thogan@harrisonpensa.com

HEARD: December 6, 2024, by video conference

ENDORSEMENT

[1] The Toronto-Dominion Bank (“TD”) brings this application for an Order appointing Albert Gelman Inc. as receiver of the assets, undertakings, and properties of the respondents Stevens Omni Inc. (“SOI”) and Soflex Logistics Inc. (“Soflex”), together referred to as the “debtors.” The application is brought under the respective General Security Agreements of the debtors, and s. 101 of the *Courts of Justice Act* (the “CJA”).

[2] The application proceeded today as unopposed, with neither respondent or counsel on their behalf appearing, and with no responding material filed or uploaded to Case Centre.

[3] SOI is essentially the operating company which has credit agreements with TD consisting of an operating line and a credit card facility. Soflex is essentially the

guarantor of obligations and indebtedness of SOI and has no employees or operating business of its own. The debtors have each given a General Security Agreement (“GSA”) to TD dated October 1, 2012. The GSA’s were given as security over all personal property of the debtors to secure their obligations to TD.

[4] SOI went into default on its credit facilities in or around August 2023. TD’s counsel wrote a demand letter dated September 20, 2023, that SOI meet its payment requirements by December 1, 2023. SOI accepted that demand on October 18, 2023. When SOI failed to pay by that deadline, TD once again demanded payment by February 15, 2024, which was then extended to March 8, 2024. On each of those dates, SOI failed to pay as required.

[5] TD, SOI and Soflex entered a Forbearance Agreement on February 15, 2024. The Forbearance Agreement contained a provision for the appointment of a receiver in the event of a default. SOI also agreed to pay its obligations to TD by February 15, 2024, and gave its consent to the appointment of Albert Gelman Inc. as receiver if it did not.

[6] On August 13, 2024, TD gave notice to each of the debtors that it would be seeking the appointment of a receiver. TD by its lawyers also served a Notice of Intention to Enforce Security on SOI and Soflex under s. 244(1) of the *Bankruptcy and Insolvency Act* (the “BIA”). The ten day period under that statutory provision has long since passed.

[7] As of August 21, 2024, SOI was indebted to TD in the amount of \$2,837,807.36.

[8] Mr. Hogan submits that TD is asking the court to make an order that is by nature a contractual receivership. He characterizes the nature of the order in this way because of the consent given by the debtors to the appointment of a receiver

in the Forbearance Agreement. He also refers the court to the appointment of a receiver upon default as a remedy available to TD in paragraph 12 of each GSA.

[9] I agree that the interests of TD as a secured creditor must be protected. The obligations of SOI for which demand has been made have not been paid. The debtors are in default of the financing terms. TD is now in a position to appoint a receiver over the assets and property of the debtors secured by the GSA's pursuant to s. 243 of the BIA.

[10] There are also competing claims for unpaid levies and taxes. The appointment of a receiver is required to preserve the property of the debtors to complete the orderly sale of the assets, undertaking and property of each of them. The appointment of a receiver shall also serve to ensure that the proceeds of any sale are applied to each of the debtor's obligations, and to deal with any subsequent claims to the proceeds.

[11] Albert Gelman Inc. consents to act as receiver if appointed by the court.

[12] TD raises the question whether this court has jurisdiction to hear this application at Brampton and to make the requested order appointing a receiver. The affidavit of Sanjay Kansal, an account manager with TD, provides evidence that SOI has its registered office in Mississauga and that conducted its business from a location in Oakville, Ontario. Each of these municipalities is located in Central West Region. The Superior Court sitting at Brampton therefore has jurisdiction under s. 243(5) of the BIA to hear this application.

[13] The question then becomes whether the court should exercise its discretion to appoint the receiver. The burden is on the secured creditor to show that it is just or convenient to appoint a receiver under s. 101 of the CJA. The appointment of a receiver is generally considered to be an extraordinary form of equitable remedy.

The court does not regard the extraordinary aspect of the remedy so much where the security given by the debtor(s) permits that appointment, or where the debtor (s) has given their consent. In either case, the secured creditor is seen as seeking to enforce a term of an agreement between the parties. See *Elleway Acquisitions Limited v. The Cruise Professionals Limited*, 2013 ONSC 6866, at para. 27.

[14] The facts in evidence meet the burden of proof to show it is just and convenient to appoint a receiver in this case under the factors described by Farley J. in *Confederation Life Insurance Co. v. Double Y. Holdings Inc.*, 1991 CarswellOnt. 1511, at paras. 19-24. TD has acted in a commercially reasonable manner under all the circumstances. I find it just and convenient as between the parties that an Order issue appointing Albert Gelman Inc. as receiver of all the assets, undertaking and properties of the debtors SOI and Soflex under s. 101 of the CJA and the contractual documents between the parties. This finding is also consistent with the principles set out by Newbould J. to consider all the circumstances in *RMB Australia Holdings Limited v. Seafield Resources Ltd.*, 2014 ONSC 5205, at paras. 28-29.

[15] The Appointment Order shall issue in the form of the draft Order filed. The terms of the draft Order are substantially the same as those found in the model receivership order proposed by the Commercial List in Toronto, as modified to meet the particular circumstances of this application.

