Court File No.: BK-25-03236991-0035
District of: Ontario
Division No.: 08-Waterloo
Court No.: 35-3236991
Estate No.: 35-3236991

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

IN THE MATTER OF THE BANKRUPTCY OF
RHH RENTAL PROPERTIES LTD.
of the City of Guelph, in the Province of Ontario

FACTUM OF THE MOVING PARTY, DELOITTE RESTRUCTURING INC., AS TRUSTEE IN BANKRUPTCY OF RHH RENTAL PROPERTIES LTD.

(Special Appointment scheduled for May 20, 2026)

McMILLAN LLP
Brookfield Place
181 Bay Street, Suite 4400
Toronto, ON M5J 2T3

Jeffrey Levine LSO#: 55582H
jeffrey.levine@mcmillan.ca
Tel: 416.865.7791

Christopher Keliher
christopher.keliher@mcmillan.ca
Tel: 403-531-4724

Reuben Rothstein LSO#: 77795F
reuben.rothstein@mcmillan.ca
Tel: 416.865.7033

Lawyers for Deloitte Restructuring Inc., as Trustee in Bankruptcy for RHH Rental Properties Ltd.

TO: **THE SERVICE LIST**

TABLE OF CONTENTS

Page No.

Court File No.: BK-25-03236991-0035
District of: Ontario
Division No.: 08-Waterloo
Court No.: 35-3236991
Estate No.: 35-3236991

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

IN THE MATTER OF THE BANKRUPTCY OF
RHH RENTAL PROPERTIES LTD.
of the City of Guelph, in the Province of Ontario

FACTUM OF THE MOVING PARTY, DELOITTE RESTRUCTURING INC., TRUSTEE IN BANKRUPTCY OF RHH RENTAL PROPERTIES LTD.

(Special Appointment scheduled for May 20, 2026)

PART I - OVERVIEW

1. This motion is about funding a bankruptcy administration with real assets upon which to realize but that presently has insufficient funding to pursue those realizations.

2. RHH Rental Properties Ltd. ("**RHH**" or the "**Bankrupt**") was a Guelph-based residential real estate developer. It raised over $110 million from retail investors, failed to repay them, and filed a voluntary assignment in bankruptcy on June 18, 2025. Its bank accounts were overdrawn. Its principal, Scott Reid, is personally bankrupt. Multiple creditors have alleged fraud.

3. Deloitte Restructuring Inc. (the "**Trustee**") was appointed at the first meeting of creditors on July 7, 2025, replacing BDO Canada Limited ("**BDO**"). The Trustee's independent legal counsel is McMillan LLP ("**McMillan**"). Since appointment, the Trustee has identified several

assets with meaningful recovery potential, including real estate interests in Stratford, Guelph, London, and Mississauga, but the estate has almost no funding for the professional fees necessary to effect that recovery. The Trustee and McMillan have been working without fee security since July 2025.

4. Three orders sought from this Court will allow the Trustee further the administration of the estate for the benefit of all stakeholders:

(a) a first-priority charge over all of RHH's assets (the "**Administration Charge**") to secure the fees and disbursements of the Trustee and McMillan;

(b) an order approving a share purchase agreement (the "**Labelle Transaction**") for the sale of RHH's 25% interest in LaBelle/RHP Stratford Inc. to Labelle Stratford Inc., (the "**Purchaser**") together with a sealing order over the purchase price; and

(c) an order staying all proceedings by RHH's secured creditors against RHH and its property for a period of six months (or such other period as this Court may deem just), without prejudice to any secured creditor's right to apply to this Court for relief from such stay.

5. All three orders are supported by RHH's inspectors.

PART II - FACTS

A. RHH Filed for Bankruptcy in June 2025

6. Before its bankruptcy, RHH was in the business of developing residential rental properties, such as condominiums and townhouses, primarily in southern Ontario. RHH was controlled by

Scott Reid. At the time of its bankruptcy, RHH had a number of development projects ongoing or fully complete.[1]

7. RHH filed a voluntary assignment in bankruptcy on June 18, 2025 (the "**Bankruptcy Date**"), unable to repay investors as obligations came due and unable to satisfy its obligations to the CRA. BDO initially consented to act as RHH's licensed insolvency trustee in its bankruptcy proceeding.[2]

8. The first meeting of creditors occurred on July 7, 2025 (the "FMOC"), during which creditors voted to substitute Deloitte Restructuring Inc. for BDO. Deloitte's appointment as licensed insolvency trustee was confirmed by the Official Receiver effective July 7, 2025 (the "**Appointment Date**").[3]

B. RHH Has Assets That Can Generate Material Recoveries for Creditors

9. Presently, the Trustee understands that the estate holds two principal assets, among other assets, with recovery potential:

(a) **LaBelle/RHP Stratford**: RHH holds a 25% minority interest in LaBelle/RHP Stratford Inc., ("**LaBelle/RHP Stratford**"), an Ontario corporation that owns a fully built, fully occupied 52-unit apartment building in Stratford, Ontario; and

(b) **45 Agnes**: an indirect 40% equity interest in a large condominium project located at 45 Agnes Road in Mississauga near the Cooksville Go Station.

---

[1] First Report of the Trustee dated May 13, 2026 (the "**First Report**"), paras. 2 and 3.
[2] First Report, para. 1.
[3] First Report, para. 4.

10. As of the date of the First Report, RHH's assets also include approximately $208,000 in cash held in the Trustee's trust account.[4]

C. 133 Creditors Have Filed Claims Totaling $117.3 Million

11. The Trustee has received 133 claims from creditors, comprising 127 unsecured claims totaling $99,378,489.78 and 6 secured claims totaling $17,932,962.75, for a combined total of $117,311,452.53.[5]

12. One secured claimant has asserted a secured claim of approximately $13.8 million. If the secured claims are validated, they will rank in priority to the approximately $99 million in unsecured claim and in priority to the costs of administration.

13. The Trustee and McMillan have yet to meaningfully assess the proofs of claim. All purported secured claims appear on the *Personal Property Security Act* registry, but additional legal and factual analysis is required to confirm the status of each.[6]

D. The Trustee Cannot Responsibly Advance This Administration Without a Priority Charge

14. When the Trustee was appointed at RHH's FMOC, BDO had already taken possession of certain of RHH's assets, including causes of action and claims in respect of related entities, as there was no cash remaining in RHH's bank accounts as at the Date of Bankruptcy.[7]

---

[4] First Report, paras. 2 and 14.
[5] First Report, para. 25.
[6] First Report, paras. 26-30.
[7] First Report, para. 49.

15. The Trustee and McMillan have performed significant work without any security for their fees.[8] That work has generated approximately $500,000 in fees outstanding (the "**Outstanding Fees**") for which there is presently no funding out of available estate assets after accounting for potential secured creditor claims.[9]

16. There is a real cost associated with the Trustee's efforts to date, and those of its legal counsel, to understand even at a high level the extent of the Bankrupt's assets upon which the Trustee might realize proceeds for the benefit of all of RHH's creditors. At the same time, the Trustee has fielded questions from RHH's creditors, including those pursuing recovery from RHH's former officers and directors in an action in the Ontario Superior Court of Justice.[10]

17. RHH's apparent secured creditors would, absent the Administration Charge, recover from any realizations in priority to the Trustee and McMillan for their professional fees and disbursements.

18. Given the above facts, the Trustee has obtained the consent of RHH's inspectors to seek a charge over RHH's assets in priority to potential secured creditors.

