



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00710411-00CL

DATE: **21-DEC-2023**

NO. ON LIST: 3

TITLE OF PROCEEDING: FIRST SOURCE FINANCIAL MANAGEMENT INC. v. KING DAVID INC. et al.

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Jeff Larry	First Source Financial Management Inc.	jeff.larry@paliareroland.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Eric Block	King David Inc. and Helen Roman-Barber	eblock@rossnasseri.com
Avi Bourassa	King David Inc. and Helen Roman-Barber	abourassa@rossnasseri.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Bryan Tannenbaum	RSM Canada Limited, the proposed receiver	bryan.tannenbaum@rsmcanada.com
Jeff Berger	RSM Canada Limited, the proposed receiver	jeff.berger@rsmcanada.com

Dale Denis	In House Counsel	

ENDORSEMENT OF JUSTICE STEELE:

- [1] This is an application by First Source Financial Management for the appointment of RSM Canada Limited as receiver over the certain lands and premises (the “Real Property”) owned by King David Inc. (“KDI”).
- [2] Helen Roman-Barber and KDI requested an adjournment, which I declined to grant given the three prior forbearances granted by the lender and the consent to the appointment of a receiver signed by the debtor.

Background

- [3] First Source Financial Management Inc. has a first mortgage over a vacant development site owned by KDI. The mortgage secures indebtedness of more than \$55 million.
- [4] KDI’s obligations under the loan are guaranteed by KDI’s principal, Helen Roman-Barber.
- [5] The commitment letter for the loan provides that the lender can appoint a receiver if the loan is in default.
- [6] The loan went into default in April 2023. The parties entered into three forbearance agreements, each of which gave the borrower more time to repay the loan. Each agreement also included the borrower’s and guarantor’s consent to the appointment of a receiver if the loan was not repaid by the end of the forbearance period.
- [7] The most recent forbearance period expired, and the loan has not been paid.

Analysis

Should a receiver be appointed over the Real Property?

- [8] As noted, the borrower and guarantor consented to this application by entering into the forbearance agreements. The three forbearance agreements provided that the lender would appoint a receiver if the loan was not repaid by the end of the forbearance period.
- [9] The Court retains the discretion to assess whether the lender is entitled to the relief sought. I am satisfied that a receiver ought to be appointed on the terms set out below.
- [10] Under section 243(1) of the *Bankruptcy and Insolvency Act* on application by a secured creditor, the Court may appoint a receiver where it is “just or convenient” to do so. Similarly, under section 101 of the *Courts of Justice Act* the Court may appoint a receiver where such an appointment is “just or convenient.”

[11] In deciding whether it is “just and convenient” to appoint a receiver, the Court must consider all of the circumstances of the case, and, in particular, the nature of the property and the rights and interests of all parties in relation to the property: *Bank of Nova Scotia v. Freure Village of Clair Creek*, [1996] OJ No. 5088, at para. 10.

[12] The relevant security documents include the right of applicant to seek the appointment of a receiver. As noted by the applicant, where the security documents provide this right, the burden on the applicant is lessened. The Court in *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866, at para. 27, stated:

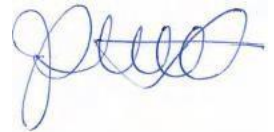
[W]hile the appointment of a receiver is generally regarded as an extraordinary remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties.

[13] The mortgage is in default. There have been three forbearance agreements and the loan has not been repaid. The relevant security documents contemplate the applicants right to appoint a receiver and the borrower and guarantor consented under the forbearance agreements.

[14] The following is ordered:

- a. The Application: (i) to appoint RSM Canada Limited as receiver (the “Appointing Order”); and (ii) for judgment against the respondents (the “Judgment”) is granted on the terms of the draft order and judgment, respectively, filed with the court and uploaded on CaseLines at A-322 (in the case of the Appointing Order) and as emailed to me on December 22, 2023 (in the case of the Judgment);
- b. The Appointing Order and Judgment are stayed until 4:00pm on January 8, 2024 to permit the Respondents to pay the Applicant the agreed-upon amount of \$55,633,654.12 plus interest as per the terms of the Judgment from the date hereof to the date of payment, which amount is secured under the charge registered as Instrument No. YR3349360 against Real Property;
- c. Should the Respondents fail to fulfil the requirements of clause (b) above on or before January 8, 2024 at 4:00pm, then the Appointing Order and Judgment shall be of full force and effect as of 4:01pm January 8, 2024 without need for further order of the court and this endorsement shall have no further effect;

- d. Should the Respondents pay the Judgment amount, inclusive of interest on or before 4:00pm on January 8, 2024, then the Appointing Order and Judgment are withdrawn and dismissed, the Notice of Application is withdrawn and will be dismissed without costs, and the parties will cause the charge against the Real Property referred to in clause (b) above to be discharged; and
- e. The court must know the status of this matter and whether the Appointing Order and Judgment are or are not outstanding and in effect. I therefore direct counsel to notify me by email on or before 4:00pm on January 8, 2024 (directly, with a copy to the Commercial List office) whether the Appointing Order and Judgment have gone into effect or whether they have been withdrawn, and whether or not the Application is to be dismissed.

A handwritten signature in blue ink, appearing to be "J. Lee", is located in the lower right quadrant of the page.