

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985,
C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O 1990 C. C.43,
AS AMENDED**

B E T W E E N:

**ANTONIETTA DEL ROSSO, MAURO DEL ROSSO,
CANADIAN WESTERN TRUST COMPANY, MARY LORBER,
457351 ONTARIO INC., JOEL S GUBERMAN PROFESSIONAL CORPORATION,
RITA ROTILIO and ALEXANDER SKORIC**

Applicants

- and -

DIANE MARTHA DEVENYI

Respondent

FACTUM OF THE APPLICANTS

May 7, 2024

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TO: **SERVICE LIST**

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PART I – OVERVIEW

1. The applicants, who are first mortgagees, apply for the appointment of Rosen Goldberg Inc. as receiver and manager of the property owned by the respondent Diane Martha Devenyi (the “**Debtor**”) at 154 Shuter Street, in Toronto (the “**Property**”). Although the Debtor does not oppose the within the application, the Bank of Montreal (“**BMO**”), which holds the second mortgage, does.
2. Each of the first mortgage and the second mortgage are in default. Each of the applicants and BMO agree that the Property must be sold. In spite of its opposition, BMO has not taken any steps to enforce its mortgage or to pay out the first mortgage or put it into good standing.
3. The applicants submit that BMO should not be permitted to stand in the way of a receiver being appointed while sitting on its hands.

PART II – SUMMARY OF FACTS

A. The Property

4. The Property is a 2,299 square foot parcel of land, with 44.07 feet of frontage, on the north side of Shuter Street, between Pembroke Street and Sherbourne Street. It is improved with a three-storey building that was constructed in 1910 as a coach house for the Rosar Funeral Home to accommodate horses and carriages. The Property is currently listed on the City of Toronto Inventory of Heritage Properties. The building contains four apartment units.¹

B. Loan and Security

5. The Debtor is indebted to the applicants in connection with a mortgage loan in the principal amount of \$1.7 million (the “**Loan**”). The Loan has been in financial default since the

¹ Affidavit of Joseph Canals sworn March 4, 2024 (“**Canals Affidavit**”) at para 6, Application Record of the Applicants (“**AR**”), Tab 2, p. 28.

Debtor's failure to pay monthly interest on February 9, 2024. No payments have been received by the applicants since that time.²

6. As of February 15, 2024, when the applicants issued a Notice of Intention to Enforce Security ("**NITE**") pursuant to section 244 of the *Bankruptcy Insolvency Act* (the "**BIA**"), the indebtedness owing under the Loan was \$1,712,858.33.³

7. The Loan was advanced on June 9, 2022 pursuant to a Promissory Note. The Promissory Note is collaterally secured by a first ranking mortgage registered against the Property in favour of the applicants on June 9, 2022 (the "**First Mortgage**").⁴ Monthly interest only is payable under the Loan at the rate 7.49% per annum.⁵

8. As set out in the Promissory Note and the First Mortgage, the Loan matures on June 9, 2024.⁶

9. The additional provisions to the First Mortgage expressly provide that upon default under the Mortgage, the applicants are entitled to appoint a receiver to manage the building and sell the Property.⁷

C. Second Mortgage

10. The BMO's second mortgage was registered on June 9, 2022 in the principal face amount of \$1,218,160.40 (the "**Second Mortgage**").⁸ The Second Mortgage was given by the Debtor as a collateral mortgage for her obligations to BMO under Minutes of Settlement dated December 28, 2021 (the "**Minutes**").⁹ Pursuant to the Minutes, the Debtor agreed to satisfy a default judgment BMO obtained against her in the amount of \$682,295.26, plus interest and

² Canals Affidavit at para 3, AR, Tab 2, p. 28.

³ Canals Affidavit at para 4, AR, Tab 2, p. 28.

⁴ Canals Affidavit at para 7, AR, Tab 2, p. 28.

⁵ Canals Affidavit at para 8, AR, Tab 2, p. 29.

⁶ *Ibid.*

⁷ Canals Affidavit at para 9, AR, Tab 2, p. 29.

⁸ Exhibit C to Canals Affidavit, AR, Tab 2, p. 43; Exhibit D to Canals Affidavit, AR, Tab 2, p. 45.

