Court File No.: CV-24-00718535-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

BUSINESS DEVELOPMENT BANK OF CANADA

Applicant

-and-

1000265218 ONTARIO INC.

Respondent

FACTUM OF THE RESPONDENT

May 24, 2024

ASSERTION LAW PROFESSIONAL CORPORATION
17-2601 Matheson Blvd E
Mississauga ON L4W 5A8

ANEAL S. SEEGOBIN (LSO #87720F)
Email: info@assertionlaw.ca
Tel. 647-997-6325

Lawyer for the Respondent

BLANEY McMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

ERIC GOLDEN (LSO #38239M)
Email: egolden@blaney.com
Tel. 416-593-3927

CHAD KOPACH (LSO #48084G)
Email: ckopach@blaney.com
Tel. 416-593-2985

Lawyers for the Applicant,
Business Development Bank of Canada

Court File No.: CV-24-00718535-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

BUSINESS DEVELOPMENT BANK OF CANADA

Applicant

-and-

1000265218 ONTARIO INC.

Respondent

TABLE OF CONTENTS

PART	TITLE	PAGE NO.
I	Summary of Facts	1
II	Statement of Issues	1
III	Law & Argument	1
IV	Order Requested	3
A	List of Authorities	4
B	Text of Statutes, Regulations & By-laws	5

PART I – SUMMARY OF FACTS[1]

1. The Respondent, 100265218 Ontario Inc. ("1000 Inc.") obtained a loan for $10,000,000 from the Applicant (the "BDC Loan"), Business Development Bank of Canada ("BDC"), on or around August 03, 2022[2]. The proceeds of this loan were used to purchase the property municipally known as 1 City View Drove, Toronto, Ontario (the "Property")[3].

2. Due to financial difficult, 1000 Inc. has been in arrears on the BDC Loan since November 2023[4].

3. Despite financial challenges, 1000 Inc. has secured purchasers for the Property, specifically R&W Carriers Inc. and 2333555 Ontario Inc., via an Agreement of Purchase and Sale dated March 04, 2024[5]. The closing date of this sale is scheduled for May 30, 2024.

4. The total sale price is sufficient to clear all arrears and outstanding debts 1000 Inc. owes to BDC.

PART II – STATEMENT OF ISSUES

5. The Respondent submits that the following issue should be considered by this Honorable Court:

   a. Whether the appointment of a receiver is just and convenient in the circumstance.

PART III – LAW & ARGUMENT

6. The test for the appointment of a receiver pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("*BIA*") or section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 ("*CJA*") is well established- the court must determine whether it is just or convenient

---

[1] The facts set out here in are drawn from the Affidavit of Adnan Ahmad, affirmed May 02, 2024 ("Ahmad Affidavit")
[2] Ahmad Affidavit at para 4.
[3] Ahmad Affidavit at para 4.
[4] Ahmad Affidavit at para 5.
[5] Ahmad Affidavit at para 8.

to do so. The Court "must have regard to all of the circumstances" in making this determination[6]. Further, the presence or lack of a contractual entitlement to permit the appointment of a receiver is not determinative of the issue[7].

7. Numerous factors have been historically considered in making this determination, including[8]:

a. The balance of convenience to the parties;

b. The principle that the appointment of a receiver should be granted cautiously;

c. The effect of the order on the parties;

d. The cost to the parties; and

e. The likelihood of maximizing return to the parties.

8. The law governing receivership emphasizes that it should only be considered as a last resort. In this case, receivership is not only premature but unnecessary as the sale of the property is imminent and would adequately satisfy all outstanding obligations of the Respondent to the Applicant.

9. *Canadian Western Bank* supports the Respondent's position that courts should avoid appointing receivers where less disruptive alternatives that satisfy the debt obligations are available. In *Canadian Western Bank*, despite the Debtor having executed a consent to judgment appointing a receiver and manger, the Court granted the Respondent a 30-day adjournment of the hearing on the appointment of a receiver on the basis that the Respondent entered into an Agreement of Purchase and Sale of the subject property, which, if completed, would pay out the applicant[9].

---

[6] *Canadian Western Bank v. 2563773 Ontario Inc.*, 2023 ONSC 4766, at para 6 [*Canadian Western Bank*].
[7] *Ibid*., at para 7.
[8] *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186 at para 25.
[9] *Canadian Western Bank*, at paras 24 and 25.

10. The imposition of a receiver at this critical juncture would disrupt or jeopardize the pending sale of the Property. Such an appointment would lower the Property's selling price due to the stigma and operational constraints associated with receivership-handled sales[9].

11. The current management of the Respondent has successfully brought the sale to near completion under challenging circumstances, demonstrating the capability and commitment to resolving the Respondent's indebtedness without the need for court intervention.

PART IV – ORDER REQUESTED

12. The Respondent respectfully requests that this Honourable Court:

a. Dismiss the Applicant's motion for the appointment of a receiver and manager over all of the Respondent's assets;

b. Alternatively, the Court adjourn any decision regarding the appointment of a receiver and manager until after the closing of the sale.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of May 2024.

Aneal Seegobin

ANEAL S. SEEGOBIN (LSO #87720F)
Email: info@assertionlaw.ca
Tel. 647-997-6325

Lawyer for the Respondent

[9] *1324789 Ontario Inc. v. Marshall*, 2019 ONSC 517 at para 44.

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Canadian Western Bank v. 2563773 Ontario Inc.*, 2023 ONSC 4766
2. *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186
3. *1324789 Ontario Inc. v. Marshall*, 2019 ONSC 517

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY-LAWS

***Courts of Justice Act*, RSO 1990, c C.43**

Injunctions and receivers

101.(1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

***Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3**

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
(c) take any other action that the court considers advisable.

Court File No. CV-24-00718535-00CL

Business Development Bank of Canada Applicant	-and-	1000265218 Ontario Inc. Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE RESPONDENT

ASSERTION LAW PROFESSIONAL CORPORATION
17-2601 Matheson Blvd E
Mississauga ON L4W 5A8

ANEAL S. SEEGOBIN (LSO #87720F)
Email: info@assertionlaw.ca
Tel. 647-997-6325

Lawyer for the Respondent,
1000265218 Ontario Inc.