



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00740765-00CL

DATE: 10-SEP-2025

NO. ON LIST: 5

TITLE OF PROCEEDING: UBC SOLUTIONS INCORPORATED v. 1680 BRIMLEY LIMITED
PARTNERSHIP et al.
BEFORE: JUSTICE J. DIETRICH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Broghan Masters	UBC Solutions Incorporated	broghan@rousseaumazzuca.com
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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Brett D. Moldaver	1680 Brimley Limited Partnership; 2808908 Ontario Inc.; Brimley Progress Developments Inc.	brett@moldaverbarristers.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Adam Beyhum	Counsel for the Lien Claimants: Astro Shoring Inc. and Astro Excavating Inc.	abeyhum@rarlitigation.com
Philip Cho	Counsel for the Proposed Receiver: TDB Restructuring Limited	pcho@weirfoulds.com
Arif Dhanani	Proposed Receiver: TDB Restructuring Limited	adhanani@tdbadvisory.ca

ENDORSEMENT OF JUSTICE J. DIETRICH:

Introduction

- [1] UBC Solutions Incorporated (“**UBC**”), seeks an order appointing TDB Restructuring Limited (“**TDB**”) as receiver of all the present and future assets, undertakings, and properties of 1680 Brimley Limited Partnership, 2808908 Ontario Inc. and Brimley Progress Developments Inc. (the “**Debtors**”) pursuant to section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 as amended (the “**BIA**”) and section 101 of the Courts of Justice Act, R.S.O. 1990, c C.43, as amended (the “**CJA**”).
- [2] Justice Cavanagh previously granted an endorsement on June 18, 2025 on consent of the parties indicating that the Respondents consented to the relief sought by UBC, however, if certain amounts had been repaid by September 8, 2025 then the consent, and receivership application, would be withdrawn.
- [3] The amounts have not been repaid, and therefore this matter is proceeding on consent.
- [4] Defined terms used but not defined herein have the meaning provided to them in the factum of UBC for use at this hearing.

Background

- [5] 1680 Brimley Limited Partnership (“**1680**”), is an Ontario limited partnership with its principal place of business located at 6 Carlaw Avenue, Suite 200, Toronto, Ontario. 2808908 Ontario Inc. (“**280**”), is a company incorporated pursuant to the laws of the Province of Ontario with its registered head office located at 5000 Yonge Street, Suite 1706, Toronto, Ontario. 280 is the general partner of 1680. The sole officer and director of 280 is Hans Jain (“**Mr. Jain**”). Brimley Progress Developments Inc. (the “**Nominee**”), is a company incorporated pursuant to the laws of the Province of Ontario with its registered head office located at 5000 Yonge Street, Suite 1706, Toronto, Ontario. The sole officer and director of the Nominee is also Mr. Jain.
- [6] The Nominee is the registered owner of real property municipally known as 1680 Brimley Road, Scarborough, Ontario (the “**Real Property**”). The Debtors planned to develop and construct “Town Centre Place” on the Real Property, consisting of four towers incorporating both residential and retail space (the “**Project**”). To UBC’s knowledge, the Project has not progressed beyond the excavation and shoring phase of construction.
- [7] On September 29, 2023, UBC, as Lender, entered into a Credit Agreement with 1680, as Borrower, and 280 and the Nominee, as Guarantors (the “**Credit Agreement**”), whereby UBC agreed to loan the principal amount of \$65,000,000.00 to 1680 (the “**Land Loan**”). On February 15, 2024, UBC and the Debtors entered into an Amendment Agreement to the Credit Agreement (the “**Amendment Agreement**”) whereby UBC consented to and advanced a one-time increase to the principal amount of the Land Loan in the aggregate amount of \$5,000,000.00, thereby bringing the principal amount of the Land Loan to \$70,000,000.00.

