



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00707330-00CL
BK-24-00208693-OT31

DATE: May 3, 2024

NO. ON LIST: 4/5

TITLE OF PROCEEDING: ENLIGHTENED FUNDING CORPORATION v. VELOCITY ASSET
AND CREDIT CORPORATION et al

IN THE MATTER OF THE BANKRUPTCY OF HUGH WADDELL

BEFORE: JUSTICE CONWAY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Rebecca Kennedy Deborah Palter Derek Harland	Counsel for the Receiver - Deloitte	rkennedy@tgf.ca dpalter@tgf.ca dharland@tgf.ca
Haddon Murray	Counsel to Peoples Trust Company, the Applicant by assignment	haddon.murray@gowlingwlg.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Frank Bennett	Counsel for Velocity Asset and Credit Corporation and 926749 Ontario Ltd. O/A Clonsilla Auto Sales and Leasing	bennett@ican.net

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Michael Citak	Counsel for Equigenesis Corporation	mcitak@grllp.com
Jeffrey Haylock	Beacon Holdings Limited	jhaylock@polleyfaith.com

ENDORSEMENT OF JUSTICE CONWAY:

[1] This is the continuation of the motions that were before me on April 23, 2024.

Receiver's Motion

- [2] The Receiver seeks authorization to assign the Debtors into bankruptcy and approval of a sales process order. The Receiver has agreed to adjourn that part of its motion for approval of activities and fees to a later date, to be re-scheduled at a scheduling appointment.
- [3] The Debtors submit that this court does not have jurisdiction to grant the order authorizing the Receiver to assign them into bankruptcy. I do not accept this submission. The caselaw indicates that it is well established that a court may grant this order: see, for example, *Royal Bank v. Sun Squeeze Juices Inc.*, 1994 CarswellOnt 266, aff'd 1994 CarswellOnt 310, 28 C.B.R. (3d) 201. See also *Bank of Montreal v Owen Sound Golf and Country Club*, 2012 ONSC 557 at para. 7. Clearly, it is grounded in the incidental powers conferred on the court under s. 243 of the BIA and s. 101 of the *Courts of Justice Act*.¹
- [4] What I do accept, however, is that this is a matter of discretion, to be exercised by the court in the circumstances of each case. In the case at bar, there are several benefits to stakeholders to allow this assignment to occur including: (i) the secured creditor Peoples has indicated that it will bring a petition in any event. Allowing the Receiver to make the assignment will be more efficient and is in line with the single proceeding model for insolvency matters; (ii) it will alter the priorities such that the statutory deemed trusts for GST and HST owed by the Debtors will no longer apply, thereby increasing recoveries for stakeholders; and (iii) it will give the trustee various investigative powers under the BIA with respect to reviewable transactions described in the Receiver's reports.
- [5] Mr. Waddell has filed affidavits disputing much of the Receiver's conduct and statements in its reports. His counsel Mr. Bennett confirmed that Mr. Waddell does not seek to appeal the receivership orders but says that I should exercise my discretion not to grant the bankruptcy order on the basis of Mr. Waddell's evidence. While there is conflicting evidence in the record, the Receiver relies on undisputed facts in support of its request. For example, it relies on Mr. Waddell's own evidence of the Debtors' defaults to the Applicant

¹ The Debtors also submit that there has been no finding that they were insolvent. The factual record before me on the receivership application clearly established their insolvency.

in his affidavit of October 20, 2023 filed on the receivership application; the undisputed evidence of unplating vehicles where floor plan financing had not been repaid out of lease financing proceeds (Receiver's Third Report, paras. 38-42); and the undisputed evidence of vehicle transfers to Auto Connect without a corresponding repayment to the secured creditor (Mr. Waddell's affidavit of April 11, 2024, para 13(e)).

- [6] Considering the benefits to stakeholders and the undisputed facts relied on by the Receiver, I am prepared to exercise my discretion to permit the Receiver to assign the Debtors into bankruptcy.
- [7] Mr. Bennett submits that Deloitte is conflicted in acting as the trustee in bankruptcy. A receiver is permitted to act as a trustee under s. 13.3(2) provided that disclosure of a potential conflict is made at the time of appointment and at the first meeting of creditors. Here, there are numerous secured creditors, it is not a single creditor receivership. None of the secured creditors has raised any issue with the appointment of Deloitte as the trustee. It is far more cost effective for Deloitte to act as the trustee, thereby preserving recovery for creditors. I have no issue appointing Deloitte as the trustee at this point. This may be revisited at the first meeting of creditors.
- [8] Under s. 2 of the BIA, the initial bankruptcy event was October 6, 2023, the date the receivership application was filed. The application contained a request for the power to assign the Debtors into bankruptcy: see *National Telecommunications (Re)*, 2017 ONSC 1475. The lookback period will therefore be calculated from that date.
- [9] The Receiver seeks approval of the sales process order. I am satisfied that this is the best means to maximize recoveries for stakeholders. The sale process is and will be subject to court supervision. The sale process timelines are acceptable. The process is open to a myriad of sale opportunities for the Debtor's assets.
- [10] At the request of Beacon, I include the following in this endorsement: The court recognizes that the process for allocating sales proceeds to different classes of leases or assets to be sold in the sales process, and for establishing a claims process to determine creditor entitlements to proceeds from such classes, remains to be determined, and is not determined by the court's approval of the sales process.
- [11] I have signed both orders on the Receiver's motion. Orders to go as signed by me and attached to this Endorsement. These orders are effective from today's date and are enforceable without the need for entry and filing.

Peoples Motion

- [12] Peoples brings a motion for the appointment of an interim receiver over the assets of Mr. Waddell pending the hearing of its bankruptcy application against him. I am granting the order pursuant to s. 46(1) of the BIA.

- [13] There is evidence that Mr. Waddell attempted to dissipate his assets in the face of these insolvency proceedings. Specifically, on December 21, 2023, weeks after the full receivership was granted over the Debtors, he attempted to retroactively transfer his Florida property to his wife by filing a Corrective Warranty Deed stating that it was to be transferred to his wife and filing a Quit Claim Deed retroactive to February 2016. Those attempts were rejected.
- [14] Then, following correspondence from Peoples in January 2024 warning him about transferring his assets and the Florida property in particular, he continued to market the Florida property. Then, days after he received the bankruptcy application and on the eve of the hearing, he sold the property.
- [15] Peoples has met both parts of the test set out in *Konopny (Re)*, 2009 CanLII 44412. In light of Mr. Waddell's guarantee of the Debtors' indebtedness to Peoples (Velocity itself owes over \$19 million), I am satisfied on a balance of probabilities that Peoples will succeed in obtaining a bankruptcy order against Mr. Waddell. Further, Mr. Waddell's conduct with respect to the Florida property poses a real risk that assets will disappear if a receiver is not appointed.
- [16] I have reviewed the form of interim receivership order with counsel for Peoples and Mr. Waddell. I have required that it be scaled back considerably given that it is for the sole purpose of preserving assets owned by an individual. Counsel have done that and the form is now acceptable to me. It is far more balanced and in line with the purpose for which it is granted.
- [17] Peoples has now provided the required undertaking re damages.
- [18] 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.", is located at the bottom left of the page.