

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

Caisse Populaire Pointe-aux-Roches-
Tecumseh Inc.

Plaintiff

- and -

G.I. Farms Inc., G.I. Farms Inc., Vantec USA
Ontario Inc., 2287188 Ontario Inc., 2027512
Ontario Inc. and 1690169 Ontario Inc.

Defendants

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) K. D. Reason, for the plaintiff
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) D. Freiheit, for the defendants
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) HEARD: December 15, 2017

Templeton J.

RULING

- [1] On or about November 15, 2013, the Defendant, G.I. Farms Inc. (“G.I. Farms”) acquired ownership of property located at 2980 South Talbot Road, Cottam, Ontario. Mr. Frank Porrone is the President of this company.
- [2] On August 22, 2013, Mr. Porrone had signed a Conditional Commitment Letter in favour of the Plaintiff. This lending agreement provided for an \$8 million dollar first mortgage in favour of the Plaintiff and was a “1st Position General Security Agreement on all assets and undertaking of the Borrower, supported by assignment of applicable insurance.” Another company of Mr. Porrone’s, namely, 2027512 Ontario Inc., was identified in the agreement as a Guarantor.

- [3] On November 4, 2013, the Plaintiff and G.I. Farms executed a General Security Agreement. Paragraph 4.1 of this Agreement provided that upon the occurrence of any event of default, the security interest would immediately become enforceable and the Plaintiff could forthwith or at any time thereafter and without notice to G.I. Farms, take one or more of a number of actions including the appointment of a Receiver of the Collateral or institute proceedings in any court of competent jurisdiction for the appointment of a Receiver.
- [4] On November 15, 2013, a mortgage in the amount of \$8 million was registered on title to the property located at 2980 South Talbot Road in favour of the Plaintiff. The mortgage included the Standard Charge Terms.
- [5] By April 2015, G.I. Farms had defaulted on the payments required. On or about August 17, 2016, the Plaintiff and G.I. Farms executed a Forbearance Agreement attached to which as Schedule "D" was an executed consent to the appointment of a Receiver and Manager of the property of G.I. Farms.
- [6] Again, G.I. Farms defaulted on the mortgage payments required. As of November 23, 2016, the indebtedness to the Plaintiff amounted to \$7,200,993.76. This debt was acknowledged by G.I. Farms in an Addendum to the Forbearance Agreement ("the Addendum") executed in or about January 2017. In the Addendum, G.I. Farms agreed to pay a forbearance fee and its indebtedness to the Plaintiff by November 30, 2017.
- [7] Yet again, G.I. Farms defaulted on its financial obligation to the Plaintiff. On June 6, 2017, the Plaintiff agreed to a second Addendum which included a provision that in the absence of any continued forbearance, the Plaintiff may immediately move to appoint a Receiver over the real property in accordance with the executed Consent that was attached. In this second Addendum, G.I. Farms agreed to pay the indebtedness of \$7,394,539.16 on or before December 15, 2017.
- [8] G.I. Farms has failed to do so.
- [9] The total amount owing as of November 27, 2017 is \$7,693,809.53.
- [10] The Plaintiff seeks the appointment of a Receiver in all of the circumstances. Two other mortgagees consent to the order requested.
- [11] At the hearing, G.I. Farms indicated that on December 14, 2017, the day before the hearing, it had entered into an Agreement of Purchase and Sale with a numbered company. The purchase price is \$19,230,000 and the completion date is March 15, 2018.
- [12] Section 101 of the *Courts of Justice Act* R.S.O. 1990, c. C 43 and s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-2 permit a court to appoint a receiver if it considers it to be just and convenient to do so. In determining whether it is just and convenient to appoint a receiver, a 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 *Elleway Acquisitions Ltd. V. Cruise Professionals Ltd.*, 2013 ONSC 6866.

- [13] In the case before me, it is clear that the mortgage is in default, the indebtedness is not in dispute and G.I. Farms has been afforded multiple opportunities to cure its default. Further, there is no evidence before me that the intended purchaser of the property has the financial wherewithal to close this deal. The deposit of \$50,000 is minimal at best even if it is non-refundable in view of the amount required to close the deal.
- [14] The parties entered into a private contract that was amended from time to time over time to address the failure of G.I. Farms to meet its financial obligations. The terms and conditions of this contract to which G.I. Farms expressly agreed, included the right of the Plaintiff to obtain the order it now seeks. The Plaintiff is merely seeking to enforce a contractual right.
- [15] In all of these circumstances, I am satisfied that the appointment of a receiver is justified. There has been a default and the remedy sought by the Plaintiff is available contractually. The remedy is therefore not extraordinary in nature.
- [16] In view of the immediate availability of the receiver and the opportunity for the receiver to vet the financial circumstances of the potential purchaser to meet its obligations under the Agreement of Purchase and Sale, the beneficial effect for all parties if the purchase and sale is successful, the failed efforts of G.I. Farms in the past to organize and meet its financial obligations in the past, the current vulnerability of the property to weather-related forces and the continuing increase in the total indebtedness of G.I. Farms to the Plaintiff, I am satisfied that the appointment of a receiver, in this case BDO, is just and convenient.
- [17] The parties made submissions concerning the ongoing costs to protect the assets of the business of G.I. Farms. I did not find this evidence helpful in my deliberations and chose not to consider the ability or not of G.I. Farms to pay the costs of maintaining the property and assets.
- [18] G.I. Farms is not entitled to further delay to an enforcement of this contractual remedy to the substantial detriment of the Plaintiff.
- [19] For all of these reasons, the draft order prepared and filed by the Plaintiff shall be issued and entered.
- [20] The parties may make brief written submissions with respect to costs within 45 days.

Justice L. Templeton
Templeton J.

CITATION: Caisse Populaire v. G.I. Farms, 2017 ONSC 7657
COURT FILE NO.: 35-1842432T
DATE: 20171220

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

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and

G.I. Farms Inc., Vantec USA Ontario Inc., 2287188
Ontario Inc., 2027512 Ontario Inc. and 1690169 Ontario
Inc.

RULING

Templeton J.

Released: December 20, 2017