



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-25-00735544-00CL

DATE: **19-MAR-2025**

NO. ON LIST: 3

TITLE OF PROCEEDING: THE TORONTO-DOMINION BANK v. 2271066 ONTARIO LIMITED

BEFORE: Madam Justice J. Dietrich

**PARTICIPANT INFORMATION**

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

Name of Person Appearing	Name of Party	Contact Info
Miranda Spence	Lawyer for THE TORONTO-DOMINION BANK	<a href="mailto:mspence@airdberlis.com">mspence@airdberlis.com</a>
Calvin Horsten	Lawyer for THE TORONTO-DOMINION BANK	<a href="mailto:chorsten@airdberlis.com">chorsten@airdberlis.com</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
Rajesh Ahuja	Representative of 2271066 Ontario Limited	<a href="mailto:r.ahuja@dmscorp.ca">r.ahuja@dmscorp.ca</a>
Torrance, Rebecca (Observer)	Counsel for Northbridge General Insurance Corporation and Arch Insurance Canada Ltd.	RTorrance@blg.com

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**ENDORSEMENT OF JUSTICE J. DIETRICH:**

**Introduction**

- [1] The Applicant, The Toronto-Dominion Bank (“**TD**”), seeks an Order appointing BDO Canada Limited (“**BDO**”) as receiver (the “**Receiver**”) of all the assets, properties and undertakings of 2271066 Ontario Limited (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor and all proceeds thereof, including, without limitation, the real property at the address municipally known as 181 Regina Road, Vaughan, Ontario (the “**Real Property**”) pursuant to s. 243 of the *Bankruptcy and Insolvency Act* and s. 101 of the *Courts of Justice Act*.
- [2] At a case conference held on February 11, 2025, counsel for the Debtor attended and a schedule was set by Justice Black for the hearing today. That schedule required responding material to be delivered by the Debtor by February 24, 2025. No responding material was delivered.
- [3] Rather, Mr. Rajesh Ahuja attended in person today. He advised that he was a representative of the Debtor, that he did not wish to spend funds on counsel and that he would assist with a private sale of the Real Property such that the appointment of the Receiver was unnecessary in his view. No leave was requested or given for the corporate respondent to appear other than by counsel.
- [4] Counsel for Northbridge General Insurance Corporation and Arch Insurance Canada Ltd. attended today to observe, but did not take any position on the application.
- [5] Terms used in this endorsement and not otherwise defined herein, have the meaning provided to them in the factum of TD filed on this application.

**Background**

- [6] The Debtor is a real property holding company affiliated with Dependable Mechanical Systems Inc. (“**Dependable**”), 4R HVAC Inc. (“**4R**”), and 2648256 Ontario Inc. (“**264**”) and, together with Dependable, 4R and the Debtor, the “**Borrowers**”).
- [7] The Debtor is a privately-owned Ontario corporation. Mr. Ahuja is the sole director and an officer of the Debtor. The Debtor is the registered owner of the Real Property.
- [8] The Borrowers are indebted to TD in the amount of over \$15.5 million in connection with the credit facilities that TD advanced to them (the “**Credit Facilities**”) pursuant to and

under the terms of the letter of agreement dated April 5, 2024, as amended by amending agreements dated June 30, 2024 and August 15, 2024 among TD, as lender, the Borrowers, as borrowers, and each of Rajesh and Radha, as personal guarantors (collectively, the “**Credit Agreement**”).

- [9] The Debtor guaranteed the obligations of all the other Borrowers under the Credit Agreement pursuant to unlimited guarantees dated October 16, 2020, and October 21, 2021.
- [10] To secure its obligations to TD, the Debtor provided security to TD (the “**Security**”), including, without limitation: a first charge/mortgage in the principal amount of \$11,500,000 which was registered on title to the Real Property on November 25, 2020; a second charge/mortgage in the principal amount of \$4,000,000 which was registered on title to the Real Property on June 28, 2024; a general assignment of rents which was registered on title to the Real Property on November 25, 2020; and a general security agreement dated October 16, 2020.
- [11] Numerous Events of Default (as defined in the Credit Agreement and/or Security) have occurred and are continuing, including failing to keep current priority payables owing to Canada Revenue Agency, exceeding authorized borrowing limits and breach of financial covenants.
- [12] On October 18, 2024, TD made formal written demand on the Borrowers, including, the Debtor as borrower and guarantor in respect of the Credit Facilities extended under the Credit Agreement, for the payment of amounts owing to TD thereunder (the “**Demand Letters**”). Notices of intention to enforce security (the “**BIA Notices**”) pursuant to subsection 244(1) of the BIA accompanied the Demand Letters sent to the Borrowers, including the Debtor.
- [13] On November 28, 2024, TD and the Borrowers entered into a forbearance agreement (the “**Forbearance Agreement**”) whereby the Borrowers agreed to fully repay TD by December 31, 2024. As set out therein, \$25,066,307.34 was due and owing by the Borrowers to TD for principal, interest, and legal fees as of November 21, 2024, plus accruing interest and costs (the “**Indebtedness**”).
- [14] On December 5 and 6, 2024, the Borrowers repaid the sum of \$9,891,629.87 to TD using the proceeds of the sale of one of their real properties, as contemplated by the Forbearance Agreement. However, the Borrowers did not repay the balance of the Indebtedness owing to TD in full by December 31, 2024, as agreed. Consequently, the Forbearance Agreement expired and TD’s counsel issued formal notice of the termination of the Forbearance Agreement by letter dated January 17, 2025, indicating that steps would be taken to commence this receivership application.

