ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CL-26-00000303-0000 **DATE: July 10, 2026**

NO. ON LIST: 3&4

TITLE OF PROCEEDING: National Bank of Canada v. Total Home Energy Systems Inc. et al

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Stephanie Fernandes	National Bank of Canada	sfernandes@tgf.ca

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE KIMMEL:

The Application

[1] National Bank of Canada (the "Applicant") makes an application pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, for:

(a) appointing BDO Canada Limited ("BDO") as receiver and manager (in such capacity, the "Receiver"), without security, of all of the current and future assets, undertakings, and properties (the "Property") of Total Home Energy Systems Inc. ("Total Home") and THES Acquisition Inc. ("THES" and together with Total Home, the "Respondents"); and

(b) an order (the "Sale Process Order"), approving a proposed sale process (the "Sale Process") of the Property and approving a sales agent engagement between BDO Canada Limited, in its capacity as Receiver of the Respondents (if so appointed) and BDO Canada Transaction Advisory Services Inc. ("BDO Advisory") dated as of July 3, 2026 (the "Engagement Letter") to carry out the Sale Process.

[2] The facts relevant to the relief sought by the Applicant are set out in greater detail in the Affidavit of John Karkoutlian sworn July 3, 2026 (the "Karkoutlian Affidavit") and in the Proposed Receiver's pre-filing report dated July 6, 2026 (the "Pre-Filing Report"). Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Applicant's factum filed on this motion.

[3] The respondent debtors (and others) were served with this application. No stakeholder appeared to oppose it or raised any concerns in advance of the hearing. It proceeded on an unopposed basis.

Background to Application

[4] Total Home is in the business of providing heating, ventilation, and air conditioning ("HVAC") services, as well as plumbing services to residential, commercial and agriculture businesses in and around St. Jacob's, Ontario. THES was incorporated on March 30, 2023 for the purpose of funding the acquisition of Total Home. THES's primary asset is its 70% ownership interest in Total Home. THES is wholly owned by MechCan Inc. ("MechCan"). MechCan wholly or partially owns six other entities operating related businesses elsewhere in Ontario and Canada (together, all of these related entities, including the two respondents to this application are the "MechCan Group"). There are cross-guarantees and cross-collateralized security among and between the various entities in the MechCan Group. The total overall indebtedness to the applicant is more than $9 million.

[5] Between March 31, 2026 and April 10, 2026, MechCan and five of its affiliates filed Notices of Intention to Make a Proposal under the BIA (the "NOIs") and BDO was named as proposal trustee (in such capacity, the "Proposal Trustee") in respect of those NOIs. Four of those NOI proceedings are still ongoing. Since the NOI filings, MechCan and one other of the NOI filed entities were deemed to make assignments in bankruptcy. BDO is the trustee in bankruptcy in respect of those entities (in such capacity, the "Trustee"). Another affiliate made a bankruptcy application and BDO is its Trustee as well.

[6] The respondents are the two remaining companies in the MechCan Group that are not yet in insolvency or restructuring proceedings. However, after the applicant served its demands and notices of intention to enforce security under the BIA on the respondent companies, their directors resigned. Counsel advises that the minority shareholders have been attempting to continue the operations of these remaining companies but

no one has corporate authority to realize upon their assets, hence this receivership application and request for approval of the proposed Sale Process.

It is Just and Convenient to Appoint BDO as Receiver

[7] The Applicant's GSAs charge the property of the Respondents as security for the Respondents' obligations under the Credit Facilities. The Applicant is therefore a "secured creditor" within the meaning of the BIA. The Respondents have failed to repay the Credit Facilities notwithstanding the issuance of the Demand Letters and the BIA Notices. The Respondents are "insolvent persons" within the meaning of the BIA, as they are unable to meet their obligations as they generally become due to the Applicant. It is a term of each of the GSAs that the Applicant may appoint a receiver upon default by the applicable Respondent in any of its obligations to the Applicant.

[8] The amount of the Respondents' indebtedness is significant when the cross-guarantees are accounted for. A demand for repayment of the total indebtedness and 244 BIA Notices have been issued and the notice period under the 244 BIA Notices has since elapsed. The amounts demanded remain unpaid.

[9] 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 to do so.

[10] In determining whether it is just or 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: see *Bank of Nova Scotia v Freure Village of Clair Creek*, [1996] OJ No 5088 at para 10. 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 (as they do in this case), the right to seek the appointment of a receiver, the burden on the applicant is lessened: see *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd*., 2013 ONSC 6866 at para 27. For example, irreparable harm need not be established: see B*ank of Montreal v. Carnival National Leasing Limited and Carnival Automobiles Limited*, 2011 ONSC 1007 (Commercial List), at paras. 24 – 28.

[11] As summarized in *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186 at para 25, 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

[12] In this case, I find that it is just and convenient to appoint the Receiver, for among other reasons those summarized in paragraph 46 of the Applicant's factum on this motion. BDO is qualified to act as receiver and has consented to do so.