19. If the Administration Charge is granted, the Trustee can fund the activities needed to maximize estate value for all stakeholders, including validating the secured claims, completing the Labelle Transaction, endeavouring to liquidate RHH's investment in the 45 Agnes project and investigating potential reviewable transactions.[11]

---

[8] First Report, para. 14.
[9] First Report, para. 51.
[10] First Report, para. 14.
[11] First Report, para. 55.

E. The Labelle Transaction is Fair and Should be Approved

20. RHH owns 250 shares of LaBelle-RHP. The Purchaser owns the remaining 750 shares. Together they hold all issued and outstanding equity of LaBelle-RHP.[12]

21. Before the Date of Bankruptcy, the Purchaser and RHH negotiated the terms of the Labelle Transaction. The Trustee has adopted those terms with inspector approval.[13]

22. The Trustee did not administer a sale process. Instead, it relied on two independent appraisals of the Stratford apartment building, issued in January 2025 by national real estate firms. The Trustee views those firms as credible. The Trustee then provided the appraisals to its valuations group, who confirmed the values are reasonable in light of current market conditions.[14]

23. The purchase price contained in the Share Purchase Agreement is the average of the two appraisals obtained by RHH and the Purchaser less certain amounts required to be paid pursuant to the Share Purchase Agreement and to retire the mortgage on the property owned by LaBelle-RHP.

24. Current market conditions support proceeding at the agreed price. Rental prices have declined modestly over recent quarters and capitalization rates have become less favorable for sellers. The agreed price likely represents a small premium over what could be achieved today.[15]

25. The Share Purchase Agreement dated May 11, 2026 appears in Appendix "D" to the First Report, redacted only as to the purchase consideration. The Trustee seeks a sealing order covering

---

[12] First Report, para. 58.
[13] First Report, para. 59.
[14] First Report, para. 62.
[15] First Report, para. 62.

the purchase price until closing. Disclosure before closing might serve as a ceiling for a purchase price in any future negotiation if the transaction does not proceed.[16]

F. A Six-Month Stay Will Protect the Estate's Realization Efforts

26. To date, no secured creditor of RHH other than 2599894 Ontario Inc. ("**259**") has taken any step toward enforcing on its security. Should this Court grant the requested priority charge, the Trustee requests a stay of proceedings by secured creditors of RHH for six months to permit the Trustee time to advance the administration of the estate without having its attention diverted to enforcement proceedings that may unknowingly be duplicative of its efforts.

PART III - ISSUES

27. This motion raises three issues:

(a) **Issue 1:** Should this Court grant the Administration Charge over RHH's assets in priority to existing secured creditors?

(b) **Issue 2:** Should this Court approve the Labelle Transaction and seal the purchase consideration?

(c) **Issue 3:** Should this Court stay proceedings by RHH's secured creditors for six months?

PART IV - LAW AND ARGUMENT

A. Issue 1: The Court Should Grant the Administration Charge

---

[16] First Report, para. 60.

1. The Court Has Inherent Jurisdiction Under to Grant the Charge

28. Section 136(1) of the BIA provides that, subject to the rights of secured creditors, the proceeds realized from the property of a bankrupt shall be applied in priority of payment. Within that waterfall, the costs of administration, including the expenses and fees of the trustee and legal costs, rank first. The general scheme therefore provides that a trustee's remuneration is to be paid from property that is not held in trust for others or subject to security. However, s. 136(1) does not exhaustively address priority disputes between trustees and secured creditors.[17]

29. That gap is filled by s. 183(1) of the BIA, which preserves this Court's inherent jurisdiction in bankruptcy proceedings. Courts have exercised that jurisdiction to grant a first-priority charge in favor of a trustee over estate assets, including assets subject to secured creditor claims, where doing so is necessary to protect the integrity of the administration and ensure the trustee receives reasonable compensation for work that benefits the estate.[18]

2. Courts Grant Trustee Charges When the *Kingsway* Factors Are Met

30. The leading authority confirming the court's inherent jurisdiction to impose a charge in favour of the trustee is *Kingsway General Insurance Company*.[19] In *Kingsway*, the Alberta Court of Appeal confirmed that inherent jurisdiction exists under s. 183(1) of the BIA to grant a charge on property subject to undetermined trust claims for the trustee's fees and disbursements, notwithstanding the objection of the trust claimant.[20] While that jurisdiction must be exercised

---

[17] *Golfside Ventures Ltd (Re)*, 2023 ABKB 86 ("***Golfside***") at paras. 46-52.
[18] *Creative Wealth Media Finance Corp. et al.*, 2025 ONSC 4326 ("***Creative Wealth***"), at paras. 10 and 14; Golfside, at paras. 46–52.
[19] *Kingsway General Insurance Company*, 2006 ABCA 293 ("***Kingsway***").
[20] *Kingsway* at para. 29.

sparingly and only in appropriate circumstances,[21] the court confirmed it is just and practical to grant a charge for trustee fees where the trustee's participation furthers the equitable distribution of estate assets.[22] In exercising that discretion, courts should consider the following non-exhaustive factors:

(a) the strength of the secured or trust claim;

(b) the stage of proceedings and the effect of the order on them;

(c) the need to maintain the integrity of the bankruptcy process;

(d) realistic alternatives;

(e) the impact on the trust claimants, the trust property, and other creditors;

(f) the anticipated time and costs involved;

(g) limits that can be placed on the fees or charges; and

(h) the role of the trustee.[23]

31. The Alberta court applied *Kingsway* to a conventional secured claim dispute in *Golfside*. In that case, the opposing claimant was a builder's lien holder asserting a claim exceeding the value of all of the bankrupt's assets, and the charge was granted over its opposition. The court confirmed that section 136(1) of the BIA does not exhaustively address priority disputes between a trustee and secured creditors, leaving inherent jurisdiction available.[24] In support of the charge, the court found that: (a) trustees are fundamental to the bankruptcy system; (b) determining the validity and priority of claims has a real cost; (c) trustees are entitled to reasonable compensation for their problem solving and exercise of judgment; and (d) failing to grant the order would have

---

[21] *Kingsway* at para. 33.
[22] *Kingsway*, at paras. 39–41.
[23] *Kingsway* at para. 37.
[24] *Golfside* at para. 47.

a chilling effect on trustees who face unexpected secured claims post-appointment.[25] The court granted the trustee a first-priority charge over the bankrupt's assets in priority to the opposing lienholder.[26]

32. This Court applied and extended *Kingsway* and *Golfside* in *Creative Wealth Media Finance Corp. et al*.[27] In that case, this Court exercised its inherent jurisdiction to permit a trustee's fees and disbursements (both incurred to date and on a go-forward basis) to be paid from estate funds subject to unresolved trust and secured creditor claims.[28] The Court confirmed that two preconditions must be met before inherent jurisdiction is available: first, the BIA must be silent or not have dealt with the matter exhaustively; and second, after weighing competing interests, the benefit of the relief must outweigh the prejudice to those affected.[29] The Court found both preconditions satisfied. The BIA had not exhaustively addressed the matter of trustee fees where estate funds are subject to both trust and secured claims, and the trustee was uniquely situated to maximize recoveries for all claimants.[30] The Court also noted that determining the validity and priority of competing claims has a real cost; one for which trustees are entitled to receive reasonable compensation.[31] The motion was widely served and unopposed[32] and the Court granted the order.[33]

---

[25] *Golfside* at para. 49.
[26] *Golfside* at paras. 51–52.
[27] *Creative Wealth* at paras. 7 and 19.
[28] *Creative Wealth* at paras. 7 and 19.
[29] *Creative Wealth* at para. 12.
[30] *Creative Wealth* at para. 15.
[31] *Creative Wealth* at para. 16.
[32] *Creative Wealth* at para. 18.
[33] *Creative Wealth* at para. 19.

