



ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

ENDORSEMENT

COURT FILE NO.: CV-23-00707989-00CL

DATE: April 14, 2025

NO. ON LIST: 4

TITLE OF PROCEEDING: 1180554 ONTARIO LIMITED v. CBJ DEVELOPMENTS INC. et al

BEFORE JUSTICE: OSBORNE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Jeffrey Larry Ryan Shah	Counsel for the Receiver, TDB Restructuring Ltd.	Jeff.larry@paliareroland.com Ryan.shah@paliareroland.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Dextin Zucchi	Counsel for CBJ Developments Inc.	Dextin.zucchi@codehunterllp.com
Andrew Parley Devon Kapoor	Counsel for the Alberta Defendants	aparley@litigate.com dkapoor@litigate.com
Jonathan Kulathungam	Counsel for 1180554 Ontario Ltd.	jkulathungam@teplitskyllp.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Greg Roberts	Counsel for Chris Agagnier	Greg.roberts@roblaw.ca

Adrienne Ho	Counsel for the Receiver, KSV	aho@airdberlis.com
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ENDORSEMENT:

1. The Receiver seeks an order for discharge and release, approval of the Third Report and the activities described therein, approval of its statement of receipts and disbursements for the period January 26, 2024 to February 28, 2025, and approval of its fees and those of its counsel (together with a fees estimate forward through the conclusion of the mandate of the Receiver) for the period from September 1, 2024 to February 28, 2025.
2. The Receiver relies on the Third Report dated March 7, 2025. The Receiver was appointed on January 26, 2024 over the assets and property of the Respondents, CBJ Developments Inc., CBJ-Clearview Garden Estates Inc. and CBJ -Bridal Park II Inc. (collectively, “CBJ”).
3. The Receiver first sought its discharge before this Court on March 18, 2025. On that date, and for the reasons set out in my Endorsement, the same date, I declined to grant the discharge at that time.
4. The Receiver returns today to seek that relief.
5. Some background and context is required to inform the positions of the parties.
6. The Applicant in this proceeding, 1180554 Ontario Limited (“554”), is also the plaintiff in two guarantee actions pending before this Court at Oshawa, Ontario (CV-23-00002045-0000 and CV-23-00002436-0000). 554 does not oppose the relief sought today, but seeks some clarity that the discharge of the Receiver does not affect its ability to pursue the relief sought in the above-noted two guarantee actions.
7. In my view, no relief in respect of those two guarantee actions is required or appropriate. Nothing in the relief sought by the Receiver today, including but not limited to a discharge, would affect those actions, which presumably can continue in the ordinary course.
8. I pause to observe that CBJ also commenced an action in this Court in Fort Erie (CV-24-00723362-00CL) on July 5, 2024 without authorization of the Receiver, consent or leave. The Defendants in that Ontario action are not before the Court today. It is not clear that they have been served with the materials or even that they are aware of the motion for discharge. Mr. Roberts advises the Court, and other counsel confirm, that that action may also be affected by another receivership application in respect of some or all of the defendants to that action recently commenced in this Court, which application may have the further effect of staying that Fort Erie action. In the circumstances, and in the absence of any materials and in the absence of the relevant parties, I make no order with respect to that proceeding.
9. With respect to the motion of the Receiver for discharge and other relief, Mr. Chris Agagnier, a director of CBJ, filed two affidavits sworn April 10 and April 11, 2025 (today), respectively. Mr. Agagnier is a director of CBJ. He is also one of the individual defendants in the first of the above-noted two actions pending before this Court at Oshawa, Ontario. The affidavits are not filed as part of a motion record. Mr. Roberts appears today as counsel for Mr. Agagnier and confirms that he acts for Mr. Agagnier personally, and not for CBJ.
10. Mr. Agagnier seeks an order imposing two terms on any discharge of the Receiver relating to an Alberta action described below. Specifically, he seeks an order granting leave to CBJ *nunc pro tunc* to commence

the Alberta action, or a discharge of the Receiver in a manner that contemplates the continued carriage of the action by CBJ. I cannot discern any basis for Mr. Agagnier seeking this relief in his personal capacity.

