Court File No. CV-25-00742000-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

BANK OF MONTREAL

Applicant

and

CHEEMA CARRIERS CORP. AND 1000083465 ONTARIO INC.

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 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 RESPONDENTS

June 11, 2025

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PART I – INTRODUCTION

1. The applicant Bank of Montreal (the "**Bank**") seeks the heavy-handed and blunt instrument of a Receivership, but there is a readily available alternative solution in the present case which obviates the need to appoint a Receiver and, very importantly, will preserve the viability of the Respondents logistics companies and save over 45 jobs in this regional business enterprise. Appointing a Receiver over the Respondent Companies is a draconian step that is far from "just or convenient"; rather, a Receivership is the least desirable outcome where the Bank's interests can be well-protected by other means – namely, allowing sufficient time to complete the sale of the Respondents' real property which is scheduled to complete on July 31, 2025[1].
2. There is no dispute that the Bank is a secured creditor owed approximately $10.5 million. However, as the Bank is aware, a firm, valid, and binding agreement of purchase and sale dated May 23, 2025[2] (the "**Agreement**") has been executed between the Respondent, 1000083465 Ontario Inc. (the "**Numbered Company**")

[1] Ex- A of Affidavit of Faraz Elahi sworn June 4, 2025
[2] Ex-C of Affidavit of Faraz Elahi sworn May 30, 2025

and the buyer, 9089365 Canada Inc o/a CQR Logistics (the "**Purchaser**") for a purchase price of $10 million. The Respondents simply require a reasonable period of time (a matter of less than 50 days) to complete the sale and use the proceeds to pay the Bank. The shortfall of around $500,000.00 will be paid to the Bank on closing of the sale transaction[3].

3. Moreover, the Respondents have not defaulted on any of their monthly payment obligations and the Bank has been receiving regular monthly payments. A covenant breach triggered by a fall in the Respondents' Debt Service Coverage Ratio and increase in Total Funded Debt to EBITDA ratio has caused the current situation, but the Respondent's businesses are viable on an ongoing basis. The Bank has not advanced any persuasive explanation as to why the need to appoint a receiver is urgent or that is "just and convenient" in this scenario. The security supporting the Bank's loan means that the Bank is fully protected.
4. Instead, the Bank seeks to proceed with this Receivership application, prematurely selecting a highly invasive remedy that our courts have described as "particularly intrusive" and "relief that should only be granted sparingly"[4]. Ontario courts have consistently held that a contractual provision allowing for the appointment of a receiver, fairly standard in most commercial loan documents, is not by any means determinative. Even where such a contractual provision is present, Ontario courts undertake a broad assessment of all relevant circumstances to determine whether appointing a receiver is just and convenient, applying a test sharing its origins with

[3] Paragraph 15 of Affidavit of Faraz Elahi sworn May 30, 2025
[4] *Royal Bank of Canada v Chongsim Investments Ltd.*, 1997 CanLII 12112 (ON SC) ("*Chongsim")*

equitable interlocutory injunction remedies that call for a balancing of burdens and interests.

5. Here, the relevant circumstances support staying or dismissing the Bank's application, in order to permit the Respondent Companies' sufficient time and breathing space to complete the sale of the real Property, thereby preserving the Respondent Companies and saving over 45 jobs for hard-working local residents. These circumstances include:

    a. The Bank is the Respondent Companies' sole material creditor, and the only creditor or stakeholder that supports appointing a Receiver[5].

    b. The Bank's indebtedness is already protected by a fixed first-charge mortgage on the Property, along with a general security agreement over all of the Respondents' assets. The Bank would be the first one to be paid from the proceeds of the sale of the Property.

    c. The Bank continues to receive regularly monthly payments and there hasn't been a monetary default since the beginning of the Respondents' banking relationship with the Bank[6].

    d. There would be very substantial fees and costs associated with a Receivership over the Respondent Companies. These fees and expenses are unnecessary in the face of the Agreement.

    e. The Respondent Companies operate a viable logistics, shipping and freight services business, which is a key cog in the supply chain for multiple companies, including for the delivery of essential goods (like groceries) to

[5] Paragraph 15 of Affidavit of Faraz Elahi sworn May 30, 2025
[6] Paragraph 33 of Affidavit of Faraz Elahi sworn May 30, 2025

Canadian households, including in some smaller Ontario centres[7]. Over 45 employees and contractors rely directly on the Respondent Companies for work, with many other workers in the supply chain indirectly affected. A Receivership is highly likely to put an end to the entire business enterprise.

f. In similar circumstances, including those that involve contractual provisions permitting receiverships, Ontario courts have dismissed receivership applications. As in those cases, appointment of a Receiver here is neither just nor convenient. The Bank has not demonstrated urgency. A timely reprieve to allow the sale of the Property to complete will not prejudice the Bank.

g. The Bank's application should therefore be dismissed or stayed.

