



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00747875-00CL

DATE: August 1, 2025

NO. ON LIST: 2

TITLE OF PROCEEDING: WESTBORO MANAGEMENT LTD. V TAG GALLIPEAU CORP. et al

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Maya Poliak	Lawyer for the Applicants.	maya@chaitons.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Edward Conway	Lawyer for the Respondent.	edward@seconway.com

Other:

Name of Person Appearing	Name of Party	Contact Info
Taayo Simmonds	Lawyer for ETI	tsimmonds@simmondslaw.ca
Alec Hoy	Lawyer for the Proposed Receiver	ahoy@cassels.com
Jeff Berger Bryan A. Tannenbaum	Proposed Receivers	jberger@tdbadvisory.ca btannenbaum@tdbadvisory.ca

ENDORSEMENT OF JUSTICE KIMMEL:

- [1] Westboro Management Ltd. (the "Lender") seeks an order (the "Receivership Order") appointing TDB Restructuring Limited ("TDB") as receiver (in such capacity, the "Receiver") of the property, assets, and undertaking of TAG Gallipeau Corporation (the "Debtor"), acquired for, or used in relation to a business carried on by the Debtor, including the real property municipally known as 361 Queen Street, in the Town of Smiths Falls (the "Town"), Ontario (the "Property").
- [2] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Applicant's factum dated July 31, 2025.
- [3] The Lender's attempts to sell the Property under power of sale since the Debtor's initial default over three years ago have not been successful, in part due to the nature and condition of the Property and also due to the lack of co-operation of some of the tenants of the Property and of the Debtor. The Lender had entered into various conditional agreements of purchase and sale, but none have closed due to, among other things, continued interference by the Debtor with the sale process and lack of available financial information, including up to date rent rolls and leases. Some of the prospective purchasers who the Lender was dealing with in the course of its prior efforts to sell the Property indicated that they would require a vesting order and court supervised process to consider purchasing the Property.
- [4] The Debtor is now consenting to the Receivership Order. None of the secured lenders oppose it, nor has any other party on the service list raised any concerns about it.
- [5] The Property has some residential, some commercial and some vacant development land components. There are commercial tenants. There are three outstanding work orders from the city and there are outstanding property taxes. There are three different secured creditors (the applicant being in the first priority position). The second secured creditor (that also holds subsequent security to the third secured creditor) is owned by the estate of a former director of principal of the Debtor. There is expected to be a deficiency on recoveries for at least some of the secured debt.
- [6] Pursuant to section 243 of the BIA and section 101 of the *Courts of Justice Act* (Ontario), the Court has the power to appoint a receiver where it is "just or convenient" to do so. Various factors have been considered by the court in determining whether to do so, as are summarized in some of the cases cited by the applicant: see *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186, at para. 25; see also, *Aggregated Investments Inc. et al. v. Pace Group Holding Inc. et al.*, 2025 ONSC 2695, at para. 24.
- [7] The circumstances summarized above and detailed in the Lender's factum at paragraphs 29 and 30, even in the absence of a contractual entitlement to appoint a receiver upon default under the applicant's security, are all good reasons to grant the Receivership Order: see

2607087 Ontario Limited v. 2654993 Ontario Ltd et al, 2024 ONSC 4595, at para 10;
Kingsett Mortgage Corp. v. Mapleview Developments Ltd., 2024 ONSC 1983, at para 22.

- [8] When the evidence about the conduct of the debtor suggests that a creditor's attempts to privately enforce its security will otherwise fail, a court-appointed receiver may be warranted: see *Hypoint*, at para. 26.
- [9] I find that it is just and convenient and appropriate to appoint TDB as Receiver. TDB has consented to this appointment.
- [10] The Receivership Order is relatively standard, with one caveat: it does not contemplate that the Receiver will immediately take possession of the Property and begin collecting rents. The Receiver requires some additional information about the condition of the property and the availability of insurance, among other things. The Receiver does not want to take possession of the Property until it has had the opportunity to: (i) attend at and assess the Property and any safety concerns; (ii) assess any environmental liabilities; and (iii) obtain and evaluate the commercial and residential leases for the Property.
- [11] If and when the Receiver does take possession of the Property and begins collecting rents it will not only notify the Debtor (as the Receivership Order requires) but it will necessarily have to advise the Tenants and others who are involved with the Property, and the court also directs that a copy of any such notice provided to the Duty also be sent to the service list as well.
- [12] Certain terms of the Receivership Order have been negotiated with stakeholders. For example, there is a carve out from the stay at paragraph 10 to allow a proceeding involving priorities to continue, even though the Debtor is a necessary party. The Receivership Order makes it clear that the Receiver and Debtor need not participate and the Debtor's rights will not be impacted.
- [13] The court asked that paragraph 3 (c) of the draft order be amended to remove reference to repudiation or disclaimer of contracts. In the event that such is recommended by the Receiver, it can come back to court for approval to do so. There was also some language added to what is now paragraph 11 of the Receivership Order, the purpose and intention of which was not entirely clear so the court asked that this additional language be removed.
- [14] A sealing order was requested in the applicant's factum in connection with a Confidential Appendix "1" containing a summary of the transactions entered into by Westboro that have not closed. The summary is said to contain sensitive commercial information about the Real Property that, if disclosed, could jeopardize the value of the Real Property.
- [15] The court often grants partial sealing orders in these types of circumstances, on the basis that they satisfy the requirements of the test in *Sherman Estate v. Donovan*, 2021 SCC 25,

at para. 3. On that basis, I would find it appropriate to grant, at least until the Property is sold, after which the Confidential Appendix shall be unsealed. However, I do not see any sealing order language in the draft order provided. The Confidential Appendix may be sealed on the basis of this endorsement if the Lender still considers it to be needed. In such event, **the Receiver shall be responsible for the sealing of the confidential appendix in the court file and for the unsealing of the Confidential Appendix, if and when appropriate.**

[16] The revised form of Receivership Order has been signed by me today.

A handwritten signature in cursive script, appearing to read "Kimmel J.", written in dark ink.

KIMMEL J.