



**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00707172-00CL

DATE: November 17, 2023

NO. ON LIST: 4

TITLE OF PROCEEDING: TANDIA FINANCIAL CREDIT UNION LIMITED v. 1557113 ONTARIO INC. et al

BEFORE: JUSTICE OSBORNE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
SPENCE, MIRANDA and LICI, MATILDA	TANDIA FINANCIAL CREDIT UNION LIMITED	mlici@airdberlis.com
		mspence@airdberlis.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
KULATHUNGAM, JONATHAN	1557113 ONTARIO INC.	jkulathungam@teplitskyLLP.com
	1870431 ONTARIO INC.	
	2500994 ONTARIO LTD.	
	2544924 ONTARIO INC.	

For Other:

Name of Person Appearing	Name of Party	Contact Info
SEIFER, DAVID	PROPOSED RECEIVER, BDO	dseifer@dickinsonwright.com
MAZUR, CHRIS		Cmazur@bdo.ca

ENDORSEMENT OF JUSTICE OSBORNE:

- [1] This receivership application was returnable today. Responding materials on behalf of the debtors were delivered this morning. The hearing was scheduled for 10 AM and the parties requested that it be stood down for one hour to allow for settlement discussions. I agreed.
- [2] Upon resumption, the parties advised that they had reached an agreement which effectively contemplates the appointment of the receiver today but the suspension of its powers, on consent. While in some circumstances the court is reluctant to appoint a receiver but suspend its powers, I am satisfied that such is appropriate in the circumstances. The parties have agreed on the language of this Endorsement and indeed provided it to me on consent.
- [3] Tandia Financial Credit Union Limited (the “Applicant”) commenced this application to appoint BDO Canada Limited as receiver (in such capacity, the “Receiver”), without security, of all of the assets, properties and undertakings of each of 1557113 Ontario Inc., 1870431 Ontario Inc., 2500994 Ontario Ltd., and 2544924 Ontario Inc. (collectively, the “Respondents”) acquired for or used in relation to a business or businesses carried on by the Respondents, including over the property municipally known as:
- (a) 10201 Hwy 41, Kaladar, ON K0H 1Z0;
 - (b) 14265 Hwy 41, Cloyne, ON K0H 1K0;
 - (c) 28 Monogram Place, Trenton, ON K8V 5P8; and
 - (d) 395 Bell Blvd, Belleville, ON K8P 5H9 (the “Real Properties” and collectively, the “Property”).
- [4] The Respondents own and operate gas stations at the Real Properties.
- [5] The parties’ agreement hinges on the Respondents securing re-financing to pay out the Applicant’s indebtedness in full, and meeting certain milestones. Accordingly, the receivership order is unopposed on certain strict terms which I will set out below.
- [6] I am satisfied that it is appropriate to appoint the Receiver in the circumstances and so grant the Receivership Order sought by the Applicant, but order that it shall be held in abeyance on the following terms:
- (a) the re-financing by 1557113 Ontario Inc. and 2500994 Ontario Ltd. in respect of the real properties located at 10201 Hwy 41 and 28 Monogram Place must close on or before November 30, 2023 (the “First Refinancing”). Otherwise, the Receiver shall be authorized to commence its mandate vis-à-vis all Respondents as of December 1, 2023, and the receivership order shall be effective and enforceable without any need for entry or filing;
 - (b) provided that the First Refinancing closes on or before November 30, 2023, the remaining Respondents, being 1870431 Ontario Inc. and 2544924 Ontario Inc., must provide a commitment letter in respect of the properties located at 14265 Hwy 41 and 395 Bell Blvd on or before December 5, 2023, which letters must provide for a closing date of January 5, 2024 at latest (the “Commitment Letters”). Otherwise, the Receiver shall be authorized to commence its mandate vis-à-vis 1870431 Ontario Inc. and 2544924 Ontario Inc. as of December 6, 2023, and the receivership order shall be effective and enforceable without any need for entry or filing;
 - (c) if the Applicant is not repaid in full on or before January 5 2024, the Receiver shall be authorized to commence its mandate vis-à-vis 1870431 Ontario Inc. and 2544924 Ontario Inc. as of January

6, 2024, and the receivership order shall be effective and enforceable without any need for entry or filing.

- [7] I direct the Applicant's counsel to advise me in writing, via email to the Commercial List Office, whether or not each of those three milestones has been met and whether the receivership comes into effect. If a full refinancing is achieved in accordance with the above timelines, such that the Applicant is repaid in full as contemplated, the parties shall notify the Commercial List Office, and a dismissal order in respect of the receivership order may be sought in writing on consent.

Oleary, J.