



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

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

DATE: 26 January 2024

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

BEFORE: JUSTICE PENNY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Jonathan Kulathungam	1180554 ONTARIO LIMITED	jkulathungam@teplitskyllp.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Miranda Spence	CBJ DEVELOPMENTS INC. et al	mspence@airdberlis.com
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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Bryan A. Tannenbaum	Proposed receiver	bryan.tannenbaum@rsmcanada.com
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ENDORSEMENT OF JUSTICE PENNY:

- [1] The applicant, 1180554 Ontario Limited, is the first in priority secured creditor of the respondent debtors (CBJ), holding \$16 million of registered mortgages against three parcels of land owned by CBJ in the area of Stayner, Ontario. These mortgages bear interest at the rate of 13%. The applicant seeks the appointment of a receiver over these properties for the purposes of realization and payment of the outstanding mortgages.
- [2] This application was before Justice Steele on December 19, 2023. At that time, the debtor sought, and obtained, an adjournment of 118's receivership application. The basis for the adjournment was to enable the debtor some time to proceed with a sales process it had already undertaken with Royal LePage. Although the debtor asked for a six-month adjournment, Justice Steele granted the adjournment to January 26, 2024, a period of a little over five weeks. At the new return date, the debtor was to report on likely buyers as a result of the Royal LePage sales and marketing program and the status of any prospective sale transactions.
- [3] On the return, the debtor and the second and third mortgagees (the Niagara lenders) now seek a further adjournment.
- [4] The Niagara lenders served notices of default under their mortgages on January 8, 2024. These notices make demand for payment of over \$55 million owed under second and third mortgages. Further, these defaults triggered increases in interest payable under the terms of the Niagara lenders' mortgages to 24% per annum, compounded monthly.
- [5] Since December 19, 2023, there have been no letters of intent and no offers. The properties were not listed on the MLS. There is no evidence of any pending transactions or even serious interest. The listing has just been reduced from \$70 million to \$60 million. Thus, the proposed listing price is now less than the amount of debt now claimed to be owed by 118 and the Niagara lenders.
- [6] The Niagara lenders ask for "a few weeks" to come up with a deal or a refinancing plan. There is no evidence offered of what that might be or of any prospects. There is certainly no indication of any willingness to assume the 118 debt. Further, the Niagara lenders had counsel who attended on the December 19 motion before Justice Steele. The Niagara lenders were well aware of the issues and the limited scope of the adjournment. The fact that they recently chose to retain new counsel does not assist them. They too have had months to come up with a plan or an alternative to the evolving and deteriorating financial situation which is now upon them, and five weeks since the attendance before Justice Steele. Their first attempt to file material was effectively the morning of the hearing.
- [7] In my view, this latest adjournment request is based on nothing more than a wing and a prayer and must be denied.
- [8] The debtor has not been transparent with the applicant and has provided no information or updates on the Royal LePage marketing program. It has changed the listing price without consultation. The debtor clearly has no capacity whatsoever to sustain the heavily leveraged properties and service the mortgages. The debtor itself filed no new evidence for the January 26, 2024 hearing. The only new evidence CBJ offers is the opinion of Royal LePage, to the effect that it would be detrimental to ongoing marketing efforts to cut

Royal LePage loose at this point. Notably, Royal LePage offers no evidence of imminent deals or even likely prospects.

- [9] There is no doubt the applicant's loans are in default. There is no dispute that 118 has first in priority security. While there is a dispute about the enforceability of certain "participation payments", this dispute is relevant to priority and distribution issues, not whether there are grounds for the appointment of a receiver in the first instance. The 118 loan documentation provides for the appointment of a receiver. The debtor has not been transparent or co-operative with 118 since December 19. The time given to the debtor by Justice Steele has not proven effective or fruitful. As noted, the situation has gotten worse, a lot worse, not better. Ongoing interest accumulation has skyrocketed as a result of the default notices delivered by the Niagara lenders. For good reason, the applicant has lost all confidence in the debtor.
- [10] Given the size and value of the properties, the amount of the debts, the complexity of the required process of orderly realization and distribution, and the number of stakeholders and mortgagees, it is appropriate to have a court appointed officer take charge. This will ensure transparency and the opportunity for stakeholders to be heard. The application for the appointment of RSM Canada Limited as Receiver is granted.
- [11] The Niagara lenders also asked, in the alternative, for the appointment of their own choice of receiver. No motion was brought for this relief. There was a vague and unspecified concern raised about "conflict of interest". I give no credence to this argument. The alleged concern over a conflict concerns 118 and its relationship to the law firm of Bennett Jones. This has nothing to do with the proposed receiver, Mr. Tannenbaum of RSM. On the record before me, there is no basis for making any findings concerning conflicts (the applicant has also raised conflict issues about Mr. Hoffman, the deponent for the Niagara lenders, and his relationship to CBJ), and certainly none in respect of RSM.
- [12] No black line to the Model Order was circulated. The applicant is required to do so. I expect all counsel to work co-operatively to sort out any issues with the form of the order. This is not, obviously, an invitation to re-litigate issues already dealt with or to seek tactical or other collateral advantages.
- [13] The appropriate order as approved by all counsel shall be delivered to my attention through my registrar (if it is ready during business hours on January 26, 2024) or through the Commercial List office if it is not. If counsel are not able to resolve the form of the order, I may be spoken to.
- [14] Finally, the debtor has suggested that it would not be financially prudent to jettison Royal LePage's efforts at this stage, in favour of a completely new solicitation and sale process, which could take months and involve time consuming and costly court attendances. RSM is well aware of its obligations to the court and to the stakeholders to maximize value for the benefit of all. It is not my role, at the outset, to direct the Receiver as to what course of action it must take. I am sure (and have been assured that) RSM will carefully consider all proposals for how to achieve the highest value in any realization plans, including whether the ongoing work of Royal LePage is sufficient and appropriate in all the circumstances.



Penny J.