⁹ Exhibit D to Canals Affidavit, AR, Tab 2, p. 47.

costs, by making minimum consecutive monthly payments of \$4,500 to BMO's solicitors, Rubenstein Siegel LLP in trust, beginning on December 28, 2021 and to pay the balance outstanding by November 1, 2023.¹⁰

11. Consistent with the Minutes, the balance due date under the Second Mortgage was November 1, 2023.

12. The Second Mortgage is in serious financial default. According to BMO's affiant, as of January 12, 2024, the balance outstanding under the Second Mortgage was \$1,317,227.62.¹¹

D. BMO's Opposition

13. BMO's affiant deposes, without identifying the source of her information, that since December 2023, the Debtor has been attempting to sell the Property.¹²

14. According to an appraisal BMO obtained in November of 2023 and has placed into the record without redaction, which values the Property at \$2.7 million, BMO is already in a shortfall position.¹³

15. Any sale for a price that is less than the indebtedness owing under the First Mortgage and the Second Mortgage would require BMO to voluntarily discharge the Second Mortgage on closing. It is unclear why, if BMO accepts that it will suffer a shortfall and is presumably prepared to discharge the Second Mortgage for less than the full amount owing, the Debtor has not sold the Property.

16. BMO argues that a receiver is unnecessary as three of the apartment units in the building are used as short-term rental units through AirBnB, the fourth unit is occupied by the debtor and that vacant possession of the Property will be available for the purposes of any sale and closing. BMO's evidence in this regard is hearsay twice removed. It is based on advice

¹⁰ Exhibit D to Canals Affidavit, AR, Tab 2, p. 47.

¹¹ Affidavit of Jocelyne Sauve sworn April 9, 2024 ("**Sauve Affidavit**") at para 2, Responding Record of Bank of Montreal ("**RR**"), Tab 1, p. 7.

¹² Sauve Affidavit at para 6, RR, Tab 1, p. 7.

¹³ Exhibit A to Sauve Affidavit, RR, Tab 1, pp. 11-32.

received by BMO's affiant, from BMO's counsel, Mr. Siegel, who in turn received it from the debtor, who has deliberately elected not to respond to the within application.¹⁴

E. BMO's Failure to Enforce the Second Mortgage or Protect its Equity of Redemption

17. Although the Second Mortgage is in serious financial default, BMO has taken no steps to enforce the Second Mortgage. BMO has also not exercised its right under the *Mortgages Act* to pay out the First Mortgage or put the First Mortgage into good standing by performing the debtor's covenants under the First Mortgage, including paying interest arrears and expenses necessarily incurred by the applicants to enforce the First Mortgage, which if performed would be an absolute defence to the within application.

PART III – THE ISSUE

18. The sole issue is whether it is just or convenient for the Court to appoint Rosen Goldberg Inc. as receiver over the Property.

PART IV – LAW AND ARGUMENT

19. The applicants respectfully submit that in view of BMO's failure to enforce the Second Mortgage and its failure to exercise its right under the *Mortgages Act*¹⁵ to avoid the appointment of a receiver and the overall circumstances in the facts at bar, it just and convenient that a receiver be appointed.

A. Relief from Acceleration

20. Sections 22 and 23 of the *Mortgages Act* provide legislative relief from any right of acceleration which a mortgagee may contract from a mortgagor.

¹⁴ Sauve Affidavit at para 6, RR, Tab 1, p. 7.

¹⁵ *Mortgages Act*, [R.S.O. 1990, c. M.40](#).

i. Relief Before Action

21. Section 22(1) of the *Mortgages Act* provides:¹⁶

22. (1) Despite any agreement to the contrary, where default has occurred in making any payment of principal or interest due under a mortgage or in the observance of any covenant in a mortgage and under the terms of the mortgage, by reason of such default, the whole principal and interest secured thereby has become due and payable,

(a) at any time before sale under the mortgage; or

(b) before the commencement of an action for the enforcement of the rights of the mortgagee or of any person claiming through or under the mortgagee, the mortgagor may perform such covenant or pay the amount due under the mortgage, exclusive of the money not payable by reason merely of lapse of time, and pay any expenses necessarily incurred by the mortgagee, and thereupon the mortgagor is relieved from the consequences of such default.

22. According to section 1 of the *Mortgages Act* the term “mortgagor” includes any person deriving title under the original mortgagor or entitled to redeem a mortgage...”.¹⁷ Therefore, BMO, as second mortgagee, has an absolute right to put the First Mortgage into good standing and pay the expenses necessarily incurred by the applicants, and thereby be relieved of the within application.

ii. There is No Action

23. There are three (3) types of action which a mortgagee may bring to enforce its rights under a mortgage: (a) an action for foreclosure; (b) an action on the covenant (for payment); and (c) an action for possession. It is respectfully submitted that an application by a secured creditor to appoint a receiver over a debtor’s assets arising from default in payment is not an action for the enforcement of the rights of a mortgagee as contemplated in section 22 of the *Mortgages Act*.

