



**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

ENDORSEMENT

COURT FILE NO.: CV-23-00699908-00CL

DATE: April 19, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: NHE CAPITAL CORP. v. 111 SHERWOOD INVESTMENTS INC.

BEFORE: JUSTICE OSBORNE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

| Name of Person Appearing | Name of Party | Contact Info |
|---------------------------------|----------------------|-----------------------------|
| SEIFER, DAVID PAUL | NHE CAPITAL CORP. | dseifer@dickinsonwright.com |

For Defendant, Respondent, Responding Party:

| Name of Person Appearing | Name of Party | Contact Info |
|---------------------------------|------------------------------|-------------------------------|
| ACCARDI, JOE | Representative of the Debtor | Joe.accardi@forgeandfoster.ca |

For Other, Self-Represented:

| Name of Person Appearing | Name of Party | Contact Info |
|---------------------------------|-------------------------|--|
| ZWEIG, SEAN WONG, JORDAN | KSV (Proposed Receiver) | zweigs@bennettjones.com jwong@ksvadvisory.com |
| QUATTROCIOCCHI, ANTHONY | Observer | Anthony@yokegroup.ca |

ENDORSEMENT OF JUSTICE OSBORNE:

1. The Applicant, NHE Capital, seeks the appointment of a Receiver over 111 Sherwood Investments (the “Debtor”), including its property at 111 Sherwood Dr., Brantford, ON.
2. This matter was first before me on July 4, 2023, on which date I adjourned it *sine die*, on consent, as the parties had entered into a forbearance agreement. That agreement, as amended, expired on April 1, 2024.
3. This matter was before me again on April 3, 2024, on which date the principals of the parent company of the Debtor appeared to advise that they hoped to arrange new financing, in the absence of which they would likely not contest the appointment of a Receiver. Again, on consent, the matter was adjourned to today’s date.
4. There is no refinancing, the indebtedness has not been repaid, and the Applicant seeks the appointment of a Receiver.
5. Today, a principal of the parent company of the Debtor, Forge & Foster, again appeared, without counsel, and advised the Court that they had just received a refinancing offer this morning. In addition, a representative of that proposed financing party, the Yoke Group, also appeared and advised that they had an offer that they were prepared to submit, or trying to submit. The Applicant confirms that it has received inquiries from a number of parties. Nothing has been delivered to counsel and the representatives of the Applicant in court with their counsel were unaware of any offer, having been received.
6. The Debtor is indebted to the Applicant in connection with the loan in the principal amount of \$12 million that matured on April 1, 2023. The indebtedness today exceeds \$12.3 million. Section 244 Notices and demands have been served. The relevant Property is an income-producing property. A court-appointed Receiver is ideally suited to manage and maintain the Property, with a view to implementing a SISP.
7. In making a determination about whether it is, in the circumstances of a particular case, just or convenient to appoint a receiver, the Court must have regard to all of the circumstances, but in particular the nature of the property and the rights and interests of all parties in relation thereto. These include the rights of the secured creditor pursuant to its security: *Bank of Nova Scotia v. Freure Village on the Clair Creek*, 1996 O.J. No. 5088, 1996 CanLII 8258.
8. 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: while the appointment of a receiver is generally an extraordinary equitable remedy, the courts do not so regard the nature of the remedy where the relevant security permits the appointment and as a result, the applicant is merely seeking to enforce a term of an agreement already made by both parties: *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 at para. 27. However, the presence or lack of such a contractual entitlement is not determinative of the issue.
9. The appointment of a receiver becomes even less extraordinary when dealing with a default under a mortgage: *BCIMI Construction Fund Corporation et al v. The Clover on Yonge Inc.*, 2020 ONSC 1953 at paras. 43-44.
10. I am satisfied that under either or both of section 101 of the *Courts of Justice Act* and section 243 of the *Bankruptcy and Insolvency Act*, it is just or convenient to appoint a receiver today, for the reasons

set out in the Affidavits of Ely Rechtsman sworn May 19, 2023 and April 15, 2024, and the Affidavit of Paul Muchnik sworn June 29, 2023, each with exhibits thereto.

11. I have advised the self-represented representatives of the Debtor and the possible refinancing party that they should have their counsel contact counsel for the Receiver, and that the Receiver would have a dialogue with them and consider any *bona fide* offers received in accordance with its powers and duties under the appointment order.
12. The draft order submitted is consistent with the Model Order of the Commercial List. I am satisfied that the terms of the proposed receivership, as reflected in the draft order are appropriate in the circumstances of this case.
13. Order to go in the form signed by me today which is effective immediately and without the necessity of issuing and entering.
14. Finally, a word about the role of counsel as counsel of record in a proceeding and as officers of the court. I observed in my Endorsement made in this proceeding on April 3, 2023 that counsel for the Debtor, Scarfone Hawkins LLP, had apparently purported to withdraw from the matter simply by advising counsel for the Applicant that they would not be involved further, without bringing a motion to be removed from the record, let alone obtaining an order. No Notice of Change of Solicitors was served or filed and no new counsel has been involved. At the last appearance, the client was as surprised as the Court was that counsel simply did not appear, although aware of the hearing.
15. I observed in my earlier Endorsement that, in the circumstances, that firm remained counsel for the Debtor in this matter, and I directed counsel for the Applicant to provide that firm with a copy of my Endorsement. Counsel advises that that was done, and a copy of the email has been uploaded to caselines.
16. Once again, the firm has not appeared today and has not brought a motion to be removed from the record. When counsel go on the record in a matter and appear in Court on behalf of a party, they assume obligations to their client and to this Court, until relieved from those obligations by the appointment of new counsel or by order. Counsel for the Applicant will provide a copy of this Endorsement to that firm.

Olson, J.