3. All Eight *Kingsway* Factors Support the Administration Charge Here

33. Each factor favors granting the charge:

(a) **Strength of secured claims:** The six purported secured claimants appear on the PPSA Registry, but the Trustee has not validated any of their claims. Additional legal and factual analysis is required. The strength of those claims is unestablished, and that analysis requires funded professional resources the Administration Charge is intended to secure.

(b) **Stage of proceedings:** The bankruptcy proceeding is at a critical early stage. The Trustee has identified multiple avenues of recovery (the Labelle Transaction, the Demeter Bond investigation, and potential reviewable transactions) but cannot pursue any of them without funding.

(c) **Integrity of the bankruptcy process:** Numerous creditors have alleged financial impropriety by RHH and its senior management. The Trustee believes a forensic review is necessary, but such a review is not possible at this time given available funding.[34] Granting the charge is essential to ensuring the bankruptcy process functions as it should.

(d) **Realistic alternatives:** The Trustee explored whether a secured creditor might fund a receivership appointment, but that did not materialize. There is no viable alternative mechanism to secure the Trustee's compensation.[35]

---

[34] First Report, paras. 6 and 44.
[35] First Report, para. 54.

(e) **Impact on creditors:** The Administration Charge benefits all creditors. It enables the Trustee to undertake realizations from assets that are presently unmonetized, generating distributable proceeds across all creditor classes in accordance with the priority set out in the BIA. The requested relief will allow McMillan to conduct a security review of each of RHH's purported secured creditors, a step that protects unsecured creditors from inflated priority claims, and to advance asset realizations for transactions previously identified in the First Report. Granting the Administration Charge will also facilitate a robust asset tracing exercise that may further advance creditor interests and recoveries. Secured creditors benefit from an orderly, professional administration rather than a race to enforce.

(f) **Time and costs:** The Trustee proposes that fees and disbursements secured by the Administration Charge be subject to approval by the inspectors of RHH's estate, or in the absence of inspector consensus or in urgent circumstances, further order of this Court.

(g) **Limits on the charge:** The Trustee proposes that the quantum of the Administration Charge be subject to approval by RHH's inspectors or further order of this Court.

(h) **Role of the Trustee:** The Trustee is administering a complex estate involving alleged fraud, potential preference payments, unresolved priority disputes, and multiple development properties. It is uniquely positioned to recover value for all creditors. That work deserves compensation security.

34. The Trustee respectfully submits that the foregoing factors, taken together, compel the granting of the Administration Charge.

B. Issue 2: The Court Should Approve the Labelle Transaction and Seal the Purchase Price

1. The Labelle Transaction Should Be Approved

i. The Court Has Jurisdiction to Approve the Transaction

35. Under s. 30(1)(a) of the BIA, a trustee in bankruptcy has the power, with the permission of the inspectors, to sell or otherwise dispose of for or such price or other consideration as the inspectors may approve all or any part of the property of the bankrupt.[36]

36. While the BIA does not require court approval for a sale by a trustee that has inspector approval, where a trustee anticipates that interested parties may wish to make submissions in respect of the relief sought, the trustee may seek directions from the court under s. 34(1) of the BIA authorizing the sale to proceed.[37]

37. Here, the Trustee seeks the Court's express approval of the Labelle Transaction in light of the significance of the transaction to RHH's estate, the absence of a formal competitive sale process, and the need for the sealing order described below. Court approval will protect the Trustee, advance creditor confidence in the proceeding, and provide certainty of closing to the Purchaser.

---

[36] *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, ("**BIA**") s. 30(1)(a).
[37] See *Fantasy Construction Ltd., Re*, 2006 ABQB 357 at para. 10, where the court confirmed that while court approval of a trustee sale is not required, it may be prudent for a trustee who anticipates opposition from interested parties to seek directions from the court under s. 34(1) of the BIA; and at para. 13, the court granted such directions on the basis that the trustee had exercised reasonable business judgment in relation to the proposed sales.

ii. Courts Approve Sales Where the Trustee Acted Properly and Providently

38. Courts approve trustee and receiver sales where the court officer has acted properly and providently, and the process by which the sale was obtained was fair. The court should not second-guess the considered business decisions of its court officer and must place substantial weight on the court officer's commercial judgment.[38]

39. In applying that standard, the court considers whether: (a) the trustee made a sufficient effort to obtain the best price and did not act improvidently; (b) the interests of all parties were taken into account; (c) the process was characterized by efficacy and integrity; and (d) there was no unfairness in the working out of the process.[39]

40. A formal competitive auction is not required. Where the court officer has satisfied itself through other commercially reasonable means that the purchase price is fair, the court will confirm the sale.[40]

iii. The Labelle Transaction Satisfies the Test

41. The Labelle Transaction satisfies the applicable legal standard for the following reasons:

---

[38] *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII (ONCA) ("***Soundair***") at pp. 8-9.
[39] *Soundair* at pp. 8-9.
[40] *Soundair* at p. 8-9; see also *Calpine Canada Energy Limited (Companies' Creditors Arrangement Act)*, 2007 ABQB 49, at para. 29, where the court held: "It is noteworthy that *Soundair* did not suggest that a formal auction process was necessary or advisable in every case, and the Court in fact referred to *Salima Investments Ltd v. Bank of Montreal* (1985), 1985 ABCA 191 (CanLII), 59 C.B.R. (N.S.) 242, 41 Alta. L.R. 58, 65 A.R. 372, 21 D.L.R. (4th) 473, where the Alberta Court of Appeal suggests that a court on an application to approve a sale is not necessarily bound to conduct a judicial auction."

(a) **Independent appraisals underpin the price:** Two national real estate firms independently appraised the Stratford apartment building in January 2025. The appraisers are credible and at arm's length from both parties.

(b) **The Trustee's valuations group validated the price:** As an additional check on value, the Trustee provided the existing appraisals to specialists in its valuations group. They confirmed the values are reasonable given current market conditions.

(c) **Current market conditions favor closing now:** Third, current market conditions support proceeding promptly on the agreed terms. Rental prices have declined modestly over the last several quarters and capitalization rates have become less favorable for sellers, such that the previously agreed price likely represents a small premium over what could be negotiated in today's rental environment. For this reason, the Trustee is comfortable to proceed with the previously agreed price and recommends that the Court approve its request.

(d) **The transaction is structured appropriately:** The shares are being sold on an "as is, where is" basis. Representations are limited to those included in the Share Purchase Agreement and are appropriate for an insolvency sale.

(e) **The inspectors have approved:** The Inspectors of RHH's estate reviewed and approved the terms of the Labelle Transaction on April 8, 2026.

(f) **The Purchaser is the obvious counterparty:** The Purchaser already holds the remaining 75% of LaBelle-RHP. Selling to an existing majority shareholder

reduces execution risk, avoids third-party due diligence complications, and eliminates the need for a shareholder buy-in process.[41]

42. For these reasons, the Labelle Transaction represents a proper exercise of the Trustee's business judgment, was conducted on a fair and commercially reasonable basis, and is in the best interests of RHH's estate and its creditors.

