SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: **CV-22-00691422-00CL** **DATE:** **21 December 2022**

NO. ON LIST: **3**

TITLE OF PROCEEDING: **NATIONAL BANK OF CANADA v. RATNAS PROPERTY INVESTMENT INC. et al**

BEFORE JUSTICE: **MADAM JUSTICE KIMMEL**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
PUYA FESHARAKI *(counsel)*	National Bank of Canada	pfesharaki@tgf.ca
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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
JASON KANJI *(proposed receiver)*	Grant Thornton Limited *(Proposed Receiver)*	Jason.kanji@ca.gt.com
ROB STELZER *(proposed receiver)*		Rob.stelzer@ca.gt.com

ENDORSEMENT OF JUSTICE KIMMEL:

1. The Applicant, National Bank of Canada (the "Bank") seeks an Order 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, appointing Grant Thornton Limited ("Grant Thornton") as receiver and manager (in such capacity, the "Receiver"), without security, of all of the assets, undertakings and properties of each of the Respondents including, but not limited to, the lands and premises of Ratnas Property Investment Inc. ("Property") municipally known as 369 Ontario Street, Port Hope, in the Province of Ontario (the "Real Property"), and authorizing the Receiver to carry out a sale process in respect of the Property (the "Sales Process").

Appointment of Receiver

2. Grant Thornton consents to this appointment upon the terms of the revised draft order.
3. The officers and directors of the named respondents were personally served with this motion and have since been provided (by email at the email addresses with which counsel for Grant Thornton has communicated with them in the past) with the factum, First Report of the Proposed Receiver and the hearing co-ordinates for today's appearance. A lawyer who has been involved although not on record for the respondents was also provided with all of the materials for today's hearing. None of these persons have responded to indicate any objection to the proposed order, and none appeared today.
4. Other stakeholders on the service list, including some other secured creditors and the taxation authorities, have also been served with the material for today's appearance and none have indicated any objection to the proposed form of order, nor did any other stakeholder appear today.
5. The applicant has a contractual right to appoint a receiver under its security. Accordingly, the order sought need not be regarded as an extraordinary equitable remedy. Rather, the court is focused on a consideration of whether it is in the interests of all concerned for the court to appoint a receiver. See *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd*., 2013 ONSC 6866, at paras. 24-28.
6. The evidence before the court establishes that the debtors are insolvent, are in default of their obligations to the applicant, have been given notice and an opportunity to cure the default and have not done so. The proposed form of order as it relates to the appointment of the Receiver is consistent with the court's model form of appointment order. Having considered the evidence and the written and oral submissions of the applicant, I find it to be just and convenient to grant the appointment order requested (which is in a form consistent with the model appointment order), pursuant to s. 243 of the *Bankruptcy and Insolvency Act,* RSC 1985, c B-3 and s. 101 of the *Courts of Justice Act*, RSO 1990, c. C-43.

Approval of Sales Process for the Property and Counsel

7. The applicant also asks the court to approve, in advance, the Receiver's proposed Sales Process for the Property. The Sales Process is conventional and appears to be fair. The Receiver considers it to be commercially efficacious and it is designed to optimize the chances of securing the best possible price for the Property, in the circumstances. See *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750 at para 6.
8. Any eventual sale transaction will be subject to further court approval. Given the amount at issue and the potential recoveries, it is most efficient to have the sale process approved now to minimize the number of court appearances and reports. For this same reason, the applicant and the Receiver are proposing that they be represented by the same counsel to the extent that their interests are aligned, and counsel has agreed to this. The Receiver can and will retain independent legal counsel in connection with any matter where there might be a conflict, including but not limited to an independent security opinion.

9. Order to go in the revised form signed by me today.

Kimmel J.

KIMMEL J.