

CITATION: Suitor v. Libro Credit Union Inc., 2025 ONSC 3751
COURT FILE NO.: BK-24-208718-OT31
DATE: 20250624

ONTARIO

SUPERIOR COURT OF JUSTICE [Commercial List]

B E T W E E N:

**IN THE MATTER OF THE BANKRUPTCY OF
THOMAS DYLAN SUITOR
AN INDIVIDUAL WITH A LOCALITY OF BURLINGTON, ONTARIO**

BEFORE: Justice Jana Steele

HEARD: June 18, 2025

COUNSEL: *Vinayak Mishra*, for Dylan Suitor

Joshua Tayar & Fred Tayar, for TDB Restructuring Limited, Interim Receiver

Michael Cassone, for Libro Credit Union

Dennis Domenichini, self-represented creditor

William Fawcett, for the City of St. Thomas

David Im, for the Court Appointed Secured Lender in Balboa CCAA Proceedings

Patrick Corney, for National Bank

Jennifer Stam, for the Fuller Landau Group, Receiver of Lion's Share Group Inc.

Colin Hunt, for Peakhill Capital Inc.

ENDORSEMENT

JUSTICE JANA STEELE

Overview

- [1] TDB Restructuring Inc., in its capacity as the Court-Appointed Interim Receiver of Thomas Dylan Suitor, brought a motion before the court that was first heard on May 26, 2025. Among other things, the Interim Receiver seeks court approval to commence a marketing and sales process in respect of Mr. Suitor’s real Properties.
- [2] For the reasons set out below the Interim Receiver’s motion to commence a marketing and sale process in respect of the Properties is dismissed.

Background

- [3] Mr. Suitor was in the business of purchasing, renovating, leasing, and selling residential real estate.
- [4] The Interim Receiver was appointed by Order dated October 7, 2024 further to a motion brought by the receiver of the Lion’s Share Group Inc.: *In the Matter of the Bankruptcy of Thomas Dylan Suitor*, 2024 ONSC 5940 (“*Suitor 2024*”). The motion was brought within the bankruptcy application.
- [5] By Order dated March 26, 2025, Mr. Suitor was adjudged bankrupt, and TDB was appointed as the trustee of his estate: *Suitor v. Fuller Landau Group*, 2025 ONSC 1686. Mr. Suitor is appealing that decision.
- [6] The present motion first came before me on May 26, 2025. The Interim Receiver had contemplated the inclusion of ten properties in a proposed sales process. During the May 26, 2025 attendance, the Interim Receiver advised that there were certain properties that were to be excluded from the proposed sales process. Libro Credit Union (“Libro”) also wanted 207 Ross Street (the property in respect of which Libro is the first mortgagee) to be excluded from the proposed sales process, but the Interim Receiver was not willing to exclude 207 Ross Street. Mr. Suitor is in default under his loan to Libro and Libro has delivered a demand for payment and notice of intention to enforce security.
- [7] I adjourned the matter to June 5, 2025, and directed the Interim Receiver to provide additional submissions to address the proposed exclusion of certain of Mr. Suitor’s properties, but not others, from the proposed sale process.
- [8] At the return on June 5, 2025, Libro raised the issue of the jurisdiction/powers of the Interim Receiver. At that attendance, Dennis and Jessica Domenichini, the first mortgagees on another property owned by Mr. Suitor (38 Duncan Avenue South), filed

materials and made submissions. Their position was that if any properties were to be carved out from the proposed sales process, 38 Duncan should also be carved out so they could commence a power of sale. Mr. Suitor is in default under his mortgage on 38 Duncan. The Domenichini's sent a demand letter to Mr. Suitor at the end of December, 2024, which contemplates the commencement of a realization process.

- [9] At the June 5, 2025 attendance, the Interim Receiver provided additional information regarding the proposed exclusion of three additional properties from the proposed sales process, leaving only seven properties subject to the proposed sales process.
- [10] In my endorsement dated June 5, 2025, which was released on June 9, 2025, I directed the Interim Receiver to address the issue of whether the court had jurisdiction under s. 46 of the BIA to expand the powers of an interim receiver in the manner proposed. I granted the relief sought by the Interim Receiver that was not opposed, including approval of fees and the limited sealing order. The balance of the relief was adjourned to the return.
- [11] The parties re-appeared on June 18, 2025 to make submissions on the jurisdiction issue. The Interim Receiver and Libro Credit Union ("Libro") filed factums.
- [12] Mr. Suitor's counsel indicated that Mr. Suitor supported the Interim Receiver implementing the proposed marketing and sales process on the basis that all of his twelve properties were subject to the process.

