



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-24-00733110-00CL DATE: March 3, 2025

NO. ON LIST: 3

TITLE OF PROCEEDING: 405 ST DAVID STREET INVESTMENTS INC v. 2750876
ONT INC

BEFORE JUSTICE: J. STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Broghan Masters Daniel J. Wright	Counsel for the Applicant	broghan@rousseaumazzuca.com dwright@rousseaumazzuca.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

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

ENDORSEMENT OF JUSTICE STEELE:

1. The applicant, 405 St. David Street Investments Inc. (the “Applicant”), seeks the appointment of TDB Restructuring Limited as receiver over all the assets of the respondent, 2750876 Ontario Inc. (the “Respondent”).
2. No one opposes the relief sought. Notice of these proceedings was provided to the Respondent by the Applicant.

Background

3. The Respondent is the registered owner of certain real property, comprising three adjoining parcels in the City of Kawartha Lakes as described in more detail at para. 7 of the Applicant’s factum (the “Real Property”).
4. On or around Feb. 12, 2020, the Applicant entered into an agreement of purchase and sale with 2669049 Ontario Inc. (“049”) “in trust for a company to be incorporated.” Michael Moldenhauer is the sole officer and director of 049. The agreement of purchase and sale included provisions for a vendor take back mortgage in favour of the Applicant.
5. After Mr. Moldenhauer incorporated the Respondent company (of which he is the sole officer and director), the Real Property was transferred to the Respondent and the Applicant registered a vendor take back mortgage against title to the property.
6. The VTB mortgage, in the principal amount of \$9,860,000, was registered in the land registry office. The maturity date was May 27, 2024.
7. When the mortgage matured, the Applicant demanded payment, which was not made.
8. Subsequently, the Applicant delivered a Notice of Sale in accordance with the *Mortgages Act*.
9. The redemption period that was afforded to the Respondent has expired. The Applicant has not received payment.
10. As of November 27, 2024, the Respondent owed the Applicant \$10,510,095.32. Interest continues to accrue.
11. As of January 15, 2025, other than the VTB mortgage in favour of the Applicant, there are no other liens, charges, mortgages, or other security interests registered against the Real Property.

Analysis

12. The only issue before me is whether to appoint TDB as receiver over the Real Property.
13. Under section 101 of the *Courts of Justice Act* and section 243(1) of the *Bankruptcy and Insolvency Act*, the Court may appoint a receiver where it is “just or convenient” to do so.

14. In determining whether it is “just or convenient” to appoint a receiver, the Court must consider “all of the circumstances but in particular the nature of the property and the rights and interests of all relevant parties.” *Nova Scotia v. Freure Village on Clair Creek*, 1996 CanLII 8258 (ONSC) at para. 10. The discretionary factors that the Court has historically considered in determining whether it is appropriate to appoint a receiver were recently summarized by the Court in *C&K Mortgage et al v. 11282751 Canada Inc. et al*, 2024 ONSC 1039, at para. 19.
15. I have determined that the proposed receivership order is just and convenient in the circumstances.
16. Although the appointment of a receiver is generally an extraordinary remedy, the extraordinary nature of the remedy is reduced where the applicant is merely seeking to enforce a term of an agreement that was agreed to by both parties: *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866, at para. 27. As noted by Koehnen J. in *BCIMC Construction Fund Corporation et al v. The Clover on Yonge Inc.*, 2020 ONSC 1953 at para. 44, “[t]he appointment of a receiver becomes even less extraordinary when dealing with a default under a mortgage.”
17. For the reasons set out at para. 50 of the Applicant’s factum, I am satisfied that it is just or convenient in the circumstances to grant the order sought.
18. Order attached.



Justice Steele

Date: March 3, 2025