



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-24-00723897-00CL

DATE: 14-AUG-2024

NO. ON LIST: 7

TITLE OF PROCEEDING: NATIONAL BANK OF CANADA v. COMMCACHE ASSET MANAGEMENT INC.  
et al.

BEFORE: JUSTICE CONWAY

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
Puya Fershanki	NATIONAL BANK OF CANADA	<a href="mailto:pfershanki@tgf.ca">pfershanki@tgf.ca</a>

**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Richard A. Wellenreiter	2689918 ONTARIO INC.	<a href="mailto:rwellenreiter@wellenreiterllp.ca">rwellenreiter@wellenreiterllp.ca</a>

**ENDORSEMENT OF JUSTICE CONWAY:**

- [1] All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Applicant dated August 14, 2024.
- [2] This is an Application for the appointment of a receiver over the Commache Property and the 52 Lacroix Property, owned by the Respondents. The Application is unopposed, as confirmed by Mr. Oakes in his correspondence to the Applicant's counsel today.
- [3] In my view, it is just and convenient to appoint a receiver over these properties. The Mortgages and GSAs provide for the appointment of a receiver in the event of default. The Debtors have defaulted on their obligations under the Credit Agreements, Mortgages, and GSAs. As noted, the Application is unopposed. Mr. Oakes says that he wishes to work cooperatively with the Receiver in an effort to minimize costs and preserve equity.
- [4] The Applicant has agreed with the Second Mortgagee to suspend the receivership with respect to the John Street Property so that the Second Mortgagee can seek to redeem the Lender's First Mortgage on that Property. This agreement is consistent with recent caselaw as outlined in the Applicant's factum and provides transparency and appropriate balance between the interests of the Applicant and the Second Mortgagee. Counsel have agreed on the following language, which I endorse:
- [5] The order granted today shall be without prejudice to the rights of 2689918 Ontario Inc., the second mortgagee (the "Second Mortgagee") in respect of the 215 John Street East, Blenheim, Ontario, property (the "John Street Property"), to take an assignment of the Applicant's direct indebtedness and security relating to the John Street Property, including the Applicant's first mortgage (the "Assignment"), on the following terms and conditions:
- a. on or before the date that is thirty (30) days of the date of this Order (the "Interim Period"), the Second Mortgagee shall deliver to the Applicant a term sheet, letter of intention or similar proposal (the "Term Sheet") that contemplates an Assignment transaction that can reasonably be consummated within three months of the date of this Order;
  - b. during the Interim Period, the Receiver shall not list, market or begin any process for sale with respect to the John Street Property, in order to permit the Second Mortgagee time to effect the condition at (a) above; and
  - c. provided the condition at (a) above is satisfied, the parties shall work together in good faith to complete the Assignment transaction. The parties may seek the Court's direction in respect of the conditions herein.
- [6] Order to go as signed by me and attached to this Endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