PART II – SUMMARY OF FACTS

Background to the Respondent Companies

6. Cheema Carriers Corp. ("**Cheema**") is an Ontario company carrying on the business of transportation and logistics since 2013. Cheema specializes in the transport of temperature controlled and perishable commodities such as fresh fruits, meat, and other produce. Cheema primarily transports these goods from the United States of America to Canada. Cheema services a variety of companies and industries and is an important part of the supply chain for many grocery stores in

[7] Paragraph 5 of Affidavit of Faraz Elahi sworn May 30, 2025

Ontario and elsewhere, including grocery stores in smaller and mid-sized centers that are essential elements of local economies[8].

7. The Numbered Company is an affiliated company and is the owner of 860 Progress Court, Oakville (the "**Property**")[9].
8. In 2013, Cheema started out as a family-owned business with just a few trucks. The company's only employees at the time were family members. Through hard work and organic growth, including the continued investing of earned capital into additional trucks, Cheema has developed into a significant and successful operation. Cheema has deep rooted connections within the industry with suppliers and clients. Cheema is understood to be a reputable and dependable transporter, in an industry where reliability is paramount.[10]

Cheema's relationship with the Bank

9. In or around September 2024, the Respondents were informed by the Bank that the Respondents' Debt Service Coverage Ratio and Total Funded Debt to EBITDA Ratio had fallen below the ratio required by the credit agreement[11].
10. Accordingly, the Respondents met with the Bank to explain that as per the Respondent's calculations, the ratios were aligned with the credit agreements and, if anything, they were only slightly off. The Bank was informed that Cheema was reporting a strong fourth quarter and fuel prices had come down. Accordingly, the ratios would stabilise in six months' time. The Respondents were assured that as

[8] Paragraph 5 of Affidavit of Faraz Elahi sworn May 30, 2025
[9] Paragraph 6 of Affidavit of Faraz Elahi sworn May 30, 2025
[10] Paragraph 7 and 8 of Affidavit of Faraz Elahi sworn May 30, 2025
[11] Paragraph 26 of Affidavit of Faraz Elahi sworn May 30, 2025

long as payments to the Bank were made on time, Bank would accommodate appropriate extensions[12].

11. Then the Respondents received Notice dated November 1, 2024, from the Bank stating that the Bank is ending its relationship with the Respondents as the business fell outside the Bank's risk appetite. The letter further demanded payment of the entire indebtedness by January 31, 2025[13] (during the Holiday season).
12. The Respondents reached out to other lenders, however, given that the Bank was terminating its banking relationship with the Respondents prematurely, other lenders would have to conduct due diligence before advancing funds. Furthermore, given the economic climate at the time, it was difficult to arrange such a significant sum in such short notice[14].
13. Further, it was the Respondents' understanding that before the issue is escalated, their accounts will be referred to special accounts, and they will have an opportunity to sit down with the Bank to resolve the issues. However, in or around the third week of April 2025, the Respondents received correspondence from the Bank's lawyer demanding the payment of the entire indebtedness immediately[15].
14. Since the start of this banking relationship with the Bank, there has not been a default in the payment obligations and regular monthly payments have been made to the Bank.
15. Given the urgency in which the Agreement was executed, the Agreement initially stipulated a closing date of January 31, 2026, and was subject to certain conditions

[12] Paragraphs 27 and 28 of Affidavit of Faraz Elahi sworn May 30, 2025
[13] Exhibit- T of Affidavit of Leo Chun sworn April 28, 2025
[14] Paragraph 31 of Affidavit of Faraz Elahi sworn May 30, 2025
[15] Paragraph 32 of Affidavit of Faraz Elahi sworn May 30, 2025

included for the benefit of the Purchaser. Since then, the Purchaser and the Numbered Company have executed following two amendments:

a. First Amendment brings forward the closing date to July 31, 2025, with an option to extend for a period of sixty days[16]; and
b. Second Amendment removing all the conditions thereby making the Agreement firm, valid, and binding[17].

