ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CL-25-00753553-0000 **DATE: December 2, 2025**

NO. ON LIST: 1

TITLE OF PROCEEDING: CMLS FINANCIAL LTD. v. BRONTE LAKESIDE LTD. et al

BEFORE: JUSTICE J. DIETRICH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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For Defendant, Respondent, Responding Party:

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ENDORSEMENT OF JUSTICE J. DIETRICH:

Introduction

[1] CMLS Financial Ltd. ("**CMLS**") seeks an order appointing Albert Gelman Inc. as receiver (the Receiver) of the property of Bronte Lakeside Ltd. (the "**Debtor**") including the land municipally known as 2432-2452 Lakeshore Road West and 77, 87, and 93 Bronte Road, Oakville, Ontario (the "**Bronte Property**") and interest of the Bronte Limited Partnership ("Beneficial Owner") in the Bronte Property pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended (the "**BIA**") and section 101 of *the Courts of Justice Act*, R.S.O. 1990, c C.43, as amended (the "**CJA**").

[2] The matter was first before me on November 19, 2025 at which time I granted the Debtor's request for a two week adjournment. The Respondents filed a further affidavit of Sarmad Ganni sworn November 24, 2025. As well, CMLS delivered a further affidavit of Jeffrey Burt in reply on or before November 26, 2025.

[3] At the time of this hearing, counsel agreed that the status of additional financing was that the Debtor was in the process of having a commitment signed which provided for an initial injection of $1.5 million for purposes of paying out construction liens and taxes on the Bronte Property, but the potential financing would not pay out CMLS.

[4] Defined terms used but not defined herein have the meaning provided in the facta of CMLS filed for use at this hearing.

Background

[5] The Debtor is incorporated pursuant to the laws of Ontario, with its head office in Ottawa, Ontario. The Beneficial Owner, Bronte Limited Partnership, is an Ontario limited partnership with Bronte GP Inc. as its general partner.

[6] The Debtor planned to construct a six-storey, 203-unit luxury condominium development marketed as "The Residences at Bronte Lakeside" (the "**Project**") on the Bronte Property. The Debtor has entered into pre-sale agreements of purchase and sale for the Project; however, they have not begun any structural building at the Property.

[7] CMLS made the Loan to the Debtor in the principal amount of $19,100,000 pursuant to the terms of a commitment letter dated November 26, 2024 (the "**Commitment Letter**"). As security for the Loan, among other things, the Debtor granted CMLS Capital a first mortgage over the Bronte Property in the amount of $19,100,000 (the "**Mortgage**") registered on title on December 18, 2024, a General Assignment of Rents and Leases over the Bronte Property, a General Security Agreement (the "**GSA**"), and an assignment of the Project's purchase agreements.

[8] The Mortgage and the GSA both provide for the appointment of a receiver and manager over the Debtor's assets, including the Bronte Property, upon default by the Debtor.

[9] The Debtor holds title to the Bronte Property, in trust, as a bare trustee and nominee for the Beneficial Owner, who is the sole beneficial owner of the Bronte Property. On or about December 18, 2024, CMLS entered into an authorization, direction, and consent with the Beneficial Owner and the Debtor, pursuant to which, among things, the Beneficial Owner agreed to be bound to the terms of the Commitment Letter and the Security.

[10] Beginning in June of 2025, construction liens totalling over $800,000 were registered against the Bronte Property. Construction liens of over $1.2 million have now been registered against the Bronte Property. The Debtor's failure to discharge the construction liens within the requisite 10-day cure period provided for in the Mortgage constituted an Event of Default under the Mortgage and the Commitment Letter.

[11] By letter dated September 11, 2025, counsel on behalf of CMLS, made demand on the Debtor for payment in full of the amounts owing under the Loan which had been accelerated by the Event of Default, being in the

approximate amount of $18,515,023.50 as of September 10, 2025 (the "**Indebtedness**"), excluding legal and other professional fees, and gave notice of its intention to enforce its security pursuant to section 244(1) of the BIA.