¹⁶ [Section 22](#) of the *Mortgages Act*.

¹⁷ [Section 1](#) of the *Mortgages Act*.

24. In *Jacob's Hold Inc. v. Canadian Imperial Bank of Commerce*,¹⁸ Jarvis J. held:

The appointment by the Court of a receiver is for the purposes of preserving the estate of the bankrupt for the benefit of the creditors. It is not formally or otherwise a proceeding for the recovery of a debt, the realization of a security or the taking of any property of a farmer.

25. As the applicants have not brought an action to enforce the First Mortgage within the meaning of the *Mortgages Act*, BMO has an unequivocal right, pursuant to section 23 of the *Mortgages Act*, to put the First Mortgage into good standing, to pay expenses necessarily incurred by the applicants and to thereby avert acceleration of the First Mortgage and the appointment of a receiver over the Property.

iii. Relief After Action

26. The language of section 23 of the *Mortgages Act* is similar to section 22, except that it relates to the right of a mortgagor (or mortgagee entitled to redeem) to put a mortgage into good standing after an action for enforcement of the rights of a mortgagee has been commenced.

27. Section 23(1) of the *Mortgages Act* provides:¹⁹

23. (1) Despite any agreement to the contrary, where default has occurred in making any payment of principal or interest due under a mortgage or in the observance of any covenant in a mortgage and under the terms of the mortgage, by reason of such default, the whole principal and interest secured thereby has become due and payable, in an action for enforcement of the rights of the mortgagee or of any person claiming through or under the mortgagee, the mortgagor, upon payment into court of the sum of \$100 to the credit of the action as security for costs, may apply to the court and, conditional upon performance of such covenant or upon payment of the money due under the mortgage, exclusive of the money not payable by reason merely of lapse of time, and upon payment of the costs of the action, the court,

(a) shall dismiss the action if judgment has not been recovered; or

¹⁸*Jacob's Hold Inc. v. Canadian Imperial Bank of Commerce*, [2000 CanLII 22730 \(ON SC\)](#) at para 3; cited in Houlden & Morawetz in their *Bankruptcy & Insolvency Law Newsletters*, June 19, 2001.

¹⁹ [Section 23](#) of the *Mortgages Act*.

(b) may stay proceedings in the action, if judgment has been recovered and if no sale or recovery of possession of the land or final foreclosure of the equity of redemption has taken place.

28. The principle underlying section 23 of the *Mortgages Act* was described by McDermid J. in *Gord Harris Construction Ltd. v. Sternas*²⁰ as follows:

In my opinion, s. 23 (1) applies to the situation where, during the term of a mortgage, the mortgagor goes into default, usually because of the failure to pay a monthly installment, as a result of which the usual acceleration clause causes the entire balance to become due and payable. ***The goal of the section is to permit the mortgagor, after the mortgagee has commenced an action, to place the mortgage back in good standing so as to preserve the mortgagor's equity in the property***, even though the mortgagee may have obtained judgment, provided that "no sale or recovery of possession of the land or final foreclosure of the equity of redemption has taken place."

Utilizing s. 23 (1), the mortgagor may pay \$100 into court as security for costs and apply for a stay of proceedings, which the court *may* grant upon the mortgagor placing the mortgage back into good standing and paying the mortgagee's costs of the action. I interpret the words "... upon payment of the money due under the mortgage, exclusive of the money not payable by reason merely of lapse of time, ..." to mean that the mortgagor must pay the arrears of principal, (other than the amount due by reason of the acceleration clause), the arrears of interest and the mortgagee's reasonable costs.²¹ [Emphasis added]

29. In *Business Development Bank of Canada v. Pine Tree Resorts Inc.*,²² a first mortgagee applied to court for the appointment of a receiver over an inn which was not operating. Each of the second mortgagee and the debtor opposed the application. The second mortgagee instead proposed to exercise its right under the *Mortgages Act* to pay arrears of principal and interest owing under the first mortgage, as well as arrears of property taxes and the first mortgagee's costs, and to control the sale of the inn under power of sale. Additionally, the second mortgagee undertook to continue making payments of principal and interest under the first mortgage during its sale process and to keep the first mortgagee apprised of its sale efforts on

²⁰ *Gord Harris Construction Ltd. v. Stern*, [1992 CarswellOnt 3841](#), 34 A.C.W.S. (3d) 848, [1992] O.J. No. 1389.

