



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

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

DATE: July 29, 2024

NO. ON LIST: 3

TITLE OF PROCEEDING: EQUITABLE BANK v. EQUITYLINE SPV LIMITED PARTNERSHIP

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Miranda Spence	Equity Bank	mspence@airdberlis.com
Adrienne Ho	Equity Bank	aho@airdberlis.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Judy Hamilton	Equityline SPV Limited Partnership	jh@friedmans.ca

For Other, Self-Represented:

		Contact Info

ENDORSEMENT OF JUSTICE STEELE:

- [1] The only issue before me is whether it is just and convenient in the circumstances to appoint a receiver. Equitable Bank asks the Court to appoint a receiver. This is opposed by Equityline SPV Limited Partnership (“SPV”)
- [2] I am satisfied that it is just and convenient in the circumstances to appoint a receiver.
- [3] SPV is indebted to Equitable Bank in connection with a revolving credit facility. Currently there is over \$10 million owing by SPV to Equitable Bank. Equitable Bank is the sole secured creditor of SPV with registration under the PPSA on all the debtor’s property, including its beneficial ownership interests in mortgage loans (“Equityline Mortgages”). Legal ownership in respect of such mortgage loans is held as security by a third-party custodian, Computershare Trust Company of Canada.
- [4] The obligations of the debtor to Equitable Bank are secured by, among other things, a general security agreement that grants Equitable Bank a security interest in all the debtor’s property. The security interest was registered under the PPSA.
- [5] There have been one or more defaults by SPV under the credit agreement with Equitable Bank, including a default by the debtor under the Custodial Agreement. Further SPV is in default of its interest and principal payments.
- [6] Equitable Bank made formal written demand on SPV on April 23, 2024, attaching notices of intention to enforce security pursuant to s. 244(1) of the *Bankruptcy and Insolvency Act*. The debtor has failed to repay the outstanding debt.

Is it just and convenient to appoint a receiver?

- [7] The Court may appoint a receiver where it is “just and convenient” to do so: CJA, s. 101(1). Similarly, under section 243(1) of the BIA, on an application by a secured creditor, where the Court considers it to be just or convenient to do so, the Court may appoint a creditor to:
- a. Take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
 - b. Exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
 - c. Take any other action that the court considers advisable.
- [8] In order to determine whether it is just and convenient to appoint a receiver, the Court must have regard to all of the circumstances. In particular, the following considerations have been held to be relevant:
- The moving party has a right under its security to appoint a receiver;
 - The security is in jeopardy; and

- Whether it is in the interests of all concerned to have a receiver appointed by the Court. This analysis includes an examination of 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 working duties of the receiver and manager.

Bank of Nova Scotia v. Freure Village on the Clair Creek, 1996 CanLII 8258 (ONSC) at paras. 10-13.

[9] Recently this Court in *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186 at para. 25 summarized the following factors that the Court may consider in determining whether a receiver should be appointed:

- 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;

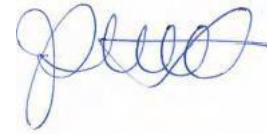
- o. The likelihood of maximizing return to the parties; and
- p. The goal of facilitating the duties of the receiver.

- [10] Equitable Bank submits that the appointment of a receiver is necessary and appropriate. Among other things, Equitable Bank has lost confidence in the debtor based on SPV's conduct leading up to these proceedings.
- [11] Where a debtor's past conduct would suggest that efforts by a creditor to privately enforce its security will be delayed or fail, a court appointed receiver may be appropriate: *C&K Mortgage et al. v. 11282751 Canada Inc. et al.*, 2024 ONSC 1039, at para. 21.
- [12] The debtor submits that it will be more cost-effective and practical for the debtor to continue to administer and enforce the underlying Equityline Mortgages as opposed to a receiver. SPV submits that it can continue the ongoing enforcement proceedings. The mortgage portfolio consists of residential mortgage loans, most of which are valued at under \$1 million. SPV states that it would be cost prohibitive for a receiver, with Court oversight, to enforce these mortgages. Among other things, SPV submits that there is sufficient protection in place as a result of a consent interim order that would prevent SPV from dealing with the mortgages without Equitable Bank's consent. SPV also points to the face value of the mortgages in the portfolio of over \$18 million.
- [13] Equitable Bank does not want the enforcement proceedings and mortgages to be transferred to SPV to continue enforcement due to the history. Given the allegations that were made against SPV by Computershare that various actions were taken by SPV without Computershare's authorization or knowledge, Equitable Bank argues that it would be inappropriate for SPV to continue to act without court oversight. As noted in para. 49 of the Stephen Murphy affidavit, Computershare has identified 33 unauthorized proceedings commenced by EquityLine. At least 3 of these unauthorized proceedings involve counterclaims against Computershare.
- [14] There have also been allegations of fraud made against the debtor. SPV acknowledges in its materials that counterclaims have been filed alleging fraudulent mortgage practices.
- [15] Computershare has provided notice to terminate its custodial agreement. Computershare does not want to remain the custodian of these mortgages. Computershare has agreed to extend the notice period pending the termination of this application. Equitable Bank submits, therefore, that a receiver is urgently needed to take control of the EquityLine Mortgage portfolio.
- [16] There were also three mortgages that were discharged without the proceeds being paid to Equitable Bank. In his affidavit, Sergiy Shchavyelyev, the president and CEO of SPV acknowledges that "there was an accounting error when three mortgages in the Equityline SPV were discharged without Equitable having been paid their interest in that mortgage."
- [17] Equitable Bank has the contractual right to appoint a receiver under the GSA. 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 seeking the appointment of the receiver is relaxed. Generally, the appointment of a receiver is an extraordinary equitable remedy. However, the Courts do not regard the remedy in this way where the relevant security documents permit the appointment. This is because the

applicant is seeking to enforce a term of an agreement that both parties made: *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866, at para. 27, *Hands-On Capital Investments Inc. v. DMCC Holdings Inc.*, April 19, 2023 (Ont. S.C.J.), at para. 48.

[18] I agree with Equitable Bank's submission that as a result of SPV's default under the credit agreement, and failure since then to repay the debt, the appointment of a receiver is a result of enforcing the contractual terms to which the debtor had already agreed.

[19] Further, Equitable Bank is opposed to SPV continuing the administration and enforcement. As noted at para. 12 of the affidavit of Jackson Chau, Associate Director, Special Loans at Equitable Bank, given the history "the Bank has no confidence in Equityline to administer the mortgage portfolio." Accordingly, while I understand that it may be more costly for a receiver to administer and enforce the EquityLine Mortgage portfolio, given the circumstances leading up to this application, it is just and convenient, and appropriate in the circumstances for a receiver to be put in place.

A handwritten signature in blue ink, appearing to be "J. Chau", is located in the lower right quadrant of the page.

Date of Release: July 30, 2024