



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00721560-00CL

HEARING DATE: OCT/06/2025

NO. ON LIST: 03

TITLE OF PROCEEDING: EQUITABLE BANK v EQUITYLINE SPV LIMITED PARTNERSHIP

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Miranda Spence, Counsel to the Receiver and the Applicant	Equitable Bank	Mspence@airdberlis.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Rebecca L. Kennedy Derek Harland Denna Jalili, Counsel to Receiver	KSV Restructuring Inc.	Rkennedy@tgf.ca Dharland@tgf.ca Djalili@tgf.ca
Mitch Vininsky, Receiver	KSV Restructuring Inc.	Mvininsky@ksvadvisory.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Geoffrey Adair, Counsel to Interested party	Margaret Jank	Gadair@agblp.com
Cristina Fulop, Counsel to party	Computer share	Cristina.fulop@ca.dlapiper.com
Tony Antoniou counsel for non-party	TitlePLUS	Tony@alaw.ca

ENDORSEMENT OF JUSTICE KIMMEL:

- [1] There were two aspects to the motion brought by KSV Restructuring Inc. in its capacity as Court-appointed receiver (in such capacity, the “Receiver”) of EquityLine SPV Limited Partnership (“EquityLine”). The first was for an Order directing the Land Registrar for Land Registry Office No. 61 to rectify the register by deleting certain instruments (the “Jank Mortgage”) from title to the property of Margaret Ellen Jank (the “Jank Property”) pursuant to section 57(13)(b) of the *Land Titles Act*, R.S.O. 1990, c. L.5 (the “LTA”), on the basis that the Jank Mortgage is a “fraudulent instrument” as defined under the LTA (“Jank Mortgage Relief”).
- [2] The second aspect of the Receiver’s motion was to seek ancillary relief, including approval of a proposed distribution and of its Reports, activities and fees and the fees of its counsel (the “Ancillary Relief”).
- [3] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the factum of the Receiver filed in support of this motion.

Jank Mortgage Relief

- [4] Following the court’s May 13, 2025 endorsement, the Receiver and Ms. Jank followed the process that the court directed for the Receiver to make its determination and recommendation regarding the validity of the Jank Mortgage, which led the Receiver to seek the Jank Mortgage Relief.
- [5] TitlePLUS requested an adjournment of the aspects of the Receiver’s motion seeking the Jank Mortgage Relief on the basis that it had not participated in the process that the Receiver and Ms. Jank engaged in to satisfy the Receiver of the validity of Ms. Jank’s position regarding the circumstances under which the Jank Mortgage was procured. Since TitlePLUS has an economic stake in this determination, it should be afforded some time to consider its position.
- [6] However, the court is also sympathetic to the concerns of Ms. Jank and her family, and her need to sell her property to generate proceeds to enable her to eventually move into assisted living. The court explored with the parties at the hearing terms upon which the Receiver could arrange for a discharge of the Jank Mortgage on a basis that does not alter the playing field for potentially impacted stakeholders, including Ms. Jank, the mortgagee Equitable Bank and TitlePLUS.
- [7] The parties were able to reach agreement after the hearing on the following terms of the adjournment of the part of the Receiver’s motion dealing with the Jank Mortgage Relief:

