Court of King's Bench of Alberta

Citation: Servus Credit Union Ltd v 2353824 Alberta Ltd, 2026 ABKB 542

Date:
Docket: 2503 08529
Registry: Edmonton

Between:

Servus Credit Union Ltd.

Applicant

\- and -

2353824 Alberta Ltd. and Ward Farnum Fleming

Respondent

\- and -

Date:
Docket: 2601 11524
Registry: Calgary

Between:

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

And in the Matter of a Plan of Compromise or Arrangement of 2353824 Alberta Ltd., McKernan Crossing GP Ltd., and Longhorn Projects Inc.

2353824 Alberta Ltd., McKernan Crossing GP Ltd., and Longhorn Projects Inc.

Applicant

Reasons for Judgment
of the
Honourable Justice Michael J. Lema

I. Introduction

[1] Should a judicial listing of a warehouse property in Fort McMurray be converted to a receivership (which the lender wants), or should a *CCAA* process be launched (which the property owner wants)?

[2] I find that receivership is the answer, as explained below.

II. Analysis

[3] Here are the key factors, drawing on ***Reconsidering Real Estate: Applying the CCAA in Light of Port Capital***, 2023 CanLIIDocs 3083, a helpful survey of real-estate company insolvencies. It focuses on the tug-of-war between proposed enforcement by secured creditor and proposed debtor-driven *CCAA* proceeding.

A. Is there equity in the properties?

[4] Here is the authors' distillation of the case law on this aspect:

> One of the key factors that governs much of the discussion is whether there is equity in the subject properties. …
>
> At the front end of the discussion between competing *CCAA* and receivership applications will be an assessment of whether there is equity in the properties such that a proposed *CCAA* proceeding, with its relative [sic] restructuring costs and the delay to secured lenders' enforcement, will not put the secured lenders' security at risk. For example, in *Octagon Properties Group Ltd. (Re)*, 2009 ABQB 500 [*Octagon*], the summary of the 20 properties presented by the debtors at the initial application disclosed that the debtor's current valuation indicated that there was some equity in most of the properties, although in some cases it was a very small amount and that there was no equity in a few properties. In *Encore Developments Ltd. (Re.)*, 2009 BCSC 13 [*Encore*], where a developer sought *ex parte* relief under the *CCAA* at first instance that was later set aside, the Court noted it was probable that there was no equity in any of the projects. The lack of equity was a factor in the analysis of the overall relative risk to the secured lenders. Generally, in cases where there is insufficient equity, there is often little need for discussion[,] and enforcement proceedings are favoured [i.e. over a *CCAA* process]. As noted above, in *Alderbridge Way GP Ltd. (Re)*, 2022 BCSC 1436, the exception to this rule would be where the secured liabilities are already so high that the realization from enforcement of that security would result in too great a shortfall to be palatable, in which case the flexibility of the *CCAA* and the

> potential for alternative solutions that come with it may be appropriate. Of course, this would also depend on the secured creditors' support of the *CCAA* relief. [paras13-14] [emphasis added] [footnotes deleted]

[5] In ***Energera Inc (Re)***, 2026 ABKB 200 [***Energera***], Feasby J. examined this factor by asking whether other claimants and interested parties have a material stake in the insolvency proceedings:

> A *CCAA* process is more appropriate than a receivership where there is a reasonable prospect of recovery for multiple stakeholder groups. The *CCAA* provides a transparent process and a framework for the interests of all stakeholders to be considered. Where, as in this case, it appears that the senior secured lenders are the only stakeholders who will see any recovery, the *CCAA* process is contrary to [their] interests … because of the additional expense and because it offers no practical benefit to other stakeholders: *Shire International Real Estate Ltd (Re)*, 2010 ABQB 48 at para 9.

[6] Applying the "presence of equity" factor here, I find that 2353824 Alberta Ltd. ("235") has negligible equity in the property in question, as explained below.

[7] Servus relies on a Frost Evaluations appraisal dated September 30, 2025 reflecting the following appraised values:

Market value:	$3,525,000
Forced sale with terms:	$3,180,000
Forced sale with cash	$2,650,000.