[15] TD understands that significant priority payables, in the amount of approximately \$10 million, have accumulated at Dependable. As such, TD is only proceeding at this time to seek the appointment of a receiver over the Debtor's property.

[16] The receivership application was commenced by TD on January 23, 2025.

[17] As noted above, pursuant to the Endorsement of Justice Black in these proceedings dated February 11, 2025, the Debtor was to deliver its responding materials by February 24, 2025. The Debtor did not do so.

## **Issue**

[18] The issue to be determined today is whether it is just or convenient to appoint a receiver over the assets, properties and undertakings of the Debtor.

## **Analysis**

[19] The test for the appointment of a receiver under s. 243 of the BIA or s. 101 of the CJA is whether it is just or convenient.

[20] In determining whether it is just a convenient to appoint a receiver the 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. While the appointment of a receiver is generally an extraordinary equitable remedy, where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: see *Elleway Acquisitions Limited v. The Cruise Professionals Limited*, 2013 ONSC 6866 at para. 27.

[21] Although the presence of a contractual entitlement to appoint a receiver is not determinative factor, here, where the right to appoint a receiver is provided under the Mortgage, the remedy becomes less extraordinary see para 44 of *BCIMC Construction Fund Corporation et al. v. The Clover on Young Inc.*, 2020 ONSC 1953.

[22] As recently summarized by Justice Osborne in *iSpan Systems LP*, 2023 ONSC 6212 at para. 32 and 33, a number of factors have historically been taken into account in the determination of whether it is appropriate to appoint a receiver. The factors are not a checklist, but rather a collection of considerations to be viewed holistically, they include:

- a. whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;
- b. the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;

- c. the nature of the property;
- d. the apprehended or actual waste of the debtor's assets;
- e. the preservation and protection of the property pending judicial resolution;
- f. the balance of convenience to the parties;
- g. the fact that the creditor has a right to appointment under the loan documentation;
- h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
- i. the principle that the appointment of a receiver should be granted cautiously;
- j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
- k. the effect of the order upon the parties;
- l. the conduct of the parties;
- m. the length of time that a receiver may be in place;
- n. the cost to the parties;
- o. the likelihood of maximizing return to the parties; and
- p. the goal of facilitating the duties of the receiver.

[23] In this case, it is just and convenient to appoint a receiver.

[24] The Debtor is in default of its obligations to TD.

[25] Pursuant to the terms of the Security, including the Mortgages granted to TD, TD has the contractual right to seek the appointment and receiver over the Debtor's property.

[26] TD has attempted to work with the Debtor. The Demand Letter and BIA Notices were issued approximately five months ago. TD entered into a Forbearance Agreement with the Debtor which has now terminated.

[27] Although the Receivership Application was commenced in January, 2025, the Debtor failed to file any responding material in accordance with the schedule set by Justice Black.

[28] Although the Debtor now offers to assist with a private sale of the Real Property, TD advises that it has lost confidence in management of the Debtor. This is understandable as the evidence is that the Borrowers have accumulated significant Priority Payables and have taken steps to transfer receivables in violation of agreements with TD and that are subject to security interests of TD and potential other secured creditors.

[29] BDO is qualified to act as receiver and has consented to do so.

[30] The terms of the proposed receivership order, with the modifications discussed during the hearing today are appropriate and consistent with the Model Order of the Commercial List.

## **Disposition**

[31] For the reasons provided above, I grant the receivership order in the form signed by me today.

March 19, 2025

Justice J. Dietrich