



SUPERIOR COURT OF JUSTICE

ENDORSEMENT

COURT FILE NO.: CV-25-00740747-00CL DATE: April 24, 2025

NO. ON LIST: 1

TITLE OF PROCEEDING: **ICICI BANK CANADA v. 2338486 ONTARIO LIMITED**

BEFORE: **JUSTICE J. DIETRICH**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Mitch Grossell Daniel Alievsky	ICICI BANK CANADA	mgrossell@tgf.ca dalievsky@tgf.ca

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info

Other:

Name of Person Appearing	Name of Party	Contact Info
Eric Inspektor	Corfinancial corp	eric@corfinancialcorp.com
Adam Zeldin	(Albert Gelman Inc. - Proposed Receiver)	azelden@albertgelman.com

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ENDORSEMENT OF JUSTICE J. DIETRICH:

Introduction

[1] ICICI Bank Canada. (the “**Bank**”) seeks an order appointing Albert Gelman Inc. (“**AGI**”) as receiver over the assets, property and undertaking of the Respondent, 2338486 Ontario Limited (the “**Debtor**”) including the real property located at 392 Erb Street West, Waterloo, Ontario and 398 Erb Street West, Waterloo, Ontario (the “**Erb Properties**”) pursuant to s. 243 of the *Bankruptcy and Insolvency Act* and s. 101 of the *Courts of Justice Act*.

[2] This matter was first before me on April 17, 2025, at which time I adjourned the application until today to ensure that the Debtor had notice of the proceeding. I am satisfied based on the Supplemental Affidavit of Lionel Meunier affirmed on April 22, 2025 that the Debtor had notice of this hearing.

[3] Mr. Inspektor of CorFinancial Corp. attended and advised that he has concerns about recovery and costs and seeks the most efficient way forward, which he suggested was a power of sale proceeding. I heard from Mr. Inspektor today, however, I advised him that CorFinancial as a corporation needs to be represented by counsel going forward or a motion seeking leave to be represented other than by counsel is required.

[4] No one on behalf of the Debtor attended.

[5] As outlined below, the Bank seeks the appointment of the receiver urgently as a CorFinancial has issued a notice of sale under mortgage on March 19, 2025 with the notice period expiring on April 25, 2025.

[6] Terms not otherwise defined herein have the meaning provided to them in the factum of the Bank filed on this application.

Background

[7] The Debtor is a corporation incorporated under Ontario law and is the registered owner of the Erb Properties. The sole director and officer of the Debtor is Kamal Patel.

[8] The Debtor’s primary business activity is the development of the Erb Properties into a six-story residential building with 73 total residential units and underground parking. However, the Debtor has not materially advanced the development of the Erb Properties and has not obtained site plan approval from the City of Waterloo for the proposed redevelopment of the Erb Properties.

[9] In July of 2023, pursuant to a Commitment Letter, the Bank provided a term loan in the amount of \$2.8 million to the Debtor which matures on July 1, 2025. As security, the Bank obtained a mortgage over the Erb Properties, a general security agreement and a general assignment of rents.

[10] The Debtor failed to make principal and interest payments beginning in September 2024. As of April 1, 2025, the Bank is owed approximately \$3 million plus accruing interest, and other fees and expenses.

[11] Following the payment default in the fall of September of 2024, the Debtor, through its advisor CORFinancial engaged in discussions with the Bank. CORFinancial represented itself as the Debtor's financial

advisor to the Bank. There were some discussions regarding a forbearance agreement, but the status of that agreement is not relevant for today's purposes.

[12] CORFinancial registered a security interest under the PPSA on January 28, 2025 and a charge in the amount of \$500,000 against the Erb Properties on March 3, 2025 without the Bank's knowledge or consent.

[13] On March 17, 2025, a construction lien was registered against the Erb Properties by Masri O Inc.

[14] On April 4, 2025, the Bank received a Notice of Sale dated March 19, 2025, which alleges that there was a payment default under the charge in favour of CORFinancial, and that CORFinancial intended to commence a power of sale proceeding to market and sell the Erb Properties.

[15] On April 7, 2025, the Bank delivered a letter to CORFinancial which required CORFinancial to cease the marketing of the Erb Properties, withdraw the notice of sale, and provide the Bank with the relevant loan and security documentation. CORFinancial acknowledged receipt of the letter and indicated that the Erb Properties has already been listed for sale through CBRE, although no listing has been confirmed. During the hearing Mr. Inspektor advised the properties have not been listed.

