



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00716425-00CL

DATE: May 14, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: Duca Financial Services Credit Union Ltd v. 10503452 Canada Inc., *et al*

BEFORE: JUSTICE CONWAY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Alexandra Teodorescu	Counsel for the Applicant, <i>Duca Financial Services Credit Union Ltd.</i>	ateodorescu@blaney.com
Timothy Dunn		tdunn@blaney.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Faraz Khan	Counsel for the Respondents, 10503452 Canada Inc and Asif Karimov	Faraz.khan@khanllp.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Eldar Babayev	Counsel for Orkhan Karimov	eldar@esblaw.ca

ENDORSEMENT OF JUSTICE CONWAY:

- [1] This application for the appointment of a receiver returned to me today after two previous adjournments to permit the respondent company (10503452 Canada Inc. (“105”)) to refinance. Mr. Khan for 105 advised that the Vector financing has progressed and security documents have been drafted but 105 needs more time for the transaction to close.
- [2] I am denying a further adjournment. This matter was before me on April 11th and April 30th, at which times I adjourned the application. On April 11, 2024, and as set out in my endorsement of that date, Mr. Khan advised that 105 consented to the receivership order if the refinancing did not close by April 30th. It is now May 14, 2024.
- [3] Although I am not granting an adjournment and putting Duca to the expense of another attendance, I am prepared to give a few more days (as requested by Mr. Khan) for the refinancing to close, if indeed it is that close. I will delay the effectiveness of the order until **3 p.m. on May 17, 2024**. Counsel for Duca shall advise the court forthwith thereafter whether the indebtedness has been paid out and the order has or has not come into effect.
- [4] Ms. Teodorescu advised that Duca will provide Mr. Khan with a discharge statement forthwith and no later than 3 p.m. tomorrow.
- [5] With respect to the order itself, I am satisfied that the appointment of a receiver is just and convenient in this case. 105 owes over \$4.3 million to Duca and has been in default since the loan matured on January 1, 2024. Duca holds both a first mortgage and a General Security Agreement. The required notices have been sent. The security held by Duca provides for the appointment of a receiver on default.
- [6] Mr. Babayev for Orkhan has not filed any responding materials on this application. He requested that the receivership order be more clearly restricted to the real property at 740-748 Sheppard Avenue, the subject matter of Duca’s first mortgage, and not the adjacent real property. Ms. Teodorescu was agreeable to that clarification and has now amended the draft appointment order. With respect to Orkhan’s alleged trust interest in the property, the trust agreement was registered on title over 2.5 years after the Duca mortgage was registered. According to Duca, 105 did not disclose the alleged Orkhan beneficial interest in the property to Duca at the time the credit agreement was signed. Section 62(1) of the *Land Titles Act*, RSO 1990, c. L5 precludes the registration of a notice of trust on title. I accept Duca’s submission that this alleged beneficial interest does not stand in the way of making the appointment order. Any interest asserted by Orkhan can be addressed at a later stage, such as on a motion for an AVO or a distribution motion.
- [7] Considering all of the circumstances, I consider it just and convenient to grant the appointment order and have now signed the amended version. Order to go as signed by me

and attached to this Endorsement. This order is effective from the date provided therein and is enforceable without the need for entry and filing.

A handwritten signature in blue ink, appearing to read "Conway J.", with a stylized flourish at the end.