²¹ *Ibid* at paras 7 and 8.

²² *Business Development Bank of Canada v. Pine Tree Resorts Inc.*, [2013 ONSC 1911 \(CanLII\)](#), aff'd [2013 ONCA 282 \(CanLII\)](#) ("*Pine Tree*").

an ongoing basis. The second mortgagee argued that it would not be just or equitable to appoint a receiver since a receivership would be more expensive and time consuming, than simply letting the second mortgagee put and keep the first mortgage in good standing while marketing and selling the inn under power of sale.

30. Justice Mesbur rejected the second mortgagee's argument because, among other reasons, the second mortgagee was not prepared to pay arrears of HST owing by the debtor, notwithstanding that the first mortgage contained a covenant on the part of the debtor to pay taxes.²³ Her Honour noted that in circumstances where there is disagreement among stakeholders about how property should be marketed, courts have held it is appropriate to appoint a receiver.²⁴

31. Justice Mesbur also considered that the advantage of appointing a receiver was that the receiver is the court's officer, with duties and obligations to both the court and all stakeholders.²⁵ Her Honour also considered the additional advantages of a receivership including a stay of proceedings against the debtor and the fact that a buyer of the inn would obtain a vesting order, thus protecting it against potential claims of other creditors.²⁶

32. The applicants respectfully submit that where, as here, a subordinate secured creditor whose loan is in default opposes the appointment of a receiver, without offering to put the senior appointing creditor's loan into good standing and without taking steps to enforce its own security, the reasoning in *Pine Tree* applies with even greater force. Therefore, BMO should not be permitted to stand in the way of a receiver being appointed while sitting on its hands.

²³ *Ibid* at [para 55](#).

²⁴ *Ibid* at [para 54](#).

²⁵ *Ibid* at [para 52](#).

²⁶ *Ibid* at [para 53](#).

B. Test to Appoint a Receiver

33. Pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*²⁷ and section 101 of the *Courts of Justice Act*²⁸ the Court may appoint a receiver and manager where it is “just or convenient” to do so.

34. In the facts at bar, it is just and convenient to appoint Rosen Goldberg Inc. as receiver over the Property because: (a) the applicants’ security provides for the appointment of a receiver on default; and (b) a court-appointed receiver is the optimal remedy to ensure that the applicants’ interests are preserved and that the rights of all stakeholders are protected.

i. Just as of Contractual Right

35. Where a debtor has *expressly* agreed to the appointment of a receiver in the event of default, the court should not ordinarily interfere with the contract between the parties.²⁹

36. The significance of a contractual right to privately appoint a receiver was discussed by Justice Blair in *Bank of Nova Scotia v. Freure Village on Clair Creek*:³⁰

It is conceded, in effect, that if the loans are in default... - which they are the Bank is entitled to move under its security and appoint a receiver-manager privately.

...

While I accept the general notion that the appointment of a receiver is an extraordinary remedy, it seems to me that where the security instrument permits the appointment of a private receiver - and even contemplates, as this one does, the secured creditor seeking a court appointed receiver - and where the circumstances of default justify the appointment of a private receiver, the "extraordinary" nature of the remedy sought is less essential to the inquiry. Rather, the "just or convenient" question becomes one of the Court determining, in the exercise of its discretion, whether it is more in the interests of all concerned to have the receiver appointed by the Court or not. {emphasis added]

²⁷ *Bankruptcy and Insolvency Act*, [RSC 1985, c B-3](#).

²⁸ *Courts of Justice Act*, [RSO 1990, c C.43](#).

²⁹ *United Savings Credit Union v. F & R Brokers Inc.*, [2003 BCSC 640](#) at [para 16](#).

³⁰ *Bank of Nova Scotia v. Freure Village of Clair Creek*, [1996 CanLII 8258 \(ON SC\)](#) at [paras 9 and 12](#).

