



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-25-00738703-00CL DATE: APRIL 17, 2025

NO. ON LIST: 1

TITLE OF PROCEEDING: Cerruti Investments Inc. v. 2616766 Ontario Ltd.

BEFORE: JUSTICE J. DIETRICH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Jeffrey Levine	Cerutti Investments	Jeffrey.Levine@mcmillan.ca
Alexander Overton	Cerutti Investments	Alexander.Overton@mcmillan.ca

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
George Benchetrit	2763161 Ontario Ltd.	george@chaitons.com
David Im	2763161 Ontario Ltd.	dim@chaitons.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
David Preger	Vipen Chauser (shareholder)	dpreger@dickinsonwright.com
Josh Winter	Boulder Group and Industrial Floor Systems Corp. (lien claimants)	josh@winterlawfirm.ca
Simran Joshi	Mahan Dhillon and Hira Dhillson	sjoshi@reconllp.com
Chris Armstrong	KSV Advisory, proposed Receiver	carmstrong@goodmans.ca
Murtaza Tallat	KSV Advisory, proposed Receiver	mtallat@rsvadvisory.com

ENDORSEMENT OF JUSTICE J. DIETRICH:

Introduction

- [1] Cerruti Investments Inc. (“**CII**”) seeks an order appointing KSV Restructuring Inc. (“**KSV**”) as receiver over the assets, property and undertaking of the Respondent, 2616766 Ontario Limited (“**766**”) including the real property located at 6500 Cantelon Drive, Windsor, Ontario (the “**Real Property**”) pursuant to s. 243 of the *Bankruptcy and Insolvency Act* and s. 101 of the *Courts of Justice Act*.
- [2] This hearing was scheduled by me, by endorsement dated March 19, 2025. At that previous case conference, Vipen Chause, one of the directors/shareholders of 766 was represented by counsel and the other director/shareholder, Mahan Dhillon attended personally. That endorsement set out a schedule for this hearing, including that any responding material was to be filed by March 28, 2025. No responding material was filed by 766, Mr. Chause or Mr. Dhillon. Similarly, no factum was filed by those parties.
- [3] However, counsel for Mr. Chause and counsel for Mr. Dhillon did appear today. Counsel for Mr. Dhillon advised that her client was in the process of attempting to obtain replacement financing to redeem the mortgages and she may seek relief relating to those efforts in the future.
- [4] Counsel for Mr. Chause advised that his client had concerns regarding the calculation of amounts owing to CII and relief may be sought in that regard in the future. Neither counsel opposed the appointment of the Receiver.
- [5] 2763161 Ontario Limited (the “**161**”) is also a secured creditor of 766. Certain postponement, subordination and standstill agreements have been entered into between 161 and CII providing 161 with priority over CII. 161 has filed responding material supporting the appointment of the Receiver and seeking the appointment of a receiver itself should CII not proceed with its requested relief for any reason.

Background

- [6] 766 is a real estate holding company that owns the Real Property. The Real Property is a 53.4 acre industrial property with approximately 492,000 square feet of industrial space that is occupied by commercial tenants. 766 completed a significant renovation of the Real Property between 2021 and 2024, but these efforts remain incomplete, leading to tenant issues and operational deficiencies.

- [7] Mr. Cerruti extended the initial loan financing to 766 in 2021 pursuant to a Property Loan and Acquisition Agreement dated March 1, 2021 (the “**PALA**”). The PALA, and all related loan and security documents, were later assigned by Mr. Cerruti to CII pursuant to an Assignment of Loan and Charge/Mortgage dated April 24, 2023 and an Amended and Restated Assignment of Loan and Charge/Mortgage dated February 26, 2025. The PALA was amended three times to reflect certain further advances and agreements made between, among others, 766, Mr. Cerruti and CII (the “**Amended PALA**”).
- [8] As at February 19, 2025, CII asserts it is owed approximately \$20 million by 766, as noted above, this amount is partially disputed by Mr. Chause.
- [9] Amounts owing under the Amended PALA are secured by, among other things, a mortgage over the Real Property in the principal amount of \$22,000,000, a general security agreement and a general assignment of rents. The general security agreement contains provisions entitling CII to seek the appointment of a receiver.
- [10] On December 31, 2023, the Mortgage matured and became due and payable in full. Despite this, 766 has failed to repay the indebtedness to CII. CII issued a notice of sale under the Mortgage on May 23, 2024 and a notice of intention to enforce security pursuant to s. 244 of the BIA to 766 on July 8, 2024.
- [11] On or about September 2024, 766 engaged CBRE to market the Real Property for sale. Certain offers to acquire the Real Property have been submitted to CBRE but no offer has been accepted by 766 or all its principals.
- [12] CII issued an amended notice of sale under mortgage on January 24, 2025, and delivered a demand for payment to 766 along with an updated notice of intention to enforce security under s. 244 of the BIA on February 26, 2025.
- [13] As noted above, CII's mortgage is subordinate to two mortgages registered in favour of 161 in the total principal amount of \$17 million. Amounts owed to 161 by 766 are also secured by assignments of rent and general security agreements.
- [14] Only CII and 161 have filed registrations under the *Personal Property Security Act* (Ontario).
- [15] Charges in favour of Fulger Transport (in the amount of \$6,599,000) and Tatro Horizons Ltd (in the amount of \$450,000) have also been registered against the Real Property.
- [16] Property Taxes of approximately \$375,000 were owing in respect of the Real Property as of January 17, 2025, relating to taxes owed in 2023, 2024 and 2025.

