

**SUPERIOR COURT OF JUSTICE – ONTARIO**

7755 Hurontario Street, Brampton ON L6W 4T6

**RE:** 2439656 ONTARIO INC.  
MS CAPITAL CORP., **applicants**

**AND:**

CHACON HOLDING CORP., **respondent**

**BEFORE:** Justice L. Shaw

**COUNSEL:** SIDHU, AMANDEEP for the applicants  
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**HEARD:** August 16, 2024, via video conference

## **ENDORSEMENT**

- [1] The applicant moves to appoint BDO as a receiver of mortgaged property pursuant to s. 243 of the *Bankruptcy and Insolvency Act* (“BIA”). The property is a commercial multi-tenant industrial building.
  
- [2] The applicants were granted a mortgage by the respondent in June 2023. Pursuant to that mortgage, the applicants agreed to advance the respondent \$3.6 million. This was the second mortgage registered on title. The first mortgage is held by The National Bank. That mortgage is also in arrears.
  
- [3] The respondent failed to repay the mortgage when it became due on December 19, 2023. Default judgment was obtained on January 18, 2024.
  
- [4] It was a term of the General Security Agreement (para. 6) that a receiver could be appointed.
  
- [5] As of June 5, 2024, the respondent owes the applicant \$4.1 million plus legal fees and disbursements.
  
- [6] This application was first before the court four weeks ago – on July 19, 2024. Justice Harris granted an adjournment at the request of the respondent so that it could retain counsel and file responding material. I note that the respondent was served with the application on May 31, 2024.
  
- [7] Counsel appeared today on behalf of the respondent and again requested an adjournment. Counsel advised the court that the respondent received an offer to purchase the property last evening. Her position was that if the property was going to sell, there was no need to appoint a receiver.
  
- [8] There were a number of counsel present today including counsel for the proposed receiver, the first mortgagee and some of the subsequent mortgagees (I understand that there are numerous mortgages registered on title). All counsel were sent into a breakout room to discuss the proposed offer.

- [9] After reviewing the matter, counsel for the applicant advised that his client wanted to proceed with the application as there were concerns about the tentative offer to purchase.
- [10] I do not agree that there should be any further adjournments of this matter. The respondent knew of this application since May 31, 2024. It was granted an adjournment when the matter was first before the court. It has had ample time to prepare responding materials. While the respondent may want to resolve the matter, it must also respond to the application. It has failed to do so.
- [11] After reviewing the material filed for this application and hearing from counsel, I am satisfied that pursuant to s. 243(1) of the BIA, it is just and convenient to appoint BDO as the receiver. I have also considered the principles set out in *Bank of Montreal v. Sherco Properties Inc*, 2013 ONSV 7023.
- [12] Order to go per draft that I signed.

*Justice Shaw*