37. This principle has been extended in instances where a secured creditor applies to court for the appointment of a receiver notwithstanding that its security instrument provides only for the appointment of a private receiver.³¹

38. The applicants submit that there is nothing in the facts at bar that should cause the Court to interfere with the parties' private contractual ordering or to consider the appointment of a receiver, which was explicitly contemplated by that contractual ordering, as an extraordinary remedy.

ii. The Appointment of a Receiver is the Optimal Remedy

39. It is well established that a court-appointed receiver is an officer of the court, acting in a fiduciary capacity to all parties having an interest in the subject matter of the receivership:³²

A court-appointed receiver is an officer of the court. It has a fiduciary duty to act honestly and fairly on behalf of all claimants with an interest in the debtor's property, including the debtor (and, where the debtor is a corporation, its shareholders). It must make candid and full disclosure to the court of all material facts respecting pending applications, whether favourable or unfavourable.

40. A secured creditor need not demonstrate that other remedies are ineffective before applying for the appointment of a court-appointed receiver.³³

41. A court-appointed receivership is the most effective and fair remedy and will allow for the utmost flexibility in responding to various contingencies because it facilitates the orderly and efficient realization of assets, judicial determination of creditor claims and priorities, and the fair distribution of proceeds to creditors by reference to their legal rights. Furthermore, a

³¹ *Romspen Investment Corp. v. 1514904 Ontario Ltd. et al*, [2010 ONSC 1339 \(CanLII\)](#) at [paras 23 to 26](#).

³² *Regal Constellation Hotel Ltd., Re*, [2004 CanLII 206 \(ON CA\)](#) at [para 26](#).

³³ *Bank of Nova Scotia v. D.G. Jewelry Inc.*, [2002 CanLII 12477 \(ON SC\)](#) at [para 3](#).

stay of proceedings will prevent any precipitous creditor action that may undermine the realization process.³⁴

42. In determining whether it is just and convenient to appoint a receiver, the Court must have regard to “all of the circumstances, but in particular the nature of the property and the rights and interest of all parties in relation thereto”.

43. In assessing whether it is just and convenient to appoint a receiver, the question is whether it is more in the interests of all concerned to have the receiver appointed or not. In order to answer the question the court must consider all the circumstances of the case, particularly:

- (a) the effect on the parties of appointing the receiver. This includes potential costs and the likelihood of maximizing return on and preserving the subject property;
- (b) the parties’ conduct; and
- (c) the nature of the property and the rights and interests of all parties in relation to it.³⁵

44. The applicants need not establish that it will suffer irreparable harm if the proposed receiver is not appointed.³⁶ The appointment of a receiver “becomes even less extraordinary when dealing with a default under a mortgage”.³⁷

C. It is Just and Convenient to Appoint Rosen Goldberg Inc. as Receiver and Manager

45. Having regard to the foregoing considerations, in the case at bar it is just and convenient to appoint Rosen Goldberg Inc., as receiver and manager given that:

- (a) notwithstanding the issuance of the NITE on February 15, 2024, the Debtor has failed to repay the Loan;

³⁴ *Pope & Talbot Ltd. (Re)*, [2009 BCSC 1552 \(CanLII\)](#) at [para 131](#); *Canada (Attorney General) v. Reliance Insurance Company*, [2007 CanLII 41899 \(ON SC\)](#) at [para 26](#).

³⁵ *Pine Tree*, at [para 22](#).

³⁶ *Bank of Montreal v Carnival National Leasing Limited*, [2011 ONSC 1007 \(CanLII\)](#) at [paras 24 and 28](#).

³⁷ *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, [2020 ONSC 1953 \(CanLII\)](#) at [para 43-44](#).

- (b) the statutory notice period under the BIA has long expired;
- (c) the Debtor does not oppose within application;
- (d) the Second Mortgage is also in serious financial default and has matured;
- (e) BMO has not taken any steps to enforce the Second Mortgage;
- (f) BMO has not paid out the First Mortgage or put or offered to put the First Mortgage into good standing;
- (g) equity in the Property is eroding with the passage of time and the associated accrual of interest under the First Mortgage and the Second Mortgage;
- (h) by virtue of its heritage designation, the Property will require considerable skill and expertise to market and sell effectively;
- (i) a Court-appointed receiver will be in position to ensure that vacant possession of the Property can be delivered upon the closing of a sale;
- (j) Rosen Goldberg Inc. is well regarded as a Court officer for its skill and experience in marketing and selling real estate in Ontario; and
- (k) a Court-appointed receiver will ensure that the interests of the applicants, BMO and the Debtor are considered and facilitate a fair and transparent marketing and sale process with a view to maximizing realization and achieving a definitive sale of the Property within a reasonable timeframe.

