

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**IN THE MATTER OF AN APPLICATION UNDER  
SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C.  
1985, c. B-3, AS AMENDED; AND  
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C. 43,  
AS AMENDED**

**RE:** 1112396 ONTARIO LIMITED, BLUEBERRY RECORDINGS INC.,  
STANART HOLDINGS INC. and FALVO HOLDINGS LIMITED Applicants

**AND:**

Z. DESJARDINS HOLDINGS INC. and ZACHARY DESJARDINS,  
Respondents

**BEFORE:** Tranquilli J.

**COUNSEL:** Stephen Turk & Judy Hamilton, for the Applicants

William Chapman, for the Respondent

Caitlin Fell & Shaun Parsons for the Interim Monitor

**HEARD:** October 25, 2023

**ENDORSEMENT**

- [1] *[The following reasons were delivered orally today following the hearing of an urgent motion for directions.]*
- [2] The applicant lenders bring this application for appointment of a receiver pursuant to s. 243(1) of the *Bankruptcy and Insolvency Act* and s. 101 of the *Courts of Justice Act*. The debtor operates 3 gas station/convenience stores in Grand Bend, Clinton and Exeter. As of June 2023, the respondent is indebted to the applicants in the amount of \$4,514,868.20 together with accrued interest and accruing interest, fees and costs. The loans have been outstanding for many months, with extensions and forbearance agreements, with no result. The agreements make numerous provisions for the lenders' rights in the event of a default, including the appointment of a receiver.
- [3] The application was first returned in this court on October 13, 2023. At that time the parties consented to an interim order pending the argument of the application at the end

of January 2024. That order provides for the appointment of an Interim Monitor, RSM Canada Limited and sets out various obligations for the respondent pending the argument of the application.

- [4] Note is made of the respondent's affidavit of October 12, 2023, at the last return of this application, and which was before the court and the parties when the consent order was finalized. That affidavit outlined a history of a contractual dispute with a third-party supplier who had been operating the gas stations. The respondent deposed it had reopened the gas stations in a limited capacity, with limited inventory in May 2023 after the third-party ostensibly stopped operating the stations, and that as of the first week of September 2023, the respondent was operating the premises at full capacity, with an expectation to be able to refinance the operations by mid December 2023.
- [5] However, the Interim Monitor raised concern last week when it attended at each of the respondent locations to discover that they were closed, with no employees present. Further inquiries revealed the TSSA licence for the Grand Bend gas station had expired.
- [6] This triggered an urgent motion for directions by the Interim Monitor, set for today by the local administrative justice, followed by the applicants' return of its application for the initial relief sought to appoint RSM Canada Limited as receiver and manager, based upon the issues raised by the Interim Monitor.
- [7] The respondents' supplementary affidavit received the evening of October 24, 2023, acknowledges the operations were closed for Point of Sales upgrades, at which time they took the opportunity to take stock of inventory and clean the premises. They re-opened earlier than expected by October 20, 2023. Photographs are included to demonstrate the presence individuals at a gas station, which is said to be open.
- [8] The respondents advise the expiration of the Grand Bend TSSA licence is inadvertent and as result of the acts or omissions of the third party Canco, who had previously been operating the premises. The respondents advise that having been made aware of this lapse, they immediately took steps to renew the licence and show the receipt in that regard.
- [9] There is also an ancillary issue with respect to service of a statement of claim issued by the respondents against its former supplier and its principals, along with the applicants, alleging a conspiracy. Part of the relief sought relates to injunctive relief preventing the applicants/defendants from enforcing their mortgages.
- [10] To the extent the applicants are required to demonstrate a material change in circumstances since the consent order, I am satisfied they have done so. The entire point to this application and the interim order is to preserve an asset and mitigate against the risk of collateral dissipation or erosion. The closure of all three operations, within days of the consent order, and without notice to the applicants and the monitor, is concerning. The order was clearly reached on October 13, 2023 and the respondents were on notice of their obligations. Any delay in the formal issuance of the order is of no moment.

- [11] I agree with the submissions of the interim monitor and the applicants that these events of last week are not sufficiently explained by the responding affidavit, particularly where financial disclosure has been long outstanding, as demonstrated in the application record. In fact, I find the respondents' explanations raise more questions than answers and tends to support the monitor's and the applicants concerns. The shutdown seems to contradict the representations made only one week earlier to the court and to the parties. Why is a total shutdown necessary for a Point of Sale upgrade? Why didn't they advise the monitor given their clear obligations under the consent interim order? The photographs are insufficient to restore confidence that these businesses are now back up and running as going concerns. There is no documentation supporting that there are currently business activities on the premises. There is no explanation of who took these photographs, when, what and who they are purported to depict and at what location(s).
- [12] The fact that the renewal of the TSSA licence has now been made also fails to address questions and concerns as to whether it is, or will be, in fact licensed and the ramifications of operating without a licence. The TSSA licence appears to have at all times been the responsibility of the respondents, given their name on the documentation, notwithstanding any alleged conduct by the third party Canco.
- [13] In all, it is reasonable that the interim monitor and the applicants take the position there now reason for even greater concern given the lack of transparency and the suspicious circumstances of the temporary closure and the status of the TSSA licence. This interim order has been thwarted from the outset in achieving its purpose of ensuring the continued preservation and maintenance of the property. There are grounds for suspicions as to the dissipation of the property and that the value of the lenders' collateral is being eroded.
- [14] This interim order highlighted that this was the time for greater transparency. Unfortunately, that did not occur and the explanations to date do not sufficiently displace the concerns raised by last week's developments. Under the *BIA*, the respondents have a duty to act in good faith – 4.2 (1). The respondents have failed to meet their obligations to act candidly, honestly, forthrightly, and reasonably in their dealings.
- [15] I accept that the time has arisen for the Interim Monitor to take greater control as the receiver, on the terms sought by the applicants. I am not satisfied that additional terms to the interim monitoring order will sufficiently address the overarching interest of preserving and maintaining these assets. Given the contractual agreement, there is a low burden for the applicants to meet for the appointment of a receiver. The respondent has been given ample opportunity to show good faith and to explore opportunities to cure the defaults as well as for refinancing. I am satisfied it is just and appropriate for the immediate appointment of a receiver on the terms as sought by the applicants.

[16] The application is therefore granted. The draft receivership order appended as Schedule A to the interim monitorship order of Heeney J. dated October 13, 2023 is signed, with amendments as to the date and the participation of the Interim Monitor and the special appointment date is vacated.

A handwritten signature in blue ink, reading "K. Tranquilli J.", is centered on a light yellow rectangular background.

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Justice K. Tranquilli

**Date:** October 25, 2023