

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

IN THE MATTER OF Section 101 of the  
*Courts of Justice Act* and Section 243 of the *Bankruptcy and Insolvency Act*

BETWEEN:

**EQUITYLINE MORTGAGE INVESTMENT CORPORATION, EQUITYLINE  
SERVICES CORP., COMPUTERSHARE TRUST COMPANY OF CANADA and  
ELLE MORTGAGE CORPORATION**

Applicants

-and-

**2545174 ONTARIO INC.**

Respondent

**BRIEF OF AUTHORITIES OF THE APPLICANTS**

December 10, 2021

**ROBINS APPLEBY LLP**  
Barristers & Solicitors  
2600 - 120 Adelaide Street West  
Toronto ON M5H 1T1

**Dominique Michaud LSO #56871V**  
Email: [dmichaud@robapp.com](mailto:dmichaud@robapp.com)  
Tel: (416) 360-3795

**Joseph Jamil LSO #74614L**  
Email: [jjamil@robapp.com](mailto:jjamil@robapp.com)  
Tel: (416) 360-3783  
Fax: (416) 868-0306

Lawyers for the Applicants

**TO: DAVID SEED**  
Barrister & Solicitor  
3040-3300 Bloor Street West  
Center Tower  
Toronto, ON M8X 2X3

LSO No.: 34871I  
Email: dseedlaw@rogers.com  
Tel: (416) 622-2440

Lawyer for the Respondent

**AND SCHNEIDER RUGGIERO SPENCER MILBURN LLP**  
**TO:** 1000-120 Adelaide Street  
Toronto, ON M5H 3V1

**Davide Di Iulio LSO No.: 62160S**  
Tel: (416) 362-8282  
Email: ddiulio@srlawpractice.com

Lawyers for iCapital Financial Services Corp.

**AND ALI RANA**  
**TO:** Email: cis@mail.com

**AND ONTARIO MINISTRY OF LABOUR, TRAINING, AND SKILLS**  
**TO: DEVELOPMENT, DIRECTOR OF EMPLOYMENT STANDARDS AS**  
**REPRESENTED BY MOF**  
**CO/ MINISTER OF FINANCE**  
Crown Law Office – Civil  
McMurtry-Scott Building  
720 Bay Street, 8<sup>th</sup> Floor  
Toronto, ON M7A 2S9

Email: Steven.Groeneveld@ontario.ca  
Insolvency.Unit@ontario.ca  
Leslie.Crawford@ontario.ca

**AND THE TDL GROUP CORP.**  
**TO:** 300-130 King Street West  
Toronto, ON M5X 1E1

**Douglas Chen**  
Email: dchen@rbi.com  
Tel: (905) 339-6211

**AND 1299400 ONTARIO LTD.**  
**TO:** 412-23 Westmore Drive  
Etobicoke, ON M9V 3Y7

**AND 2399574 ONTARIO INC.**  
**TO:** 202-200 Matheson Blvd.  
Mississauga, ON L5R 3L7

-and-  
228-2980 Drew Road  
Mississauga, ON L4T 0A7

**AND MERCHANT OPPORTUNITIES FUND LIMITED PARTNERSHIP**  
**TO:** 2000-1500 West Georgia Street  
Vancouver, BC V6G 2Z6

## Index

<b>TAB</b>	<b>DOCUMENT</b>
1.	Frank Bennett, <i>Bennett on Receivership</i> , 3d ed. (Toronto: Thomson Reuters, 2011)

**BENNETT**  
**on**  
**RECEIVERSHIPS**

**Third Edition**

by

**Frank Bennett**

L.S.M., LL.M.

Toronto, Canada

**CARSWELL®**

Once an order is made appointing a receiver, the court may refer the conduct of all or part of the receivership to a referee under Rule 54 of the Ontario *Rules of Civil Procedure*.<sup>51</sup>

## (b) Under What Circumstances—Who May Apply

In determining whether it is “just or convenient” that a receiver should be appointed, the court considers many factors that vary in the circumstances of the case. While the remedy is usually employed by a security holder to enforce payment of a debt, other parties can employ the remedy seeking protection and preservation of assets pending adjudication of the issues. These factors include the following:<sup>52</sup>

---

in an appointment of a receiver: see *B.C. Power Corp v. A.G. (B.C.)* (1962), 38 W.W.R. 577 at p. 588 and p. 635 ff, 34 D.L.R. (2d) 196 at p. 211, 1962 CarswellBC 71 (B.C. C.A.), appeal allowed (sub nom. *B.C. Power Corp. v. B.C. Electric Co.*) [1962] S.C.R. 642, 38 W.W.R. 701, 34 D.L.R. (2d) 196 at p. 274 (S.C.C.).

