

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

EQUITABLE BANK

Applicant

- and -

EQUITYLINE SPV LIMITED PARTNERSHIP

Respondent

**APPLICATION UNDER SUBSECTIONS 47(1) AND 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

FACTUM OF THE APPLICANT

July 26, 2024

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PART I – OVERVIEW

1. EquityLine SPV Limited Partnership (“**EquityLine**” or the “**Debtor**”) has been in default under its loan arrangements with Equitable Bank (“**Equitable Bank**” or the “**Bank**”) since the end of March, 2024, or earlier.¹ The Bank is the sole secured creditor with registration under the Ontario *Personal Property Security Act* on all of the property of the Debtor, including its beneficial ownership interests in mortgage loans (the “**Equityline Mortgages**”), for which legal ownership is held as security by a third-party custodian, Computershare Trust Company of Canada (“**Computershare**” or the “**Custodian**”).²
2. Following the issuance of demands and a Notice of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (the “**BIA**”) by the Bank by letter dated April 23, 2024, the Debtor has failed to repay the outstanding debt.³ The Debtor owes the Bank \$10,073,480 (the “**Indebtedness**”), exclusive of legal and advisor fees, disbursements and accruing interest.⁴
3. Accordingly, the Bank seeks to enforce its security and appoint KSV Restructuring Inc. (“**KSV**”) as receiver of the Debtor’s assets, properties and undertakings, including the EquityLine Mortgages (collectively, the “**Property**”).
4. The Debtor’s sole response to the Bank’s application is that it will be more cost-effective for the Debtor to enforce the underlying EquityLine Mortgages itself, rather than appointing a

¹ Affidavit of Brendan Smith sworn May 31, 2024 at paras 34-36, Tab 2 of Application Record of Equitable Bank [“**Smith Affidavit**”].

² Smith Affidavit at paras 7-8, and 12.

³ Smith Affidavit at para 37 and Exhibit “O”.

⁴ Smith Affidavit at para 40.

receiver.⁵ The Bank has lost all confidence in the Debtor to take those steps, considering that (a) the Debtor commenced enforcement of certain of the EquityLine Mortgages in the name of Computershare, without Computershare's knowledge or consent, leading Computershare to terminate its custodial arrangements; and (b) the Debtor has discharged certain of the EquityLine Mortgages without repaying the Bank's proportionate share of those mortgages.

5. In the circumstances, it is just and convenient to appoint KSV as the receiver of the Property.

PART II – FACTS

6. The Debtor is a limited partnership formed pursuant to the laws of the Province of Ontario, with its stated registered office in Richmond Hill, Ontario.⁶ Its general partner is EquityLine SPV GP Inc.⁷

7. Pursuant to a Mortgage Sale and Servicing Agreement dated August 5, 2021, EquityLine offers the EquityLine Mortgages through EquityLine Financial Corp. as mortgage broker and with EquityLine Services Corp. acting as servicer of the mortgages.⁸

8. The Debtor is indebted to the Bank in connection with a revolving credit facility made available by the Bank to the Debtor (the "**Facility**") pursuant to and under the terms of a credit agreement dated August 5, 2021 (as amended, replaced, restated or supplemented from time to time, the "**Credit Agreement**").⁹

9. The obligations of the Debtor are secured by, among other things and without limitation:

⁵ Factum of Equityline SPV Limited Partnership dated July 23, 2024 ("**Equityline Factum**").

⁶ Smith Affidavit at para 3.

⁷ Smith Affidavit at para 3.

⁸ Smith Affidavit at para 6.

⁹ Smith Affidavit at para 10.

- (a) a general security agreement dated August 5, 2021 (the “GSA”), which grants to the Bank, among other things, a security interest in any and all of the property, assets and undertakings of the Debtor, registration in respect of which was duly made pursuant to the *Personal Property Security Act* (Ontario) (the “PPSA”); and
- (b) a custodial agreement dated August 5, 2021 between the Debtor and the Custodian, and a title custodian acknowledgment agreement dated August 5, 2021 between the Bank and the Custodian, by which legal title to the EquityLine Mortgages is held by the Custodian with the Debtor as beneficial owner; (collectively, the “Security”).¹⁰