16. Further, the Bank's allegation that the execution of the Agreement is a default of the credit agreements and contrary to the wording of Justice Dietrich's endorsement is incorrect. Firstly, the Bank has been aware of the Numbered Company's intention to sell the Property to the Purchaser since at least as early as May 12, 2025. At no point did the Bank raise issue with the sale of the Property and has only now raised this as an issue in order to manufacture a default where no default exists. Secondly, the Bank has a registered charge against the Property which means that the transfer of title would not be completed until the Bank is paid. Hence, there are no reasonable grounds for the Bank to object to the sale of the Property. Thirdly, the bad faith of the Bank is evident from the fact that while on one hand, the Bank is seeking payment of $10.5 million, on the other hand, the Bank is seeking to stop the Respondents from selling their assets to pay the Bank.
17. With regards to the Bank's allegation that the Property is being sold for an amount less than the appraisal value, if the Bank had shown good faith and agreed to cooperate with the Respondents, the Respondents may have been able to achieve a higher value for the Property, however, with the Bank making immediate

[16] Exhibit-A of the Affidavit of Faraz Elahi sworn June 4, 2025
[17] Exhibit-B of the Affidavit of Faraz Elahi sworn June 4, 2025

demands for payment of $10.5 million, the Respondents had to act quickly and in the process have had to sell the Property for less than appraisal value. In any event, it does not lie with the Bank to raise issue regarding the sale price of the Property as the Bank is being paid repaid in full and any loss on the sale of the Property is being borne by the Respondents alone.

PART III – STATEMENT OF ISSUES, LAW & AUTHORITIES

18. The only issue to determine on this application is whether it is just and convenient to appoint a receiver. Here, where there is a reasonable (and well-advanced) solution that would save a viable business important to local economies, as well as more than 100 jobs, it is plainly not just and convenient to appoint a Receiver.

The Test to Appoint a Receiver

19. In order to appoint a Receiver, the Court must be satisfied that doing so is "just and convenient"[18].
20. In a statement that Ontario courts have repeatedly followed, in *Royal Bank of Canada v Chongsim Investment Ltd.* Justice Epstein (as she then was) commented on the extraordinary nature of relief appointing a receiver: "The appointment of a receiver is particularly intrusive. It is therefore relief that should only be granted sparingly. The law is clear that in the exercise of its discretion, the court should consider the effect of such an order on the parties."[19]

[18] *2607087 Ontario Limited v. 2654993 Ontario Ltd. et al.*, 2024 ONSC 4595 ("*993 Ontario Ltd.")*
[19] *Chongsim supra*, 1997 CanLII 12112 (ON SC)

21. Accordingly, in determining whether appointing a receiver is just and convenient, the presence or absence of a contractual provision permitting the appointment of a receiver is not determinative[20]. Rather, the Court must have regard to all of the circumstances, including in particular the nature of the property or business at issue, and the rights and interests of all parties in relation to it[21].

22. Drawing upon the common origins and nature of the equitable remedies of injunction and receiver, Ontario Courts have historically taken several factors into consideration in determining whether appointing a receiver is appropriate (including where there is a purported contractual provision in respect of appointment):

    a. whether irreparable harm might be caused if no order is made – although 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 assets;
    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;

[20] *993 Ontario Ltd. supra*, 2024 ONSC 4595
[21] *993 Ontario Ltd. ibid*

g. the fact that the creditor has a provision for 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; the effect of the order upon the parties;
k. the conduct of the parties;
l. the length of time that a receiver may be in place;
m. the cost to the parties;
n. the likelihood of maximizing return to the parties; and
o. the goal of facilitating the duties of the receiver[22].

23. As the Ontario Superior Court has very recently noted, these factors are not a checklist. Rather, they are "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"[23]. Ultimately, the Court must take a broad view and determine what is just, equitable and convenient, taking all relevant considerations into account.

[22] *993 Ontario Ltd. ibid*
[23] *993 Ontario Ltd. ibid*

It is not Just or Convenient to Appoint a Receiver in this Case

24. With reference to the relevant factors here, it is quite simply not just or convenient to appoint a Receiver. There are significantly less intrusive solutions that would see the Bank paid in full, while preserving the Respondent Companies business and saving over 45 jobs associated with it.