See also *McKnight v. Hutchison*, 2011 BCSC 36 (CanLII), 2011 CarswellBC 41 (B.C. S.C.) where the court did not appoint a receiver in a partnership dispute, but made a preservation order pending the trial.

- 51 Once a court-appointed receiver is appointed, it is doubted that the security holder can simply discontinue the action especially after the court has ordered a sale. Although the appointment of a receiver is corollary relief in an action, the receiver cannot be discharged except by the court which appointed it: see *Guar. Trust Co. of Canada v. 208633 Holdings Ltd.*; *Northland Bank v. 208633 Holdings Ltd.* (1982), 19 Alta. L.R. (2d) 151, 42 C.B.R. (N.S.) 90, 1982 CarswellAlta 312 (Alta. Q.B.).
- 52 These factors were considered in *Paragon Capital Corp. v. Merchants & Traders Assurance Co.* (2002), 46 C.B.R. (4th) 95, 2002 ABQB 430 (CanLII), 2002 CarswellAlta 1531 (Alta. Q.B.) and in *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.* (2009), 60 C.B.R. (5th) 142, 2009 BCSC 1527 (CanLII), 2009 CarswellBC 2982 (B.C. S.C. [In Chambers]).

In *1468121 Ontario Ltd. v. 663789 Ontario Ltd.*, 2008 CanLII 66137, 2008 CarswellOnt 7601 (Ont. S.C.J.) at para. 9, leave to appeal to the Divisional Court dismissed 2009 CanLII 9440, 2009 CarswellOnt 1128 (Ont. S.C.J.) where the court considered the four following factors in dismissing a motion for the appointment of an interim receiver:

- “(1) Since the appointment of a receiver is very intrusive, it should only be used sparingly with due consideration for the effect on the parties as well as a consideration of conduct of the parties. (See: *Royal Bank v. Chongsim Investments Ltd.* (1997), 32 O.R. (3d) 565 (Ont. Gen. Div.);
- (2) Since an appointment of a receiver is tantamount to execution before judgment, it should not be granted unless there is strong evidence that the creditor will not recover. (See: *Ryder Truck Rental Canada Ltd. v. 568907 Ontario Ltd. (Trustee of)* (1987), 16 C.P.C. (2d) 130 (Ont. H.C.);
- (3) When the security interest permits the appointment of a receiver – and the circumstances of default justify the appointment – the extraordinary nature of the remedy is less essential to the consideration of the court. (See *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CarswellOnt 2328 (Ont. Gen. Div. [Commercial List]));
- (4) Where there is default which is not caused by the moving party where a loan had matured and there was no other means to protect the party’s interest, then a receivership order should issue. (See *Royal Bank v. 605298 Ontario Inc.*, 1998 CarswellOnt 4436 (Ont. Gen. Div. [Commercial List])).”

In *Lindsey Estate v. Strategic Metals Corp.* (2010), 67 C.B.R. (5th) 88, 2010 ABQB 242 (CanLII), 2010 CarswellAlta 641 (Alta. Q.B.), appeal dismissed (2010), 27 Alta. L.R. (5th) 241, 69 C.B.R. (5th) 42, 2010 ABCA 191 (CanLII) (Alta. C.A.), the motion court considered the following factors in

- (1) whether irreparable harm might be caused if no order were made, although it is not essential that the creditor establish that it will suffer irreparable harm if a receiver is not appointed;<sup>53</sup>
- (2) the risk to the security holder. In considering the risk factor, the court considers the size of the debtor's equity in the assets and the need for protection or safeguarding the assets while the litigation takes place. If the security holder can readily establish that there is going to be a sizeable deficiency in relation to the size of the loan, then the court will lean in favour of making the appointment as there is clear prejudice to the security holder. On the other hand, the court may not consider this factor to be important if there is no danger or jeopardy to the security holder or in other words, there is a substantial equity that will adequately protect the security holder;<sup>54</sup>
- (3) the nature of the property;

---

determining "just or convenient":

"In determining whether it is just and convenient to appoint a Receiver, a Court should consider various factors such as:

- a. whether irreparable harm might be caused if no order is made;
- b. the risk to the parties;
- c. the risk of waste debtor's assets;
- d. the preservation and protection of property pending judicial resolution; and
- e. the balance of convenience."