[12] The Debtor is also in arrears on the municipal property taxes owing on the Bronte Property to the Town of Oakville totalling $114,239.55 as of October 2, 2025.

[13] Following the November 19, 2025 appearance in this matter, counsel for 2604956 Ontario Inc. ("**260**") reached out to counsel to CMLS. 260 has commenced an action against, among others, the Beneficial Owner related to a promissory note and commitment letter entered into in April and May 2025 whereby 260 advanced approximately $590,000 to the Beneficial Owner in exchange for a second mortgage on the Real Property. 260 claims, among other things an equitable mortgage over the Real Property. In the statement of defence filed by the Beneficial Owner, it is admitted that a second mortgage was given on the Real Property, but that it was to be held in escrow and has not been registered. CMLS was not aware of and it did not consent to the second mortgage in favour of 260.

Issue

[14] There only issue to be determined today, is whether it is just or convenient to appoint a receiver over the assets, properties and undertakings of the Debtor including the Bronte Property and the interest of the Beneficial Owners in the Bronte Property.

Analysis

[15] 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.

[16] 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 *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc*, 2020 ONSC 1953, at para 43-44.

[17] As summarized by Justice Osborne in *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186 at para 25, 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.

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

[19] The Debtor owes in excess of $18.5 million to CMLS.

[20] CMLS has not acted precipitously. Construction liens were first registered against the Bronte Property in June of 2025. CMLS has been communicating with the Debtor regarding various event of default since at least August of 2025. There is no dispute that the 10-day contractually agreed cure period has long since expired and contractually the entire amount owing to CMLS has accelerated.

[21] CMLS demanded repayment in September of 2025, over 2 months ago, and has not been repaid. The notice period under the notices required by s. 244 of the BIA has also lapsed.

[22] CMLS is entitled to apply to the Court for the appointment of a receiver upon default under the terms of its loan documents and security. Pursuant to the Beneficial Charge Agreement, the Beneficial Owners agreed to be bound by the terms of the Commitment Letter and the Mortgage, including the provisions for the appointment of a receiver upon default.

[23] The Debtor argues that it is not just and convenient to appoint a receiver because financing to repay the construction liens and taxes, which initially caused the Event of Default is imminent. The Debtor argues that once that occurs, CMLS will essentially be back in the position it bargained for. However, what CMLS bargained for (and the Debtor and Beneficial Owners agreed to) was an acceleration of the amount owing to CMLS if construction liens had not been discharged in a timely manner. That did not occur. Further, even absent an event of default, the amounts owing to CMLS mature next month. No evidence regarding a plan to repay CMLS in full has been put forward at all.

[24] I recognize that the facts are not identical to either *Macquarie Equipment Finance Limited v. Validus Power Corp. et al* ., 2023 ONSC 4772 or *Canada ICI Capital Corporation v. Ecre Smart Living Hinton Ine et al*, 2024 ONSC 5529. However, each case is unique and in the present circumstances I am satisfied that the appointment of a receiver is just and convenient.

[25] The failure to disclose the litigation with 260 who claims a second mortgage of the Real Property is also concerning. I do not agree with the Debtors that simply because the charge that was granted to 260 was not

registered on title that somehow a further default under the Commitment Letter and Mortgage has not occurred. It is concerning that the Debtor did not disclose the second mortgage or the litigation to CMLS.

[26] I also note that the appointment of a receiver does not put an end to the Debtor's right to redeem, however, practically as time goes by, costs increase and as the receiver takes steps it becomes more difficult for the Debtor to exercise such right. Accordingly, if the Debtor does obtain funding relatively quickly to repay CMLS and other creditors, the costs of the receivership will be minimized.

[27] Further, a Court-supervised process will provide best protect the interests of CMLS and other stakeholders. It will be beneficial to all parties for the Real Property to be sold in an orderly, efficient and transparent process.

[28] Albert Gelman Inc. is qualified to act as receiver and has consented to do so.

[29] The terms of the proposed receivership order, as modified during today's hearing are appropriate and consistent with the Model Order of the Commercial List.

Disposition

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

Date: Dec 02, 2025 Justice J. Dietrich