



SUPERIOR COURT OF JUSTICE

ENDORSEMENT

COURT FILE NO.: CV-24-00719689-00CL DATE: February 20, 2025

NO. ON LIST: 2

TITLE OF PROCEEDING: **Bank of Montreal v. True North Freight Solutions Inc. et al.**

BEFORE: **JUSTICE STEELE**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Samantha Hans	Counsel for Bank of Montreal	shans@airdberlis.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info

Other:

Name of Person Appearing	Name of Party	Contact Info
Maya Poliak	Receiver – BDO Canada Ltd.	Maya@chaitons.com

ENDORSEMENT OF JUSTICE STEELE:

[1] The Receiver seeks an order, among other things, approving BDO's second report and activities, authorizing certain distributions to holders of purchase money security interests, requiring RBC Bank (Georgia) N.A. to cooperate with the terms of the receivership order and the Receiver's requests, and approving the fees and disbursements of the Receiver and its legal counsel.

[2] No party opposes the relief sought.

[3] The debtor companies carried on business as transportation logistics companies and operated a fleet of freight trucks and trailers. BMO was the primary secured creditor of the debtors. There were also a number of lessors who financed vehicles used in the business.

[4] The Receiver worked to locate and take possession of the debtors' assets. However, there were certain issues, including missing vehicles, and efforts made by the debtor and its principals to divert funds from customers.

[5] A number of auctions have been conducted by Ritchie Bros. for the sale of the debtors' vehicles.

[6] There were four vehicles in respect of which Coast Capital Equipment Finance Ltd. and/or Travelers Leasing Ltd. ("Coast Capital") claimed a security interest. However, the registrations in respect of these four vehicles were against the debtors' prior name (Kanman Logistics Inc.). Kanman Logistics Inc. had changed its name to North Shore on November 4, 2021. Despite having been aware of the name change as early as January 31, 2023, Coast Capital had not updated its registrations to reflect the new name of the debtors. The Receiver determined that Coast Capital's security interest in the four vehicles had become unperfected. Initially Coast Capital had objected to the Receiver's determination that BMO has priority over Coast Capital in respect of the net proceeds from the sale of these four vehicles. However, Coast Capital subsequently withdrew its objection, so this is no longer a live issue.

[7] BVD had registered financing statements against 15 vehicles financed by the debtors. The Receiver made multiple requests to BVD to file a proof of claim. BVD has not filed a proof of claim. The Receiver determined that BMO has priority over BVD and those vehicles. Accordingly, this issue is no longer a live issue.

Should the Court approve the Proposed Distributions?

[8] The Receiver proposes to distribute to PMSI holders the lesser of (i) the amount currently owing to them in respect of each of the vehicles subject to their security; and (ii) the net sale proceeds from the sale of the applicable vehicle.

[9] Under s. 33(2) of the PPSA:

(2) Except where the collateral or its proceeds is inventory or its proceeds, a purchase-money security interest in collateral or its proceeds has priority over any other security interest in the same collateral given by the same debtor if the purchase-money security interest,

(a) in the case of collateral, other than an intangible, was perfected before or within 15 days after,

(i) the debtor obtained possession of the collateral as a debtor, or

(ii) a third party, at the request of the debtor, obtained or held possession of the collateral,

Whichever is earlier; or

(b) in the case of an intangible, was perfected before or within 15 days after the attachment of the purchase-money security interest in the intangible

[10] Counsel for the Receiver has reviewed the proofs of claim filed by each of the proposed distribution recipients and has confirmed that the recipients of the distributions perfected their PMSIs by registering financing statements against the applicable vehicles within 15 days of the debtor obtaining possession of the applicable vehicle in accordance with the PPSA.

[11] The Receiver recommends the Court approve the proposed distributions.

Should the Court approve the Relief sought with respect to the Georgia Bank Accounts?

[12] The Receiver learned that the debtors have bank accounts with a US financial institution. The Receiver wrote to the Georgia Bank and requested that, among other things, the funds in the bank accounts be remitted to the Receiver.

[13] The Georgia Bank advised the Receiver that it will not provide the Receiver with access to the debtors' US bank accounts without a court order from the US directing them to do so. The Receiver's US counsel advised them that this result is best achieved by domesticating an order of the Canadian court in the US.

[14] The Receiver states that it intends to have both the Receivership Order and this order domesticated in the US to enable the Receiver to take possession of the debtors' US bank accounts.

[15] I am satisfied that it is appropriate to grant this relief.

Should the Court approve the Receiver's Second Report and Activities?

[16] As is commonly done, the Receiver seeks court approval of its Second Report, and supplement to the Second Report, and the activities set out therein.

[17] The Court has the jurisdiction to review and approve the activities of a court-appointed receiver as set out in the receiver's reports: *Bank of America Canada v. Willann Investments Ltd.*, 1996 CanLII 2782 (ONCA).

[18] The Court in *Re Target Canada Co.*, 2015 ONSC 7574, at paras. 22-23, identified several good policy and practical reasons for monitors in CCAA proceedings to routinely seek court approval of their reports and activities. These policy and practical reasons also apply in receivership proceedings where the receiver seeks approval of its report and activities: *Re Hangfen Evergreen Inc.*, 2017 ONSC 7161, at para. 15.

[19] I am satisfied that the activities of the Receiver set out in the Second Report, and supplement to the Second Report were reasonable, necessary and undertaken in good faith pursuant to the Receiver's duties and powers and should be approved.

Should the fees of the Receiver and its Legal Counsel be approved?

[20] The Receiver seeks court approval of its fees and those of its counsel. Fee affidavits have been filed.

[21] When considering whether to approve professional accounts, the court will consider the overall value contributed, taking into consideration (a) the nature, extent and value of the assets, (b) the complications encountered, (c) the degree of assistance provided by the debtor, (d) the time spent, (e) the receiver's knowledge, experience and skill, (f) the diligence and thoroughness displayed, (g) the responsibilities assumed, (h) the results of the receiver's efforts, and (i) the cost of comparable services when performed in a prudent and economical manner: *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at paras. 33 and 44-45.

[22] The Receiver is of the view that its fees and those of Chaitons are consistent with the rates charged by similar firms and are reasonable and appropriate in the circumstances.

[23] I am satisfied that the fees and disbursements are fair and reasonable.

[24] Orders attached.



Justice J. Steele