



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00707066-00CL

DATE: 13 October 2023

NO. ON LIST: 2

TITLE OF PROCEEDING: BANK OF MONTREAL v. 2TH, INC. ET AL.

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Miranda Spence	Bank of Montreal and 2th, Inc.	mspence@airdberlis.com

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
Mitch Vininsky	KSV Restructuring	

ENDORSEMENT OF JUSTICE STEELE:

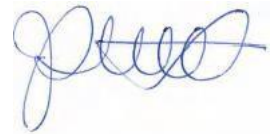
- [1] The applicant, the Bank of Montreal, seeks to appoint KSV Restructuring Inc. as receiver and manager of all the assets of each of 2th, Inc. (the Borrower) and Dr. Mislav Pavelic Dentistry Professional Corporation (Pavelic DPC) pursuant to section 243 of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act*.
- [2] No party opposes the Bank's application.
- [3] There has been a breakdown in the relationship of the two principals and shareholders of the Borrower (Dr. Pavelic and Brian Holland). Accordingly, there has been a standstill regarding the marketing and sale of the St. Clair Dental Clinic. The primary intention of the proposed receivership is to market and sell the St. Clair Dental Clinic.
- [4] The Borrower is indebted to the Bank in the approximate amount of \$2.6 million. The Borrower's obligations under the loan agreement are guaranteed by Pavelic DPC.
- [5] As security for the Borrower's obligations to the Bank, the Borrower and the Guarantors provided, among other things, general security agreements in favour of the Bank. The GSAs granted by the respondents allow the Bank to appoint a receiver over the Respondents' property upon the occurrence of a default.
- [6] There have been one or more defaults under the loan agreement.
- [7] On December 23, 2022 the Bank entered into a forbearance agreement with, among others, the respondents based on defaults at that time. The forbearance agreement expired on August 31, 2023.
- [8] The Bank has issued demands.
- [9] Under section 101(1) of the CJA, the Court may grant an order appointing a receiver where it is "just or convenient" to do so.
- [10] To determine whether it is just and convenient to appoint a receiver, the Court must have regard to all of the circumstances, including the nature of the property and the rights and interest of all parties in relation thereto. In particular, the following considerations have been held to be relevant:
- a. The moving party has a right under its security to appoint a receiver;
 - b. The security is in jeopardy; and
 - c. Whether it is in the interests of all concerned to have a receiver appointed by the Court. This analysis includes an examination of the potential costs, the relationship between the debtor and the creditors, the likelihood of maximizing the return on and preserving the subject property and the best way of facilitating the working duties of the receiver and manager.

Bank of Nova Scotia v. Freure Village on the Clair Creek, 1996 CanLII 8258 (ONSC) at paras. 10-13.

[11] This court has determined that it was just and convenient to appoint a receiver to conduct a sales process where there was a breakdown in the relationship of the owners of a joint venture where the parties had made allegations of oppressive conduct: *Rose-Isli Corp. v. Frame-Tech Structures Ltd.*, 2022 ONSC 4135, at para. 22. Similarly, the Court has appointed a receiver-manager of a business where the parties operating the business had a falling out leading to a deadlock and effective cessation of the operations of the business: *Garratt v. Charlton*, 2012 ONSC 1129, at paras 32-33.

[12] I am satisfied that it is just and convenient to appoint a receiver in the circumstances. Among other things, the Bank has a right under its security document to appoint a receiver where there has been a default. Here there has been a default, followed by a forbearance by the Bank, and the default has not been cured. Further, we have a situation where there is one remaining significant asset and a breakdown of the relationship of the two principals and shareholders resulting in a standstill of the sale of that asset.

[13] Order attached.

A handwritten signature in blue ink, appearing to be "J. [unclear]", located in the lower right quadrant of the page.