- 10. The Bank is the Debtor’s sole registered secured creditor under the PPSA.¹¹
- 11. The Facility made available pursuant to the Credit Agreement is a true demand loan, but in addition, is repayable on demand upon the occurrence of an event of default.¹² There have been one or more defaults by the Debtor under the Credit Agreement, including, without limitation, a default by the Debtor under the Custodial Agreement.¹³
- 12. Until recently, based on monthly written reports provided directly to the Bank by the Debtor, the Bank understood that many of the EquityLine Mortgages were in various stages of arrears ranging from 30 days to 90 days, but that payments continued to be made and none of the EquityLine Mortgages were being treated as defaulted or subject to enforcement proceedings.¹⁴

¹⁰ Smith Affidavit at paras 11, 14-15.

¹¹ Smith Affidavit at para 12.

¹² Smith Affidavit at paras 34-35.

¹³ Smith Affidavit at paras 35-36.

¹⁴ Smith Affidavit at para 18.

13. In actuality, a majority of the EquityLine Mortgages were in default, and the Debtor had been providing the Bank with inaccurate information as to the position of the Debtor and the status of the Security.¹⁵ As a result, the Bank no longer knows the true value of its Security.
14. Prior to the above discoveries by the Bank and the Custodian, EquityLine Services Corp. retained a lawyer, Terry Walman, and commenced lawsuits to collect on certain defaulted mortgage loans, which lawsuits were brought in the name of Computershare without its knowledge or authorization.¹⁶ Computershare has since been named in a number of counterclaims stemming from these unauthorized lawsuits.¹⁷ As a result, Computershare has exercised its right to end its custodianship and intends to transfer out legal title to the Equityline Mortgages, with the result that a significant aspect of the Bank's security (*i.e.* the third-party custodianship of the collateral) is now in jeopardy.¹⁸
15. Following the defaults under the Credit Agreement, the Bank made formal written demand on the Debtor by letter dated April 23, 2024 and delivered a Notice of Intention to Enforce Security pursuant to subsection 244(1) of the BIA.¹⁹
16. It has now come to light that through the Bank's independent investigation, that at least nine of the EquityLine Mortgages believed to be held as security by Computershare have in fact been discharged or postponed without the proceeds being paid to the loan and without the authorization or knowledge of either the Bank or the Computershare.²⁰ The impacted

¹⁵ Smith Affidavit at para 19.

¹⁶ Smith Affidavit at para 22.

¹⁷ Affidavit of Stephen Murphy at para 51, sworn July 25, 2024, Tab 1 of the Application Record of the Further Supplemental Application Record of Equitable Bank dated July 26, 2024 (the "**Murphy Affidavit**").

¹⁸ Smith Affidavit at paras 24-25 and Murphy Affidavit at para 58.

¹⁹ Smith Affidavit at para 37.

²⁰ Smith Affidavit at para 29.

EquityLine Mortgages represent \$3,098,880 of outstanding debt owed to the Bank that is no longer secured by a property charge, and an approximate reduction of the Bank's collateral of \$8,229,019.²¹

17. The Debtor has admitted that three of the EquityLine Mortgages were discharged without the relevant proceeds having been paid to the Bank.²²
18. While Computershare has consented to a temporary extension of the Custodian Agreement pending the hearing of this application, it is not prepared to continue indefinitely. Accordingly, the only options available to the Bank are to (a) hand over enforcement of the Equityline Mortgages from Computershare to EquityLine directly, or (b) appoint a receiver to enforce the Equityline Mortgages, as it is entitled to do under the terms of its GSA.
19. In light of the facts described herein, the Bank seeks to appoint KSV as the receiver.

PART III – ISSUES

20. The issue on this Application is whether KSV should be appointed as the receiver of the Debtor.

PART IV- LAW & ARGUMENT

A. The Court has Jurisdiction to Appoint a Receiver

21. This Court has jurisdiction to appoint a receiver. Subsection 243(1) of the BIA provides that, on application by a secured creditor, a court may appoint a receiver to, *inter alia*, take

²¹ Smith Affidavit at para 29.

