ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CL-26-00000153-0000

DATE: 15 September 2026

NO. ON LIST: 2

TITLE OF PROCEEDING: THE TORONTO-DOMINION BANK v. NOVO PLASTICS INC.; 2139654 ONTARIO LIMITED

BEFORE: JUSTICE MYERS

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT OF JUSTICE MYERS:

[1] I have previously written that it is a short term and often self-defeating strategy to take an adversarial position with one's secured lender. When a debtor needs the lender's cooperation, forbearance, or understanding, the rationale becomes clear.

[2] Here, there is no dispute that the debtor owes the bank about $31 million. The bank first made demand more than a year ago in June, 2025.

[3] Since that time, the bank fairly agreed to several extensions of time pursuant to signed forbearance agreements and even without an active forbearance agreement.

[4] In the forbearance agreements, the debtors admit away any defences to the enforcement of their debt and security. That is the *quid pro quo* that is both standard in the industry and understandable.

[5] Unfortunately, the debtors were not able to bring a transaction to fruition before this matter was brought back on last spring.

[6] Usually, forbearance agreements do not prohibit a debtor from opposing at least the timing or convenience of a receivership proceeding. Where a debtor comes forward with a last-minute proposal to benefit creditors more than a receivership will, or, at least, to repay the moving creditor in full, the court frequently grants a final extension or two.

[7] That has already happened here. The July hearing was adjourned on consent to allow the debtors time to close a deal that they say was going to pay out the bank.

[8] The price of the final adjournment agreed upon by the debtors was execution of a "Consent" to the appointment of the receiver as sought by the bank if the bank remained unpaid as at August 31, 2026. In additional the debtors agreed to provide full releases to the bank by that date as well. Neither condition was met by the debtors, again.

[9] The terms of the consent were clear and intended to be contractually binding. Para. 1 of the consent says:

> 1. On consent, the full receivership Order proposed by The Toronto-Dominion Bank ("TD Bank") in this Application and appended to TD Bank's Application Record dated April 14, 2026 at Tab 2 (collectively, the "Relief") shall be adjourned to a date of TD Bank's choosing (the "Return Date"), provided that such Return Date is not before September 1, 2026, which Return Date is peremptory on the Debtor, and ***on which Return Date TD Bank shall be entitled to seek the Relief on the full consent of the Debtor (without any defences, complaints or objections whatsoever),*** subject only to paragraph 2 of this Consent to Receivership. For greater certainty, the Debtor hereby consents to the Relief. [Emphasis added.]

[10] It simply is not open to the debtors today to seek to adjourn yet again to try to bring the elusive transaction to fruition. They have bound themselves to consent to the relief sought.

[11] I agree with Kimmel J. who wrote in *RBC v. Peace Bridge Duty Free Inc*., 2025 ONSC 7339 at para 39.

> Commercial certainty also supports the appointment of the Receiver in this case where the Debtor consented to it in a negotiated arrangement while represented by counsel. Agreements to consent orders such as this are common in the insolvency practice and the parties should be able to expect the court to uphold their bargains, barring unforeseen or special circumstances [citations omitted].

[12] To me a binding consent to a receivership order is also an important confirmation by a debtor that it has done all that it can do to preserve its equity. There is nothing left to be done. See: *Royal Bank of Canada v. 12870428 Canada Inc., et al*., Court File No. CV-25-00750706-00CL, unreported endorsement dated November 4, 2025, at para 10.

[13] But as both Kimmel J. and I stated in these cases, there can be exceptions. First, the court always needs to be satisfied that it is just and equitable to appoint a receiver in the circumstances of the case regardless of the position of the debtor. Equity must be satisfied that the balance of convenience favours the making of the order sought. Moreover, circumstances change. Contracts may be breached. For example, a lender may commit a material breach of contract that could amount to a repudiation of the agreement encompassing the debtor's promise to consent. Or a borrower may commit an efficient breach of contract offering full compensation to avoid specific performance of its agreement.

[14] For myself, barring a condition that would excuse performance of an agreement at law, I would be very hesitant to allow a debtor to ignore its obligation to consent to a court order. See: *Johnston v. McLean*, 2024 ONCA 791 (CanLII),

[15] The parties entered into the Consent to give the debtors a few more weeks than they sought to close a transaction. At that time, there was a roof repair issue holding up the closing. But on August 11, 2026, the proposed buyer made a requisition for the removal of two old building permits registrations that remain on title to the property.