2. The Purchase Price Should Be Sealed Until Closing

43. This Court has jurisdiction to grant sealing orders under Section 137(2) of the *Courts of Justice Act*, RRO 1990, c C. 43, s 137(2), as well as under s. 183(1) of the BIA and the Court's inherent jurisdiction over its own process.[42]

44. In *Sherman Estate v. Donovan*, the Supreme Court of Canada established the governing framework for sealing orders. The court confirmed that the open court principle is a fundamental feature of the Canadian justice system, but that it may be limited where the moving party establishes the following three elements:

(a) court openness poses a serious risk to an important public interest;

(b) the sealing order is necessary to prevent that risk, in that reasonably alternative measures will not prevent the risk; and

(c) as a matter of proportionality, the benefits of the sealing order outweigh its negative effects.[43]

45. Commercial confidentiality can constitute an "important public interest" where disclosure would harm the administration of an insolvency proceeding and, in turn, the creditors the

---

[41] First Report, para. 62.
[42] *Courts of Justice Act*, RRO 1990, c C. 43, s 137(2); *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, ("**BIA**") s. 183(1).
[43] *Sherman Estate v. Donovan*, 2021 SCC 25, at paras. 30-38.

proceeding protects. Where a disclosed sale price would cap or anchor future negotiations if the sale fails, courts have granted sealing orders on this basis.[44]

46. Here, the sealing order sought here is narrow and time-limited. It concerns only the purchase consideration in the Labelle Transaction, and only for the period up to closing. Moreover, all three *Sherman Estate* elements are satisfied:

(a) **Serious risk to an important public interest:** If the purchase price is disclosed and the Labelle Transaction does not close, any future purchaser will use the disclosed price as a ceiling in negotiations. This directly harms the estate's approximately 127 unsecured creditors with combined claims of nearly $99.4 million. Maximizing creditor recovery is an important public interest in insolvency.

(b) **Necessity:** There is no alternative short of a sealing order that would prevent the harm described above. A confidentiality undertaking binding counsel alone cannot protect against the public nature of court filings. The redaction of only the price, while the remainder of the agreement is publicly available, is the least restrictive means of achieving the objective.

(c) **Proportionality:** The sealing order is time-limited and scope-limited. It covers only the purchase price and only until closing. The remainder of the First Report and the Share Purchase Agreement will be publicly available. The minimal

---

[44] *GE Canada Real Estate Financing Business Property Co. v. 1262354 Ontario Inc.*, 2014 CarswellOnt 2113 at paras. 32-35.

limitation on court openness is outweighed by the protection afforded to estate creditors.

C. Issue 3: Stay of Proceedings Against Secured Creditors

1. Section 69.3(2) of the BIA Grants This Court the Power to Stay

47. On bankruptcy, s. 69.3(1) of the BIA imposes an automatic stay: no creditor has any remedy against the bankrupt or the bankrupt's property, or may commence or continue any action, execution, or other proceedings, for the recovery of a claim provable in bankruptcy.

48. Secured creditors are not automatically stayed by s. 69.3(1). Section 69.3(2) preserves a secured creditor's right to realize or otherwise deal with its security as if s. 69.3 had not been passed. However, the court has discretion to otherwise order, that is, to stay secured creditor enforcement, subject to statutory time limits under s. 69.3(2)(a)-(b).

49. The Trustee acknowledges that the six-month maximum period under s. 69.3(2)(a) expired on December 18, 2025. To the extent any of RHH's secured debts fall within that provision, the Trustee relies on this Court's inherent jurisdiction under s. 183(1) as an independent and sufficient basis for ordering the stay.

2. Courts Grant This Stay When There Are "Very Cogent Reasons"

50. The case law on s. 69.3(2) of the BIA and its predecessor provision is sparse but clear: the court will only stay secured creditor enforcement when the trustee presents "very cogent reasons". Three cases establish and develop this standard.

51. This Court established the "very cogent reasons" standards in *Dunham, Re*.[45] There, this Court confirmed that a secured creditor has a right to deal with its security notwithstanding bankruptcy, and held that the court should only interfere with that right where there are very cogent reasons.

52. *Re Dominion Lock Co*, confirmed and extended the Dunham standard.[46] The court reaffirmed that courts should only intervene under the predecessor provision to s. 69.3(2) in exceptional circumstances (for "very cogent reasons").[47] Furthermore, the court confirmed that courts retain the power to grant a stay at any point before the secured assets have been finally disposed of.[48] The court endorsed the principle from *Re Les Pharmacies Modernes Inc.* that a stay is appropriate whenever it would benefit creditors to give the trustee and inspectors an opportunity to assess the position and devise a plan whereby the secured creditor could be paid out without undue depression of the remaining assets.[49]

53. Finally, in *Winroc Supplies Ltd. v. Willows Golf Corp.*, a case arising in the context of a proposal proceeding, the court applied the predecessor provision to section 69.3(2).[50] It confirmed that the power to postpone secured creditor enforcement rights under the old Bankruptcy Act is equivalent to the power under s. 69.3(2) of the current BIA, and that this power extends to debts due at the date of bankruptcy.[51] The court granted a stay of up to six months from the date the

---

[45] *Dunham, Re* (1981), 40 CBR (NS) 25 (Ont SC) ("***Dunham***") at para 2.
[46] *Re Dominion Lock Co.*, 1985 CarswellQue 33 (Que SC) ("***Dominion Lock***").
[47] *Dominion Lock* at para. 30.
[48] *Dominion Lock* at paras. 19 and 27.
[49] *Dominion Lock* at para. 16.
[50] *Winroc Supplies Ltd. v. Willows Golf Corp.*, 1993 CarswellSask 22 (Sask QB) ("***Winroc***") at paras. 11-12.
[51] *Winroc* at addendum, para. 20, which, although not included in the CanLII version of this case, is referenced at para. 17 thereof and reads: "For clarification of the second full paragraph on p. 5 of my fiat [p. 204], add to that paragraph the words: This power, in old s. 69(2), is similar to the power of the court to postpone the rights of secured creditors set out in s. 69.3(2) of the new Bankruptcy and Insolvency Act. So whether the lienholders are now governed by the

receiving order was granted, holding that to allow the secured creditor to proceed with its sale before creditors had an opportunity to consider a proposal would be contrary to the intentions of the BIA.[52]

3. Five Cogent Reasons Support a Six-Month Stay Here

54. There are very cogent reasons to grant this stay:

(a) First, the Trustee is actively engaged in a multi-faceted realization effort that will benefit all creditors, secured and unsecured alike. If the Administration Charge is granted, the Trustee's planned activities include: completing the Labelle Transaction; endeavouring to liquidate RHH's investment in the 45 Agnes project; advancing investigations necessary to evaluate the Redemption Bond; carrying out additional reviews of the activity in RHH's pre-bankruptcy bank accounts; and determining whether there are other potential sources of recovery via potential litigation. Uncoordinated enforcement by secured creditors would directly impede these efforts.

(b) Second, a stay will permit time for the Trustee to progress realizations for the benefit of all creditors without concern for having to race against any secured creditors pursuing self-help remedies that may undermine the Trustee's efforts.

---

old or the new Act is immaterial - the powers of the court to postpone are the same with respect to debts due at the date of bankruptcy."

[52] *Winroc* at paras. 13 and 16.

(c) Third, the stay is temporary and appropriate in duration. A six-month stay is reasonable and proportionate given the scope of the realization activities the Trustee has undertaken and the work that remains to be completed.

(d) Fourth, the inspectors of the Bankrupt's estate approve of the Trustee bringing this motion. Inspector approval is an additional safeguard that lends legitimacy and credibility to the request for a stay.