25. In similar circumstances, Courts have rightfully dismissed receivership applications. For example, in M & K Construction Ltd v. Kingdom Covenant International, Justice McEwen held it was not just and convenient to appoint a receiver in circumstances where: (i) appointing a receiver would put an end to the respondent's rights to continue their business; (ii) there was no evidence the value of the property was diminishing; (iii) the value of the subject property exceeded the outstanding indebtedness; (iv) the appointment of the receiver would add significant expenses; (v) there was no demonstrated urgency; and (vi) there were no other creditors[24].

26. In coming to this decision, Justice McEwen relied in part on *Canadian Imperial* Bank *of Commerce v. John Taylor's Truck Sales Ltd.* There, the Ontario Superior Court dismissed a receivership application where the bank's security was "not a wasting asset" and "not in jeopardy", the subject property was independently appraised at a value larger than the bank's indebtedness, and there was "no urgency to having a Receiver appointed to manage or control any assets or business". The court also noted the "inevitably expensive" costs of a Receiver and

[24] *M & K Construction Limited et al. v Kingdom Covenant International*, 2015 ONSC 2241

urged the parties to cooperate on the proposed solution to refinance the subject property in the interim and pay the bank with the proceeds[25].

27. Similarly, in *Royal Bank of Canada v Chongsim Investments Ltd*., Justice Epstein dismissed a receivership application where "the effect of installing a receiver to manage the affairs of the defendants would have a serious and potentially permanent adverse affect on their operations", including as a sale process involving a receiver "frequently results in a lower price and always results in substantial receivership fees". In coming to this conclusion, Justice Epstein also relied on the fact that the receivership may well damage the defendant's relationship with key stakeholders, and that the bank had "more than adequate security" for its indebtedness Accordingly, Justice Epstein dismissed the motion[26].

28. Very recently in *2607087 Ontario Limited v 2654993 Ontario Ltd*., Justice Osborne also dismissed an application to appoint a receiver. The subject application was brought by the debtor's sole material creditor (pursuant to a contractual entitlement to do so), which had also commenced mortgage enforcement proceedings over the subject property. Justice Osborne dismissed the application, commenting on the existence of the mortgage proceeding, relying on two key factors: (i) the security of the applicant was fully protected by real property held by the debtor; and (ii) there was no evidence that the value of the real property was depreciating[27].

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[25] *Canadian Imperial Bank of Commerce v John Taylor's Truck Sales Ltd*., 2003 CanLII 38796 (ON SC),
[26] *Chongsim supra*, 1997 CanLII 12112 (ON SC)
[27] *993 Ontario supra*, 2024 ONSC 4595

29. The Ontario Superior Court decisions outlined above are instructive. Several factual similarities to those cases are present here, all of which militate in favour of dismissing or staying the Bank's application:

    a. The Bank is the Respondent Companies' sole material creditor, and the only stakeholder that supports appointing a Receiver.

    b. There is no evidence of any urgency in favour of the Bank. The $10.5 million claimed by the Bank is more than adequately protected by a fixed first-charge mortgage on the Property, along with a general security agreement over all of the debtor's assets.

    c. There is no evidence that the value of the Property is depreciating.

    d. There would be very substantial fees associated with a Receivership over the Respondent Companies. These fees are unnecessary in the face of a executed Agreement.

    e. As outlined above, the Respondent Companies operate a viable shipping and freight services business. They are a key component in the supply chain for multiple companies and continue to operate a viable business. Their clients rely on the Respondent Companies to ensure the arrival of goods, including essential goods (like groceries), to customers. And over 45 local employees and contractors rely on the Respondent Companies for work. A Receivership would very likely put an end to the Respondent Company's business.

30. The negative impact on these stakeholders cannot be understated. In short, a viable Canadian business, with growth attributed to many years of hard work, would be shut down for no compelling reason.

31. It would be an unjust result to allow all of this to happen while the sale of the Property is already underway and well-advanced. Indeed, there is no evidence that a brief reprieve to allow the sale to complete will prejudice the Bank, which is fully secured by these and other assets, in any way. There is no urgency.

PART IV—ORDER REQUESTED

32. The Respondent Companies therefore request an order dismissing or staying the Bank's application, with such ancillary and other relief as may be appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATE: June 11, 2025

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