

CITATION: Urbancorp, 2021 ONSC 3593
COURT FILE NO.: CV-21-00657455-00CL
COURT FILE NO.: BK-21-208473-OT31
DATE: 2021-05-20

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Doreen Saskin, Applicant

AND:

Urbancorp Management Inc.

AND RE: **IN THE MATTER OF THE BANKRUPTCY OF URBANCORP MANAGEMENT INC.**, a corporation incorporated under the laws of Ontario, carrying on business in the City of Toronto, in the Province of Ontario

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *Robin Schwill* and *Robert Nicholls*, for KSV Restructuring Inc.

James Renihan, for Doreen Saskin

Kenneth Kraft, for Adv. Guy Gissin, the Israeli Functionary

Robert Drake and *Mario Forte*, for The Fuller Landau Group Inc.

HEARD: April 12, 2021

RELEASED: May 20, 2021

ENDORSEMENT

[1] At issue are competing applications in respect of Urbancorp Management Inc. (UMI”).

Background

[2] On January 26, 2021, KSV Restructuring Inc. (“KSV”), in its capacity as Court-appointed Monitor, in the *Companies’ Creditors Arrangement Act* (“CCAA) proceedings of Urbancorp Toronto Management Inc. (“UTMI”) (the “Monitor”) issued an Application for Bankruptcy Order (“ABO”) as against UMI. The ABO was issued pursuant to the provisions of the *Bankruptcy and Insolvency Act* (“BIA”). The ABO proposes KSV as trustee in bankruptcy of the property of UMI.

[3] KSV is also (i) the Court-appointed monitor of certain other members of the Urbancorp group of companies, including Urbancorp (952 Queen West) Inc. and Bridge on King Inc. (the “Urbancorp Group”) subject to proceedings in Court File No. CV-16-1139-00CL (the “CCAA Proceedings”); (ii) the Court-appointed Receiver of Urbancorp Renewable Power Inc.; and (iii) Trustee in Bankruptcy of Newtowns at King Towns Inc., Urbancorp (Woodbine) Inc., Urbancorp (Bridlepath) Inc. and TCC/Urbancorp (Bay) Limited Partnership (collectively, the “Urbancorp Proceedings”).

[4] In the ABO, KSV states that, based on a review of the accounting records of UMI available to it, UMI is indebted to UTMI in the sum of \$7,654,257.23 (the “Indebtedness”) and is indebted to the following Urbancorp entities:

- (a) Urbancorp (952 Queen West) Inc., in the sum of \$750,000;
- (b) Bridge on King Inc., in the sum of \$255,000;
- (c) Urbancorp Renewable Power Inc., in the sum of \$50,000; and
- (d) Newtowns at King Towns Inc. in the sum of \$140,480.

[5] On February 22, 2001, Doreen Saskin issued an Application for an order appointing RSM Canada Limited (“RSM”) as receiver and manager (in such capacity, the “Receiver”) of the assets, undertakings and property of UMI pursuant to section 243 of the BIA and section 101 of the *Courts of Justice Act* (the “CJA”).

[6] Doreen Saskin contends that she is a secured creditor, holding a General Security Agreement (“GSA”) from UMI and that she is owed the principal sum of approximately \$2.2 million plus in excess of \$600,000 of accrued interest.

[7] It is undisputed that UMI is insolvent. UMI has no sources of revenue, is not currently operating and has no ability to satisfy its obligations. No dispute has been filed to the ABO.

[8] KSV points out that underlying the two competing applications is the motion (the “Distribution Motion”) brought by the Monitor in the CCAA Proceedings of UMI to distribute the proceeds from the sale of certain geothermal energy systems. King Towns North Inc. (“KTNI”), an entity controlled by Mr. Alan Saskin (the spouse of Doreen Saskin), has objected to the Monitor’s proposed distributions as they do not contemplate a payment to KTNI in relation to the assignment of a lease (the “Berm Lease”).

[9] KSV understands that KTNI is wholly-owned by UMI and there is a significant possibility that UMI’s only asset will be the funds distributed to KTNI in the event the court finds in favour of KTNI on the Distribution Motion. If KTNI is unsuccessful on the Distribution Motion, these applications will likely be moot.

[10] KSV contends that as the court-appointed officer in the Urbancorp Proceedings, the Monitor is familiar with the complicated structure and complex business arrangements of the

Urbancorp Group and UMI and is well positioned to administer UMI's estate following the issuance of the Bankruptcy Order.

[11] KSV questions the quantum of the debt owed to Doreen Saskin. KSV also raises concerns with respect to the validity and enforceability of the GSA. Doreen Saskin and UMI are not at arm's length. KSV wants to review transactions as between Doreen Saskin and UMI.