- a. The Receiver shall take all necessary steps to discharge the Jank Mortgage, including directing Computershare Trust Company of Canada, as custodian of the Jank Mortgage and registrant on title, to do so if and when advised by Margaret Jank that she has entered into an agreement of purchase and sale to sell the Jank Property or a refinancing agreement with respect thereto. Such discharge shall not be relied upon by TitlePLUS as a ground to deny coverage in relation to the title insurance claim made by the Receiver to TitlePLUS in respect of the Jank Mortgage.
- b. If Ms. Jank sells the Jank Property, the net sale proceeds shall be held in her lawyer's trust account and shall not be released without the consent of the Receiver and TitlePLUS, or further order of this Court. The Jank Mortgage shall attach to the net sale proceeds with the same priority as it had with respect to the Jank Property immediately prior to the sale, as if the Jank Property had not been sold and the Jank Mortgage had not been discharged. Counsel to Ms. Jank shall promptly advise counsel to the Receiver and counsel to TitlePLUS of (a) the execution of any agreement of purchase and sale for the Jank Property; and (b) the receipt of any sale proceeds into his trust account, including the quantum of such proceeds.
- c. Similarly, if Ms. Jank enters into any transaction that refinances the Jank Property or otherwise results in an equity take-out from the Jank Property, the net proceeds of such transaction shall be held in her lawyer's trust account and shall not be released without the consent of the Receiver and TitlePLUS, or further order of this Court. The Jank Mortgage shall attach to such proceeds with the same priority as it had with respect to the Jank Property immediately prior to the transaction, as if the Jank Property had not been refinanced and the Jank Mortgage had not been discharged. Counsel to Ms. Jank shall promptly advise counsel to the Receiver and counsel to TitlePLUS of (a) the execution of any refinancing or equity take-out agreement relating to the Jank Property; and (b) the receipt of any proceeds therefrom into his trust account, including the quantum of such proceeds.
- d. TitlePLUS shall have 45 days from October 6, 2025, to review the evidence and take any other steps it needs to consider its position (including commissioning its own expert report) with respect to the Jank Mortgage. TitlePLUS will communicate its position to counsel to the Receiver and counsel to Ms. Jank by no later than November 20, 2025. If TitlePLUS does not provide a response, or concurs with the Receiver and Ms. Jank, then the finding by the Receiver that the Jank Mortgage is a "fraudulent instrument" under the LTA shall be binding on all parties, including TitlePLUS.

- e. If TitlePLUS disputes that the Jank Mortgage is a “fraudulent instrument” under the LTA, the adjudication of same is scheduled for an in-person, half-day hearing on January 13, 2026.
- f. In any scenario, the Receiver (and any other interested parties that may wish to attend) will return before Justice Kimmel for a 9:30 appointment on November 26, 2025, to provide an update on the process.

[8] The parties have further agreed to the following schedule for the delivery of materials if the dispute with respect to whether the Jank Mortgage is a “fraudulent instrument” is proceeding to a hearing on January 13, 2026:

- a. November 20, 2025: Delivery of any responding motion materials by TitlePLUS, including any expert reports it intends to rely on.
- b. November 26, 2025: Case conference to confirm whether the matter is proceeding.
- c. December 3, 2025: Delivery of reply materials by the Receiver and Ms. Jank, if any.
- d. December 10, 2025: TitlePLUS shall deliver written interrogatories, if any, to the Receiver.
- e. December 15: Deadline for the completion of all cross-examinations and the delivery of the Receiver’s responses to any written interrogatories.
- f. December 23: Delivery of responding factum from TitlePLUS.
- g. January 6, 2026: Delivery of reply facta from the Receiver and/or Ms. Jank.
- h. January 13, 2026: Hearing date.
- i. Any amendments to the foregoing timetable, or additional procedural directions, may be addressed at the November 26, 2025 case conference.