See also *Textron Financial Canada Ltd. v. Chetwynd Motels Ltd.* (2010), 67 C.B.R. (5th) 97, 2010 BCSC 477 (CanLII), 2010 CarswellBC 855 (B.C. S.C. [In Chambers]).

- 53 *Swiss Bank Corp. (Canada) v. Odyssey Industries Inc.* (1995), 30 C.B.R. (3d) 49, 1995 CarswellOnt 39 (Ont. Gen. Div. [Commercial List]) referring to *Bank of Montreal v. Appcon Ltd.* (1981), 33 O.R. (2d) 97, 37 C.B.R. (N.S.) 281, 123 D.L.R. (3d) 394 (Ont. H.C.). In the *Odyssey* case, there was no evidence of the loans being in jeopardy of repayment while being in default.

The *Swiss Bank* case has been distinguished and not followed in Alberta: *BG International Ltd. v. Canadian Superior Energy Inc.* (2009), 53 C.B.R. (5th) 161, 2009 ABCA 127 (CanLII), 2009 CarswellAlta 469 (Alta. C.A.) where the court stated that the debtor does not to prove any special hardship, much less "undue hardship" to resist an application for the appointment of a receiver.

See also *Lakeside Colony of Hutterian Brethren v. Hofer* (1993), 87 Man. R. (2d) 216, 19 C.B.R. (3d) 190, 1993 CarswellMan 30 (Man. Q.B.) where the court also took into consideration the fact that the plaintiffs had a strong *prima facie* case and that the balance of convenience favoured the appointment.

- 54 If there is no danger to the debtor's property, and the appointment will have a devastating effect on the debtor, the court will not appoint a receiver: *HMW-Bennett & Wright Contractors Ltd. v. BWV Investments Ltd.* (1991), 95 Sask. R. 211, 7 C.B.R. (3d) 216, 1991 CarswellSask 42 (Sask. Q.B.)

See also *Ontario Development Corp. v. Ralph Nicholas Enterprises Ltd.* (1985), 57 C.B.R. (N.S.) 186, 1985 CarswellOnt 206 (Ont. H.C.) where the court, after considering that the debtor's financial situation was desperate, appointed a receiver and manager.

In *Churchill (Local Government District) v. Costa Cartage Ltd.* (1994), 94 Man. R. (2d) 216, 1994 CarswellMan 286 (Man. Q.B.) where the debtor threatened to remove the furniture and furnishings of a hotel.

See also *Wilson v. Marine Drive Properties Ltd.* (2008), 51 C.B.R. (5th) 74, 2008 BCSC 1431 (CanLII), 2008 CarswellBC 2240 (B.C. S.C.).

See also *Loblaws Brands Ltd. v. Thornton*, 2009 CanLII 12803, 2009 CarswellOnt 1588 (Ont. S.C.J.) where the unsecured creditor's right to recovery money in a fraud situation is in serious jeopardy.

- (4) the rights of the parties thereto;<sup>55</sup>
- (5) the apprehended or actual waste of the debtor's assets;
- (6) the preservation and protection of the property pending the judicial resolution;<sup>56</sup>
- (7) the balance of convenience to the parties;
- (8) the fact that the creditor has the right to appoint a receiver under its security;<sup>57</sup>

55 *Nat. Trust Co. v. Yellowvest Holdings Ltd. et al.* (1979), 24 O.R. (2d) 11, 98 D.L.R. (3d) 189, 1979 CarswellOnt 1364 (Ont. H.C.); applied in *Third Generation Realty Ltd. v. Twigg Holdings Ltd.* (1991), 6 C.P.C. (3d) 366, 1991 CarswellOnt 469 (Ont. Gen. Div.). See also *Royal Trust Corp. of Can. v. D.Q. Plaza Holdings et al.* (1984), 36 Sask. R. 84, 53 C.B.R. (N.S.) 18, 1984 CarswellSask 38 (Sask. Q.B.).

See also *BG International Ltd. v. Canadian Superior Energy Inc.* (2009), 53 C.B.R. (5th) 161, 2009 ABCA 127 (CanLII), 2009 CarswellAlta 469 (Alta. C.A.) where the court stated that an appointment should not lightly be granted and that the rights of both parties should be carefully balanced before an appointment is made.