[16] On March 20, 2025, the Bank demanded repayment and delivered a notice of intent to enforce security pursuant to s. 244 of the BIA.

Issue

[17] The only issue to be determined is whether it is just or convenient to appoint a receiver over the assets, properties and undertakings of the Debtor.

Analysis

[18] The test for the appointment of a receiver under s. 243 of the BIA or s. 101 of the CJA is whether it is just or convenient.

[19] In determining whether it is just or convenient to appoint a receiver, the court must have regard to all of the circumstances of the case particularly the nature of the property and the rights and interests of all parties in relation to the property: see *Bank of Nova Scotia v Freure Village of Clair Creek*, [1996] OJ No 5088 at para 10. While the appointment of a receiver is generally an extraordinary equitable remedy, where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: see *Bank of Montreal v. Sherco Properties Inc.* 2013 ONSC 7023 at para 41 and 42.

[20] Although the presence of a contractual entitlement to appoint a receiver is not a determinative factor, here, where the right to appoint a receiver is provided under the Mortgage, the remedy becomes less extraordinary: see para 44 of *BCIMC Construction Fund Corporation et al. v. The Clover on Young Inc.*, 2020 ONSC 1953.

[21] As summarized by Justice Osborne in *RBC v. 2531961 Ontario Inc. et al.*, 2024 ONSC 1272 at paras 12-13, a number of factors have historically been taken into account in the determination of whether it is appropriate to appoint a receiver. The factors are not a checklist, but rather a collection of considerations to be viewed holistically, they include:

- a. whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;
- b. the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;
- c. the nature of the property;
- d. the apprehended or actual waste of the debtor's assets;
- e. the preservation and protection of the property pending judicial resolution;
- f. the balance of convenience to the parties;
- g. the fact that the creditor has a right to appointment under the loan documentation;
- h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
- i. the principle that the appointment of a receiver should be granted cautiously;
- j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
- k. the effect of the order upon the parties;
- l. the conduct of the parties;
- m. the length of time that a receiver may be in place;
- n. the cost to the parties;
- o. the likelihood of maximizing return to the parties; and
- p. the goal of facilitating the duties of the receiver.

[22] In this case, it is just and convenient to appoint a receiver.

[23] The Debtor is in default of its obligations to the Bank.

[24] Pursuant to the terms of the security granted to the Bank, the Bank has the contractual right to seek the appointment and receiver over the Debtor's property including the Erb Properties.

[25] The evidence is that there are multiple charges on the Erb Properties which are in arrears. At least one construction lien has also been registered against the property.

[26] The Debtor's former financial advisor has commenced power of sale proceedings under a recently granted charge and advised that they have listed the Erb Properties for sale.

[27] Based on an appraisal that was filed by the Bank, subject to a sealing order request, it is not clear that there is sufficient value in the Erb Properties to satisfy all amounts owing to the Bank.

[28] The appointment of a receiver would permit a transparent marketing process in respect of the Erb Properties, an orderly collection of rents and will be able to ensure that the Erb Properties is properly insured.

[29] The Bank has not acted precipitously. The loan owing to the Bank has been in default since payments were missed in September of 2024. The Bank has provided the Debtor an opportunity to work through a forbearance for a number of months. However, given that the Debtor's financial advisor has registered a charge against the Erb Properties without the Bank's knowledge and consent and has now commenced power of sale proceedings, the Bank has, understandably, lost confidence in management of the Debtor.

[30] AGI is qualified to act as receiver and has consented to do so.

[31] The terms of the proposed receivership order are appropriate and consistent with the Model Order of the Commercial List. I note that paragraph 24 of the requested order provides a general URL address for AGI's insolvency documents, but does not provide a direct landing page to information regarding this proceeding. That should be rectified at the next hearing so that interested parties served with the order are provided with a direct link to the relevant documents relating to this particular proceeding.

[32] The limited sealing order being sought is necessary to preserve the Receiver's ability to maximize the value of the Erb Properties. I am satisfied that the requested sealing order for the Confidential Exhibit "1", being an appraisal of the Erb Properties meets the test in *Sherman Estate v. Donovan* 2021 SCC 25 at para 38 and that disclosure of this information would pose a risk to the public interest in enabling stakeholders of a company in receivership to maximize the realization of assets. I direct counsel for the Receiver to file a hard copy of the confidential exhibit with the Commercial List Office in a sealed envelope with a copy of the relevant order and this endorsement.

Disposition

[33] Accordingly, I grant the receivership order in the form signed by me today.



Justice J. Dietrich

April 24, 2025