Analysis

Can the Interim Receiver market and sell Mr. Suitor's properties?

- [13] The Interim Receiver's appointment order does not include a power to market and sell Mr. Suitor's properties. At paras. 96 and 97 of *Suitor 2024*, Osborne J. commented on the limited nature of the powers to be granted to the interim receiver:

97. [T]he powers of the proposed interim receiver will, as set out above, be limited. The fact that those powers are not unlimited is a factor to be considered in approving the interim receivership. An interim receiver is not appointed in a vacuum, and the terms of the proposed appointment are relevant to whether the appointment should be made.

98. The draft order would permit the interim receiver, if appointed, to:

- a. Monitor Suitor's bank accounts in the accounts of Related Entities and approve all disbursements;
- b. Take any steps deemed necessary or desirable to prevent disbursements, transfers or encumbrances of property;

- c. To undertake investigations deemed appropriate;
- d. To apply to this Court for further advice or directions; and
- e. Undertake other related activities.

[14] The Interim Receiver was appointed under s. 46 of the *Bankruptcy and Insolvency Act* (the “BIA”), which provides:

46(1) The court may, if it is shown to be necessary for the protection of the estate of a debtor, at any time after the filing of an application for a bankruptcy order and before a bankruptcy order is made, appoint a licensed trustee as interim receiver of the property or any part of the property of the debtor and direct the interim receiver to take immediate possession of the property or any part of it on an undertaking being given by the applicant that the court may impose with respect to interference with the debtor’s legal rights and with respect to damages in the event of the application being dismissed.

(2) The interim receiver appointed under subsection (1) may, under the direction of the court, take conservatory measures and summarily dispose of property that is perishable or likely to depreciate rapidly in value and exercise such control over the business of the debtor as the court deems advisable, but the interim receiver shall not unduly interfere with the debtor in the carrying on of his business except as may be necessary for conservatory purposes or to comply with the order of the court. [Emphasis added.]

[15] Accordingly, both the BIA and the endorsement approving the appointment of the Interim Receiver, refer to the limited powers, primarily of a preservation/protection purpose, provided to an interim receiver.

[16] The Interim Receiver submits that judicial precedent would support the Court granting the power to market and sell to the Interim Receiver. The Interim Receiver notes that in the bankruptcy of *Royal Crest Lifecare Group Inc.* (Court File No. 31-OR-206980-T, 2002), this Court appointed an interim receiver under s. 46 of the BIA, with the power to sell the debtor’s property and operating businesses and granted super-priority charges to secure the interim receiver’s fees and disbursements and its borrowings. The Order of Farley J. in *Royal Crest* was provided to the Court. However, the Interim Receiver noted that “[n]o endorsement relating to the Order has been found.”

[17] Similarly, in *Precision Péga Inc., Re*, 2007 QCCS 1301, 45 CBR (5th) 12, an interim receiver that had been appointed under s. 46 of the BIA, with the authority to market, but not sell, the debtor’s assets, subsequently brought a motion authorizing it to sell the assets, which consisted of manufactured aircraft parts. The Superior Court of Quebec authorized the interim receiver to sell the assets.

- [18] The Interim Receiver noted that in *Precision* the debtor had agreed that the assets should be sold without delay, which is an important factor. In the instant case, Mr. Sutor's counsel advised that Mr. Sutor had only agreed to a proposed sale on the basis that all of his properties were to be included (which is not the case). His counsel indicated that Mr. Sutor has concerns regarding efficiency and efficacy if some of the properties are removed from the proposed marketing and sales process.
- [19] As noted above, Libro opposes the inclusion of 207 Ross Street in the proposed sales process.
- [20] Libro filed materials on the jurisdiction issue, focused on a recent Quebec Court of Appeal case dealing with section 47 of the BIA: *Séquestre de Media5 Corporation*, 2020 QCCA 943. As noted by the Interim Receiver, section 47 of the BIA is different. It provides for the appointment of an interim receiver where notice is about to be sent or was sent under s. 244 of the BIA:

47(1) If the court is satisfied that a notice is about to be sent or was sent under subsection 244(1), it may, subject to subsection (3), appoint a trustee as interim receiver of all or any part of the debtor's property that is subject to the security to which the notice relates until the earliest of

- a) The taking of possession by a receiver, within the meaning of subsection 243(2), of the debtor's property over which the interim receiver was appointed,
- b) The taking of possession by a trustee of the debtor's property over which the interim receiver was appointed, and
- c) The expiry of 30 days after the day on which the interim receiver was appointed or of any period specified by the court.

