



**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

ENDORSEMENT

COURT FILE NO.: CV-23-00705867-00CL DATE: 26-MAR-2024

NO. ON LIST: 3

TITLE OF PROCEEDING: BANK OF MONTREAL v. 11603531 CANADA INC.

BEFORE: OSBORNE, J.

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Ian Klaiman	The Receiver, MNP	iklaiman@szklaw.ca
Tony Van Klink	The Applicant, BMO	tvanklink@millერთhompson.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Howard Manis	11603531 CANADA INC. and Usman Khalid	hmanis@manislaw.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Scott Turton	2325084 ONTARIO INC.	scott@scottturtonlaw.com

ENDORSEMENT OF JUSTICE OSBORNE:

[1] MNP, in its capacity as Court-appointed Receiver over the property of 11603531 Canada Inc. (the “Debtor”), including the real property of the Debtor at 55 Dundas St. E., Toronto, seeks an order:

- a. approving the First Report of the Receiver dated March 20, 2024;
- b. compelling the director of the Debtor, Mr. Usman Khalid (“Khalid”), Goldstock Corporation (“GSC”) and all tenants of any units located at the property, to provide access to the Receiver and its service providers including but not limited to realtors, on 48 hours notice;
- c. compelling Khalid, GSC and 10587699 Canada Corp. (“105”) to produce, within 48 hours, all books and records related to the building including leases, subleases and the other materials set out in the Notice of Motion;
- d. to remove, within 24 hours, all hazardous materials until such occupants undertake an audit in accordance with the Ontario Fire Code Part 5 “Hazardous Material, Processes and Operations” and obtain required approvals for the storage of such materials. In the alternative, the Receiver seeks an order authorizing the Receiver to proceed accordingly without further notice to 105 or the occupants;
- e. allowing the Receiver and/or its service providers to have immediate access thereafter to all units for inspection to confirm the removal of such hazardous materials;
- f. approving the Receiver’s Interim Statement of Receipts and Disbursements as at March 19, 2024; and
- g. sealing the confidential appendices to the Receiver’s First Report pending further order.

[2] The Debtor and Khalid seek an adjournment of the motion today. They do so on the basis of a medical note which counsel has uploaded to caselines, from Markham Stouffville Urgent Care Centre entitled “Sickness Certificate” in respect of Mr. Khalid.

[3] The Receiver opposes the request for an adjournment. BMO supports the position of the Receiver. 232 takes no position on the adjournment request.

[4] For the reasons below, I denied the adjournment and granted the motion of the Receiver subject to two minor points referenced below.

[5] The Debtor owns a five-story building located at the property. Khalid is a director of the Debtor and was responsible for its operations. Both GSC and 105 are entities related to the Debtor and to Khalid and are under their control or control of related family members.

[6] The Debtor is indebted to the Bank of Montréal for loans advanced in the amount of \$7,353,195.25 as at August 31, 2023 with interest and costs continuing to accrue.

[7] BMO has security over all of the assets, including a mortgage on the property. GSC, Khalid, and Khalid Mahmood are guarantors on the loans. GSC occupies the third floor in the building.

[8] Prior to the receivership order having been granted, the Debtor had entered into a forbearance agreement with BMO to give the Debtor time to source alternative financing. Notwithstanding the subsequent extension of the forbearance agreement many times at the request of the Debtor, the alternative financing never materialized.

[9] Accordingly, the Receivership Order was made on November 14, 2023. The initial information of the Receiver about the leases of units located in the Property was based on an appraisal completed in March 2023 which listed eight different tenants. However, when the Receiver met with Khalid on November 14, 2023, he advised that there were only two tenants:

- a. 2325084 Ontario Inc. (“232”) which occupied the basement and second floor pursuant to two separate leases; and
- b. 105, which occupied units 300, 401, 402, 501, 502 and the ground floor.

[10] Khalid also advised the Receiver that he represented the Debtor, GSC and 105. When questioned as to the discrepancy of the number of tenants between his information in the appraisal, he advised that there were subleases with respect to the lease of 105 although refused to provide copies of those alleged subleases.

[11] The only lease Khalid ever provided to the Receiver was the 105 lease, which in the view of the Receiver reflects that:

- a. it is non-arm’s-length in that it is signed by Khalid on behalf of 116 and by Sulemon Khalid;
- b. there are discrepancies between the 105 lease and the rent roll information the Receiver received from BMO. BMO advised that 105 was only leasing units 300, 401 and 402, and the rent rates were significantly higher than documented in the 105 lease. There are also other discrepancies in the 105 lease within the document itself including the term of the lease, the rental rate and other non-commercial terms.