²² Affidavit of Sergiy Shchavyelyev sworn July 16, 2024 at para 24, Tab 1 of Responding Application Record of Equityline, dated July 16, 2024 (the “**Shchavyelyev Affidavit**”).

possession over the assets of an insolvent person and exercise any control that the court deems advisable over that property and over the insolvent person's business, in circumstances where it is "*just or convenient*" to do so.²³ Similarly, the CJA enables the court to appoint a receiver where such appointment is "*just or convenient*".²⁴

B. Equitable Bank has Complied with Technical Requirements

22. Equitable Bank has served the requisite notices pursuant to section 244 of the BIA.²⁵ The prescribed 10 day notice period has expired. KSV has consented to act as receiver.²⁶

23. Further, courts have recognized that where the secured creditor has enumerated rights to appoint a receiver, the burden on the applicant is relaxed.²⁷ In such cases, the remedy sought is merely the applicant enforcing the terms of an agreement between the parties.²⁸ Equitable Bank has the contractual right to appoint a Receiver. Its GSA with the Debtor provides the Bank a right to appoint a receiver upon the occurrence of an event of default under the Credit Agreement. Such default includes the failure to pay any amounts due on demand.²⁹

24. There is a clear event of default under the Credit Agreement. The amount of debt remains outstanding.³⁰ Accordingly, the appointment of a receiver in this case is not an extraordinary

²³ [Bankruptcy and Insolvency Act \(R.S.C., 1985, c. B-3\)](#), s 243 [*BIA*].

²⁴ [Courts of Justice Act, RSO 1990](#), c C. 43 at s 101 [*CJA*].

²⁵ Smith Affidavit at para 37.

²⁶ Smith Affidavit at para 45.

²⁷ [Elleway Acquisitions Ltd. v. The Cruise Professionals Ltd.](#), 2013 ONSC 6866 at [para 27](#) and [iSpan Systems LP](#), 2023 ONSC 6212 at [para 31](#).

²⁸ [Elleway Acquisitions Ltd. v. The Cruise Professionals Ltd.](#), 2013 ONSC 6866 at [para 27](#) and [iSpan Systems LP](#), 2023 ONSC 6212 at [para 31](#).

²⁹ Smith Affidavit at para 13.

³⁰ Smith Affidavit at para 41.

measure, as it is simply the result of enforcing the contractual terms to which the Debtor had already assented to.

C. It is Just and Convenient to Appoint a Receiver

25. In determining whether it is “just or convenient” to appoint a receiver under either the BIA or the CJA, the court can take into account all of the circumstances, such as the costs, preservation of the security, and the relationship between the debtor and its creditors.³¹

26. As recently summarized by this Court in *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, various factors are historically considered in determining whether a receiver should be appointed. The court laid out these factors as follows:

- (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;

³¹ *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CanLII 8258 at [para 10](#) and [para 12](#) (ONSC). *Elleway Acquisitions Ltd. v. The Cruise Professionals Ltd.*, 2013 ONSC 6866 at [para 26](#).

- (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.³²

27. It is not essential that the moving party establish, prior to the appointment of a receiver, that:

- (a) It will suffer irreparable harm; or

³² [*Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*](#), 2022 ONSC 6186 at [para 25](#), citing [*Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*](#), 2009 BCSC 1527 at [para 25](#). See also [*Re 2806401 Ontario Inc. o/a Allied Track Services Inc.*](#), 2022 ONSC 5509 at [para 13](#).

(b) That the situation is urgent.³³

28. A court-appointed receiver may also be appropriate, where the debtor's past conduct would suggest that efforts by a creditor to privately enforce its security will be delayed or otherwise fail.³⁴

29. As set out below, it is just and convenient in the circumstances to appoint a Receiver.

(i) Equitable Bank will suffer irreparable harm without a Receiver

30. Contrary to EquityLine's assertions, Equitable Bank will suffer irreparable harm if a Receiver is not appointed. The outstanding debt under the Facility has not been repaid, so the value of the Bank's security continues to erode. There is no basis to grant what is effectively an injunction against Equitable Bank's rights as secured creditor by allowing a defaulting Debtor to determine when and how the Bank's security may be enforced. A receiver is necessary to protect the value of Equitable's security.

31. Further, the appointment of a Receiver is urgently required, given that Computershare has advised EquityLine that it no longer wishes to remain custodian of these mortgages, and has provided notice to terminate its custodial agreement.³⁵ Computershare has agreed to extend this notice period for a short time period, pending the hearing of this application.³⁶ Thus, a receiver is urgently needed to take control of the EquityLine mortgage portfolio.

