



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00709164-00CL DATE: 22 November 2023

NO. ON LIST: 4

TITLE OF PROCEEDING: STAR AMERICA DPGI ACQUISITION COMPANY, INC. v.
DEMAND POWER GROUP INC.

BEFORE JUSTICE: KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Nathalie Nouvet	STAR AMERICA DPGI ACQUISITION COMPANY, INC	nnouvet@stikeman.com
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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Ted Evangelidis	DEMAND POWER GROUP INC	tevangolidis@pallettvalo.com
Joe Pasquariello	Proposed Receiver	<u>jpasquariello@goodmans.ca</u>

ENDORSEMENT OF JUSTICE KIMMEL:

1. Star America DPGI Acquisition Company, Inc. ("Star America"), seeks an Order appointing Deloitte Restructuring Inc. as receiver and manager (in such capacity, "Deloitte" or the "Receiver"), without security, over the assets, undertakings and properties of the Respondent, Demand Power Group Inc. ("Demand Power" or the "Company"). This relief is unopposed, including by any of Demand Power's shareholders who received notice of this application. Deloitte has provided its consent to act, if appointed.
2. Star America is a shareholder and investor in the Company. The other significant shareholder and investor is PPL Technology Ventures, LLC ("PPL"). Star America and PPL together own at least 40% of the issued and outstanding share capital. The nominees of these two shareholders are currently the only two directors on the Company's board of directors (the "Board").

3. The Company does not have any secured creditors, nor have any liabilities been identified to taxation or other authorities that might have preferred claims. The applicant understands the Company's liabilities to unsecured creditors to be approximately \$180,000, each of which are individually only owed relatively small amounts. The Company's bi-weekly payroll is \$27,000.
4. Both PPL and the Company have raised some points of concern about the accuracy of certain matters that are set out in the affidavit filed in support of this application. There is ongoing litigation in which those parties are at odds with Star America. The points of contention do not relate to any of the facts that are relevant to the court's determination of this application, but they wanted the fact of their objection noted on the record, which it now has been.
5. Demand Power is a developer and operator of power supply systems in Ontario (the "Projects"). Historically, it entered into long-term contracts with its customers, which provided for the installation of certain power supply equipment on the customer's premises and the supply of power over a fixed term.
6. For the fiscal year ended December 31, 2022, Demand Power recorded a total comprehensive net loss of approximately \$4, 195,882.34. As of October 30, 2023, Demand Power had assets of only \$122,110 and liabilities (all of which are unsecured) of approximately \$188,605.77. It recently terminated virtually all (except essential) employees and all of its ongoing power supply projects. It has no source of revenue. As of the date of the hearing today, counsel advised that the Company is not likely to be able to meet the next payroll for its remaining essential employees from its available cash. That creates exposure for the directors.
7. The Board agrees that the Company is insolvent and cannot meet its liabilities as they come due and that Demand Power needs to undertake a prompt liquidation and wind-down its business to maximize value for all of the Company's stakeholders; however, it cannot agree on the process to do so and is deadlocked: one of the two directors wants the Company to pursue a Notice of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act* (Canada) (the "BIA"), whereas the other wants the Company to make an immediate filing for bankruptcy. Compounding this problem is that Demand Power continues to accrue significant expenses in the ordinary course which continues to negatively impacts any potential recovery available to Demand Power's stakeholders.
8. The Company is involved in litigation (the "Lien Litigation") arising out of two of its projects, the Sault Area Hospital Project (the "SAH Project") and the Jebco Manufacturing Project (the "Jebco Project"). Among other proceedings, on February 11, 2022, a third party contractor hired by the Company, Deltro Electric Ltd. ("Deltro") caused construction liens in the amounts of \$6,607,022.87 and \$2,581,442.79 to be registered against the properties underlying the SAH Project and Jebco Project, respectively (the "Deltro Liens").
9. In light of the financial difficulties that the Company is now in (for reasons which are detailed in the material filed in support of this application but which are not relevant to the court's decision today to appoint the Receiver), the only party with any economic risk if an adverse judgment is made in the Lien Litigation against Demand Power is Star America. Star America also believes there may be value still to be unlocked for the Company from these projects that are in litigation. For those reasons, it has agreed to fund the receivership (and certain litigation). Star America was not prepared to pay for a trustee in bankruptcy proceedings.
10. Pursuant to section 101(1) of the *Courts of Justice Act*, RSO 1990, c C.43 (the "CJA"), the court can appoint a receiver where it appears to be just or convenient to do so.
11. The CJA does not limit applicants strictly to creditors or require the filing of a bankruptcy as a pre-requisite to the appointment of a receiver or receiver- manager. Canadian Courts have found that an applicant need only be a "major stakeholder" to have standing to bring an application for a receivership: *King (Township) v. Rolex Equipment Co.*, 1992 CanLII 8587 (ON SCDC), at paras 17, 22; *Law Society of Alberta v. Higgerty*, 2023 ABKB 499, at paras 28-32; *Alberta Health Services v. Network Health Inc.*, 2010 ABQB 373, at paras 18-19; *Hands-On Capital Investments Inc. v. DMCC Holdings Inc.*, 2023 ONSC 2417, at paras 58-63; see also *Kady Properties v. Centennial Hotels Ltd.*, 1995 CarswellOnt 946 (ONCJ Comm List).