[12] The Receiver states that the 232 leases expired on December 31, 2022 although 232 has paid rent for the basement unit to date, in accordance with the document that Khalid apparently provided to 232 but which does not reflect any signatures. 232 also apparently paid rent for the second floor unit up to the end of February, 2023.

[13] I pause to observe that 232 operates a pharmacy in the basement unit and previously operated a medical lab out of the second floor unit, although 232 has vacated that unit. 232 is represented in Court today. It is entirely cooperative with the Receiver and indeed has its own concerns with respect to rent and common area expenses which it has been charged by the Debtor. It, like the Receiver, has had difficulty obtaining relevant books and records from the Debtor.

[14] The Debtor and Khalid will not provide, and have failed to provide, to the Receiver any books and records for the Debtor, including its accounting records, such that the Receiver cannot properly calculate taxes, maintenance and insurance for the property, among other things. Moreover, when the Receiver has sought access to the property, Khalid has enforced a clause in the 105 lease requiring a minimum of two weeks advance notice. This has interfered with access sought by the Receiver for realtor listing proposals, an appraisal, a building condition site inspection etc. All of this has delayed the receivership process. On other occasions, Khalid has simply refused to provide the Receiver with access to the property at all.

[15] Finally, the Receiver is concerned about the storage of compressed gas cylinders on the property which it says are stored without proper authority. The Debtor and Khalid will not confirm their removal.

[16] First, I observe that none of this relief ought to have required a motion at all. The entitlement of the Receiver to the books and records from the Debtor, and to reasonable access to the property, flowing from the powers of the Receiver granted in the original receivership order. However, Mr. Khalid and the Debtor which he controls have not been cooperative.

[17] Second, this motion was returnable before me on February 29, 2024 when the Debtor and Khalid requested, and were granted, an adjournment until today. As my Endorsement of February 29 reflected, all counsel confirmed their availability for today's date and the fact that the motion would be fully briefed and ready to proceed. I urged the parties to attempt to resolve matters on consent. Also as reflected in the Endorsement, the Debtor was going to provide particulars of various of the subleases, whether written or oral, to the Receiver forthwith. That has not occurred.

[18] Finally, on February 29, the Debtor submitted that there were no issues with respect to access to tenant premises with the exception of one tenant who had valuable inventory on site. There is no evidence before me yet again as to what that is, what the problem is or whether it has been removed and if not, why not.

[19] Third, the Debtor and Khalid have not filed any responding materials are provided any books and records or other materials to the Receiver since February 29. They are still making access extremely difficult.

[20] The medical note uploaded to caselines is entitled "Sickness Certificate" and reflects that Mr. Khalid sought medical advice relating to an (unspecified) illness, and that the "Period of Illness" was March 17 to March 24, 2024. There are no further particulars. There is no explanation for the lack of cooperation at any time since the appointment of the Receiver last year until March 17, the start of the period of illness, and certainly not from the date of my last endorsement of February 29 to March 17.

[21] In short, notwithstanding the able submissions of Mr. Manis, Mr. Khalid and the Debtor are simply refusing to cooperate in any meaningful way. Moreover, none of the relief sought is substantive in the sense of finally determining any rights. The Debtor and Mr. Khalid do not challenge the significant indebtedness to the bank.

[22] The relief sought relates to the production of books and records to the Receiver so that the Receiver can sort out the state of affairs. It relates to access to the Receiver can assess and evaluate the condition of the building and the currency and terms of the various alleged tenancies, including 232, as noted above. None of that should be controversial, and the failure of the Debtor and Mr. Khalid to provide the information, books and records is simply causing delay and increased expense.

[23] I pause again to note the obvious: if documents requested do not exist, Mr. Khalid can formally confirm that and the Receiver can take whatever steps may flow from that. But it is not an answer to simply refuse to respond that all.

[24] The Interim Statement of Receipts and Disbursements is appropriate and is approved.

[25] The Confidential Appendices to the First Report are sealed until further order of this Court. I am satisfied that the sealing relief protects the integrity of the process during the pendency of this matter and meets the test articulated by the Supreme Court of Canada in *Sierra Club* and refined in *Sherman Estate*.

[26] With respect to the form and content of the order, I have directed counsel for the Receiver to provide to me a revised form of order with two changes. First, hazardous materials should be removed from the property within 48 hours, and not 24 hours. Second, at the request of Mr. Turton for 232, the medical pharmacy in the basement unit will be excepted from that requirement contained in paragraph 7 of the order.

[27] With those two changes, order to go in the form signed by me today which is effective immediately and without the necessity of issuing and entering.

[28] I have implored counsel to see if they cannot resolve some of the issues on consent. The Court expects the cooperation of the debtor and Mr. Khalid with all orders made in this proceeding.

 Owen, J.