(e) Fifth, the risk of piecemeal enforcement in the present circumstances is particularly acute. It is important to review the validity of the claims submitted so that the overall economics and creditor-class recoveries of RHH's estate can be more accurately ascertained. This is particularly important in the case of RHH given the allegations of financial impropriety that have been expressed to the Trustee by multiple RHH creditors. Secured creditor enforcement during the stay period could destroy value, disrupt ongoing negotiations with counterparties, and foreclose recovery opportunities that would otherwise benefit all stakeholders.

PART V - ORDER REQUESTED

55. For the foregoing reasons, the Trustee respectfully requests that this Court make an order:

(a) granting the Administration Charge as a first-priority charge over all of the property of RHH and the proceeds thereof, in priority to all other security interests, liens, charges, mortgages, and encumbrances, to secure the fees and disbursements of the Trustee and McMillan, subject to approval of such fees and disbursements by the inspectors of RHH's estate or further order of this Court;

(b) approving the Labelle Transaction and the Share Purchase Agreement as described in the First Report;

(c) granting a sealing order in respect of the purchase consideration in the Labelle Transaction, such sealing order to remain in effect until the earlier of: (i) closing of the Labelle Transaction; and (ii) further order of this Court;

(d) staying all proceedings by secured creditors of RHH against RHH or its property for a period of six months from the date of this Order, without prejudice to any secured creditor's right to apply to this Court for relief from such stay on notice to the Trustee; and

(e) such further and other relief as counsel may advise and this Honourable Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of May, 2026.

Reuben Rothstein

McMILLAN LLP

Jeffrey Levine
Christopher Keliher
Reuben Rothstein

Lawyers for Deloitte Restructuring Inc.,
as Trustee in Bankruptcy of
RHH Rental Properties Ltd.

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Golfside Ventures Ltd (Re)*, 2023 ABKB 86;

2. *Creative Wealth Media Finance Corp. et al.*, 2025 ONSC 4326;

3. *Kingsway General Insurance Company*, 2006 ABCA 293;

4. *Fantasy Construction Ltd., Re*, 2006 ABQB 357;

5. *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII (ONCA);

6. *Calpine Canada Energy Limited (Companies' Creditors Arrangement Act)*, 2007 ABQB 49;

7. *Sherman Estate v. Donovan*, 2021 SCC 25;

8. *GE Canada Real Estate Financing Business Property Co. v. 1262354 Ontario Inc.*, 2014 CarswellOnt 2113; and

9. *Winroc Supplies Ltd. v. Willows Golf Corp.*, 1993 CarswellSask 22 (Sask QB).

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date May 13, 2026

Signature

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS*Bankruptcy and Insolvency Act*, RSC 1985, c B-3, ss. 30(1)(a), 30(2), 34(1), 69.3(2), 136(1), 183(1)

Powers exercisable by trustee with permission of inspectors

30 (1) The trustee may, with the permission of the inspectors, do all or any of the following things:

(a) sell or otherwise dispose of for such price or other consideration as the inspectors may approve all or any part of the property of the bankrupt, including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt, by tender, public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;

Permission limited to particular thing or class

(2) The permission given for the purposes of subsection (1) is not a general permission to do all or any of the things mentioned in that subsection, but is only a permission to do the particular thing or things or class of thing or things that the permission specifies.

Trustee may apply to court for directions

34 (1) A trustee may apply to the court for directions in relation to any matter affecting the administration of the estate of a bankrupt and the court shall give in writing such directions, if any, as to it appear proper in the circumstances.

Stays of proceedings — bankruptcies

69.3 (1) Subject to subsections (1.1) and (2) and sections 69.4 and 69.5, on the bankruptcy of any debtor, no creditor has any remedy against the debtor or the debtor's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy.

Priority of claims

136 (1) Subject to the rights of secured creditors, the proceeds realized from the property of a bankrupt shall be applied in priority of payment as follows:

(a) in the case of a deceased bankrupt, the reasonable funeral and testamentary expenses incurred by the legal representative or, in the Province of Quebec, the successors or heirs of the deceased bankrupt;

(b) the costs of administration, in the following order,

(i) the expenses and fees of any person acting under a direction made under paragraph 14.03(1)(a),

(ii) the expenses and fees of the trustee, and

(iii) legal costs;

Courts vested with jurisdiction

183 (1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

(a) in the Province of Ontario, the Superior Court of Justice;

(b) [Repealed, 2001, c. 4, s. 33]
(c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;
(d) in the Provinces of New Brunswick and Alberta, the Court of Queen's Bench;
(e) in the Province of Prince Edward Island, the Supreme Court of the Province;
(f) in the Provinces of Manitoba and Saskatchewan, the Court of Queen's Bench;
(g) in the Province of Newfoundland and Labrador, the Trial Division of the Supreme Court; and
(h) in Yukon, the Supreme Court of Yukon, in the Northwest Territories, the Supreme Court of the Northwest Territories, and in Nunavut, the Nunavut Court of Justice.

2. *Courts of Justice Act*, RRO 1990, c C. 43, s 137(2)

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

SCHEDULE "C"

LIST OF AUTHORITIES (NOT AVAILABLE ON CANLII)

1. *Dunham, Re* (1981), 40 CBR (NS) 25 (Ont SC); and

2. *Re Dominion Lock Co.*, 1985 CarswellQue 33 (Que SC).

1981 CarswellOnt 217
Ontario Supreme Court, In Bankruptcy

Dunham, Re

1981 CarswellOnt 217, 40 C.B.R. (N.S.) 25

Re DUNHAM

Ferron, Registrar

Heard: November 10, 1981
Judgment: November 17, 1981

Counsel: *J.W.V. Craig, Q.C.*, for the Royal Bank.
T.M. Peacock, for trustee.

Subject: Corporate and Commercial; Insolvency
Related Abridgment Classifications
Bankruptcy and insolvency
X Priorities of claims
X.1 Secured claims
X.1.d Dealings with security after bankruptcy
Headnote
Bankruptcy --- Priorities of claims — Secured claims — Dealings with security after bankruptcy — Stay of realization
Secured creditors — Realization of security — Application by trustee to postpone rights of secured creditor — Considerations.
The trustee had an offer to purchase the bank's security, which consisted of shares in an off-shore corporation, but required a postponement to permit the purchaser to arrange financing. Accordingly, the trustee brought an application under s. 49(2) of the Bankruptcy Act for an order postponing the right of the bank to realize on its security.
Held:
Application dismissed.
The application was originally returnable more than two weeks earlier and there was nothing in the material to suggest that significant progress in connection with the financing had been made in the interim. The security of the bank was in jeopardy. Even if financing were available, and obtained by the proposed purchaser, it would be doubtful whether the trustee would be entitled to redeem the bank's position in the face of a valid and subsisting contract between the bank and a third party.
A secured creditor, notwithstanding the debtor's bankruptcy, has a right to deal with its security. The court should interfere with that right only where there are very cogent reasons.
Table of Authorities
Statutes considered:
Bankruptcy Act, R.S.C. 1970, c. B-3, s. 49(2).

Application by trustee for order postponing rights of secured creditor to realize on security.

***Ferron*, Registrar (orally):**

1 This is an application referred to me by Steele J. in his endorsement dated 3rd August 1981. The application is brought under s. 49(2) of the Bankruptcy Act, R.S.C. 1970, c. B-3 for an order postponing the right of the bank to realize on its security.