12. Star America is a major stakeholder and a proper applicant for the appointment of a receiver under s. 101 of the CJA.
13. Having regard to the circumstances commonly considered on applications to appoint receivers under the CJA (dating back to the oft cited case of *Bank of Nova Scotia v. Freure Village of Clair Creek*, 1996 CanLII 8258 (Ont. Sup. Ct. J.)), I am satisfied that it is appropriate to do so in this case:
 - a. The Company continues to accrue liabilities that it does not have the funds to satisfy. The Board's attempts to restrict management from incurring expenses without pre-approvals from the Board (representing the significant shareholders) have not been successful. Without any revenue coming in, the continued outflow of cash is to the prejudice of the Company's stakeholders and to the Company itself given its financial position.
 - b. The appointment of the Receiver is critical to the preservation of the Company's remaining value for the benefit of all stakeholders.
 - c. Star America has agreed to fund the appointment of Deloitte as the Receiver, so there will be no cost to any other party.
 - d. No stakeholder will suffer any prejudice as a result of the appointment of the Receiver. The Receiver will serve as an officer of the court and be tasked with promptly assessing and undertaking whatever insolvency process it deems most appropriate with the ultimate goal of maximizing value for all stakeholders.
 - e. This application is proceeding unopposed because, despite the deadlock at the Board over what to do in light of the Company's insolvency, the fact of the insolvency and the need to take some steps is accepted. The appointment of the Receiver is the practical and only way to ensure that the Company's limited assets are preserved for the benefit of all of its stakeholders; given that there is no indication that consensus amongst the Board is possible, without the court's appointment of the Receiver, the Company's current path will erode any remaining value for stakeholders.
14. While the existence of a contractual right to appoint a receiver can lessen the onus on the applicant, such a right is just one among many factors that the court will consider in deciding whether to appoint a receiver. There are no preconditions to the appointment of a receiver under s. 101 of the CJA. Each case must be decided on its own facts. See *Gold Candle Ltd. v. GSR Mining Corporation*, 2016 ONSC 4472 and *Degroote v. DC Entertainment Comp. et al*, 2013 ONSC 7101, at para. 14.
15. This is an unusual situation that warrants the appointment of a Receiver. Having considered the evidence and the written and oral submissions of the applicant, I find it to be just and convenient, for the protection of the estate of the Company and the interests of the applicant and its other stakeholders, to grant the appointment order requested.
16. The draft order provided is largely consistent with the model appointment order, with standard clarifying language that is acceptable to the court. Upon being advised that the only known "Person" affected by paragraph 13 of the order is Star America, I have allowed for that provision to be included. If there are other affected "Persons" who were not given notice they may resort to paragraph 33 of the order if they have concerns about this or any other provisions that cannot be resolved through dealings with the Receiver directly.
17. Order to go in the form signed by me today with immediate effect and without the necessity of formal issuance and entry.

A handwritten signature in dark ink, appearing to read "Kimmel J.", with a stylized, cursive script.

KIMMEL J.