

Court File Number: CV-21-00662099-00CL
CV-21-00665128-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

BRYTON CAPITAL CORP. GP LTD. and BAYVIEW CREEK RESIDENCES INC.
(formerly known as BRYTON CREEK RESIDENCES INC.)

Applicants

AND

**CIM BAYVIEW CREEK INC., GRANT THORNTON LIMITED IN ITS CAPACITY AS
THE BANKRUPTCY TRUSTEE OF CIM BAYVIEW CREEK INC., BAYVIEW CREEK
(CIM) LP, 10502715 CANADA INC., MNP LTD. IN ITS CAPACITY AS THE
BANKRUPTCY TRUSTEE OF BAYVIEW CREEK (CIM) LP AND 10502715
CANADA INC., GR (CAN) INVESTMENT CO., LTD., MONEST FINANCIAL INC.,
TRACY HUI, JOJO HUI, CARDINAL ADVISORY LTD., and THE CORPORATION
OF THE CITY OF RICHMOND HILL**

Respondents

-and-

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

AND

**BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT INC., and CIM
BAYVIEW CREEK INC.**

Respondents

Case Management Yes No by Judge:

Counsel	Telephone No:	Email/Facsimile No:
Robert Choi, Adam Beyhum and Aram Keyvani for Bryton Capital Corp. GP Ltd.		
John Russo for RSM Canada Inc. in its capacity as privately appointed receiver of CIM Bayview Creek Inc., Bayview Creek (CIM) LP and 10502715 Canada Inc.		
Adam Slavens, Jonathan Silver and Mike Noel for The Enforcement Committee of the Debenture Holders		
E. Patrick Shea for GR (Can) Investments Co. Ltd. and Monest Financial inc.		
John N. Birch for Grant Thornton Limited in its former capacity as proposal trustee and current capacity as trustee in bankruptcy of CIM Bayview Creek Inc.		
Rory McGovern for Cardinal Advisory Limited		

Order Direction for Registrar (**No formal order need be taken out**)
 Above action transferred to the Commercial List at Toronto (**No formal order need be taken out**)

Adjourned to: _____
 Time Table approved (as follows): _____

DATE OF HEARING: August 11, 2021

ENDORSEMENT

Introduction

[1] Two applications were heard together.

[2] In the first application, the Applicants Bryton Capital Corp. GP Ltd. (“Bryton Capital”) and Bayview Creek Residences Inc. (formerly known as Bryton Creek Residences Inc.) (“Bryton Creek”) (together, “Bryton”) apply for an order:

- a. directing and approving the sale of a property in Richmond Hill (the “Property”) by RSM Canada Limited, in its capacity as the privately appointed receiver over the property of CIM Bayview Creek Inc. (“CIM Bayview”), Bayview Creek (CIM) LP, 10502715 Canada Inc. (collectively, the “Debtors”) as contemplated by the terms of Bryton Capital Corp. GP Ltd.’s mortgage registered on title to the Property and the agreement of purchase and sale between the Debtors and Bayview Creek Residences Inc.;
- b. vesting title to the Property free and clear of all encumbrances;
- c. declaring that any proceedings commenced after December 21, 2020 relating to the validity of the Option (as defined herein) are barred by the principles of *res judicata* and abuse of process;
- d. in the alternative to the relief sought in c., above, declaring that no relief may be granted to, among other things, set aside the Option pursuant to the *Fraudulent Conveyances Act*, RSO 1990, c. A.33, *Assignments and Preferences Act*, RSO 1990, c. A.33, or the oppression remedy pursuant to section 241 of the *Canada Business Corporations Act*, RSC, 1985, c. C-44;
- e. an order declaring that any claims brought under, among other things, ss. 95 and 96 of the *Bankruptcy and Insolvency Act* relating to the Option shall have no effect on the validity or enforceability of the Option, together with an order dismissing those claims.

[3] The second application is brought by DUCA Financial Services Credit Union Limited (“DUCA”), the first ranking mortgagee of the property, seeking appointment of msi Spergel Inc., a licensed trustee, as receiver of the assets, properties and undertakings of the Debtors, including the Property.

[4] For the following reasons, the application by Bryton is dismissed and the application by DUCA is granted.

Factual Background

[5] This application concerns the Property which is a residential development property located in Richmond Hill, Ontario.

Parties

[6] Bryton Capital is a real estate developer and holds a second ranking mortgage on the Property. Bryton Creek is the optionee under an option to purchase the Property (the “Option”).

[7] The Option was assigned by Bryton Creek to itself and 10747 Bayview Mortgage Corp. on June 16, 2021, as permitted by the terms of the Option.

[8] CIM Bayview, as bare trustee for Bayview LP, holds title to the Property. The general partner for Bayview LP is 10502715 Canada Inc. (“105 Canada”).

[9] CIM Bayview, Bayview LP and 105 Canada (“Vendors”) were the Vendors under the Option and the related agreement of purchase and sale (“APS”). All of the Vendors are now bankrupt. Jiubin Feng is the director of the Vendors.

