



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00716046-00CL

DATE: May 13, 2024

NO. ON LIST: 2

TITLE OF PROCEEDING: DEL ROSSO et al v. DEVENYI et al

BEFORE: JUSTICE CONWAY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
David Preger	Counsel for the Applicants	dpreger@dickinsonwright.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Allyson Fox	Counsel for Bank of Montreal	allyson@rslaw.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE CONWAY:

- [1] This is an Application by the first mortgagees for the appointment of a Receiver over the property owned by the respondent (the Debtor) at 154 Shuter Street, Toronto.
- [2] The Debtor does not oppose the Application. BMO, the second mortgagee, opposes the Application. It submits that the Applicants should sell the property through power of sale proceedings.

- [3] Both the first and second mortgages are in default. The Applicants' security documentation allows for the appointment of a receiver in the event of default, which makes the appointment of a receiver a less extraordinary remedy: *Bank of Nova Scotia v. Freure Village of Clair Creek*, 1996 CanLII 8258 (ON SC), at para. 12. BMO has not taken steps to redeem the first mortgage or put it into good standing so that it can control the sale process. The Applicants do not have to demonstrate that other remedies are ineffective before applying for the appointment of a court appointed receiver: *Bank of Nova Scotia v. D.G. Jewelry Inc.*, 2002 CanLII 12477 at para. 3.
- [4] In this case, and despite the focused and able submissions of Ms. Fox, I consider it just and convenient to appoint a receiver. I have considered all of the circumstances. As noted, both mortgages are in default. A court-appointed officer can move expeditiously towards a sale of the property under court supervision and maximize recoveries for all stakeholders. The property is a heritage building. There are four units in the building. BMO relies on evidence from the Debtor that vacant possession will not be a problem. That evidence is hearsay. I am satisfied that a receiver will be more readily able to obtain the assistance of the court and ensure vacant possession of the building should there be any issue with the four units. A receiver will be more able to deliver clear title to a buyer through a court approval and vesting order.
- [5] However, I advised counsel that although I was prepared to appoint a receiver, the order and the receivership need to be streamlined and cost efficient. BMO is the fulcrum creditor and measures need to be put in place to ensure that its recovery is not eroded by the cost of a receivership. To that end, counsel worked out a form of order to include provisions that will protect the interests of BMO and any other stakeholders from unlimited or excessive costs of a receivership.
- [6] Counsel have now sent me a revised order that includes those provisions. It is acceptable to me.
- [7] 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. If counsel require further direction on the conduct of this receivership, they may book a case conference before me through the CL office.

A handwritten signature in blue ink, appearing to read "Conway J.", is located at the bottom left of the page. The signature is written in a cursive style.