ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00742524-00CL **DATE: July 31, 2025**

NO. ON LIST: 3

TITLE OF PROCEEDING:

1001116006 Ontario Inc. vs. 2568551 Ontario Inc., et al

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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ENDORSEMENT OF JUSTICE KIMMEL:

[1] The applicant 1001 Ontario seeks an order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* ("BIA") and section 101 of the *Courts of Justice Act* appointing Grant Thornton as receiver over: (a) the Calibrex Real Properties and all the proceeds thereof; (b) the Milborne Real Properties and all the proceeds thereof; and (c) all the assets, undertakings and properties of the Milborne Respondents. All respondents have confirmed that they do not intend to oppose this application.

[2] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Aide Memoire and supporting affidavit of the applicant filed in support of this motion.

The Appointment of the Receiver

[3] On April 9, 2025, the applicant 1001 Ontario purchased the legal and beneficial rights and interests in two loan agreements secured by mortgages on the Calibrex and Milborne Real Properties in Niagara Falls. The applicant obtained an assignment of the security under the two loans when it purchased the rights and interests under the Calibrex Loan Agreement and the Milborne Loan Agreement. 1001 Ontario is a secured creditor within the meaning of the BIA. The applicant also registered its security interests under the Personal Property Security Act. There are no other registered secured creditors. There is a lien claimant whose position is considered later in this endorsement.

[4] Grant Thornton consents to being appointed as Receiver. It is a Trustee as defined in the BIA and no issues have been identified that would call its qualifications to be so appointed into question.

[5] The respondents are "insolvent persons" under the BIA.

a. An Event of Default has occurred under the Calibrex Loan Agreement. Calibrex has failed to pay and/or failed to cause the Calibrex Affiliates to pay the required interest payments due on the loan from and after September 30, 2024. As of May 7, 2025, the total tax arrears owing on the Calibrex Real Properties were over $420,000.

b. The Milborne Respondents are in default of their obligations under the Milborne Loan Agreement. They have: (i) failed to pay any of the required interest payments due on the loan from and after September 30, 2023; and (ii) failed to repay the balance the principal and accrued interest when the loan matured on February 1, 2024. As of May 7, 2025, the total tax arrears owing on the Milborne Real Properties are nearly $220,000.

c. One of the Milborne Respondents failed to pay a contractor resulting in a construction lien for $52,206 being registered against one of the Milborne Properties on April 7, 2025 (the "Construction Lien").

d. The respondents are unable to meet and/or have stopped paying their obligations in as they become due.

[6] Notices were delivered pursuant to s. 244 of the BIA of the applicant's intention to enforce upon its security and none of the defaults have been cured.

[7] Having regard to all of the circumstances, but in particular the nature of the property and the rights and interests of all parties in relation thereto, including but not limited to the rights of the applicant under its security, I must be satisfied that it is just and convenient to appoint the Receiver under both s. 243 of the BIA and s. 101 of the CJA.

[8] Other considerations that are applicable in this case include: a contractual right to appoint a receiver, the existence and nature of the default, the need to preserve and protect the property, the risk of the lenders' security deteriorating, and the likelihood of maximizing returns to the parties: see *JBT Transport Inc.(Re),* 2025 ONSC 1436 at para. 32 citing *Bank of Nova Scotia v. Freure Village of Claire Creek*, 1996 CanLII 8258 (ONSC) at paras. 10-12 and *Kingsett Mortgage Corp. v. Mapleview Developments Ltd., et al* ., 2024 ONSC 1983, at paras. 24-25.

[9] The appointment of a receiver is needed in this case to preserve the value in the Real Properties and to protect the interests of the applicant and those of the corporate respondents' stakeholders. There is no reasonable prospect that the respondents will cure their defaults nor complete the intended development. They have filed no evidence to the contrary. The respondents involved in the original development plans are suing one another, and Milborne or his companies are involved in at least 11 claims related to his various ventures. Other properties owned by Milborne or his related companies (not at issue in this application) have either been sold through a receivership process or are currently the subject of a receivership application. The hope and expectation is that there may be an opportunity to sell the Properties that are the subject of this receivership application in a coordinated effort with the sale of adjacent properties also in receivership.

[10] The respondents have allowed the properties to sit mostly vacant for years, creating significant safety and financial concerns, including unpaid property taxes, three fires on three of the subject properties due to apparent neglect, and the Construction Lien. The property tax arrears take priority over the mortgage security that 1001 Ontario holds. The pattern of fires on the properties also risks further lien claims.

The Construction Lien

[11] The Construction Lien claimant does not oppose the appointment of the Receiver but appeared at the hearing to seek a carve out from the BIA stay of proceedings: a) to allow the claimant to take steps to compel the applicant to respond to its request for information under section 39 of the *Construction Act*; and b) to impose a deadline for the applicant to serve and file a statement of defence to the lien action.

[12] The Construction Lien relates to demolition and removal of a building on the property that had been damaged by fire. The claimant issued a Statement of Claim to perfect its lien on July 2, 2025. It granted an indulgence to extend the time for the filing of the Statement of Defence to August 11, 2025. This was on the expectation that this receivership application was not going to be heard until September 25, 2025 when it had originally been scheduled. The applicant sought an earlier hearing date when it received confirmation that the respondent debtors would not be opposing the motion.

[13] Prior to issuing the Statement of Claim, on June 11, 2025 the Construction Lien claimant had made a request under s. 39 of the *Construction Act*. The s. 39 request has been responded to but the Construction Lien claimant has not had a chance to review it to determine if it is satisfied with the response. While it could now require leave to take enforcement steps arising out of the responses received, it has the responses and no one suggested that the granting of the order today would preclude the Receiver from responding to any reasonable follow up requests that may be made once the responses have been reviewed. That is all that it can and should reasonably expect given the circumstances.

[14] Further, I do not consider that it would be appropriate for the Construction Lien claimant to be potentially advantaged over other creditors and stakeholders through an exception or carve out to require a response to the Construction Lien claimant's recently issued statement of claim. However, I agree that it should not be disadvantaged by having granted the indulgence it did when it thought the receivership application would not be proceeding until September and allowed extra time for the statement of defence, rather than immediately noting the defendant to be in default. To address that concern, the court advised that the receivership order would be signed later today and the Construction Lien claimant was relieved of the obligation to abide by the indulgence granted so that it could note the defendant in default.

[15] The court makes no determination at this time as to what the implications of that noting in default will be in the context of the receivership. It is noted that the applicant recognized in its Aide Memoire filed on this motion that the $52,206 Lien Claim already on title could take priority over the mortgage security. That remains to be determined, either by the Receiver or the court, in the normal course of this receivership.

[16] In these circumstances, I am not satisfied that the requested exceptions or carve outs that are sought by the Construction Lien claimant are necessary or appropriate and they are not granted.

Appointment Order

[17] The proposed form of order does not deviate in any material respect from the Commercial List model order. I am satisfied that it is just and convenient for the Receiver to be appointed and I have signed the requested order today, which shall have immediate effect without the necessity of formal issuance and entry.

Kimmel J.

KIMMEL J.