11. CBJ appears today as represented by Mr. Zucci. CBJ has filed no materials whatsoever, and nor has it filed a factum. However, CBJ places great reliance on the affidavits of Mr. Agagnier, which I pause to note were sworn before counsel to CBJ, and not Mr. Agagnier's own counsel. Relying on the affidavits of Mr. Agagnier, CBJ seeks the imposition of the two terms referred to above to any discharge of the Receiver in order that CBJ can continue the Alberta action described below, and which is already pending.
12. In addition to the Fort Erie action described above, CBJ commenced an action in the Alberta Court of King's Bench on December 23, 2024, also during the course of the receivership of CBJ, and also without the knowledge or consent of the Receiver or leave of this Court.
13. Today, CBJ and Mr. Agagnier acknowledge having commenced both actions (the Fort Erie action and the Alberta action). As set out in my earlier Endorsement made in this matter, CBJ had no authority to commence either action, given the clear and unequivocal terms of the Receivership Order made in this proceeding. CBJ does not argue otherwise, and nor could it. It does submit, however, that leaving aside for today's purposes the Fort Erie action, there is no prejudice to allowing the Alberta action to continue.
14. The defendants in the Alberta action, Andrew Cockwell, Ian Cockwell, Mutende Equities Ltd. and Ursataur Capital Management LP, were first before this Court on March 18, 2025, on which date, as noted above, I declined to discharge the Receiver. The Receiver had been advised of the commencement of the Alberta action, and indeed counsel to the Receiver had sent correspondence to CBJ advising and confirming that the Alberta action had been commenced without the consent of the Receiver, contrary to the express terms of the Receivership Order, and demanded that CBJ refrain from taking any steps without the consent of the Receiver, which had not been given.
15. The Alberta action had been adjourned by the Alberta Court of King's Bench on March 18 at the request of CBJ to March 31. Given that both of the above-noted Alberta and Ontario actions had been commenced by CBJ in direct breach of the Receivership Order, and given the uncertainty with the status of proceedings in Alberta, I determined it was not appropriate to discharge the Receiver and that my Endorsement and the surrounding circumstances should be brought to the attention of the Court of King's Bench in Alberta when the matter returned before that Court on March 31.
16. When the Alberta action came back before the Alberta Court on March 31, 2025, the Alberta Court dismissed the application for an order striking the Statement of Claim, but stayed the Alberta action pending either an order from this Court granting leave *nunc pro tunc* to CBJ to commence that action, or a discharge of the Receiver by this Court in a manner that contemplated continued carriage of the Alberta action by CBJ. The Alberta Court deferred to this Court as the most appropriate forum within which to determine whether and the extent to which such relief should be granted. Hence the return of this matter today.
17. The Alberta Defendants submit that this Court should decline to grant leave and should decline to grant the discharge of the Receiver in a manner that contemplates continued carriage of the Alberta action by CBJ, all on the basis that such be without prejudice to the right of CBJ to commence a new action once it has the authority to do so, or to seek whatever directions may be appropriate from the Alberta Court with respect to lifting the stay currently imposed.
18. They submit that the Alberta action was commenced in clear breach of the Receivership Order, of which Mr. Agagnier and CBJ were well aware (he is a director of CBJ), CBJ has taken no steps (even today) to attempt to rectify its breach of the order by seeking permission from the Receiver or leave from the Court, and CBJ will be free to commence a new claim in Alberta once it has the authority to do so. They submit

that declining to grant leave for discharge permitting a continuation of the Alberta action will not determine any rights of CBJ under the Alberta *Limitations Act*, so there is no prejudice to it.

19. CBJ submits that it will be prejudiced since it commenced the Alberta action as it did to protect against the then imminent expiry of the relevant Alberta limitation period, which has apparently now arguably expired.
20. It commenced the Alberta action and the Ontario action in direct and flagrant breach of the Receivership Order. Mr. Agagnier was a director and is a director of CBJ. He states in his affidavits, effectively, that he thought the activities of the Receiver were limited to those affecting the real property over which security had been granted to the senior creditor, 554. Mr. Agagnier states in his first affidavit that, in respect of the Alberta action, he did not recall being served with the Receivership Order or being made aware of any specific provisions that prohibited the commencement of legal proceedings on behalf of CBJ.
21. Yet, in his second affidavit sworn the very next day, on April 11, 2025, Mr. Agagnier states that with respect to the Ontario action commenced approximately six months earlier, he was in “constant communication with [the Receiver], that the Receiver advised his lawyer that they were going to issue the claim, and further that he (Mr. Agagnier) was advised by his counsel that the Receiver “did not take any issue with that course of action”.
22. Leaving aside the double hearsay nature of that evidence, it is difficult to reconcile that series of events as recalled by Mr. Agagnier in respect of the Ontario action with what happened six months later regarding the Alberta action.
23. His evidence is to the effect that with respect to the Ontario action, he and his counsel specifically discussed the potential action with the Receiver and (allegedly) obtained confirmation from the Receiver that it did not object to CBJ commencing the action itself (a position directly contradicted by the Reports of the Receiver and the correspondence appended thereto by which it challenged the right of CBJ to commence the actions). Yet, Mr. Agagnier’s evidence with respect to the very same situation he encountered six months later regarding the Alberta action is to the effect that he did not realize the Receivership Order prohibited the company from commencing the action without the consent of the Receiver or leave of the Court.
24. I continue to be concerned, as I was on March 18, 2025, by the blatant disregard of CBJ for orders of this Court, and by its failure or refusal to take any steps to rectify or regularize its actions in commencing these two proceedings once both the Defendants, and the Court-appointed Receiver, took issue with what had been done.
25. This Court expects and, if social and civil order is to be maintained, is entitled to expect, that its orders will be complied with. This principle was confirmed by the Court of Appeal for Ontario just a few weeks ago when it stated (ironically, specifically in respect of non-compliance with a receivership order) that:

It is a fundamental principle that orders of a court to be obeyed. They are not to be stalled, and they are not to be negotiated. Serious consequences are to be expected by anyone who wilfully fails to obey a court order.

