



**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

ENDORSEMENT

COURT FILE NO.: CV-25-00740748-00CL

DATE: May 16, 2025

NO. ON LIST: 3

TITLE OF PROCEEDING: First Source Financial Management Inc. et al. v.
Hammer & Nails Developments Ltd. (Maple Street) et al.

BEFORE: JUSTICE OSBORNE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Andrew Ferguson	2384921 Ontario Ltd. and TBG Mechanical Solutions Limited	aferguson@mbclaw.ca
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Seena Arjomandi	Hammer & Nails Developments Ltd. (Maple Street) and Hammer & Nails Developments Ltd. (Beckwith Street)	seena@arjomandilaw.com

For Other, Self-Represented:

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

ENDORSEMENT OF JUSTICE OSBORNE:

1. The Applicants seek the appointment of a Receiver pursuant to section 243 of the *Bankruptcy and Insolvency Act* (“*BIA*”) and section 101 of the *Courts of Justice Act* (“*CJA*”) over the properties at 7 Maple Avenue, Smith’s Falls, Ontario and 161 Beckwith St. N., Smith Falls, Ontario (the “Properties”).
2. The Applicants rely on the Affidavit and Supplementary Affidavit of Leonard Zaidener sworn April 14, 2025 and May 6, 2025 respectively, each with Exhibits thereto. Defined terms in this Endorsement have the meaning given to them in the Application materials unless otherwise stated.
3. No party has filed any responding materials. At the outset of the hearing, counsel for the Respondents requested an adjournment of the Application for 3 to 4 weeks to afford them an opportunity to finalize a sale of the properties with a view to paying out the Applicants in full. The Applicants oppose the adjournment request.
4. The request is based on the submission that late yesterday, the Respondents obtained a commitment letter from a proposed purchaser and today, received an offer for one of the two Properties (Beckwith). As noted, neither the commitment letter nor the offer is in the record. There is no affidavit evidence on which I can evaluate the *bona fides* of either document, the ability of any counterparty to fund, the conditionality of the commitments, or the timing of the commitments to fund. The offer was emailed to counsel for the Applicants during the hearing and had not been provided previously. The Applicants have accordingly, not had time to review. The Applicants did receive a copy of the commitment letter last night and advise that even if funded, it would not provide amounts sufficient to pay out the Applicants.
5. Notwithstanding the lack of evidence in the record, I did hear the submissions of counsel for the Respondents with respect to these matters.
6. In the circumstances, and having heard from and on behalf of all parties, I denied the adjournment request. The Applicants are not acting rashly or quickly. The loan facilities have been in default since February, 2025. A formal demand letter and section 244 *BIA* notice were delivered on March 21, 2025. The statutory notice period has long expired. The terms of both the Maple Mortgage and the Beckwith Mortgage permit the Applicants to appoint a receiver in the event of default. They further provide that the Respondent shall consent to the appointment.
7. I proceeded to hear the Application on the merits. Importantly, the Respondents do not oppose the relief sought on the Application and confirm the indebtedness, the demands, the contractual consent, and the entitlement of the Applicants to the receivership order the request.
8. The test for the appointment of a receiver pursuant to section 243 of the *BIA* or section 101 of the *CJA* is not in dispute. Is it just or convenient to do so?
9. In making a determination about whether it is, in the circumstances of a particular case, just or convenient to appoint a receiver, the Court 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. These include the rights of the secured creditor pursuant to its security: *Bank of Nova Scotia v. Freure Village on the Clair Creek*, 1996 O.J. No. 5088, 1996 CanLII 8258 (“*Freure Village*”)
10. Where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: while the appointment of a receiver is generally an extraordinary equitable remedy, the courts do not so regard the nature of the remedy where the relevant security permits the appointment and as a result, the applicant is merely seeking to enforce a

term of an agreement already made by both parties: *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 at para. 27. However, the presence or lack of such a contractual entitlement is not determinative of the issue.

11. As observed in *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186, the Supreme Court of British Columbia, citing Bennett on Receivership, 2nd ed. (Toronto, Carswell, 1999) listed numerous factors which have been historically taken into account in the determination of whether it is appropriate to appoint a receiver and with which I agree: *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para. 25):

- a. whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;
- b. the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;
- c. the nature of the property;
- d. the apprehended or actual waste of the debtor's assets;
- e. the preservation and protection of the property pending judicial resolution;
- f. the balance of convenience to the parties;
- g. the fact that the creditor has a right to appointment under the loan documentation;
- h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
- i. the principle that the appointment of a receiver should be granted cautiously;
- j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
- k. the effect of the order upon the parties;
- l. the conduct of the parties;
- m. the length of time that a receiver may be in place;
- n. the cost to the parties;
- o. the likelihood of maximizing return to the parties; and
- p. the goal of facilitating the duties of the receiver.

12. How are these factors to be applied? The British Columbia Supreme Court put it, I think, correctly: "these factors are not a checklist but a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient: *Pandion Mine Finance Fund LP v. Otso Gold Corp.*, 2022 BCSC 136 at para. 54).

13. It is not essential that the moving party establish, prior to the appointment of a receiver, that it will suffer irreparable harm or that the situation is urgent. However, where the evidence respecting the conduct of the debtor suggests that a creditor's attempts to privately enforce its security will be delayed or otherwise fail, a court-appointed receiver may be warranted: *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007 at paras. 24, 28-29. See also *Freure Village* at para. 10.
14. Accordingly, is it just or convenient to appoint a receiver in the particular circumstances of this case?
15. In my view, it is.
16. As of March 20, 2025, the indebtedness was \$11,892,760.64, on which interest, costs and fees continued to accrue. Construction on the Maple property has been completed and the building is partially tenanted. The Beckwith property is completed and tenanted.
17. There are four construction liens registered on title to Maple, against which amounts are said to be owing of \$443,167. Two of the lienholders are represented in Court today. They do not oppose the relief sought.
18. I am satisfied that both properties require active management to preserve asset value and maximize recoveries. TDB Restructuring has consented to act as Receiver and is qualified to do so.
19. As discussed with the parties in Court today, the Respondents will provide to the Receiver the offer and commitment letter just received. As would be expected without any direction, the Receiver will consider those potential commitments. It may be that the receivership is short in duration and limited in scope, such as if the Receiver concludes that the offers are valid, in an amount sufficient to pay out all indebtedness, together with interest and costs, and the Receiver makes a recommendation to the Court that they should be accepted as satisfying the relevant principles. But first, Receiver has to preserve the assets and evaluate the offers as against what might be achieved in the market, all with a view to doing so on an efficient basis.
20. For all of these reasons, the Application is granted. Order to go in the form signed by me today which has immediate effect without the necessity of issuing and entering.

A handwritten signature in green ink, appearing to read "O'Brien J.", with a stylized flourish at the end.