[8] 235 relies on a Gettel Appraisals appraisal dated June 26, 2025 reflecting the following appraised values:

Cost approach	$5,120,000
Income approach	$4,740,000
Direct comparison	$4,725,000
Final value estimate	$4,740,000 [emphasis added]

Servus's mortgage-backed claim stood at $4,289,528.79 as of May 4, 2026.

[9] Unpaid property taxes, ranking in priority to the mortgage, are (or were) $89,980.55. (The evidence discloses that Servus recently cleared the tax arrears and added that amount to its overall claim.)

[10] A current title search discloses a lien against the property with a face value of $25,707.00.

[11] Per-diem interest as of May 4, 2026 was $926.93. Further interest at that per-diem amount (a conservative assumption, with no payments since that time i.e. with the balance only increasing since then) over the intervening 80 days (May 5 – July 23, 2026, inclusive) is $74,154.40.

[12] Collectively, the tax, lien, and additional-interest claims are $189,841.95. Adding that figure to the May 4, 2026 balance of $4,289,528.79 yields an updated property-backed collective debt of $4,479,370.74.

[13] Even assuming the property's value to be $4,740,000, the gross equity is only $260,629.26 i.e. approximately 5.5 per cent of that estimated value.

[14] That figure excludes disposition costs (which include real estate commission). Under a consent redemption order granted December 4, 2025 by AJ Wanke, the approved commission rate was 3 per cent plus GST. Assuming at sale at $4,740,000, a 3 per cent commission would be $142,200. Adding GST would bump it to $149,310. Deducting that amount from the gross equity of $260,629.26 would leave only $111,319.26 to cover other disposition costs and Servus's solicitor-client costs of its entire enforcement steps, such level of reimbursement provided for under its mortgage. (On appropriately factoring in selling costs when calculating equity, see ***Rivas v Anobile***, 2022 ONSC 3446 at para 53(1), *affd* 2023 ONCA 158; ***Lauzon v Bentley***, 2011 ONSC 3232, para 32; and ***Dovgala (Bankruptcy)***, Re, 2005 CanLII 28176 at para 6.)

[15] 235 argued equity-wise that:

> … The Gettel Appraisal ($4,740,000) far exceeds the forced-sale value relied upon by Servus ($2,650,000); a forced-sale receivership would crystallize a shortfall of approximately $1,639,539 and destroy value for all stakeholders.

[16] However, as the above analysis shows, even an assumed sale at $4,740,000 would generate very marginal, if any, recovery for creditors or others i.e. beyond Servus's various claims, the lien claim, and disposition costs.

[17] I conclude that 235 has effectively no material equity in the property, even on its own appraisal's best estimate of value (i.e. $4,740,000).

[18] On 235's own belief in the likelihood of a sale generating recovery at that level, I note that, via the consent redemption order, it agreed to a starting listing price of $4,200,000. And consented to, or at least acquiesced in, or at least did not bring a court application opposing, or at least did not appeal the order approving, a reduction of the list price to $4,000,000.

[19] On a sale at $4.2 million (and even more so on a sale at $4.0 million), Servus would experience a shortfall, even if focusing on its claim as of May 4, 2026 i.e. all aside from downstream increases, the lien claim, and selling costs.

[20] Whether on a sale at $4.74 million, $4.2 million, or $4.0 million, Servus is effectively the only affected stakeholder.

[21] For a similar analysis, see ***JBT Transport Inc (Re)***, 2025 ONSC 1436 at paras 60 and 61 (favouring receivership over a *CCAA* process); **Affinity *Credit Union 2013 v Vortex Drilling Ltd***, 2017 SKQB 228, para 37(i) (favouring receivership over a *CCAA* process); ***Re Redekop Properties Inc***, 2001 BCSC 1892, paras 57-62 (favouring foreclosure over a *CCAA* process);

[22] This (no-material-equity-beyond-secured-claim) factor points toward receivership.