(2) The court may direct an interim receiver appointed under subsection (1) to do any or all of the following:

- a) Take possession of all or part of the debtor's property mentioned in the appointment;
- b) Exercise such control over that property, and over the debtor's business, as the court considers advisable;
- c) Take conservatory measures; and
- d) Summarily dispose of property that is perishable or likely to depreciate rapidly in value. [Emphasis added.]

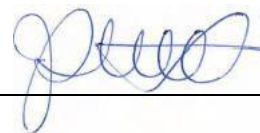
- [21] As the underlined parts of section 46 and 47 illustrate, there is significant overlap in the scope of powers contemplated for an interim receiver, whether appointed pending a bankruptcy application (s. 46) or pending a receivership application (s. 47). Accordingly, I am persuaded that the *Media5* case is, at the least, helpful to the issue before me.
- [22] In the *Media5* case, the Quebec Court of Appeal determined that s. 47 does not permit an interim receiver to undertake a process to solicit offers to sell a business as a going concern. Such a process would be undertaken by a s. 243 appointed receiver. The Quebec Court of Appeal in paras. 99-111 considered the scope of the jurisdiction under s. 47. Section 47 had previously included the following more expansive language: “take such other action that the court considers advisable.” This language was removed in or about 2009 when the BIA was amended: para. 107, *Media5*. The deletion of this language results in the powers of an interim receiver under s. 47 being similar to those under s. 46. The Quebec Court of Appeal noted, at para. 110, that an interim receiver under section 47 can only take interim measures. Further, the Quebec Court of Appeal stated, at para. 110: “De par sa nature même, une mesure conservatoire ne s’étend pas à la vente de l’entreprise débitrice ou à la mise en place d’un processus de sollicitation d’offres d’achat afin de procéder à une telle vente. »
- [23] As noted by Libro, the cases cited by the Interim Receiver pre-date the changes to section 47 of the BIA, and the Quebec Court of Appeal’s analysis in the *Media5* case. The language in section 47 dealing with what an interim receiver may do now more closely aligns with the language in section 46.
- [24] In *Suitor 2024*, Osborne J. commented on the “preservation” nature of an interim receiver, at para. 98:

The object and intent of the proposed interim receivership is to identify and preserve assets in this interim period. [...] Again, and to state the obvious, those powers do not include the ability to make any final determination as to entitlement to assets of Suitor or companies that he controls. They do, however, provide for the preservation of those assets pending such determinations.

- [25] Osborne J. determined in *Suitor 2024* that the appointment of an interim receiver, with the preservation type powers that were granted to the Interim Receiver, was appropriate. The motion for the appointment of the Interim Receiver was brought within the bankruptcy application. It may well be that a full receivership is appropriate; but that application would have to be brought pursuant to s. 243 of the BIA.
- [26] The BIA circumscribes the role of an interim receiver in section 46, versus the role of a receiver in section 243 of the BIA. The role of an interim receiver is not to engage in a full-blown marketing and sale process of property of the debtor. If circumstances exist where property is “perishable” or “likely to depreciate rapidly in value,” an interim receiver is entitled to “summarily dispose” of such property. There was not sufficient evidence before the court on the motion for the court to determine whether each of Mr.

Suitor's properties was "likely to depreciate rapidly in value." Because s. 46 contemplates the interim receiver summarily disposing of property (really as an exception to the general conservatory nature of the appointment), I would expect there to be evidence in respect of each property the Interim Receiver sought to sell and why such property was likely to depreciate rapidly in value. In Libro's factum, they note that there is no evidence that the 207 Ross Street property is deteriorating.

- [27] The Interim Receiver also suggested that the court could exercise its inherent jurisdiction to grant these additional powers to the Interim Receiver. I agree with Libro that there is no need for the court to exercise inherent jurisdiction because there are remedies available under the BIA and there is a lack of evidence that the properties are deteriorating.



J. Steele J.

Released: June 24, 2025

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