Ancillary Relief

- [9] The Receiver also sought the following Ancillary Relief: (1) an order authorizing it to make interim distributions to the Applicant, Equitable Bank, up to the amount of the secured indebtedness owed to Equitable Bank by EquityLine, without further court order; (2) approval of the Reports of the Receiver filed in these proceedings and the activities described therein; and (3) approval of the Receiver's fees and disbursements, as well as those of its counsel, Thornton Grout Finnigan LLP ("TGF").
- [10] No party opposes the ancillary relief.
- [11] Interim distribution orders are commonly granted in insolvency proceedings,: See *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 6461 at paras 70-75; *Ontario Securities Commission v. Bridging Income Fund L.P.*, 2022 ONSC 4472 at para 12; and *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.*, 2014 ONSC 1173 (CanLII) at para 53. Examples of such orders that permit interim distributions from time to time up to the secured amount of the indebtedness owed to the senior secured creditor are provided in footnote 63 of the Receiver's factum.
- [12] The Receiver has obtained a security opinion from its counsel, TGF, confirming that Equitable Bank holds a valid and enforceable security interest over all of EquityLine's present and after-acquired property, and that it is the sole secured creditor. The Receiver is of the view that interim distributions will generate substantial interest savings while preserving sufficient liquidity to administer the receivership. The Receiver is also of the view that authorizing future distributions without the need for repeated court motions will ensure that ongoing interest savings are realized promptly and will avoid the delay and professional costs of returning to court for substantively identical relief. These are all relevant considerations for the court in determining whether to authorize an interim distribution: see *AbitibiBowater*, at paras 70-75.
- [13] The Receiver has demonstrated through its Reports that it has acted reasonably, prudently and not arbitrarily within its mandate at all times. The actions, conduct, and activities of the Receiver, as set forth in the Reports, were necessary and undertaken in good faith pursuant to the Receiver's powers and duties under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 and the Appointment Order. No interested party disputes that the Receiver has acted in good faith and for the benefit of stakeholders generally or opposes the approval of the Receiver's Reports and its activities described in them.
- [14] The approval of the Reports and the activities of the Receiver described therein has been made subject to the standard qualification that has become the Commercial List practice to include in these types of orders limiting reliance upon the court approval to the Receiver and only in its personal capacity and in respect of its personal liability.

- [15] It has become the practice of the court to periodically approve the activities of its court appointed officers to enable the court to satisfy itself that their activities are being conducted in a prudent and diligent manner and in accordance with their mandate and to allow any stakeholder concerns to be addressed: see *Target Canada Co. (Re)*, 2015 ONSC 7574, at para. 23. It is within the court's inherent jurisdiction to approve the Receiver's Reports and activities described in therein and I am satisfied that it is appropriate to do so in the circumstances of this case.
- [16] The total fees of the Receiver for the period of May 2, 2024, to August 31, 2025 for which approval is sought is the amount of \$295,325.50, plus disbursements in the amount of \$2,324.34 and HST in the amount of \$38,694.48 for a total of \$336,344.32.
- [17] The total fees of the Receiver's counsel, TGF, for the period of May 24, 2024, to August 31, 2025 is the amount of \$268,515, plus disbursements in the amount of \$8,055.50 and HST in the amount of \$35,954.23, for a total of \$312,524.73.51
- [18] The professional fees claimed for the Receiver and its counsel are supported by the affidavits of Mitch Vininsky sworn September 19, 2025, and Rebecca Kennedy sworn September 19, 2025 and reflect the work that has been done since the Appointment Order. The fees are commensurate with the tasks performed and the Receiver considers the fees and hourly rates to be reasonable. I find them to be fair, reasonable and justified in the circumstances. See *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at paras 33 and 44-45.
- [19] In *Laurentian University of Sudbury*, 2022 ONSC 2927, at para. 9 (citing *Re Nortel Networks Corporation et al.*, 2017 ONSC 673 and *Diemer*, at para 45), Morawetz CJ accepted that on a motion for fee approval the "overriding principle" is reasonableness. The Court should not engage in a docket-by-docket or line- by-line assessment of the accounts as minute details of each element of the professional services rendered may not be instructive when viewed in isolation. The focus on a motion to pass accounts is to consider "what was accomplished, and not on how much it took." Having regard to the applicable factors, I am satisfied that the fees and disbursements of the Receiver and its counsel should be approved.

Order

- [20] The now revised Distribution and Ancillary Relief Order dated October 6, 2205 and signed by me today is effective and enforceable without the need for entry and filing.

A handwritten signature in cursive script, appearing to read "Kimmel J.", written in dark ink on a light background.

KIMMEL J.

October 15, 2025