B. Is a priming debtor-in-possession charge proposed?

[23] On this point, the authors summarize the case law as follows:

> In all the real estate cases where debtors were unsuccessful in obtaining *CCAA* protection, they proposed DIP charges with priority ahead of all existing secured creditors whose security would be at risk if the DIP charges were approved. For example, in *Octagon*, at the initial application, the debtor group of companies proposed a plan financed through a DIP facility to sell the properties and distribute the proceeds among the creditors. The majority of the first mortgagees opposed the application. They argued that the proposed DIP financing was particularly onerous, as the DIP charges would prime [i.e. take priority over] them ….
>
> The Alberta Court of Queen's Bench … declined to grant the stay, largely applying the principles in *Cliffs over Maple Bay Investments Ltd v Fisgard Capital Corp*, 2008 BCCA 327 to conclude that *CCAA* relief was not appropriate if a plan would not be proposed to secured creditors. The proposed DIP was for a total amount of $3.5 million, with an interest rate of 15% per annum, a standby fee of 6% per annum on the undrawn portion of the DIP, a facility fee of 2.75% of the DIP facility, and a $10,000 deposit for lender expenses. With respect to the DIP, **the Court appears to have considered the relative effect the DIP would have on the mortgagees by noting that they would be paying the cost to permit Octagon to buy some time.**
>
> In ***Encore***, the Court noted that the DIP, which had an interest rate of 24% compounded monthly, a $120,000 interest reserve holdback, a $30,000 commitment fee, and a prepayment penalty, was also onerous, and **its costs would be borne entirely by the secured lenders in the restructuring exercise.**
>
> In assessing whether a DIP financing is particularly onerous, the courts have weighed the size and terms of the proposed DIP against the effects it would have on the secured lenders' mortgage. As described above, in *Octagon*, there was insufficient equity in the properties at issue. In *Encore*, the Court noted it was probable that there was no equity in any of the projects. **In both cases the DIP would likely have resulted in the secured creditors bearing the restructuring cost.** [paras 17-18] [emphasis added] [footnotes omitted]

[24] Feasby J. offered a similar assessment in ***Energera***:

> … The proposed *CCAA* initial order in this case provides for a Directors and Offices Charge and an Administration Charge that would have priority over the existing Security. The [lending] Syndicate posits that interim lending and a corresponding interim lending charge with priority to the existing Security is likely in an extended *CCAA* scenario. The Administration Charge covers the costs of the proposed Monitor, the proposed Monitor's counsel, and counsel to Energera. The Syndicate says given a [sales and investment solicitation i.e. SISP] process is unlikely to result in the Syndicate being paid out [which is the case here, as explained above], the Syndicate will effectively be paying for everything secured by the charges: *Affinity Credit Union v Vortex Drilling Ltd*, 2017 SKKB 228 at para 37. While the Syndicate will also effectively be paying for the receiver under a receivership scenario, it is reasonable to expect that the expenses

> will be less than under the *CCAA* where the court process is more exacting and directors and officers and more insolvency professionals are involved. [para 21]

[25] In the present case, three priority charges are proposed under the *CCAA* approach, as described in Mr. Fleming's affidavit:

> The Applicants seeks an **Administration Charge in the amount of $350,000** in favour of the Monitor, the Monitor's counsel, and counsel to the Applicants, as security for their professional fees and disbursements incurred in connection with the *CCAA* proceedings. The proposed amount is fair and reasonable having regard to the size and complexity of the Applicants' business and the anticipated scope of work during the Initial Stay Period.
>
> The Applicants [also] seek a **Directors' Charge in the amount of $200,000** in favour of the directors and officers of the Applicants, to indemnity them against obligations and liabilities that may be incurred after the date of the Initial [*CCAA*] order in their capacity as directors and officers.
>
> …
>
> The Applicants [finally] seek a [debtor-in-possession i.e. **DIP] Lender's Charge in the amount of $500,000** in favour of the DIP Lender, securing all obligations of the Applicants under the DIP Facility. As described above, the DIP Lender requires the DIP Lender's Charge as a condition of advancing funds under the DIP Facility.
>
> The DIP Lender's Charge is to **rank in priority to all other security interests**, liens, charges, and encumbrances on the property, including the Mortgage and GSA held by Servus.
>
> The proposed priority ranking of the charges sought in this application is as follows:
>
> (a) First, the Administration Charge ($350,000);
>
> (b) Second, the DIP Lender's Charge ($500,000); and
>
> (c) Third, the Directors' Charge ($200,000).

[26] Recall the above analysis showing effectively no equity in the property i.e. beyond Servus's updated claim, the builders' lien, and disposition costs.

