



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

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TITLE OF PROCEEDING: CAISSE DESJARDINS ONTARIO CREDIT UNION INC. v. ENGLISH LANE HOMES INC.

BEFORE: JUSTICE J. DIETRICH

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE J. DIETRICH:

Introduction

[1] Caisse Desjardins Ontario Credit Union Inc. (the “**Lender**”) seeks an order appointing KSV Restructuring Inc. (“**KSV**”), as receiver and manager, over real property municipally known as 200 David Dunlap Circle,

Toronto (the “**Lands**”) owned by English Lane Homes Inc. (the “**Debtor**”) and personal property located on the Lands (the “**Property**”) pursuant to s. 243 of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and s. 101 of the *Courts of Justice Act* (the “**CJA**”).

[2] The Debtor opposes the appointment, and if the appointment is granted, requests certain additional relief including declarations regarding the Debtor's right to redeem and orders regarding information sharing during a sales process.

[3] Defined terms used herein but not otherwise defined have the meaning provided to them in the factum of the Lender filed for use on at this hearing.

Background

[4] The Debtor is the registered title holder of the Lands. The Lands are the proposed site of a low-rise, three-storey, 63-unit freehold townhouse (the “**Project**”). The Project was intended to be Phase II of a multi-phase development known as “English Lane Towns”, of which Phase I has been completed. The Lands remain vacant, however, the Debtor notes that certain development charges have been paid for Phase II, a storm-water management pond for both phases was constructed, OMB approval for a freehold townhouse development of 63 units has been obtained and certain sanitary, water and storm services have been constructed and a road has been built to base asphalt.

[5] On November 30, 2022, the Debtor accepted an Offer of Financing from the Lender dated November 23, 2022 (the “**Offer of Financing**”). The purpose of the Offer of Financing was to provide interim financing for the Project. Pursuant to the Offer of Financing, the Lender agreed to provide the Debtor with the following two facilities: (i) a demand interim non-revolving construction loan facility in the principal amount of \$43,169,500 (the “**Construction Loan Facility**”); and (ii) a letter of credit facility in the principal amount of \$700,000 (the “**LC Facility**”).

[6] The Construction Loan Facility was to be advanced in three initial stages, each subject to certain conditions precedent and requirements: the “Initial Land Advance”, the “Second Land Advance,” and the “Development Charges Advance”. Subsequent advances under the Construction Loan Facility were to be made based on the work completed and the remaining cost to finish the Project.

[7] On or around December 21, 2022, the Lender provided the Initial Land Advance of \$11,500,000 under the Construction Loan Facility to the Debtor. On January 30, 2023, the Lender provided the Second Land Advance of \$3,500,000 to the Debtor. There are currently three (3) outstanding standby letters of credit in the aggregate principal amount of \$1,667,743 issued under the LC Facility.

[8] The Offer of Financing is secured by, among other things, a mortgage in favour of the Lender and registered on title to the Lands on December 20, 2022 (the “**Mortgage**”) and a general security agreement dated December 20, 2022 (the “**GSA**”).

[9] The Mortgage and GSA expressly provide for the appointment of a receiver if the Offer of Financing is in default.

[10] In or about August 2023, while actively advancing the project toward construction, the Debtor approached the Lender to request access to funds within the existing facility structure to support the project's carrying costs and transition to construction. The Debtor states that this request was made in the context of substantial progress having already been achieved, including satisfaction of the Site Plan conditions and the majority of Subdivision conditions, registration progress, coordination with the City of Toronto, and ongoing permit preparation. The Debtor’s evidence is that the request was ‘agreed to in principle’ by the Lender, but not ultimately accepted or documented. The email in the record from the Lender around that time indicated that to entertain the request further information was required – there is no other documentation provided.

[11] Accordingly, although the Debtor takes issue with the failure of the Lender to provide these funds, the Debtor does not rely on any documented contractual requirement of the Lender to do so.

[12] By 2025, the Debtor says it was ready and willing to proceed with construction and had taken steps toward permit applications, including the Conditional Building Permit process. However, payment of development charges was required in order to obtain issuance of the permit. However, because the Lender did not advance the funds needed for development charges at that stage, the Debtor was unable to move forward with construction. Again, the Debtor takes issue with the Lender failing to provide additional funds, but does not rely on any contractual requirement of the Lender to do so.

[13] The Offer of Financing included an original maturity date of July 1, 2025 (the “**First Maturity Date**”). On April 8, 2025, the Lender notified the Debtor that it would not be renewing the Mortgage past the First Maturity Date.

[14] During the spring of 2025, the Debtor requested several extensions from the Lender while it worked to refinance the Indebtedness. As a result, on July 15, 2025 and September 26, 2025, the Lender delivered two separate Amending Agreements to the Debtor, which resulted in an extension of the maturity date to November 1, 2025 (the “**Second Maturity Date**”). The Indebtedness was not repaid on the Second Maturity Date and remains outstanding.

