



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-21-00656098-00CL

HEARING DATE: March 26, 2025

NO. ON LIST: 2

TITLE OF PROCEEDING: ADDENDA CAPITAL INC. v. 249 ONTARIO STREET HOLDINGS INC.
et al

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
David P. Preger Talya R. Bertler	Counsel for the Applicant - Addenda Capital Inc.	dpreger@dickinson-wright.com tbertler@dickinson-wright.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Catherine Hristow	Interim Receiver - Deloitte Restructuring Inc.	christow@deloitte.ca
Hartley Bricks	Proposed Receiver - Bricks Damiani Inc.	hartley@bricksdamiani.com

ENDORSEMENT OF JUSTICE KIMMEL:

Background and Relief Sought

- [1] Addenda Capital Inc. (“Addenda”) applied to have Deloitte Restructuring Inc. (“Deloitte”) appointed as Interim Receiver over the property of the Respondents/Debtors and the appointment was made by the Order of Justice Cavanagh dated March 9, 2021 (the “Interim Receivership Order”). The Interim Receivership Order was amended pursuant to the Order of Justice Cavanagh dated April 7, 2021, whereby the Interim Receiver's appointment was extended until further Order of the Court.

- [2] When the Interim Receiver was appointed, the Debtors were in default under Addenda's first ranking charge (the "First Charge") over their property municipally known as 249 Ontario Street, in Port Hope, Ontario (the "Property"). As of February 1, 2021, the Respondents were indebted to Addenda in the principal amount of \$4,950,337.58, with interest and costs continuing to accrue.
- [3] The primary purpose of the Interim Receiver's appointment was to stabilize the operation of the Property.
- [4] The First Charge matured on June 1, 2024. As of March 7, 2025, the amount outstanding under the First Charge was \$6,804,105.98 and per diem interest of \$625.84 was accruing thereon. Addenda now wishes to have the Property marketed and sold. Accordingly, Addenda is moving to discharge the Interim Receiver and appoint Bricks Damiani Inc. ("BDI") as full blown receiver ("Receiver"). If BDI is appointed, Hartley Bricks, Managing Director of BDI, will have carriage of this administration. Mr. Bricks is familiar with the Property and its operation. He was previously a Senior Vice-President at Deloitte and had carriage of the Interim Receiver's administration prior to his departure.
- [5] The Debtors have not been in communication with Addenda or the Interim Receiver and they did not respond to this motion. No one appeared to oppose this motion. The Interim Receiver and proposed new Receiver both consent to the Discharge Order and the Appointment Order, respectively.

The Discharge Order

- [6] The provisions of the discharge order have been tailored to the particular circumstances of this case and reviewed by the Interim Receiver and its independent counsel, as well as the proposed new Receiver, particularly with respect to the transition provisions.
- [7] Upon completion of the transition to the new Receiver, the Interim Receiver's mandate will be concluded. To avoid the costs of making a further motion to the court to obtain its discharge, the Interim Receiver seeks an order now for it to be discharged upon the filing of a Discharge Certificate confirming that the Interim Receiver has completed its remaining duties. This is appropriate in the circumstances.
- [8] The release of the Interim Receiver provided for upon its discharge appropriately excludes gross negligence and willful misconduct, as is the practice of this court for these orders.
- [9] The approval of the Interim Receiver's Second and Final Report dated March 20, 2025 and the activities of the Receiver described therein has been made subject to the standard qualification that has become the Commercial List practice to include in these types of orders. The final statement of receipts and disbursements appears to be in order, with the benefit of explanations provided during the hearing from counsel for Addenda.

- [10] It has become the practice of the court to periodically approve the activities of its court appointed officers to ensure that their activities are being conducted in a prudent and diligent manner, and it is within the court's inherent jurisdiction to do so: see *Target Canada Co. (Re)*, 2015 ONSC 7574, at para. 23.
- [11] The professional fees claimed for the Interim Receiver and both of its counsel are supported by fee affidavits and reflect the work that has been done since its appointment, and reasonable estimates of work to be completed until its discharge. The fees are commensurate with the tasks performed and the Interim Receiver considers the fees and hourly rates to be reasonable. I find them to be fair, reasonable and justified in the circumstances. See *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at paras 33 and 44-45.
- [12] The Interim Receiver believes that the Fee Accruals are sufficient and necessary to cover its fees and the fees of its counsel to the completion of these proceedings. Addenda, the fulcrum creditor, was consulted about and has approved the fees and Fee Accruals.

Appointment Order

- [13] I find the appointment of BDI as Receiver, with enhanced powers including to market and sell the Property, to be just and convenient, pursuant to both section 243(1) of the *Bankruptcy and Insolvency Act* (the "BIA") and section 101 of the *Courts of Justice Act*, having regard to "all of the circumstances, but in particular the nature of the property and the rights and interest of all parties in relation thereto", and for the other reasons outlined in paragraphs 15-20 of Addenda's factum.
- [14] The need for the appointment of a Receiver with the power to sell the Property is evident from, among other things, the lack of engagement of the Debtors, the increased mortgage debt that has accrued since the appointment of the Interim Receiver (despite the efforts of the Interim Receiver to stabilize the Property and maintain cash flows from rental income), and the maturity of the First Charge.

Orders

- [15] I have granted the Discharge Order and Appointment Order signed by me today, both dated March 26, 2025.



KIMMEL J.
March 27, 2025