

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

EQUITABLE BANK

Applicant

and

EQUITYLINE SPV LIMITED PARTNERSHIP

Respondent

**APPLICATION UNDER SUBSECTION 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.43, AS AMENDED**

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RESPONDING PARTIES

PART I - INTRODUCTION

1. The appointment of a Receiver is not necessary, practical, or the least expensive means to collect the balance owing to Equitable Bank under the credit line. The current enforcement processes arising from the defaults of the underlying residential mortgages have already proceeded, many to judgment. Rather than re-commencing enforcement from the beginning with an unwieldy process, and adding layers of additional enforcement, there should be a simple mechanism put in place to protect proceeds for Equitable Bank when the underlying mortgages in the Equityline SPV Limited Partnership ("**Equityline SPV**") portfolio are liquidated by mortgage enforcement counsel.

PART II - SUMMARY OF FACTS

2. The current principal amount owed by Equityline SPV to Equitable Bank as of June 6, 2024 was \$10,310,037.26.¹ This had been reduced from \$13,617,097.50 owed as of April 23, 2024.

3. In 2023, the balancing owing by Equityline SPV to Equitable Bank had been up to \$25,000,000, but through refinancing and enforcement proceedings, the balance was reduced to just over \$10,000,000.²

4. The 34 mortgages in the portfolio have a face value of \$18,115,600.³

5. After review by Equitable showed \$3,098,880 of outstanding debt was not secured by a property charge, Equityline SPV paid out amounts totalling \$3,543,000.

6. Each of the mortgages in the mortgage portfolio passed the underwriting criterion approved by Equitable and is title insured.⁴ Equityline SPV is the beneficial owner of mortgage loans although legal title was held by Computershare Trust Company of Canada as custodian.

7. From March 2022 interest rates arose steadily and mortgagors were defaulting at a rate that was unexpected.⁵

¹ Affidavit of Sergiy Shchavyelyev sworn July 16, 2024, ("Sergiy Affidavit") paragraph 4, Exhibit A

² Sergiy Affidavit, paragraph 11

³ Affidavit of Brendan Smith, sworn May 31, 2024, paragraph 8

⁴ Sergiy Affidavit, paragraph 7

⁵ Sergiy Affidavit, paragraphs 9 – 10

8. While the enforcement of mortgage proceedings were originally commenced in the custodian's name, Computershare, many of the proceedings were subsequently transferred back to Equityline SPV, the beneficial owner of the mortgages.⁶ This allowed regular mortgage enforcement to continue.

9. Computershare was the custodian of the mortgages in both Equityline SPV and Equityline MIC until it resigned in April 2024.

10. Following Computershare's resignation, the Equityline MIC mortgages were transferred back to the beneficial owner of the mortgages, but the Equityline SPV transfers were halted by Computershare on the instructions of Equitable, starting after this application was commenced. Instead of assigning the mortgages, Computershare served notices of change in all proceedings and refused to keep Equityline SPV informed as to what was happening with the individual enforcement proceedings, which has led to frustrated closings.

11. Much of the \$10,000,000 owed to Equitable would likely have already been paid to Equitable had those proceedings been allowed to continue as many were near to being finalized with loans paid out. Enforcement counsel offered full transparency on the files, but this was refused by Computershare as a reasonable path forward.

⁶ Sergiy Affidavit, paragraphs 17 - 20

12. Enforcement counsel was left with the understanding that enforcement proceedings would be discontinued without any projected date for recommencement of enforcement.⁷

13. Equityline SPV's preference is to engage in the most efficient, least expensive and expeditious process designed to get Equitable paid out as soon as possible.

14. Immediately after the Receivership Application was issued, Equitable Bank had already incurred \$200,000 in legal fees. KSV has also already incurred undisclosed fees for both its accounting work as well as legal fees.⁸

15. The legal costs charged to the borrower associated with a standard residential enforcement proceeding are between \$2,500 - \$10,000.⁹ A Receivership would add charges which could not be passed on to the individual mortgagors and thus erode the capital.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

16. Is it just or convenient to appoint a Receiver over Equityline SPV?

17. Should the commercial list in Toronto exercise its jurisdiction over this matter?

PART IV - ORDER REQUESTED

18. The Courts have considered numerous factors which have been historically taken into account in the determination of whether it is appropriate to appoint a receiver:

⁷ Sergiy Affidavit, paragraph 29, Exhibit I

⁸ Sergiy Affidavit, Exhibit A

⁹ Sergiy Affidavit, Exhibits H and J

- 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

19. These factors are not a checklist, but a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient.¹¹

20. Equitable will not suffer irreparable harm if no order is made. All enforcement proceedings and mortgages can be transferred back to Equityline SPV to continue enforcement. Equityline SPV will undertake to allow Equitable unfettered access to the enforcement proceedings or choose reasonable enforcement counsel. Any challenges to the validity of the mortgages would be handled by the title insurer.