See: *Canadian Western Bank v. Canadian Motor Freight Ltd.*, 2025 ONCA 263 at para. 22.
26. This Court certainly expects debtor respondents in receivership applications to comply with Receivership Orders and the authority and powers of the Receiver is appointed thereunder.

27. The Receiver is a Court officer. It is appointed with power over all assets and property of, in this case, CBJ. That includes the right to bring actions and purport to assert legal rights. During the course of the Receivership, which continues today, CBJ had no authority to commence the actions as it did on its own.
28. There were courses of action open to CBJ to address the situation properly had it elected to do so. It could have requested, at the time it unilaterally commenced the Alberta and Ontario actions, that the Receiver immediately do so on behalf of the estate or that the Receiver consent to CBJ commencing either or both actions. If the Receiver failed or declined to do so, CBJ could have sought leave from this Court authorizing CBJ to commence the actions or directing that the Receiver do so. The Receivership Order has the standard comeback clause expressly providing that any affected party can seek the advice and directions of the Court on an urgent basis. None of that was done.
29. Even today, and even with its late and improperly filed affidavits, it offers neither contrition nor explanation. Rather, it seeks retroactive (*nunc pro tunc*) relief simply regularizing and sanitizing its prior misconduct. Still, CBJ has not served a Notice of Motion with any prayer for relief (as noted above, CBJ has not filed any materials at all). In particular, it brings no motion for any such relief. Rather, it simply requests that the relief be granted, in practical terms, by way of the imposition of terms on the discharge order. I am not prepared to grant that relief today.
30. Moreover, there is no evidence upon which I can even conclude whether the Alberta action was otherwise properly commenced, leaving aside the fact that it was commenced in breach of the Receivership Order. It was not commenced by counsel acting for the Corporation, as is required absent leave. It was commenced by CBJ acting without counsel.
31. In his affidavit sworn April 10, 2025, Mr. Agagnier states simply that it was commenced by Kimberley Zacharias, CBJ's Controller, on his instructions "to preserve CBJ's claims against the defendants since [he] understood that the two-year deadline to commence the lawsuit was about to expire." There is no evidence about corporate authority to commence the proceeding, and even any knowledge of, let alone approval by, the Board of Directors of CBJ nor any explanation as to why the Corporation was not represented by counsel.
32. For all of these reasons, and had I been otherwise prepared to grant the discharge today, I would have declined to impose either of the two requested terms without prejudice to the rights of all parties to seek whatever relief they thought might be appropriate from the Alberta Court, including but not limited to the lifting of the stay imposed by that Court. In my view, the Alberta Court of King's Bench is best positioned to address the issue of whether and on what terms the stay should be lifted or other relief granted, given that issues such as whether the applicable limitation period has expired are issues of Alberta Law that flow from the application and interpretation of an Alberta statute (the *Limitations Act*) in respect of a pending Alberta action.
33. However, at the conclusion of argument on all of these issues, counsel for the Receiver suggested that the most appropriate course of action would be for the discharge motion to be adjourned. This suggestion followed submissions from Mr. Roberts to the effect that there may well be available evidence not yet in the record, relating to, among other things, communications between CBJ or its principals and the Receiver about the commencement of the Ontario action and possibly other issues, some of which is referenced above. Counsel for the Receiver was unable to reach the Receiver during the hearing.
34. In my view, an adjournment of the motion for discharge is appropriate for two reasons. First, I think it important in the circumstances of this case that the record be full and complete, particularly with respect to the issues referred to above. At present, there seems to be a dispute about what information was

conveyed to the Receiver (at least in respect of the Ontario action), when, and what if any position of the Receiver was conveyed to CBJ.

35. Second, in my view, it is important for the Receiver, as a Court officer, to take a position and advise the Court with respect to the value, if any, to the estate of either or both of the Ontario and Alberta actions. Today, the Receiver, supported by 554, takes the position that it has no further available funding and therefore has not investigated the merits (or value) of either action. This could be important, as the record suggests that all creditors (secured and unsecured) will not recover all amounts owing. I am uncomfortable considering the appropriateness of a discharge of the Receiver without the record being clear as to the value of any and all available assets for the benefit of creditors and what, if anything, should be done in that regard.
36. For all of these reasons, the motion for discharge of the Receiver is adjourned to a date to be fixed through the Commercial List office. It follows that the motion for companion relief (approval of activities and fees of the Receiver) should also be adjourned to be considered at the same time as the discharge.

A handwritten signature in black ink, appearing to read "Osborne J.", is positioned above a horizontal line.

Justice Osborne

Date: April 14, 2025