2 A secured creditor notwithstanding the bankruptcy has a right to deal with its security and there must be very cogent reasons existing in order for the court to interfere with that right. In this matter the trustee has an offer to purchase the bank's

security, that is, the shares in Welcome Inn (Barbados) Limited, held by the bank as security, but requires a postponement to permit the purchaser to arrange financing.

3 The application was originally returnable on 23rd October, at which time the material suggests that postponement of some two months will be necessary. At this date no new material has been filed by the applicant and I am left to speculate as to the progress made, if any, in connection with financing. I suspect that there has been little progress since, if there were some substantial progress, I am sure that the material would have been filed to so indicate.

4 It is the right of the bank to deal with its security, which is in jeopardy on this application. Even if financing were available and obtained by the proposed purchaser from the trustee the trustee would then have to redeem the bank's position, and in the face of a valid and subsisting contract between the bank and James Worsick, the bank's position would be intolerable. It would in effect be forced to default on a contract with whatever consequences attended that default.

5 Here, in fact, in my opinion, there has been a sale by reason of the contract and the court ought not to interfere at this point in that sale. Accordingly the application is dismissed.

6 The costs of the bank on a party-and-party basis will be out of the assets of the estate, with the usual order as to the trustee's costs.

Application dismissed.

KeyCite treatment
Most Negative Treatment: Distinguished
Most Recent Distinguished: Westerman, Re | 1999 ABQB 708, 1999 CarswellAlta 861, 275 A.R. 114, 74 Alta. L.R. (3d) 183, 13 C.B.R. (4th) 296, 91 A.C.W.S. (3d) 344, [2000] 2 W.W.R. 406 | (Alta. Q.B., Sep 23, 1999)

1985 CarswellQue 33
Quebec Superior Court

Dominion Lock Co./Cie Dominion Lock, Re

1985 CarswellQue 33, [1985] C.S. 517, 56 C.B.R. (N.S.) 148, J.E. 85-585

Re DOMINION LOCK COMPANY LTD./COMPAGNIE DOMINION LOCK LIMITÉE; FRIEDMAN v. ROYAL BANK OF CANADA et al.

Dugas J.

Judgment: April 4, 1985
Docket: Montreal No. 500-11-000081-857

Counsel: *R.P. Charlton*, for Royal Bank of Canada and Roylease Ltd.
P. Fournier, for Simpson Hardware Company Inc.
M.-C. Papillon, for General Trust and Samson Bélair Inc.
A. Shuster and *R. Gagnon*, for petitioner.
P. Blaikie, for Unican Security Systems Inc.

Subject: Corporate and Commercial; Insolvency
Related Abridgment Classifications
Bankruptcy and insolvency
X Priorities of claims
X.1 Secured claims
X.1.d Dealings with security after bankruptcy
Headnote
Bankruptcy --- Priorities of claims — Secured claims — Dealings with security after bankruptcy — Stay of realization
Secured creditors — Stay of proceedings — Realization of security — Court having jurisdiction to realization at request of trustee.
The trustee requested the court to order various secured creditors to suspend, for a ninety-day period, the realization of their security on the property of the bankrupt. The trustee affirmed that he was about to obtain an offer which would put him in sufficient funds to pay all the secured creditors and have an excess, for the benefit of the unsecured creditors, in an amount of $550,000. One of the secured creditors had already taken possession and argued, by way of a preliminary objection, that the court was without jurisdiction to deal with that creditor and could no longer order suspension of realization already commenced.
Held:
Court having jurisdiction.
The jurisprudence relied upon by the secured creditor to support the contention that the court no longer has jurisdiction to order the suspension of proceedings is to be applied with caution. The scheme of the Bankruptcy Act requires that where a taking of possession has occurred, but assets have not yet been disposed of, the trustee should be permitted, in appropriate circumstances, to obtain a delay for purposes of seeking offers which would put him in funds to redeem the security. It would be inconsistent with the entire philosophy of the Act if, after having expressly permitted the trustee to redeem security, the Act did not permit reasonable delays to determine the extent to which he may obtain offers which would put him in funds to do so. Accordingly, even if realization has commenced, the trustee may still intervene as long as the property subject to the security has not been disposed of, and the court has the discretionary power to so order.

1985 CarswellQue 33, [1985] C.S. 517, 56 C.B.R. (N.S.) 148, J.E. 85-585

Table of Authorities

Cases considered:

Broydon Printers Ltd., Re (1974), 4 O.R. (2d) 48, 19 C.B.R. (N.S.) 226, 47 D.L.R. (3d) 43 (S.C.) — *followed*

Centre de Golf Montpellier Inc., Re; Hébert v. Trust Gén. du Can., Que. C.A., Montreal No. 09-000498-72, 22nd March 1972 (not reported) — *distinguished*

Côté (Jean-Guy) Ltée, Re; Verroeulst v. Trust Gén du Can., Que. S.C., Jacques J., Quebec City No. 200-11-000337-74, 27th March 1979 (unreported) — *not followed*

Dunham, Re (1981), 40 C.B.R. (N.S.) 25 (Ont. S.C.) — *considered*

Les Pharmacies Modernes Inc., Re; Zwaig v. Banque Can. Nat. (1975), 19 C.B.R. (N.S.) 161 (C.S. Que.) — *followed*

Victoriaville Furniture, Re; Swaig v. Montreal Trust, Que. S.C., Ryan J., Montreal No. 500-09-000904-778, 18th August 1977 (unreported) — *not followed*

Statutes considered:

Bankruptcy Act, R.S.C. 1970, c. B-3, ss. 2 "goods", 47, 49(1)(2), 57, 98, 101, 103(1), 105.

Civil Code of Quebec, art. 1981.

Motion by trustee to suspend realization by secured creditors; application by secured creditor to dismiss motion.

***Dugas J.*:**

1 Le syndic à la faillite de Dominion Lock Company Limited demande au tribunal d'ordonner aux créanciers garantis et à leurs agents de sursoir à la réalisation de leurs garanties et à la vente des biens nantis. La demande invoque les art. 49(2), 57 et 98 à 105 de la Loi sur la faillite.

2 In limine litis, les intimés s'attaquent à la requête du syndic et contestent sa recevabilité au motif que le tribunal serait sans compétence pour rendre l'ordonnance depuis que Simpson Hardware Company Inc. ("Simpson"), par son agent, Samson et Bélair Inc. ("Samson"), a pris possession des biens nantis et entrepris d'en disposer.

3 La débitrice a été mise en faillite le 13 février 1985. L'intimée Simpson, invoquant défaut de la débitrice de remplir les obligations qu'elle a assumées dans un acte d'obligation assorti d'une garantie fiduciaire, a demandé au fiduciaire de prendre possession. Le trust a pris possession des immeubles, machinerie, équipement et inventaire visés par le nantissement le 28 décembre 1984.

4 La requête pour ordonnance de séquestre fut déposée le 11 janvier 1985. A sa présentation, le 23 janvier, la débitrice demanda qu'elle soit reportée au 30 janvier. A cette date, elle n'obtint une nouvelle remise qu'à condition qu'un séquestre intérimaire soit installé. Le 13 février, la débitrice laissa procéder par défaut et une ordonnance de séquestre fut rendue contre elle. Le jour même le syndic présenta sa requête pour ordonnance de sursis.

5 L'ordonnance de séquestre intérimaire accordait au requérant des pouvoirs limités. On lui reconnaissait le droit de prendre et de dresser inventaire des actifs de la débitrice mais on lui refusait, par ailleurs, le droit d'intenter des procédures.