In *MTM Commercial Trust v. Statesman Riverside Quays Ltd.* (2010), 70 C.B.R. (5th) 233, 2010 ABQB 647 (CanLII) (Alta. Q.B.) the court reviewed the test for the appointment of a receiver as being comparable to the test for an injunction, namely whether there is a serious issue to be tried, irreparable harm if not granted, and the balance of convenience: *RJR MacDonald Inc. v. Canada (Attorney General)* (1994), 111 D.L.R. (4th) 385, [1994] 1 S.C.R. 311, 1994 CarswellQue 120 (S.C.C.).

56 For example, the court has the discretion to appoint a receiver in a mortgage action where the mortgagor fails to manage the buildings properly and make repairs: *Alpha Investments & Agencies Ltd. v. Maritime Life Assurance Company* (1978), 23 N.B.R. (2d) 261, 1978 CarswellNB 96 (N.B. C.A.); *J. P. Capital Corp. (Trustee of) v. Perez* (1996), 38 C.B.R. (3d) 301, 1996 CarswellOnt 430 (Ont. Gen. Div.); *Farallon Investments Ltd. v. Bruce Pallet Fruit Farms Ltd.*, 1992 CarswellOnt 4933, 31 A.C.W.S. (3d) 1283 (Ont. Gen. Div.).

See also *McLennan Ross v. Paramount Life Ins. Co.* (1986), 44 Alta. L.R. (2d) 375, 63 C.B.R. (N.S.) 265, 1986 CarswellAlta 448 (Alta. Q.B.). When a mortgagee applies for a court appointment, the order does not create any new rights; it only protects existing rights. In this case, the court held that the receiver is entitled to collect rent arrears after the appointment, but the receiver cannot collect rent already collected by the mortgagor.

See also *Standard Trust Co. v. Pendencygrasse Hldg. Ltd.* (1988), 71 C.B.R. (N.S.) 65, 1988 CarswellSask 27 (Sask. Q.B.) where the court, in referring to many of these factors, refused the appointment on the basis that the mortgagee already had significant control over the management board of a condominium complex and, therefore, its security was not in danger.

See also *Confederation Life Insurance Co. v. Double Y Holdings Inc.*, [1991] O.J. No. 2613, 1991 CarswellOnt 1511 (Ont. Gen. Div.), where the court, in referring to many of these factors, appointed a receiver to complete a large construction project of an office building and to lease out space. Here, the debtor had no substantial equity in the project, its loans were in default and they had matured.

See also *Bank of N.S. v. Marbeck Well Servicing Ltd.*; *Bank of N.S. v. Becker* (1986), 43 Alta. L.R. (2d) 453 (M.C.) (headnote only).

See also *Yukon v. B.Y.G. Natural Resources Inc.* (2007), 31 C.B.R. (5th) 100, 2007 YKSC 2 (CanLII), 2007 CarswellYukon 1 (Y.T. S.C.) where the court concluded that an interim receiver was needed where there were dangerous and unsafe conditions in a mine site that had been abandoned.

If the property is not in peril or the creditor is unable to demonstrate that, the court will not appoint a receiver: *Tim v. Lai and Harry Invt. Ltd.* (1984), 53 C.B.R. (N.S.) 80, 1984 CarswellBC 575, 1984 CanLII 446 (B.C. S.C.).

Instead of appointing a receiver, the security holder can request an injunction and a preservation order against the debtor pending a declaration that the security holder is entitled to enforce its security.

57 Where this clause is present, the extraordinary nature of the remedy is less essential as a determining factor: *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 40 C.B.R. (3d) 274, 1996 CarswellOnt 2328, 1996 CanLII 8258 (Ont. Gen. Div. [Commercial List]); *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.* (2009), 60 C.B.R. (5th) 142, 2009 BCSC 1527 (CanLII), 2009 CarswellBC 2982 (B.C. S.C.); *Textron Financial Canada Ltd. v. Chetwynd Motels Ltd.* (2010), 67 C.B.R. (5th) 97, 2010 BCSC 477 (CanLII), 2010 CarswellBC 855 (B.C. S.C. [In Chambers]).