- [8] The initial maturity date of the Land Loan was scheduled to expire at the end of March 2024. UBC consented to a six month extension until September 29, 2024 provided 1680 pay an Extension Fee to UBC in monthly installments (from April 2024 to September 2024).
- [9] The parties executed a demand debenture agreement, dated September 29, 2023 (the “**Debenture**”). The obligations of the Nominee pursuant to the Debenture were secured by, among other things a first mortgage/charge in the amount of \$80,000,000.00 registered against title to the Real Property on October 2, 2023.
- [10] The payment and performance of all of 1680’s indebtedness and obligations under the Credit Agreement, were guaranteed by 280 and the Nominee pursuant to a joint and several guarantee and indemnity, dated September 29, 2023.
- [11] 1680, by 280 as general partner, and the Nominee, also executed a beneficial charge in favour of UBC in respect of the Real Property, dated September 29, 2023. General security agreements were also executed by 1680, 280 and the Nominee in favour of UBC.
- [12] A number of defaults exist under the Credit Agreement, as amended, including (i) the Debtors failed to repay amounts owing to UBC on the maturity date (September 29, 2024); (ii) the Debtors also failed to pay the Extension Fee installments; and (iii) construction liens have also been registered against the Real Property.
- [13] On February 11, 2025, UBC sent a letter to 1680 providing notice of a number of continuing events of default and stating that all obligations were immediately due and owing. On March 14, 2025, UBC, through its counsel, sent a demand letter to the Debtors enclosing the required notice pursuant to s. 244 of the BIA.
- [14] As of June 18, 2025, \$81,834,801.61 was owing to UBC by the Debtors with interest and costs continuing to accrue.
- [15] As noted above, two construction liens were registered against the Real Property by Astro Shoring Inc. in the amounts of \$875,597.00 and \$2,188,373.00.
- [16] Following the attendance before Justice Cavanagh in June of 2025, no payments have been received. However, one additional construction lien has been registered since that time. Counsel for UBC advises that counsel for that lien claimant has been advised of today's hearing and confirmed to that they did not intend to appear today.

Issue

- [17] There only issue to be determined today, is whether it is just or convenient to appoint a receiver.

Analysis

- [18] The test for the appointment of a receiver under s. 243 of the BIA or s. 101 of the CJA is whether it is just or convenient.
- [19] In determining whether it is just or convenient to appoint a receiver the court must have regard to all of the circumstances of the case particularly the nature of the property and the rights and interests of all parties in relation to the property: see *Bank of Nova Scotia v Freure Village of Clair Creek*, [1996] OJ No 5088 at para 10. While the appointment of a receiver is generally an extraordinary equitable remedy, 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: see *Elleway Acquisitions Ltd. v. The Cruise Professionals Limited*, 2013 ONSC 6866 at para 27.
- [20] As summarized by Justice Osborne in *Canadian Equipment Finance and Leasing Inc v The Hypoint Company Limited*, 2022 ONSC 6186 at paras 24-25 a number of factors have historically been taken into account in the determination of whether it is appropriate to appoint a receiver. The factors are not a checklist, but rather a collection of considerations to be viewed holistically, they include:
- 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.

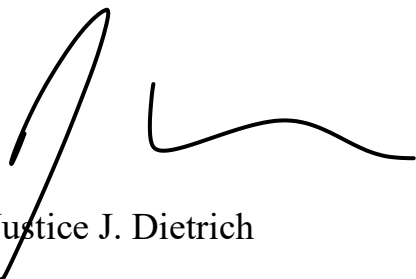
- [21] In this case, it is just and convenient to appoint a receiver.

- [22] The Debtors owe in excess of \$80 million to UBC.
- [23] The loan matured in September of 2024 and has not been repaid.
- [24] Under the terms of the security documents, UBC is entitled to apply to the Court for the appointment of a receiver upon default.
- [25] UBC has demanded repayment of the total indebtedness and issued the 244 BIA Notices. The notice period under the 244 BIA Notices has since elapsed.
- [26] As set out in Justice Cavanagh's endorsement from June 18, 2025, the Debtors consented to the relief sought. Although the consent was to be withdrawn if certain payments were made by September 8, 2025, those payments have not been made.
- [27] TDB is qualified to act as receiver and has consented to do so.
- [28] The terms of the proposed receivership order are appropriate and largely consistent with the Model Order of the Commercial List. The terms also reflect the order to which the Debtors have consented.

Disposition

- [29] Accordingly, I grant the receivership order in the form signed by me today.

September 10, 2025



Justice J. Dietrich