[27] In this circumstance, 235 had a practical onus to show that spending monies to the (theoretical) limit of all three charges would result in increased value not only covering those charges but yielding incremental value, whether to pay Servus and the other property-anchored charges in full or, beyond that, to generate funds for other creditors and, in theory, 235's shareholder.

[28] However, 235 did not discharge that onus, with no concrete refinancing or sale plan or even a rough sketch of either e.g. forecasting how the charges (if incurred to the limit) would be covered and incremental value would be created.

[29] Instead, it offered general forecasts:

> … a *CCAA* process would allow for an orderly refinancing or sale at market value, which provides a viable path to a significantly better recovery for all stakeholders, including the potential full repayment of Servus.
>
> … a *CCAA* process would allow the Applicants, the part[ies] with the most knowledge of the Property and the greatest incentive to maximize its value, to stabilize [it], repair the recent damage, resolve tenant issues, restore the Property so that new tenants can be brought in, and pursue an orderly refinancing or sale at true market value. This provides a viable path to a significantly better recovery for all stakeholders ….

[30] As discussed above, a sale at even $4,740,000 (the highest value suggested by 235) would likely yield nothing for creditors beyond Servus, the lien claim, and disposition costs.

[31] 235 did not provide any forecast, under any scenario, for how incurring the proposed charges would result in increased net value, let alone cover the charges.

[32] I see a material risk of the proposed CCAA charges encroaching into Servus's equity i.e. of Servus effectively carrying the risk of the CCAA proceedings, with no convincing (or any) evidence of counterbalancing increased value resulting from incurring them.

[33] Further evidence of uncertain value generation comes from the cash-flow statement and notes (part of Exhibit U to Mr. Fleming's affidavit).

[34] It reflects what appear (at first glance) to be reasonable expenses of $60,000 for cleaning up the warehouse, including removing third-party equipment and other assets, to be incurred over a six-week period this summer.

[35] It also shows proposed monitoring fees, to be incurred over a three-month period, of $90,000, plus legal fees of $130,000 over the same period, plus a "contingency" amount of $32,000 i.e. a total of $252,000 for what I will call oversight expenses. And this on top of proposed management fees of $16,000 payable to Mr. Fleming, presumably for his oversight of the clean-up process (at least in part).

[36] 235's materials did not detail specific tasks associated with these various proposed oversight expenses. For monitor fees, 235 stated its budget number is "an estimate and the amount of such fees will vary depending on the complexities encountered", and same for the estimate of legal fees (notes 8 and 9 to the cash-flow statement).

[37] At minimum, 235 should have provided a value-generation forecast showing (if possible) how the incurring of such expenses would provide a benefit to Servus and, potentially, to other stakeholders.

[38] 235 effectively asks Servus to accept the risk of priority charges being incurred up to $1,050,000 (i.e. $500,000 DIP plus $350,000 Administration + $200,000 Directors) with no evidence or even considered forecast showing or suggesting how incurring such (maximum) charges would or could benefit Servus, let alone any other stakeholder.

[39] This factor points to receivership as the answer here.

C. Are the professional fees and expenses [likely to be] greater in a *CCAA* context?

[40] The facts here, *CCAA*-wise, were reviewed above.

[41] I acknowledge that, as reflected in the cross-examination of its deponent, Servus provided no details of anticipated receivership costs.

[42] But with Servus being the only material stakeholder (as explained above), it should have control over what realization-related charges are incurred (for clean-up or otherwise), with court review of its ultimate recovery (selling price less preparation and disposition costs) – i.e. the commercial reasonableness of its steps - as a safety valve. (I appreciate that the proposed *CCAA* charges are also ultimately reviewable.)

[43] This factor also favours receivership.

D. Is there a reasonable timeline proposed to pay out secured creditors in the *CCAA*?

[44] As noted above, 235 provided no details, let alone timing, of a refinancing or sale under a CCAA process.

[45] As above, with Servus having the only material stake here, it should be able to make the decisions and move ahead on a timetable which suits it, albeit subject to court approval for major decisions.

[46] Again, receivership is favoured here.