³³ *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007 at [paras 28-29](#). See also *Re 2806401 Ontario Inc. o/a Allied Track Services Inc.*, 2022 ONSC 5509 at [para 15](#) and *C & K Mortgage et al. v. 11282751 Canada Inc. et al.*, 2024 ONSC 1039 at [para 21](#).

³⁴ *C & K Mortgage et al. v. 11282751 Canada Inc. et al.*, 2024 ONSC 1039 at [para 21](#).

³⁵ Smith Affidavit at para 25.

³⁶ Affidavit of Jackson Chau at para 9 sworn July 25, 2024, Tab 1 of the Supplemental Application Records of Equitable Bank dated July 25, 2024 ("**Chau Affidavit**").

(ii) A Receiver is Necessary to Protect Equitable Bank's Security

32. A receiver is also necessary to protect Equitable Bank's security. EquityLine suggests in its materials that the Bank can be protected through an irrevocable direction to enforcement counsel on the receipt of any proceeds.³⁷ Given EquityLine's conduct to date, such a mechanism is insufficient protection.

33. EquityLine's own materials admit that three mortgages were discharged without the relevant proceeds having been paid to the Bank.³⁸ EquityLine admits that these amounts were paid to a related entity.³⁹ However, despite the fact that EquityLine is aware of the location of these funds and does not dispute the Bank's entitlement to them, EquityLine has failed to pay these proceeds to the Bank. A court appointed receiver is necessary to oversee the receipt of any proceeds.

(iii) EquityLine should not be permitted to continue enforcement, given its alleged conduct

34. In considering whether it is just and convenient to appoint a receiver, courts can consider the parties' conduct.⁴⁰ EquityLine opposes the appointment of a receiver on the basis that it can continue the ongoing enforcement proceedings, and that a receiver's appointment would be duplicative.⁴¹

35. Given the allegations raised by Computershare, it will be inappropriate for EquityLine to continue to act without court oversight. In particular, it is Computershare's evidence that

³⁷ Equityline Factum at paras 23-24.

³⁸ Shchavyeleyev Affidavit at paras 24-25.

³⁹ Shchavyeleyev Affidavit at paras 24-25.

⁴⁰ *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186 at [para 25](#), citing *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at [para 25](#).

⁴¹ Equityline Factum at paras 20-21.

various actions were taken by EquityLine without its authorization and/or knowledge. These include:

- (a) The registration of an instrument on the property known as 69 Fenwood Height, Scarborough, that purports to postpone Computershare's charges in favour of Elle Mortgage Corporation, of which Terry Walman (EquityLine's enforcement counsel) is a director;⁴²
 - (b) The registration of an instrument on the property known as 135 Ben Sinclair Avenue, East Gwillimbury, that purports to transfer Computershare's charge to Elle Mortgage Corporation and Computershare;⁴³
 - (c) In one of unauthorized proceedings commenced by Equityline Mortgage Investment Corporation ("EMIC"), EquityLine's principal, Mr. Schavyelvyev, signing an acknowledgement and direction providing for a discharge of a charge on behalf of EMIC and Computershare;⁴⁴ and
 - (d) The commencement of various proceedings in Computershare's name.⁴⁵
36. In particular, Computershare has identified 33 unauthorized proceedings commenced by EquityLine and 22 unauthorized proceedings commenced by EMIC.⁴⁶ Further, it is Computershare's position that even if it had been notified by EquityLine or EMIC that enforcement proceedings would be started, Computershare would not have authorized any actions to be brought in its name.⁴⁷

⁴² Murphy Affidavit at paras 14 and 38-42.

⁴³ Murphy Affidavit at paras 43-46.

⁴⁴ Murphy Affidavit at paras 47-48.

⁴⁵ Murphy Affidavit at para 14.

⁴⁶ Murphy Affidavit at para 49.

⁴⁷ Murphy Affidavit at para 29.

37. Given these allegations, it would be inappropriate to permit EquityLine to continue the enforcement of any of these proceedings. A receiver is necessary and appropriate to review and assess the true status of the mortgages pledged as collateral as well as the appropriateness of the enforcement steps taken to date, before further enforcement steps are taken.