[15] Along with failing to repay on maturity, the Debtor has failed to make any of its monthly interest payments since November 3, 2025 and has failed to pay or keep current the realty taxes on the Lands payable to the City of Toronto for the 2025 taxation period in the amount of \$82,987.45 (inclusive of interest) and has not provided confirmation to the Lender that such taxes are current.

[16] On December 4, 2025, the Lender sent Demand Letters to both the Debtor and Ghods and a Notice of Intention to Enforce Security pursuant to section 244 of the BIA to the Debtor. As of January 30, 2026, the total amount owing was \$16,943,719.07, inclusive of interest accrued to that date (but excluding all fees, costs, and expenses). Interest and costs continue to accrue.

[17] The Debtor also states that the overall value of the Lands exceeds the amount owed to the Lender. This includes what the Debtor states are approximately \$7 million in development credits relating to roads, water and sanitary development. The Debtor also refers to an appraisal from 2022 of approximately \$52 million.

[18] Further, the Debtor states “that there are no other secured creditors with registered security against the Lands and no known unsecured creditors whose claims would be materially prejudiced by the relief sought”. It is not clear what unsecured creditors exist, but as referred to the Lender's material, there are unpaid property taxes and as noted in the Debtor's material at least three parties have entered into purchase agreements with the Debtor.

Issue

[19] The issues to be determined today, are whether it is just or convenient to appoint a receiver over the Property, and if so, should the terms requested by the Debtor relating to its right of redemption and information sharing in a sales process be included.

Analysis

[20] 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.

[21] 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, 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.

[22] Although the presence of a contractual entitlement to appoint a receiver is not a determinative factor, here, where the right to appoint a receiver is provided under a 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.

[23] As summarized by Justice Osborne, as he then was, 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.

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

[25] There is no dispute that the Debtor owes over \$16 million to the Lender. Although the Debtor claims there is an issue to be tried - being the Lender's failure to advance additional funds when requested by the Debtor, the Debtor does not raise any documented contractual requirement that funds were required to be advanced. Rather, the evidence is that the Debtor was not able to meet the conditions under the loan documents for further advances. As such, although I make no findings on that issue today, I am not persuaded that this issue rises to such a level to require a separate determination prior to the appointment of a Receiver.

[26] The loan initially matured in July of 2025 and was not repaid upon maturity. The Lender agreed to extensions of the maturity date on the basis the Debtor was attempting to refinance, until December of 2025, but has still not been repaid.

[27] The terms of the Mortgage and GSA contemplate the appointment of a receiver upon default.

[28] The Lender has demanded repayment of the total indebtedness and issued the 244 BIA Notices. The notice period under the 244 BIA Notices has long since elapsed.

[29] The Debtor also relies on an appraisal which it says indicate the Lands are worth \$52 million. That appraisal is from 2022. I am reluctant to put much weight on the appraisal given that the Debtor has not been able to refinance the amounts owing the Lender even though the loan has matured many months ago. No evidence of imminent financing has been provided.

[30] The Debtor also argues that there are no other creditors who would be prejudiced. The evidence is that there are other creditors (at least the City of Toronto and three pre-sale purchasers). This is not a matter of simple vacant land. On the Debtor's own evidence there are substantial deposits relating to the Land and significant work has been completed on the land. As such, the situation is distinguishable from that before the Court in 2607087 Ontario Limited v. 2654993 Ontario Ltd. et al., 2024 ONSC 4595.

[31] Accordingly, I am satisfied that a Court-supervised process will provide best protect the interests of the Lender and other stakeholders. A court-appointed Receiver will also be in a position to gather the relevant information about the Project including the related deposits and the status of construction, to maximize the value of the Property. It will be beneficial to all parties for the Real Property to be sold in an orderly, efficient and transparent process.

[32] KSV is qualified to act as receiver and has consented to do so. KSV has also confirmed that it will consult with the Debtor in the development of a sales process, for which it intends to return to Court for approval. This does not mean that the Receiver needs to accept every comment from the Debtor, but reasonable consultation with the Debtor who has knowledge of the Property is expected. I am not prepared, however, to grant the Debtor the relief they request in requiring the Receiver to keep them informed about every step in the sale process or provide them with copies of bids in the sales process. The Debtor has indicated that they intend to bid in a sale process and I am concerned that the integrity of a sales process would be undermined if one bidder had access to the requested information while others did not. In any event, the sales process will be addressed separately in the future.

[33] The Debtor also requested language declaratory language today regarding its right of redemption. I am not prepared to grant such language in an order. The order appointing a Receiver does not terminate the Debtor's right of redemption. However, as receivership progresses and costs continue to accrue and a sales process unfolds, the right becomes more challenging to exercise. Specific determinations about the Debtor's right of redemption can be addressed if and when the Debtor seeks to exercise such right.

[34] The terms of the proposed receivership order, as amended during today's hearing, are appropriate and largely consistent with the Model Order of the Commercial List.

Disposition

[35] Accordingly, order to go in the form signed by me today with immediate effect.



Date: March 13, 2026

Justice J. Dietrich