- (9) the enforcement of rights under a security instrument where the security holder encounters or expects to encounter difficulty with the debtor and others;<sup>58</sup>
- (10) that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;<sup>59</sup>
- (11) whether a court appointment is necessary to enable a private receiver to carry out its duties more efficiently;<sup>60</sup>
- (12) the effect of the order on the parties. If a receiver is appointed, its effect may be devastating upon the parties and their business and, where the business has to be sold, the appointment of a receiver may have a detrimental effect upon the price;<sup>61</sup>
- (13) the conduct of the parties;<sup>62</sup>
- (14) the length of time that a receiver may be in place. Usually, a receiver appointed by the court remains in place until after judgment and realization of assets. This could last several years depending upon the nature of the business. However, where a claimant moves for an order appointing a receiver for a short

---

See also *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 CarswellOnt 896, 2011 ONSC 1007 (CanLII) (Ont. S.C.J.).

See also below in text (10) extraordinary relief.

See also *Confederation Trust Co. v. Dentbram Developments Ltd.*, [1992] O.J. No. 3870, 1992 CarswellOnt 474 (Ont. Gen. Div.).

58 *STN Labs Inc. v. Saffron Rouge Inc.* (2010), 68 C.B.R. (5th) 287, 2010 ONSC 3042 (CanLII), 2010 CarswellOnt 3588 (Ont. S.C.J.); *Uvalde Investment Co. v. 754223 Ontario Ltd.* (1997), 45 C.B.R. (3d) 315, 1997 CarswellOnt 365 (Ont. Gen. Div.).

59 *Canadian Imperial Bank of Commerce v. Jack*, 1990 CarswellOnt 3055, [1990] O.J. No. 670, 20 A.C.W.S. (3d) 416 (Ont. Gen. Div.) referring to *Fisher Investments Ltd. et al. v. Nusbaum* (1988), 71 C.B.R. (N.S.) 185, 1988 CarswellOnt 180 (Ont. H.C.). While the remedy is extraordinary, the fact that a creditor has the right to appoint a receiver by instrument under its security makes the "extraordinary" nature of the remedy less essential in the consideration: *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 40 C.B.R. (3d) 274, 1996 CarswellOnt 2328, 1996 CanLII 8258 (Ont. Gen. Div. [Commercial List]).

See also *Royal Bank of Canada v. Chongsim Investments Ltd.* (1997), 32 O.R. (3d) 565, 46 C.B.R. (3d) 267, 1997 CarswellOnt 988 (Ont. Gen. Div.).

See also *O.W. Waste Inc. v. EX-L Sweeping & Flushing Ltd.*, [2003] O.J. No. 3766, 2003 CanLII 34187, 2003 CarswellOnt 3598 (Ont. S.C.J.), appeal dismissed 2004 CarswellOnt 810 (Ont. C.A.); *WestLB AG, Toronto Branch v. Rosseau Resort Developments Inc.* (2009), 59 C.B.R. (5th) 303, 2009 CanLII 55120 (Ont. S.C.J. [Commercial List]).

60 *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 40 C.B.R. (3d) 274, 1996 CanLII 8258 (Ont. Gen. Div. [Commercial List]); referred to in *Textron Financial Canada Ltd. v. Beta Liée/Beta Brands Ltd.* (2007), 27 C.B.R. (5th) 1, 2007 CanLII 297 (Ont. S.C.J.); and followed in *GE Commercial Distribution Finance Canada v. Sandy Cove Marine Co.*, 2011 ONSC 3851 (CanLII) (Ont. S.C.J.).

61 *Fisher Investments Ltd. et al. v. Nusbaum* (1988), 71 C.B.R. (N.S.) 185, 1988 CarswellOnt 180 (Ont. H.C.). In this case, the court was also concerned about the receiver's capabilities as the proposed receiver lacked experience in operating a nursing home. See also *Royal Bank of Canada v. Chongsim Investments Ltd.* (1997), 32 O.R. (3d) 565, 46 C.B.R. (3d) 267, 1997 CarswellOnt 988 (Ont. Gen. Div.).

62 *Royal Bank of Canada v. Chongsim Investments Ltd.* (1997), 32 O.R. (3d) 565, 46 C.B.R. (3d) 267, 1997 CarswellOnt 988 (Ont. Gen. Div.) where the court in rejecting the appointment reviewed the effect of the order on the parties as well as their conduct.

period, say six weeks, the court is reluctant to make such an appointment as it has devastating effects on the parties;<sup>63</sup>

- (15) costs to the parties;
- (16) the likelihood of maximizing the return to the parties;
- (17) facilitating the duties of the receiver;<sup>64</sup> and
- (18) the secured creditor's good faith, commercial reasonableness of the proposed appointment and any questions of equity.<sup>65</sup>

In many cases, a security holder whose instrument charges all or substantially all of the debtor's property provides for a court-appointed receivership if the debtor is in default and fails to pay following a demand for payment.<sup>66</sup> *Prima facie*, the security holder is entitled to enforce its security by applying for a court-appointed receiver and manager.