PART V – ORDER REQUESTED

46. For the reasons set out above, the applicants respectfully requests an order appointing Rosen Goldberg Inc. as receiver and manager of the Property.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 7th day of May, 2024.



David P. Preger

Dickinson Wright LLP
Lawyers for the Applicants

SCHEDULE "A"

1. *Jacob's Hold Inc. v. Canadian Imperial Bank of Commerce*, [2000 CanLII 22730 \(ON SC\)](#)
2. *Gord Harris Construction Ltd. v. Stern*, [1992 CarswellOnt 3841](#), [34 A.C.W.S. \(3d\) 848](#), [\[1992\] O.J. No. 1389](#)
3. *Business Development Bank of Canada v. Pine Tree Resorts Inc.*, [2013 ONSC 1911 \(CanLII\)](#), aff'd [2013 ONCA 282 \(CanLII\)](#)
4. *United Savings Credit Union v. F & R Brokers Inc.*, [2003 BCSC 640](#)
5. *Bank of Nova Scotia v. Freure Village of Clair Creek*, [1996 CanLII 8258 \(ON SC\)](#)
6. *Romspen Investment Corp. v. 1514904 Ontario Ltd. et al*, [2010 ONSC 1339 \(CanLII\)](#)
7. *Regal Constellation Hotel Ltd., Re*, [2004 CanLII 206 \(ON CA\)](#)
8. *Bank of Nova Scotia v. D.G. Jewelry Inc.*, [2002 CanLII 12477 \(ON SC\)](#)
9. *Pope & Talbot Ltd. (Re)*, [2009 BCSC 1552 \(CanLII\)](#)
10. *Canada (Attorney General) v. Reliance Insurance Company*, [2007 CanLII 41899 \(ON SC\)](#)
11. *Bank of Montreal v Carnival National Leasing Limited*, [2011 ONSC 1007 \(CanLII\)](#)
12. *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, [2020 ONSC 1953 \(CanLII\)](#)

SCHEDULE "B"

Mortgages Act, R.S.O. 1990, c. M.40

Definitions

1 In this Act,

"mortgage" includes any charge on any property for securing money or money's worth; "mortgage money" means money or money's worth secured by a mortgage; "mortgagor" includes any person deriving title under the original mortgagor or entitled to redeem a mortgage, according to the person's estate, interest or right in the mortgaged property; and "mortgagee" includes any person deriving title under the original mortgagee. ("hypothèque", "hypothécaire", "montant de l'hypothèque", "débiteur hypothécaire", "créancier hypothécaire") R.S.O. 1990, c. M.40, s. 1.

Relief before action

22 (1) Despite any agreement to the contrary, where default has occurred in making any payment of principal or interest due under a mortgage or in the observance of any covenant in a mortgage and under the terms of the mortgage, by reason of such default, the whole principal and interest secured thereby has become due and payable,

(a) at any time before sale under the mortgage; or

(b) before the commencement of an action for the enforcement of the rights of the mortgagee or of any person claiming through or under the mortgagee,

the mortgagor may perform such covenant or pay the amount due under the mortgage, exclusive of the money not payable by reason merely of lapse of time, and pay any expenses necessarily incurred by the mortgagee, and thereupon the mortgagor is relieved from the consequences of such default.

Relief after action commenced

23 (1) Despite any agreement to the contrary, where default has occurred in making any payment of principal or interest due under a mortgage or in the observance of any covenant in a mortgage and under the terms of the mortgage, by reason of such default, the whole principal and interest secured thereby has become due and payable, in an action for enforcement of the rights of the mortgagee or of any person claiming through or under the mortgagee, the mortgagor, upon payment into court of the sum of \$100 to the credit of the action as security for costs, may apply to the court and, conditional upon performance of such covenant or upon payment of the money due under the mortgage, exclusive of the money not payable by reason merely of lapse of time, and upon payment of the costs of the action, the court,

(a) shall dismiss the action if judgment has not been recovered; or

(b) may stay proceedings in the action, if judgment has been recovered and if no sale or recovery of possession of the land or final foreclosure of the equity of redemption has taken place. R.S.O. 1990, c. M.40, s. 23 (1).

Bankruptcy and Insolvency Act, RSC 1985, c B-3

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

Courts of Justice Act, RSO 1990, c C.43

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

ANTONIETTA DEL ROSSO et al.
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-and- **DIANE MARTHA DEVENYI**
Respondent

Court File No. CV-24-007160406-00CL

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
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