[13] With respect to the form of requested order, I am satisfied that the terms of the proposed receivership order are appropriate and consistent with the Model Order of the Commercial List.

Approval of the Engagement of the Sales Agent and the Sale Process

[14] The Sale Process is described in detail in paragraphs 25 to 40 of the Pre-Filing Report.

[15] In considering whether to approve a sales process, the Court is to assess the reasonableness and adequacy of what the receiver is proposing in light of the approval factors that the Court will later use to assess a proposed sale, including the non-exhaustive factors that the court will eventually consider under s. 65.13(4) of the BIA in connection with a proposed sale transaction if one emerges from the Sale Process. In the context of the approval of a sale process, the focus is on:

(a) Whether a sale transaction warranted at this time?

(b) whether a sale would benefit the whole 'economic community'?

(c) whether any of the debtors' creditors or stakeholders have a bona fide reason to object to the sale of the business at his time ? and

(d) whether there is there a better alternative?

See *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 (ON SC), at para 49; as applied in the BIA context in, for example, *Mustang GP Ltd. (Re)*, 2015 ONSC 6562, at paras. 37-38; Endorsement of Cavanagh J dated August 17. 2023, *Datatarbusiness Services Limited v. KPMG Inc*. Court File No. BK-23-02975175-0031.

[16] As set out in *CM Master Qualified Fund v blutip Power Technologies*, 2012 ONSC 1750*C*, at para. 6, when reviewing a sales and marketing process proposed by a receiver a Court should assess: (i) the fairness, transparency and integrity of the proposed process; (ii) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and, (iii) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

[17] The relevant factors are to be considered in light of the well-known principles from *Royal Bank of Canada v. Soundair Corp*., (1991), 4 O.R. (3d) 1 (Ont. C.A.) at para. 16, which, while applicable to the test for approving a transaction following a sales process, not surprisingly track the same principles applicable to that process itself:

a. whether the party made a sufficient effort to obtain the best price and to not act improvidently;

b. the interests of all parties;

c. the efficacy and integrity of the process by which the party obtained offers; and

d. whether the working out of the process was unfair.

[18] The proposed Sale Process has been developed by BDO in consultation with the Applicant and the Sales Agent, having regard to the ongoing sales processes in respect of the other companies in the MechCan Group. In its capacities as Proposal Trustee and Trustee, BDO engaged the Sales Agent and conducted sale processes with the assistance of the Sales Agent on substantially the same terms as sought to be approved under the Sale Process Order, in respect of the assets of other companies in the MechCan Group.

[19] Considering the relevant factors in this case, and for the reasons outlined in paragraph 41 of the Pre-Filing Report and paragraphs 52-53 of the Applicant's factum that the Sales Process should be approved. It provides for a fair and reasonable process with sufficient market exposure for the assets of the Debtors. It is consistent with similar court-approved sales processes in distressed scenarios involving other companies within the MechCan Group and will be facilitated by the Receiver and Sales Agent to maintain its the integrity. After the hearing, counsel provided an example of one of the court orders approving those prior similar sales processes. The Sales Agent was not only involved in the sales processes in respect of the other entities in the MechCan Group , but also has familiarity with the industry and potential interested parties.

[20] It is acknowledged that the Sales Agent is an affiliate of BDO. The Proposed Receiver is supportive of the Sales Agent Engagement Letter for the following reasons: (a) the terms and conditions of the Sales Agent Engagement Letter are commercially reasonable; (b) the hourly rates of the Sales Agent are consistent with the market rates in respect of transaction advisory services; and (c) the Sales Agent has considerable experience conducting similar sales processes and is experienced in assisting with transactions of the nature contemplated under the Sales Agent Engagement Letter and these proceedings.

[21] In the latter regard, the Sales Agent has developed a detailed understanding of the operations, cash flows, and property of the MechCan Group as a result of its involvement in the sale processes for those other entities, and, according to the Receiver, will be in a position to efficiently and seamlessly perform its services under the Sales Agent Engagement Letter.

[22] Counsel were not able to provide any general guidelines or parameters that the court has typically considered when approving the engagement of a sales agent that is affiliated with the court officer that is recommending the approval of the proposed sales officers' engagement. Unquestionably, this is done from time to time (further examples were provided by counsel after the hearing). An important consideration is that the proposed Sales Agent's compensation structure is benchmarked to market, as the proposed Receiver

has confirmed in this case. Also, I note that the compensation is fee based (plus disbursements and a fixed administrative fee), and is not commission based. I am satisfied that the appointment of an affiliated of the proposed Receiver as the Sales Agent is appropriate in the circumstances of this case.

[23] The proposed limitation of liability (to gross negligence and wilful misconduct) for the Receiver and the Sales Agent in performing their duties under the Sale Process are consistent with the protections that this court regularly affords appointed court officers engaged to carry out a Sale Process such as this.

Orders

[24] I grant the requested Receivership Order and Sale Process Order in the forms signed by me today with immediate effect.

Kimmel J.

Date: Jul 10, 2026

Jessica Kimmel