



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00707330-00CL

DATE: October 26, 2023

NO. ON LIST:

TITLE OF PROCEEDING: Enlightened Funding Corporation v. Velocity Asset and Credit Corporation et. al

BEFORE: JUSTICE CONWAY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Mike Shakra		shakram@bennettjones.com
Milan Singh		singhcheemam@bennettjones.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Miranda Spence		mspence@airdberlis.com
Josh Suttner		jsuttner@airdberlis.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Derek Harland		dharland@tgf.ca
Katherine Yurkovich	Counsel to Peoples Trust Company of Canada	Kate.yurkovich@gowlingwlg.com
Rebecca Kennedy	Counsel to Deloitte Restructuring Inc., the proposed receiver	rkennedy@tgf.ca
Greg Nelson	Beacon Portfolio Servicing Inc., Beacon FSA Inc.	gnelson@beaconfsa.com

ENDORSEMENT OF JUSTICE CONWAY:

- [1] **All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Applicant dated October 11, 2023.**
- [2] The Applicant, Enlightened, brings this application for an order appointing Deloitte as the receiver of the assets, undertakings and property of the Debtors. This matter was before the court on October 13, 2023 and was adjourned to today, for several reasons.
- [3] The Debtors do not dispute the underlying facts in the Application. In his responding affidavit of October 20, 2023, Mr. Waddell, principal of the Debtors, acknowledges that there have been defaults under the credit agreements with the Applicant and that arrears are outstanding for August, September and October. He makes a proposal to pay the arrears with funds from a term sheet attached as Exhibit A from an unidentified private lender, which is still in draft form and is not binding. He attaches another term sheet as Exhibit B for replacement financing, which is subject to due diligence and other conditions and provides for closing in 90 days.
- [4] The Debtors seek an adjournment to pay the arrears and close the replacement financing. At the conclusion of argument, I said that I was not granting the adjournment and that I was granting the receivership order. These are my reasons for doing so.
- [5] Enlightened provided a revolving credit facility to the Debtors of up to \$20 million. Under its security, it has the right to appoint a receiver on default. On May 29, 2023, the facility matured and was not repaid. Enlightened issued the Demand Letters. On May 30, 2023, Enlightened agreed to provide the Emergency Draw. On July 11, 2023, the parties entered into the Forbearance Agreement to January 11, 2024 that was conditional, among other things, on the Debtors making all payments to Enlightened. According to Enlightened, as of October 6, 2023, the total indebtedness owing under the credit agreement was \$19,406,788.71 (excluding accruing fees, expenses and costs).
- [6] As noted above, the Debtors have not paid the arrears. They propose to do so in two weeks based on a non-binding term sheet with an unidentified lender. It is not clear that the \$900,000 in financing under that term sheet will cover the arrears, even if the conditions are met. Moreover, the term sheet for the replacement financing is highly conditional. Even if the arrears are paid in two weeks, Beacon (the proposed replacement financier) needs until the end of November to complete its due diligence. There are numerous conditions under that term sheet. Therefore, even if I grant the adjournment for two weeks, there is no assurance that the replacement financing will be available or that the conditions will be met. I therefore exercised my discretion not to grant a further adjournment of this application.
- [7] In determining whether it is just and convenient to appoint a receiver, the court is required to have regard to “all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto”: see *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), at para. 10.
- [8] In this case, I have considered all of the circumstances including the nature of the security held by Enlightened that entitles it to appoint a receiver on default, the history of defaults and forbearance over the last five months, the presentation of two highly conditional term sheets by the Debtors, and the uncertainty regarding any prospect of payment of the arrears and the overall indebtedness. There are other secured creditors that will benefit from the stability of a receivership. Enlightened has entered into the

Support Agreement to fund the receivership and preserve the value of the Property pending a court-approved sales process.

[9] I consider it just and convenient to appoint a receiver and have signed the order accordingly.

[10] Order to go as signed by me and attached to this Endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

A handwritten signature in blue ink, appearing to read "Conway J.", with a stylized flourish at the end.