



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-18-00608356-00CL

DATE: APRIL 11, 2025

CV-21-00663709-00CL

NO. ON LIST: 1 & 2

TITLE OF PROCEEDING: BUDUCHNIST CREDIT UNION LTD. VS. 2321197 ONTARIO INC., et al  
BEFORE: JUSTICE CONWAY

**PARTICIPANT INFORMATION**

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

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## **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 Buduchnist Credit Union Limited (“**BCU**”) dated April 2, 2025 filed in the motion on the receivership proceeding.
- [2] There are two motions before me today. The first is in the receivership proceedings for the four Real Properties. The second is in the action by BCU against 2454904 Ontario Inc. (“**245**”).
- [3] There is a long history to these matters and the background is set out in detail in the record. I provide a brief overview.
- [4] In the receivership proceedings, the Receiver is holding approximately \$3.6 million of Proceeds for distribution from the sale of the Real Properties (the proceeds of the Cottage Property have already been distributed on consent). BCU claimed an entitlement to those Proceeds based on charges and judgments in its favour. Trade Capital opposed BCU’s claim on the basis of the Mareva Order obtained by Trade Capital. Justice Penny granted the Final Distribution Order in favour of BCU, which was varied by the Court of Appeal. That variation would have delayed distribution of the Proceeds to BCU until a later date.
- [5] BCU and Trade Capital have now settled their dispute on the terms set out in the accepted Offer to Settle (the “**Settlement**”). This will, among other things, allow an earlier distribution of the Proceeds to BCU and enforcement of the August 28 Judgment, by way of set-off, against the \$82,560.69 in the accounts of Mr. Demaria at BCU.
- [6] Since the remaining Proceeds will be distributed, the Receiver is to be discharged. The discharge order further approves the activities of the Receiver in its Eight Report, approves the interim statement of receipts and disbursements, and approves the fees and disbursements of the Receiver and its counsel.
- [7] The orders sought on this motion are on consent/unopposed by Trade Capital and are unopposed by Mr. Demaria. The Receiver supports the distribution to BCU in accordance with the Settlement.
- [8] I am approving the Settlement and granting the specific orders that are conditions thereof. The dispute with Trade Capital, which was the impediment to an earlier distribution of the Proceeds to BCU, has now been resolved. The distribution can be made in accordance with the terms of the Settlement.

- [9] The enforcement of the August 28 Judgment can be made against Mr. Demaria's accounts by way of set-off. BCU has, in addition to its common law rights, the statutory right of set-off under s. 39 of the *Credit Unions and Caisses Populaires Act, 2020*, S.O. 2020, c. 36, Sched. 7, which states: "A credit union has a lien on the deposits and membership shares of a member for any liability to it by the member, and may set off any sum standing to the credit of the member on the books of the credit union towards the payment of the liability."
- [10] Order re settlement and distribution 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. The order varies Justice Penny's order (as varied by the Court of Appeal) to permit the distribution pursuant to the Settlement. The order also contains a variation of the Mareva as necessary to implement the Settlement. Although the Mareva was issued by the Brampton court, Justice Emery agreed that the request to vary could be dealt with on the Commercial List in the context of these proceedings.
- [11] The parties have reserved certain rights with respect to the effect of the Settlement on other outstanding legal proceedings. They have agreed, and I endorse, the following:
- a. Trade Capital and Mr. De Maria reserve their respective rights to address, in the action styled as Trade Capital Finance Corp. v. Cook et al., Court File No CV-15-00002110-0000 (the "**Brampton Action**"), the treatment of pre-judgment interest with respect to the amounts received by Trade Capital from BCU in connection with the settlement reached between Trade Capital and BCU.
  - b. In the event that Trade Capital gets a judgment against 1160376 Ontario Limited and does not get a judgment against Carlo De Maria in the Brampton Action, all parties reserve their rights as to whether the settlement funds payable to Trade Capital, or any part thereof, are to be applied as a credit against the 1160376 Ontario Limited judgment. For greater certainty, certain parties dispute whether any such judgment has any relevance to the settlement funds.
- [12] The discharge order is satisfactory, subject to minor changes that have now been made. Discharge 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.
- [13] The Settlement also permits the enforcement of the August 30, 2021 judgment granted by Justice Dietrich in favour of BCU against 245 for \$4,766,152.40 plus costs. BCU seeks to enforce that judgment by way of set-off against the \$158,000 held in 245's account at BCU. The motion by BCU to enforce was brought in 2022 but opposed by Trade Capital. That opposition has been resolved in the Settlement.
- [14] 245 has been unresponsive to these proceedings and in particular to the original enforcement motion brought in 2022 that was adjourned. I am prepared to grant the order

today; however, out of an abundance of caution I have required counsel to include paragraph 3, which delays enforcement for 31 days after mailing and provides a comeback right if 245 seeks to oppose the order.

[15] 245 Order to go as signed by me and attached to this Endorsement. I changed the word “declares” to “orders” in paragraph 1. This order is effective from today's date and is enforceable without the need for entry and filing.

A handwritten signature in blue ink, appearing to read "Conway J.", with a stylized flourish at the end.