6 La présente requête demande que le tribunal impose aux créanciers garantis, pour une période de jours l'obligation de sursoir à toute procédure de réalisation de leurs garanties et leur interdise d'aliéner les biens nantis. Le syndic prétend avoir besoin de ce laps de temps pour évaluer les hypothèses qui s'offrent à lui et pour exercer les droits que lui reconnaissent les art. 57 et 99(1) de la Loi sur la faillite.

7 Le syndic affirme, au soutien de sa requête, et pour en démontrer le sérieux, qu'il est entré en pourparlers avec Unican Security Systems Ltd. et qu'il a reçu de cette compagnie une offre d'achat dont le montant lui permettrait de payer intégralement les créances garanties et de radier au bénéfice des créanciers ordinaires une somme additionnelle de $550,000.

8 Les allégués du syndic, qu'il faut tenir pour avérés, établissent clairement l'intérêt des créanciers à ce que le syndic bénéficie du sursis qu'il demande et dont il a besoin pour évaluer les garanties que détiennent les intimés et pour communiquer l'offre d'Unican aux créanciers et aux inspecteurs de la faillite.

9 Les intimés, cependant, soutiennent que le tribunal n'a pas compétence pour prononcer l'ordonnance, maintenant que Simpson a mis la débitrice en défaut et que le fiduciaire a pris possession.

10 1. L'opposition des créanciers intimés s'appuie principalement sur l'autorité d'un arrêt de notre Cour d'appel dans l'affaire *Re Centre de Golf Montpellier Inc.; Hébert c. Trust Gén. du Can.*, No. 09-000498-72 22 mars 1972 (inédit), et de deux jugements de cette cour dans l'affaire *Re Jean-Guy Côté Ltée; Verroeulst c. Trust Gén. du Can.* No. 200-11-000337-74, 1974 (inédit), et dans l'affaire *Re Victoriaville Furniture; Zwaig c. Montréal Trust* No 500-09-000904-78, 1978 (inédit).

11 Il est possible d'établir une distinction entre les faits de notre affaire et ceux de l'affaire *Victoriaville Furniture*. Ryan J. a tenu à souligner que le syndic ne s'était pas prévalu de l'art. 57 de la Loi sur la faillite et qu'il n'avait pas pu établir qu'il pourrait y avoir avantage à ce que le syndic vende les biens au bénéfice de la masse, ce qui laisse croire que la décision aurait pu être différente s'il en avait été autrement.

12 Il est aussi possible d'établir une distinction dans les faits avec l'arrêt *Centre de Golf Montpellier*, car le créancier avait disposé des biens nantis en acceptant la promesse d'achat de Paré avant la mise en faillite.

13 Il n'est cependant pas possible d'établir une distinction entre les faits de notre affaire et ceux de l'affaire *Jean-Guy Côté*.

14 Je reconnais que l'arrêt *Centre de Golf Monpellier* a soutenu que l'art. 49(2) ne peut pas être invoqué contre un créancier garanti qui a pris possession des biens sur lesquels il possède une garantie. Dans la mesure où les jugements rendus dans l'affaire *Victoriaville Furniture et Jean-Guy Côté* s'appuient sur *Montpellier*, ils ajoutent à l'autorité de l'arrêt *Montpellier*.

15 Mais — je le dis avec le plus grand respect — à cause des arts. 47(*d*), 57, 99(1), 99(3), 101 et 103(1), que ne mentionne pas l'arrêt *Montpellier*, je ne puis accepter que le syndic soit sans droit de demander une ordonnance de sursis selon l'art. 49(2) lorsque le créancier garanti a pris possession et n'a pas encore disposé de l'objet de sa garantie.

16 Je suis au contraire d'accord avec le jugement de mon collègue O'Connor dans l'affaire *Re Les Pharmacies Modernes Inc.; Zwaig c. Banque Can. Nat.* (1975), 19 C.B.R. (N.S.) 161 (C.S. Qué.), dans lequel il tient qu'il y a lieu d'accorder sursis chaque fois qu'il peut être avantageux pour les créanciers "to give to the trustee and the inspectors of the bankrupt estate an opportunity to assess the position and to devise a plan whereby the secured creditor could be paid out without undue depression of the balance of the assets" [p. 164].

17 Un jugement de Houlden J dans l'affaire *Re Broydon Printers Ltd.* (1974), 4 O.R. (2d) 48, 19 C.B.R. (N.S.) 226, 47 D.L.R. (3d) 43 (S.C.), va dans le même sens. Je me convainc que le tribunal peut intervenir selon l'art. 49(2) tant que n'est pas disparu le droit du débiteur de remédier à son défaut. Holden J. écrit [aux pp. 228-29]:

> In my opinion, it [s. 57] should not be given a narrow interpretation.
>
> The word "security" appears in s. 2 of the Bankruptcy Act in the definition of "secured creditor". Section 2 defines "secured creditor" to mean
>
> > ... a person holding a mortgage, hypothec, pledge, charge, lien or privilege on or against the property of the debtor or any part thereof as *security* for a debt due or accruing due to him from the debtor ...
>
> (The italics are mine.)
>
> It is in this wide sense that I believe the word "security" is used in s. 57.

> Ordinarily, property that is subject to the claim of a secured creditor will be in the possession of the debtor at the date of bankruptcy; hence the trustee will have no difficulty in inspecting it and obtaining full particulars in respect of it. If, however, the property is not in the debtor's possession but the bankrupt estate has an interest in it, the trustee to protect the interests of creditors should be permitted to carry out an inspection of it. If, after inspecting the property, the trustee believes there is an equity for the estate, then s. 57 preserves the right of redemption. By s. 99(3) of the Bankruptcy Act a trustee is given the right to redeem a security on payment to the secured creditor of the debt or the value of the security as assessed by the secured creditor.
>
> As I have said, I do not think s. 57 is intended to be restricted to property in the nature of a pledge or pawn. Rather, I believe the section is wide enough to include property of the bankrupt which is in the possession of a secured creditor at the date of bankruptcy. If this were not so, the trustee would be unable to protect the rights of creditors in respect of such property.
>
> "Property" is defined in s. 2 of the Bankruptcy Act to include
>
> > money, goods, things in action, land, and every description of property, whether real or personal, moveable or immoveable, legal or equitable, and whether situated in Canada or elsewhere and includes obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, in, arising out of, or incident to property.
>
> An equity of redemption in goods repossessed by a conditional vendor clearly comes within this definition.

18 Avec le plus grand respect pour l'arrêt *Montpellier*, supra, et les jugements qui l'ont suivi, je crois que les jugements *Pharmacies Modernes*, supra, et *Re Broydon*, supra, se concilient mieux avec l'économie de la Loi sur la faillite et ses dispositions expresses.

19 2. La thèse des intimés à l'effet que le tribunal est sans compétence pour imposer au créancier garanti de sursoir à la réalisation de sa garantie, se heurte aux textes mêmes de la Loi sur la faillite.

20 a. Les biens d'un failli constituent le gage commun de ses créanciers, selon l'art. 1981 du Code civil, ce que confirme l'art. 47 de la Loi sur la faillite dans son préambule: "Les biens d'un failli, constituant le patrimoine attribué à ses créanciers ..."