(iv) Allegations of Fraud and Police Investigations

38. It is also just and convenient to appoint a receiver, given the allegations of fraud. As noted in Computershare's evidence, EquityLine had commenced proceedings in the name of Computershare in which certain defendants have taken the position that they were victims of fraud.⁴⁸ In particular, Computershare is aware of an action commenced by EquityLine in its name against the property owner, Mr. Lyle Auten, of 22 Lord Roberts Drive (the "**Auten Action**"). Computershare has subsequently been provided with correspondence from the OPP Serious Fraud Office that it was investigating whether Mr. Auten is the victim of fraud.⁴⁹

39. In its own materials, EquityLine acknowledges that counterclaims have been filed against Computershare alleging fraudulent mortgage practices.⁵⁰ Despite such acknowledgement, EquityLine has not put forward evidence to rebut these allegations.

40. Given these overall circumstances, the appointment of a receiver is appropriate.

(v) Effect of Receivership Order upon EquityLine MIC Debenture Holders

⁴⁸ Murphy Affidavit at para 24.

⁴⁹ Murphy Affidavit at para 18.

⁵⁰ Shchavyelyev Affidavit at para 42.

41. EquityLine further objects to the appointment of a Receiver on the basis that no proceeds will be available for EquityLine MIC debenture holders and shareholders, due to the extraordinary expense attached to the process.⁵¹ It argues that a receivership will minimize returns to stakeholders.⁵² EquityLine further argues that since some of the enforcement proceedings may go to trial, it would be costly to have the Receiver run this litigation.⁵³
42. This argument is without merit. While the appointment of the Receiver may result in an additional accrual of professional fees, these additional costs are not a reason to deny the Bank its contractual right to appoint the Receiver. EquityLine has lost the right to manage its own enforcement processes by the conduct described herein.

(vi) It is Just and Convenient to Appoint a Receiver

43. The Indebtedness owing to the Bank exceeds \$10,073,480 and continues to accrue. Given this quantum, as well as the substantial risk to the collateral and its deterioration so far, the appointment of a receiver is necessary to preserve the value of the Debtor's remaining assets, including securing the EquityLine Mortgages, safeguarding any proceeds realized from enforcement efforts, and undertaking an orderly sale of the Property where possible.
44. The Bank has limited visibility on the business operations and financial outlook of the Debtor. Based on the surrounding circumstances of alleged fraud and a pattern of unauthorized conduct, it is reasonable to believe the collateral would continue to deteriorate without court intervention. Given the Debtor's predicament, the Bank's ability to realize on

⁵¹ EquityLine Factum at para 25.

⁵² EquityLine Factum at para 27.

⁵³ EquityLine Factum at para 26.

its Security may become moot, or at least not as fruitful, if the Debtor is permitted to continue operating independently, without the direct oversight of a receiver.

45. Accordingly, the Bank respectfully submits that the appointment of KSV as receiver of the Property is appropriate in the circumstances.

PART V – RELIEF SOUGHT

46. The Bank respectfully requests that this Court grant the aforementioned relief, and issue the Receivership Order in the form appended at Tab 3 of Equitable Bank’s Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of July, 2024.



Robb English / Miranda Spence

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007
2. *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CanLII 8258 (ONSC)
3. *Elleway Acquisitions Ltd. v. The Cruise Professionals Ltd.*, 2013 ONSC 6866
4. *iSpan Systems LP*, 2023 ONSC 6212
5. *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527
6. *Re 2806401 Ontario Inc. o/a Allied Track Services Inc.*, 2022 ONSC 5509
7. *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186
8. *C & K Mortgage et al. v. 11282751 Canada Inc. et al.*, 2024 ONSC 1039.

**SCHEDULE “B”
RELEVANT STATUTES**

Bankruptcy and Insolvency Act (R.S.C., 1985, c. B-3)

PART XI

Secured Creditors and Receivers

Marginal note: Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (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.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

[....]

Courts of Justice Act, RSO 1990, c. C. 43

Interlocutory Orders

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

EQUITABLE BANK
Applicant

- and -

EQUITYLINE SPV LIMITED PARTNERSHIP
Respondent

Court File No. CV-24-00721560-00CL

ONTARIO
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(COMMERCIAL LIST)

Proceedings commenced at Toronto

FACTUM OF THE APPLICANT
(Application returnable July 29, 2024)

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