21. Adding additional layers of legal expenses involving the Receiver and Receiver's counsel in addition to Equitable and Equitable's counsel to enforce a portfolio of simple residential mortgage loans, most of which are valued at less than \$1,000,000, will be cost

¹⁰ [Romspen Investment Corporation v. Tung Kee Investment Canada Ltd. et al. 2023 ONSC 5911, para 32](#)

¹¹ [Supra, para 33](#)

prohibitive. On the other hand, Equityline SPV will suffer irreparable harm if the cumbersome processes of court approval over each stage of the enforcement proceedings is required to approve simple residential enforcement processes in the Commercial List in Toronto over properties which are located all over Ontario. Further, to have the Receiver restart enforcement proceedings where Judgment has already been rendered is not productive or practical.

22. There is no evidence that the amounts owed to Equitable is not fully protected by the existing assets in the residential mortgage portfolio. All loans were extended based upon an agreed upon loan to value ratio. Equityline SPV also lent its proportionate share of the loan, yet Equitable currently stands in priority over any proceeds received.

23. The nature of the security is first and second mortgages on residential properties. Equitable can be easily protected by an irrevocable direction to enforcement counsel on receipt of any proceeds of refinancing or enforcement.

24. The appointment of a receiver should be granted cautiously. In this case, there are already enforcement mechanisms in place designed to insure repayment of Equitable in the regular course. There is no need for a heavily reviewed and regulated process the cost of which will far outweigh the benefits of having a court approval mechanism in place.

25. Any proceeds recovered by Equityline SPV flow directly to the Equityline MIC stakeholders who are debenture holders as well as preferred shareholders. If the Receiver is appointed, the effect of the order upon Equityline SPV will most likely be that

no proceeds will be available for Equityline MIC debenture holders and shareholders arising from the extraordinary expense attached to the process.

26. Further, it is likely that several of the enforcements will be taken to trial and thus this will be an extended appointment given the defences raised in some of the existing proceedings. To have the Receiver run all of these litigations will be cost prohibitive.

27. From April – May, 2024, while the proposed Receiver has been reviewing Equityline SPV's portfolio, Equitable has already incurred more than \$200,000 in legal fees. At the same time, Equitable has halted all enforcement proceedings and along with it, all payments to the mortgagee Equityline SPV from those mortgagors. Now these processes are in limbo and some have been discontinued, all of which delay has increased the likelihood that a Receivership will not maximize, but rather minimize returns to stakeholders.

28. With respect to the justifications for a Receiver set out in paragraph 44 of the affidavit of Brendan Smith, the Respondent states as follows:

- a. Equitable has already completed a full review and assessment of the mortgage pledged as collateral with the full cooperation of Equityline SPV. There is no evidence of a lack of cooperation on the part of Equityline SPV with respect to the review by KSV, which review is sufficient to establish that there is sufficient equity in the portfolio to fully repay Equitable once mortgages are refinanced or enforcement finalizes.

b. Computershare is not a party to these proceedings and the protection of Computershare, who acted as a custodian only with no beneficial interest, is not a sufficient justification to appoint a Receiver. Computershare was perfectly content to simply assign the mortgages back to Equityline SPV until Equitable issued a notice of control asserting decision making power over any further steps to be taken by Computershare, which was a wholly inefficient way to deal with the issues at hand;

c. The only creditor that could possibly benefit from a Receivership would be Equitable Bank.

29. It is submitted that the objective of maximizing recovery for the Lender does not require the court's intervention. The Debtor has already commenced default proceedings, the proceeds of which will go to the Lender. It is not necessary to add additional layers of enforcement to accomplish this.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of July, 2024.



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SCHEDULE "A"

LIST OF AUTHORITIES

1. [*Romspen Investment Corporation v. Tung Kee Investment Canada Ltd. et al.*](#)
[2023 ONSC 5911](#)

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RCP-F 4C (September 1, 2020)