- [17] Construction liens have also been registered against the Real Property, including, in favour of Nobel Corporation, Wallace-Kent Sprinkler Systems Incl, Industrial Floor Systems Corp, 1627149 Ontario Limited, Ultimate Fire Protection Limited, Builder Group Incl, Windsor Power & Light Ltd and Classic Fire & Life Safter Inc.
- [18] 161 delivered a notice of attornment of rents to 766 on December 23, 2024.
- [19] The Debtor and the Real Property are subject to proceedings commenced under the *Provincial Offences Act* (Ontario) for alleged violations of the *Building Code Act* (Ontario). It is not clear whether the Debtor is taking any steps to comply with these alleged violations.

Issue

- [20] The only issue to be determined is whether it is just or convenient to appoint a receiver over the assets, properties and undertakings of 766.

Analysis

- [21] 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.
- [22] In determining whether it is just and 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, the right to seek the appointment of a receiver, the burden on the applicant is lessened: see *Bank of Montreal v. Sherco Properties Inc.* 2013 ONSC 7023 at para 41 and 42.
- [23] 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.
- [24] 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.

See *Maple Trade Finance Inc. v CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para. 25.

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

[26] The Debtor is in default of its obligations to both CII as well as to 161. Pursuant to the terms of the security granted to the CII, CII has the contractual right to seek the appointment and receiver over the Debtor's property including the Real Property.

[27] The evidence is that there are multiple charges on the Real Property, at least of number of which are in arrears. Property taxes on the Real Property are in arrears. Numerous construction liens have also been filed against the Real Property and there are concerns regarding violations of the *Building Code Act* (Ontario).

[28] CII has not acted precipitously. The mortgage matured at the end of 2023. CII provided 766 with an opportunity to sell the Real Property for a number of months, but 766 has not been successful in doing so.

[29] There is no opposition to the appointment of the Receiver.

[30] KSV is qualified to act as receiver and has consented to do so.

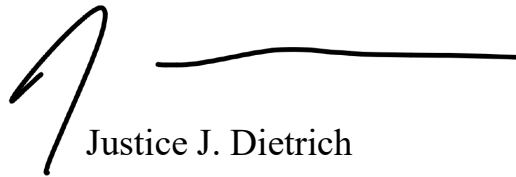
[31] The terms of the proposed receivership order, with such modifications as discussed during the hearing today, are appropriate and consistent with the Model Order of the Commercial List.

- [32] Mr. Winter, counsel for certain construction lien claimants requested a broad carve out to the stay of proceedings contained in the requested order to permit the commencement and prosecution of construction trust claims. I am not prepared to grant such relief at this time. It may be that parties hold trust claims that entitle them to certain priority, however, I am not persuaded at this time that there should be a blanket provision permitting those trust claims to be pursued outside of the receivership proceeding. It seems to me that those claims should first be addressed within the receivership proceeding, but if circumstances arise which make it appropriate to lift the stay of proceedings in order to permit specific claims to be pursued separately that can be addressed in the future on a proper record. Mr. Winter confirmed that he was not concerned about preservation or perfection rights with respect to lien claims.

Disposition

- [33] Accordingly, I grant the receivership order in the form signed by me today.

April 17, 2025

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line.

Justice J. Dietrich