[16] The building permits were issued in 1997 and 1998. That was prior to the time that the current owners bought the land. Moreover, the Applicant bank never raised the building permits as an issue when it sought and obtained mortgage security that it registered on title.

[17] The debtors submit that they should be entitled to 60 days to try to resolve these old permits. They adduce evidence by double hearsay from someone apparently with the relevant department of the municipality indicating that it may be fairly simple to resolve these old permits. But in the month since learning of the permits, there is no admissible evidence of any effort at all to take steps needed. The municipality has yet to retrieve the files from storage. The debtors apparently retained an engineer just yesterday.

[18] The double hearsay evidence is *prima facie* inadmissible. It cannot qualify for the principled exception because, among other things, counsel advises that the municipal employee was not prepared to put his or her words in writing. Even if timing created some necessity for the use of hearsay evidence (although a month is more than enough time), there can be no assurance of reliability to something allegedly said by a municipal employee that the person will not say formally and be cross-examined upon.

[19] The debtors submit that if they cannot close in 60 days, then the order can go. But that is what they said in July about August 31, 2026. It is what they said as each forbearance agreement was signed and as each extension thereafter was sought. I am not doubting the sincerity of the debtors' beliefs. It is in the nature of entrepreneurship to put everything one has into the business and to optimistically believe that bad times will be reversed if only the business can round the next corner.

[20] Debtors' enduring optimism is limited, however, by binding agreements that require objectively measured outcomes. Here there is no doubt that the debtors did not meet the conditions of the Consent by August 31, 2026.

[21] In addition, the debtors have no objective basis to say that 60 days will be enough to get the agreement closed. Just as they thought that the roof repair was a readily soluble issue, another issue arose. There is no evidence of any logical end date to the building permit issue and there is no basis to conclude that other issues won't crop up at the least opportune times.

[22] The debtors submit however, that there is no prejudice to the bank in letting them try. The proposed sale is for a gross price that is just above the full amount of the debt currently. But I have no calculation of interest and cost accrual. Moreover, if title problems cannot be resolved in 60 days, nothing stops the debtors from accepting an abatement of the purchase price.

[23] The debtors are saying, in effect, that they should be trusted to maximize the sale proceeds for the bank's benefit. And that is where the debtors' treatment of its lender comes into play.

[24] Over a year ago, the debtors moved their banking away from the Applicant bank. That is another breach of the ending terms. But equally, or more significantly, the debtors have prevented the bank from seeing the cash receipts and expenditures of the business.

[25] Well, watching cash in and out is probably not that significant where the debtors comply with the multitude of reporting requirements contained in the various lending and forbearance agreements. The problem though is that the debtors have not reported on financial matters despite their obligations to do so.

[26] The debtors have not paid a penny on their debt in the intervening period.

[27] The debtors have filed with the court the unaudited financial statements of Novo Plastics for the perio ending March 31, 2025. Although Novo is a joint debtor with its land-owning affiliate, I do not see any recognition of the debtors' full secured indebtedness to the Applicant in the fiscal 2025 statements. Perhaps that is because demand had not been made as of March 31, 2025. Even if there is a current portion of the debt reported on – which I cannot confirm by looking – equity as at March 31, 2025 is only between $8 and $9 million. Recognition of any significant portion of the Applicant's debt would render the debtors wholly insolvent.

[28] Where are the debtors' financial statements for year-end March 31, 2026?

[29] Mr. Roslak submits that the balance of convenience favours the debtors. They just need a little more time and there is no evidence that the bank will be prejudiced by more than interest accrual between now and then.

[30] The President and sole director of the debtors testifies in his affidavit sworn yesterday:

> 2) The business of Novo Plastics will permanently cease and lose any of its goodwill if the receivership order sought by the Applicant, the Toronto-Dominion Bank ("TD Bank"), is granted, with in excess of 100 people losing their employment, adversely affecting the lives of a large number of families in York Region.
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> **Irreparable Harm and Balance of Convenience**
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> 37) If a receiver is immediately appointed, Novo Plastics will be compelled to forthwith cease operations. I am responsible for day-to-day management of the company, and all heads of department report directly to me. Additionally, I am the primary salesperson for Novo Plastics, working with the assistance of some independent salespersons, and have a personal relationship with both its customers and suppliers since the day it commenced operations. The business operations of Novo Plastics could not continue without my direct involvement.