[12] Doreen Saskin points out that she is the holder of the GSA which provides her with the right to appoint a receiver over UMI's assets upon an event of default. Since the default has taken place, she submits that her contractual right to appoint a receiver ought to be respected.

[13] Doreen Saskin also points out that KSV has been involved in matters relating to Alan Saskin, and various Urbancorp Entities for years and she prefers to have "fresh eyes" on the matter.

Analysis

[14] Given that UMI is not an operating business, the only practical purpose a receivership or a bankruptcy administration will serve is to provide a mechanism to determine the quantum and the priority, if any, of Doreen Saskin's claim.

[15] If appointed, the receiver will be obligated to obtain an opinion as to the validity and enforceability of the GSA as well as a determination of the outstanding obligations of UMI to Doreen Saskin.

[16] If a trustee in bankruptcy is appointed, the trustee will have to conduct a similar review.

[17] Both RSM and KSV are capable of conducting such a review in an appropriate manner so as to satisfy all stakeholders as to the status of Doreen Saskin's claim.

[18] The BIA provides a codified route whereby the trustee can challenge the claims of secured creditors. S. 135(2)(c) provides the authority for the trustee to disallow, in whole or in part, a secured claim. S. 135(4) sets out the process to be followed in the event that the trustee's disallowance is appealed to the court.

[19] In addition, Section 96 of the BIA provides a route for a trustee to challenge transactions at undervalue and the trustee can also avail itself of provincial remedies, such as those provided under the *Fraudulent Conveyances Act*.

[20] Section 163 provides a route for the trustee to conduct examinations of various parties.

[21] Conversely, the BIA does not provide a regime to access claims in receivership proceedings. Case law establishes that it is common for a receiver to undertake a claims process, but it does not necessarily follow that examination and remedy provisions will be part of the court-supervised process.

[22] The Urbancorp Group has been involved in insolvency proceedings for a considerable period of time. KSV has been involved for a number of years in administering these insolvency proceedings. It is undeniable that the corporate structure is complex. KSV is familiar with the corporate structure.

[23] RSM may well bring “fresh eyes” to the proceedings, but undoubtedly, it will have to spend considerable time in reviewing the corporate structure.

[24] I do not question the qualifications of either RSM or KSV. Both firms are experienced insolvency administrators and both are well aware of their fiduciary obligations to all parties, including the court.

[25] I will first consider the ABO. Bankruptcy proceedings primarily provide remedies for unsecured creditors. The claims of secured creditors, to the extent of their security, do not form part of the adjudicative process on an application for a bankruptcy order. (BIA s. 43(2))

[26] There is, in my view, no principled basis on which to stay or dismiss the ABO. The debt of the applicant creditor is clearly set out. There is evidence of multiple creditors and the act of bankruptcy is also clearly set out. Finally, as noted, the debtor has not filed a dispute. The administration of the estate will enable the trustee to conduct a full review of the claim of Doreen Saskin in accordance with the detailed provisions of the BIA. It seems to me that, in these circumstances, the receivership application should not impact the bankruptcy application. The ABO is granted and a bankruptcy order shall issue with respect to UMI. KSV is named trustee.

[27] Considering now to the receivership application, the court has the power to appoint a receiver where it is “just or convenient” to do so under either s. 243 of the BIA or s. 101 of the CJA. The “just or convenient” question was addressed by Blair J. (as he then was) in *Bank of Nova Scotia v. Freure Village on Clair Creek*, [1996] O.J. No. 5088 (Gen. Div.) at para. 12.

Rather, the “just or convenient” question becomes one of the Court determining, in the exercise of its discretion, whether it is more in the interests of all concerned to have the receiver appointed by the Court or not. This, of course, involves an examination of all the circumstances which I have outlined earlier in this endorsement, including 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 work and duties of the receiver-manager.

[28] In assessing whether it is “just or convenient” to appoint a receiver in these circumstances, the relevant question to be asked is, “What function would the receiver perform?”.

[29] The answer is the assessment of the claim of Doreen Saskin.

[30] In view of the non-arm’s length relationship as between UMI and Doreen Saskin, it seems to me that it is appropriate to assess Doreen Saskin’s claim in the bankruptcy proceeding, with the assessment being conducted by the trustee.

[31] Since the ABO has been granted and given my conclusion that the trustee is the appropriate party to assess the claim of Doreen Saskin, the appointment of a receiver will not accomplish any real purpose and will only result in an increase in administration expenses and a likely delay in the proceedings.

Disposition

[32] The ABO is granted. A bankruptcy order shall issue with respect to UMI. KSV is appointed as trustee.

[33] The application for an order appointing the receiver is not granted, nor is it dismissed at this time. Rather, the application is to be stayed, pursuant to s. 106 of the CJA, pending final completion of a review of Doreen Saskin's secured claim by KSV, in the bankruptcy proceedings.



Chief Justice G.B. Morawetz

Date: May 20, 2021