E. Would a coordinated sales process in the *CCAA* provide the greatest benefit to stakeholders?

[47] This factor is not relevant here, with a single property as the focus.

F. Can a flexible, hybrid approach be taken?

[48] Same (single property) answer here.

G. Are there other stakeholders besides the secured lenders?

[49] As explained above, there are no other material stakeholders here i.e. given the extent of the registered-on-title claims and the appraised values.

[50] To the extent Mr. Fleming asserts he is a stakeholder as a guarantor, the evidence does not disclose the extent to which he has personal assets in jeopardy i.e. his true exposure on what is apparently an unsecured guarantee.

[51] In any case, he will have an opportunity to offer submissions on the reasonableness of any sale ultimately proposed by Servus and of the associated preparation and disposition expenses i.e. the commercial reasonableness of Servus's realization steps.

H. Can the *CCAA* offer other procedural benefits?

[52] 235 did not assert any such unique to *CCAA* benefits.

I. Other factors

1. Loss of confidence in management

[53] Servus asserted such a loss.

[54] 235 resisted, arguing that Mr. Fleming has acted reasonably throughout i.e. no objective basis for the asserted loss.

[55] I do not have to decide who is right in light of the other factors.

[56] Assuming Mr. Fleming has indeed acted reasonably throughout, with no loan payments since September 2024, and the equity situation as discussed above, Servus is entitled to take charge of the realization efforts as it reasonably sees fit i.e. not be delayed by an open-ended and undefined CCAA process posing the risk of material encroachment into value currently anchoring Servus's security.

2. Impact of consent redemption order

[57] 235 consented to a redemption order approving a one-day redemption period and an initial judicial listing price of $4.2 million.

[58] As reviewed in detail by both sides at the recent application, various developments (including an overholding tenant and a flood at the warehouse) have complicated matters. Both sides acknowledge that a more rigorous oversight and sale (or refinancing) process is needed, whether receivership or CCAA.

[59] Servus argues that, by agreeing to the CRO, 235 effectively surrendered, freeing Servus to pursue any reasonable realization approach i.e. whether judicial listing or receivership.

[60] Per 235, it did not consent to a receivership order, only a judicial listing and, with the listing having become impractical, it can assert any available realization (or refinancing) approach, including a CCAA process.

[61] I will proceed on the basis that, with no consent receivership order having been provided and with the judicial listing having become impractical, it is open to 235 to propose any alternative form of recovery process, including a *CCAA* proceeding.

[62] The fact remains that, in light of the other factors, receivership is the more appropriate process here.

3. Receivership forming part of security relief

[63] Servus emphasized, and 235 did not dispute, that its security includes receivership as relief. This does not mean that approval of a receivership is automatic, but it is another factor favouring receivership here.

4. Responsibility for current state of affairs

[64] Servus and 235 differ sharply over responsibility for the current subpar state of the property i.e. who as between Servus and its property manager, on the one hand, and Mr. Fleming, on the other, dropped the ball in handling the most recent tenant (including enforcing an eviction order), responding to a flood at the property, pursuing the related insurance claim, keeping the property insured, monitoring and controlling access to the property by the former tenant and others, and otherwise taking charge of the property.

[65] In all the circumstances here, even if Servus and its property manager, or either of them were principally responsible for the current state of the property (on which I make no finding), that does not make a CCAA process the preferable process here.

[66] I see no reason to believe that the proposed receiver (BDO Canada Ltd) will not take appropriate steps to control access to the property, pursue the insurance claim, prepare the property for sale, and otherwise take commercially reasonable steps to sell the property for

Servus's benefit i.e. as the only materially affected party, with 235 able to provide input at the court applications to approve the major steps, including a sale.

[67] I note here that 235 has brought an action against Servus and its property manager for alleged negligence in handling the property to date. I do not see any theoretical advantage to pursuing that claim as part of a CCAA process as outweighing the pro-receivership factors reviewed above.

III. Conclusion

[68] For these reasons, I approve Servus's application to appoint BDO as receiver of the property on the terms outlined in the draft order accompanying its application.

[69] I thank both counsel for helpful written and oral submissions.

Heard on July 3, 2026.
Dated at Edmonton, Alberta on July 29, 2026.

Michael J. Lema
J.C.K.B.A.

Appearances:

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