[31] Without reporting or even watching cashflow, there is no way for the bank or the court to know if there are still 100 employees of the debtors or if the debtors have the financial ability to continue another day in business.

[32] The last sentence of para. 37 is ambiguous. It may just be saying that a court-appointed receiver will need his assistance to run the business should it elect to do so. But it is also understandable as an implicit threat that he will not cooperate with a receiver. That would be consistent with his approach to the bank throughout the relevant period of these proceedings.

[33] Even recently, although the debtors learned of their title problems on August 11, 2026, they did not tell the bank about it until they gave notice on August 31, 2026 that they were not going to meet the deadline for payment that day.

[34] The debtors then filed their responding affidavits just yesterday.

[35] The bank is indeed suffering prejudice by delay in this matter. It is accruing costs and interest with no assurance of being paid. It has no visibility into asset moves, sources and uses of cash, or other transactions that may be under way or proposed by the debtors.

[36] With the debtors' proposed transaction being very close to the amount of the bank's debt, the bank is reasonably concerned to ensure that there is a value-maximizing process to protects its claims and the claims of all creditors. An opaque debtor who withholds information while its creditors go unpaid is not someone to be left in charge of the henhouse while the foxes are closing in on it. Who else is going unpaid? Are the squeaky wheels being oiled at the expense of superior creditors who have forborne?

[37] The debtors' unwillingness to fulfil their agreements to report to the bank rightly leads the bank to say that it will not support leaving management at the helm any longer. Despite every effort, management has not been able to bring a deal to fruition. There is no assurance that the current transaction will close. Moreover, a receiver can close it if it is in the best interest of the general body of creditors to do so.

[38] This is a case in which it is in the interest of justice to refuse an adjournment. The debtors' Consent should be enforced. They appear to be trading while insolvent. They have not provided any meaningful financial disclosure of their current circumstances. They last asked for three weeks and the bank agreed to give them six. Still no closing. The debtors have no defences to the enforcement of the Consent as a contract.

[39] I still need to consider if is just and convenient to appoint a receiver in the circumstances. The debt instruments allow for a receivership. Given the debtors' unwillingness to provide information to the bank, it cannot be expected to take private remedies and expose itself to unknown risks. The court's intervention is required so that a neutral and dispassionate officer with experience and expertise can take charge of the situation and determine the best way to balance the interests of all interested parties and maximize realization. If there is a going concern business that can survive, it will be incumbent on management to work with the Receiver to make that happen. It is hard to see how it can be in management's interest to do otherwise.

[40] There is a very substantial debt in arrears. No partial payments are being made. No offer is made to keep the bank whole even during a period of another adjournment. The bank has a complete security package. It has been more than accommodating to the debtors for over a year. At some point the wheel stops and the chips land where they may. The President's affidavit details a lengthy history of efforts to find financing or a sale. The simple reality is that despite the cooperation of the bank, which has not been reciprocated by the debtors, management has been unable to bring a deal to fruition.

[41] The equity holders have had more than enough time to find a solution to meet the debtors' legal obligations. There is no indication that the proposed transaction will close, will pay all creditors in full, or will be value-maximizing. If there are 100 employees there are payroll, potentially withholdings, and WEPP concerns as well.

[42] The creditors, suppliers, customers, employees, and governments are entitled to the benefit of a receiver who will be transparent and who will aim to benefit all to the extent reasonably possible. The debtors provide no information to indicate that despite their obvious balance sheet insolvency they ought to be allowed to continue in business.

[43] Considering the interests of all interested parties it is just and convenient to appoint a receiver as sought. *Bank of Nova Scotia v. Freure Village of Clair Creek*, 40 C.B.R. (3d) 274, [1996] O.J. No. 508 at para. 10 (Gen. Div. [Comm. List])

[44] I do not find the debtors' proposed alternative to appoint a receiver over the and alone persuasive or just. If the business is bleeding, perhaps it should be closed to protect employees and creditors. If the business has value, it should be harnessed for all interested parties in their lawful priorities. The one thing that should not happen is for equity holders to continue to operate the business in their own interests. Once the bank made demand, equity's interests were eliminated. A neutral party is needed to steward the assets while the best course of action is decided upon. The debtors consented to exactly that.

[45] Order signed as asked.

Date: Sep 15, 2026

Justice FL Myers

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