21 L'article 2 définit ce qu'il faut entendre par "biens" du failli:

> "biens" comprend les sommes d'argent, marchandises, droits, incorporels, terres, et biens de toute nature, réels ou personnels, meubles ou immeubles, en droit ou en *equity*, qu'ils soient situés au Canada ou ailleurs, ainsi que les obligations, servitudes et *toute espèce de droits*, *d'intérêts ou de profits*, présents ou futurs actuels ou *éventuels, dans les biens*, ou en provenant *ou s'y rattachant*. (Soulignés par moi-même.)

22 Cette définition est assez vaste pour inclure les pouvoirs que possède le syndic dans et sur les biens nantis. L'article 47 ajoute cependant:

> 47 Les biens d'un failli, constituant le patrimoine attribué à ses créanciers ... comprennent: ...
>
> (*d*) les pouvoirs sur des biens ou à leur égard, qui auraient pu être exercés par le failli pour son propre bénéfice.

23 Parmi ces pouvoirs du failli, il faut compter le pouvoir d'acquitter la dette et de libérer les biens nantis de la charge qui les frappe. La Loi sur la faillite traite, en effet, du pouvoir du syndic de "racheter une garantie ('redeem a security') sur paiement au créancier garanti de la créance ou de la valeur de la garantie telle qu'elle est fixée par créancier garanti" à l'art. 99(3), de "droit de rachat" ("right of redemption") à l'art. 57, de la "faculté de réméré" ("equity of redemption") à l'art. 101.

24 On ne saurait exiger du syndic qu'il exerce son droit d'effectuer le réméré des biens nantis à l'aveuglette. Aussi, la Loi sur la faillite lui octroie-t-elle certains pouvoirs d'enquête comme celui d'examiner les biens en la possession d'un créancier garanti et celui de forcer le créancier à établir la somme à laquelle il évalue sa garantie.

25 L'article 57 lui reconnaît le pouvoir d'examiner les biens nantis. Le syndic alléguait dans sa requête qu'il entendait se prévaloir de l'art. 57 et il a donné le 14 février l'avis annoncé au par. 13 de sa requête. L'article 57 se lit:

> 57. Lorsque des biens d'un failli sont détenus, à titre de gage, nantissement ou autre garantie, le syndic peut donner avis par écrit de son intention d'examiner les biens, et la personne avisée n'a pas le droit par la suite de réaliser sa garantie avant qu'elle ait procuré au syndic une occasion raisonnable de faire l'inspection des biens et d'exercer *son droit de rachat*. (Soulignés par moi-même.)

26 L'article 99(1) permet au syndic d'exiger du créancier garanti qu'il lui établisse "les détails complets de sa garantie ou de ses garanties ... et la valeur qu'il attribue à chacune", ce qui lui permettra d'exercer en pleine connaissance des faits son pouvoir qui lui est reconnu par l'art. 99(3) de racheter la garantie en payant le créancier. Le syndic alléguait dans sa requête qu'il entendait se prévaloir de l'art. 99(1) et il a donné l'avis prévu dès le 14 février.

27 La Loi reconnaît donc le droit du syndic d'intervenir à l'encontre du créancier même s'il a commencé à réaliser sa garantie pourvu qu'il n'ait pas encore disposé des biens nantis.

28 b. En principe, l'art. 49(2) permet au créancier garanti de "réaliser sa garantie ou autrement en disposer de la même manière qu'il aurait eu droit de la réaliser ou d'en disposer" sans la faillite du débiteur. Ce droit n'est cependant pas absolu, comme le démontrent les premiers mots de l'article: le droit de créancier de radier sa garantie ne lui est accordé que "sous réserve de l'article 57 et des articles 98 à 105". L'article 49(1), que je cite en entier, et l'art. 49(2), dont je ne cite que le début, se lisent:

> 49.(1) Lors de la déposition d'une proposition faite par une personne insolvable ou lors de la faillite de tout débiteur, aucun créancier ayant une réclamation prouvable en matière de faillite n'a de recours contre le débiteur ou contre ses biens, ne doit intenter ou continuer une action, exécution ou autres procédures pour le recouvrement d'une réclamation prouvable en matière de faillite, tant que le syndic n'a pas été libéré ou que la proposition n'a pas été refusée, sauf avec l'autorisation du tribunal et aux conditions que ce dernier peut imposer.
>
> (2) *Sous réserve de l'article 57 et des articles 98 à 105* un créancier garanti peut réaliser sa garantie ou autrement en disposer de la même manière qu'il aurait eu droit de la réaliser, ou d'en disposer si le présent article n'eût pas été adopté à moins que le tribunal n'en ordonne autrement ... (Soulignés par moi-même.)

29 L'article 49(2) reconnaît donc expressément le pouvoir d'intervention du tribunal pour contrôler l'exercice par le créancier garanti de son droit de réaliser sa garantie. Il faut noter que l'art. 57 interdit déjà au créancier garanti de réaliser sa garantie si le syndic lui a donné l'avis qu'il entend examiner les biens donnés en garantie. Il s'agit donc d'un pouvoir d'intervention discrétionnaire et qui peut être exercé par le tribunal en dehors des cas prévus aux art. 57 et 98 à 105 de la Loi. Autrement, le législateur aurait parlé pour ne rien dire.

30 Mais le tribunal ne devrait intervenir en vertu de l'art. 49(2) que dans des circonstances exceptionnelles: for "very cogent reasons", dit le Registraire Ferron dans *Re Dunham* (1981), 40 C.B.R. (N.S.) 25 à la p. 26 (C.S. Ont.).

31 En l'espèce, il s'agit d'un cas où le syndic a amorcé des pourparlers avec un acheteur qui offre un montant qui lui permettrait de payer intégralement tous les créanciers garantis et de réaliser pour l'ensemble des créanciers un somme de $550,000 et si on laisse les créanciers agir sans contrainte, les créanciers ordinaires ne toucheraient rien.

32 Si la preuve confirme ce qu'annoncent les allégués de la requête, le tribunal pourrait exercer son pouvoir discrétionnaire de la façon qu'indiquent les conclusions de la requête, car le tribunal a compétence pour le faire même après que le créancier a commencé à réaliser sa garantie.

33 La requête verbale en irrecevabilité ne peut tenir.

34 C'est pourquoi, à l'issue de l'argument, j'ai rejeté la requête en irrecevabilité. Vu l'urgence de la situation, je n'ai énoncé que sommairement mes motifs me réservant de m'exprimer plus longuement. Voici donc les motifs de ma décision.

35 Les frais suivront le sort de la requête.

Order accordingly.

IN THE MATTER OF THE BANKRUPTCY OF RHH RENTAL PROPERTIES LTD
of the City of Guelph, in the Province of Ontario

Court File No.: BK-25-03236991-0035
District of: Ontario
Division No.: 08-Waterloo
Court No.: 35-3236991
Estate No.: 35-3236991

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
PROCEEDING COMMENCED AT GUELPH

FACTUM OF THE MOVING PARTY, DELOITTE RESTRUCTURING INC., TRUSTEE IN BANKRUPTCY OF RHH RENTAL PROPERTIES LTD.

(Special Appointment scheduled for May 20, 2026)

McMILLAN LLP
Brookfield Place
181 Bay Street, Suite 4400
Toronto, ON M5J 2T3

Jeffrey Levine LS#: 55582H
jeffrey.levine@mcmillan.ca
Tel: 416.865.7791

Christopher Keliher
christopher.keliher@mcmillan.ca
Tel: 403-531-4724

Reuben Rothstein LS#: 77795F
reuben.rothstein@mcmillan.ca
Tel: 416.865.7033

Lawyers for Deloitte Restructuring Inc.,
as Trustee in Bankruptcy of RHH Rental Properties Ltd.