If the creditor who applies for the appointment of a receiver is neither a judgment creditor nor a secured creditor, the court will be more cautious in reviewing the factors listed above as they may not readily apply. As has been pointed out in case law, the appointment of a receiver is intrusive and can have disastrous effects on the debtor. The creditor must show that there is a serious issue to be tried, that irreparable harm will occur if an appointment is not made, and that the balance of convenience must be in the creditor's favour. In effect, the court focuses on the test set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*.<sup>67</sup>

63 In Ontario, the security holder seldom obtains judgment before the receiver sells the debtor's business. But see *First Pacific Credit Union v. Grimwood Sports Inc.* (1984), 59 B.C.L.R. 145, 56 C.B.R. (N.S.) 7, 16 D.L.R. (4th) 181 (B.C. C.A.) where the court commented about the creditor first obtaining judgment before it could sell.

64 *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 40 C.B.R. (3d) 274, 1996 CarswellOnt 2328, 1996 CanLII 8258 (Ont. Gen. Div. [Commercial List]) where the court reviewed many of the above circumstances. In this case, the debtor had been attempting to re-finance real properties for one and a half years and was at odds with the security holder as to marketing them. In postponing the appointment for a short time to give the debtor a further opportunity to re-finance, the court concluded that a court-appointed receiver could resolve that impasse.

65 *Priority 1 Security Inc. v. Phasys Ltd.* (2006), 9 P.P.S.A.C. (3d) 203, 22 C.B.R. (5th) 258, 2006 ABQB 332 (CanLII) (Alta. Q.B.).

66 The above passage as it was written in the first edition was cited in *Citibank Can. v. Calgary Auto Centre* (1989), 75 C.B.R. (N.S.) 74, 1989 CarswellAlta 343, 1989 CanLII 3440 (Alta. Q.B.).

See *Royal Bank v. Brodak Construction Services Inc.* (2002), 34 C.B.R. (4th) 107, 2002 CarswellOnt 1774, 2002 CanLII 49590 (Ont. S.C.J. [Commercial List]) referring to *Swiss Bank Corp. (Canada) v. Odyssey Industries Inc.* (1995), 30 C.B.R. (3d) 49, 1995 CarswellOnt 39 (Ont. Gen. Div. [Commercial List]).

67 [1994] 1 S.C.R. 311, 111 D.L.R. (4th) 385, 1994 CanLII 117 (S.C.C.). In *Anderson v. Hunking*, 2010 ONSC 4008 (CanLII), 2010 CarswellOnt 5191 (Ont. S.C.J.), the Ontario court summarized the factors in dismissing an application for the appointment of a receiver where the creditors were neither judgment creditors nor secured creditors at paras. 15 and 16:

"[15] Section 101 of the *Courts of Justice Act* provides that the court may appoint a receiver by interlocutory order 'where it appears to a judge of the court to be just or convenient to do so.'

The following principles govern motions of this kind:

- (a) the appointment of a receiver to preserve assets for the purposes of execution is extraordinary relief, which prejudges the conduct of a litigant, and should be granted sparingly: *Fisher Investments Ltd. v. Nusbaum* (1988), 31 C.P.C. (2d) 158, 71 C.B.R.

**EQUITYLINE MORTGAGE - and-  
INVESTMENT  
CORPORATION ET AL.**

**2545174 ONTARIO INC.**

*Applicants*

*Respondent*

Court File No.: CV-21-00673121-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF Section 101 of the  
*Courts of Justice Act* and Section 243 of the *Bankruptcy  
and Insolvency Act*

PROCEEDING COMMENCED AT **TORONTO**

**BRIEF OF AUTHORITIES OF THE APPLICANTS**

**ROBINS APPLEBY LLP**

Barristers + Solicitors  
2600 - 120 Adelaide Street West  
Toronto, ON M5H 1T1

**Dominique Michaud LSO #56871V**

Email: [dmichaud@robapp.com](mailto:dmichaud@robapp.com)  
Tel: (416) 360-3795

**Joseph Jamil LSO #74614L**

Email: [jjamil@robapp.com](mailto:jjamil@robapp.com)  
Tel: (416) 360-3783  
Fax: (416) 868-0306

Lawyers for the Applicants