



SUPERIOR COURT OF JUSTICE

ENDORSEMENT

COURT FILE NO.: CV-23-00705805-00CL DATE: March 15, 2024

NO. ON LIST: 3

TITLE OF PROCEEDING: **First Source Financial Management Inc. v. H-M Apartment Moccasin Inc. et al**

BEFORE: **JUSTICE STEELE**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Alex Henry	H-M Apartment Moccasin Inc.	ahenry@hamptonmetrix.com

Other:

Name of Person Appearing	Name of Party	Contact Info
Bryan Tannenbaum	Proposed Receiver	btannenbaum@tdbadvisory.ca

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ENDORSEMENT OF JUSTICE:

[1] First Source Financial Management Inc. brings this application seeking judgment against the respondent, H-M Apartment Moccasin Inc. (“H-M Apartment”) and Hampton-Metrix 2006 Limited Partnership (“Hampton-Metrix”) for a loan that has not been repaid, and an order pursuant to s. 243(1) of the *Bankruptcy and Insolvency Act* and s. 101 of the *Courts of Justice Act* appointing TDB Restructuring Limited as receiver over two parcels of land in Toronto (the “Real Property”).

[2] No one opposes the relief sought.

Background

[3] First Source’s most recent mortgage against the Real Property, registered in 2022, was \$21,500,000.

[4] The Real Property is not encumbered by any other mortgages.

[5] The loan went into default in July 2023.

[6] First Source made a written demand for payment and issued a Notice of Intention to Enforce Security under s. 244 of the BIA.

[7] There were certain forbearance agreements that were made. The forbearance agreement included a consent of the respondents to the appointment of a receiver and consent to judgment if the debt was not repaid.

[8] The respondents have not repaid any of the debt.

Analysis

Is it just and convenient to appoint a receiver?

[9] First Source asks the Court to appoint a receiver. The respondents do not object to the appointment.

[10] The basic principles governing the appointment of a receiver by the Court were set out in *Bank of Nova Scotia v. Freure Village on Clair Creek* 1996 CanLII 8258 (Ont. Ct. J. [Gen Div – Commercial List]), at para. 10, as follows:

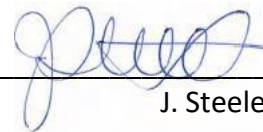
The Court has the power to appoint a receiver and manager where it is “just or convenient” to do so [citation omitted]. In deciding whether or not to do so, it must have regard to all of the circumstances but in particular, the nature of the property and the rights and interests of all parties in relation thereto. The fact that the moving party has a right under its security to appoint a receiver is an important factor to be considered, but so, in such circumstances, is the question of whether or not an appointment by the Court is necessary to enable the receiver-manager to carry out its work and duties more efficiently [citations omitted]. It is not essential that the moving party, a secured creditor, establish that it will suffer irreparable harm if a receiver-manager is not appointed [citation omitted].

[11] The applicants set out the following reasons as to why it is just and convenient in the circumstances for the Court to appoint a receiver:

- a. The respondents now owe First Source over \$25 million and have not repaid any amount;
- b. The debt is continuing to accrue at a *per diem* amount of over \$12,000 according to the Forbearance Agreement;
- c. First Source has made demands for payment. The indebtedness has been outstanding since the loan matured in July 2023;
- d. The respondents do not oppose the appointment;
- e. The Forbearance Agreement (and the charge) contemplate the appointment of a receiver;
- f. There are no other secured lenders with interest in the Real Property or the in the respondents' assets under the PPSA; and
- g. The appointment of a receiver will facilitate a transparent, orderly and safe marketing and sale process for the Real Property.

[12] I am satisfied that it is just and convenient to appoint a receiver in the circumstances.

[13] Judgment and Order attached.



J. Steele

Date: March 15, 2024