



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV- 24-00733400-00CL

DATE: March 25, 2025

NO. ON LIST: 1

TITLE OF PROCEEDING: MERIDIAN CREDIT UNION LIMITED v 2465 BROCK RD
DEVELOPMENT INC

BEFORE: JUSTICE J. DIETRICH

PARTICIPANT INFORMATION

For Applicant:

Name of Person Appearing	Name of Party	Contact Info
James Quigley	Lawyer for the Applicant, Meridian Credit Union Limited	jsquigley@szklaw.ca

For Respondent:

Name of Person Appearing	Name of Party	Contact Info
Michael Forrester	Lawyer for the Respondent, 2465 Brock Rd Development Inc.	michael@forresterlaw.ca

For Other:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE: J. DIETRICH

Introduction

[1] Meridian Credit Union Limited (the “**Meridian**”), seeks an order appointing msi Spergel Inc. (the “**Receiver**”) as receiver and manager over all of the properties, assets, and undertakings of the respondent, 2465 Brock Rd Development Inc. (the “**Company**”) pursuant to s. 243 of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and s. 101 of the *Courts of Justice Act* (the “**CJA**”). The Company is the registered owner of real property located at 2465 Brock Road, Pickering, Ontario (the “**Real Property**”).

[2] The Company delivered two affidavits of Sacha Singh sworn on February 7, 2025 and March 23, 2025 which provided information regarding refinancing efforts, however, the Company did not take issue with the underlying debt owed to Meridian or security granted by the Company to Meridian. Counsel to the Company advised that the Company is not opposing the relief sought by Meridian.

[3] Terms not otherwise defined herein have the meaning provided for in the factum of Meridian filed on this motion.

Background

[4] Pursuant to a credit agreement dated and executed by Mr. Singh on behalf of the Company on June 22, 2023 (the “**Credit Agreement**”), Meridian agreed to provide the Company with a demand loan in the amount of \$13,800,000.00, with interest to accrue thereon at Meridian’s prime rate in effect from time to time plus 2.20% per annum, for the purpose of paying out two existing mortgages encumbering the Brock Road Property (the “**Loan**”). The Loan matured on or about June 22, 2024.

[5] Along with certain guarantees, the Company’s indebtedness to Meridian with respect to the Loan is secured by, among other things, (i) a General Security Agreement granted by the Company in favour of Meridian dated June 14, 2023 (the “**GSA**”); (ii) a first-ranking collateral mortgage granted by the Company in favour of Meridian for the sum of \$15,250,000.00 registered against title to the Brock Road Property on June 22, 2023 (the “**Mortgage**”); and (iii) a Notice of Assignment of Rents granted by the Company in favour of Meridian, registered against title to the Brock Road Property on June 22, 2023.

[6] Both the Mortgage and GSA provide for the appointment of a receiver in the event of default of the Company’s obligations to Meridian.

[7] Along with Meridian, The Forty Eight Corporation has registered a charge against the Real Property in the amount of \$1.5 million dated February 8, 2024 (the “**Forty Eight Charge**”) and has filed a registration under the *Personal Property Security Act* (Ontario). New Canadian Capital Inc. Has also registered a charge against the Real Property in the amount of \$200,000.00 dated July 16, 2024 (the “**New Canadian Charge**”), and registered a notice of assignment of rents on the same day.

[8] Further, property tax arrears are owing on the Real Property in the amount of approximately \$18,234.39.

[9] As noted above, the Loan matured at the end of its one-year term on June 22, 2024. The Company failed to repay the Loan upon maturity. Certain other defaults have also occurred and are not disputed, these include: (i) contrary to the terms of the Credit Agreement the Company has failed to maintain its day-to-day banking with Meridian, which Mr. Singh has confirmed is maintained with Bank of Montreal; (ii) the Company has breached certain reporting covenants; (iii) property taxes are in arrears; and (iv) the Forty Eight Charge and the New Canadian Charge were registered without the consent of Meridian.

[10] On June 11, 2024, Meridian prepared and delivered a Notice of Default and Reservation of Rights to the Company, the receipt of which was acknowledged by Singh on June 14, 2024.

[11] As at October 31, 2024, the Company was indebted to Meridian with respect to the Loan in the amount of \$13,924,736.47, exclusive of costs, with interest continuing to accrue at the applicable rate. No payments have been made on the Loan since September 1, 2024.

[12] Meridian delivered a demand letter and Notice of Intention to Enforce Security against the Company pursuant to section 244(1) of the BIA on November 1, 2024.

[13] The Company has not been prepared to enter into a forbearance agreement with Meridian. Rather Mr. Singh has advised Meridian since October of 2024 that he has been working toward a joint-venture deal with a separate company.

[14] Along with the Real Property, the evidence is that the Company owns various reports, drawings and schematics valued at, in Mr. Singh's estimation between \$1 million and \$2 million. These items include architectural drawings to enlarge the commercial space at the said property, a survey of the Real Property, geotechnical report and topography survey, and a traffic study. The Company hired between 15 to 20 consultants to prepare the various reports, drawings, and schematics. These reports, drawings and schematics relate to the development of the Real Property (and the work product of the various retained consultants).

[15] The Real Property is mostly vacant land, but also contains a house and large garden shed from which the previous owner sells statuts. Mr. Singh also permits other people to store trucks and trailers and vehicles for a snow removal business on the Real Property. However, Mr. Singh collects no income from any of these persons.

Issue

[16] The only issue to be determined today is whether it is just or convenient to appoint a receiver over the assets, properties and undertakings of the Company.

Analysis

[17] 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.

[18] In determining whether it is just a 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. 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 *Bank of Montreal v. Sherco Properties Inc.* 2013 ONSC 7023 at para 41 and 42.

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

[20] As recently summarized by Justice Osborne in *Canadian Western Bank v 2563773 Ontario Inc.*, 2023 ONSC 4766 at paras 9-10, 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.

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

[22] The Company is in default of its obligations to the Meridian.

[23] Pursuant to the terms of the GSA and Mortgage granted to the Meridian, Meridian has the contractual right to seek the appointment and receiver over the Company's property including, the Real Property.

[24] Meridian has not acted precipitously in seeking to appoint a receiver. Attempts have been made to work with the Company to enter into a forbearance. The Loan matured over nine months ago. The property consists of more than the Real Property, and the evidence is that reports, drawings, schematics and work product related to the Real Property have significant value.

[25] In the circumstances, Meridian has understandably lost confidence in the management of the Company and the appointment of a receiver will provide transparency and fairness to stakeholders in a fair and orderly liquidation process to maximize realizations.

[26] msi Spergel Inc. is qualified to act as receiver and has consented to do so.

[27] The terms of the proposed receivership order are appropriate and consistent with the Model Order of the Commercial List.

Disposition

[28] Accordingly, I grant the receivership order in the form signed by me today.

March 25, 2025


Justice J. Dietrich