[10] Grant Thornton Limited is the Trustee in Bankruptcy for CIM Bayview.

[11] MNP Ltd. is the Trustee in Bankruptcy for Bayview LP and 105 Canada.

[12] DUCA holds a first-ranking mortgage registered on title to the Property securing repayment of \$20,720,000.

[13] GR (Can) Investment Co. Ltd., together with Monest Financial Inc. (the “Third Mortgagees”) registered a third mortgage against the Property.

[14] Jojo Hui and Tracy Hui are members of the Enforcement Committee of the Debenture Holders (the “Debentureholders”) who, in 2018, enter into a Subscription Agreement and received three year term secured redeemable debentures under which they advanced \$7,630,000 to CIM International Group Inc. (“CIM International”) to develop the Property. In a separate action, they obtained leave to issue a Certificate of Pending Litigation which was registered against the Property.

[15] RSM Canada Limited is the private receiver appointed by Bryton Capital pursuant to the terms of Bryton Capital’s Mortgage and General Security Agreement.

Factual background

[16] Some of the factual background to these applications is set out in my earlier decision in these proceedings reported at 2021 ONSC 220, at paras. 12-33.

[17] The applications relate to an Option Agreement dated June 3, 2019 under which the CIM Group granted to Bryton Creek in an irrevocable option to purchase the Property pursuant to an agreement of purchase and sale dated as of June 3, 2019. The Option was amended on July 1, 2020.

[18] On October 29, 2020, CIM Bayview filed a Notice of Intention to make a Proposal (“NOI”) under the *Bankruptcy and Insolvency Act*. Grant Thornton Limited was appointed as the proposal trustee for CIM Bayview.

[19] In the NOI proceeding, CIM Bayview sought an order approving a sales process for the sale of the property. Bryton opposed this order on the ground that it had a valid and enforceable option to purchase the Property. On November 27, 2020, I made an order extending the date for filing a proposal under the BIA and extending the dates for the exercise of the Option and for completion of a purchase of the Property under the Option.

[20] I ordered that the motion brought by Bryton in relation to the Option be scheduled for hearing on December 21, 2020.

[21] CIM Bayview brought a motion for an order (i) declaring that its notice to disclaim in the Option is valid and effective; (ii) declaring that the Option be vested out in furtherance of a sales process in the NOI insolvency proceeding; (iii) declaring that the Option violated federal law because it constitutes a criminal rate of interest and provided for an increase charge on amounts in arrears under a mortgage loan made by CIM Bayview to Bryton Capital.

[22] Bryton Capital and Bryton Creek brought a motion for an order (i) that the Option is not to be disclaimed or resiliated, (ii) declaring that Bryton Creek not be restrained from exercising the Option or, alternatively, permitting it to exercise the Option; and (iii) directing the Debtors to comply with the terms of the Option and complete the sale of the Property to Bryton Creek.

[23] Grant Thornton, as NOI trustee, did not bring a motion on December 21, 2020 but, in its factum, requested an order declaring that (a) the Option was void as against it as a transfer at undervalue; and (b) payments made by CIM Bayview to Bryton Capital as a break fee when the Option was amended were void as a preference.

[24] I released my decision on this motion on January 12, 2021. The motion by CIM Bayview was dismissed. The motion by Bryton Capital and Bryton Creek was substantially successful, and a declaration was made that Bryton Creek is at liberty to exercise its rights under the Option.

[25] Bryton Creek exercised the Option on January 14, 2021 and requested that the Debtors complete the APS. The Debtors declined to close, citing an appeal from the January 12, 2021 decision.

[26] Cim Bayview filed a Notice of Appeal of the January 12, 2021 decision. The appeal was dismissed for delay on April 14, 2021.

[27] Bryton Creek exercised the Option on January 14, 2021.

[28] On February 8, 2021, CIM Bayview was deemed to have made an assignment for the benefit of creditors and Grant Thornton became trustee of the bankrupt estate.

[29] On May 4, 2021, Bayview Creek LP and 10502715 Canada Inc. made assignments for the benefit of creditors pursuant to the BIA naming MNP Limited ("MNP") as trustee of their bankrupt estates.

[30] Bryton Capital appointed RSM Capital Limited as receiver pursuant to its mortgage and general security agreement.

[31] On May 20, 2021, the trustees in bankruptcy for the Vendors announced that they were disclaiming their interest in the Property.

[32] On June 1, 2021, Bryton Capital took possession of the Property.

[33] On June 2, 2021, GR (Can) Investment Co. Ltd. on its own behalf and on behalf of other creditors of CIM Bayview Creek Inc., 10502715 Canada Inc. and Bayview Creek (CIM) LP issued a Notice of Application against Bryton Creek as respondent.

[34] In its application, GR seeks remedies under s. 241 of the *Canada Business Corporations Act*, the *Assignments and Preferences Act* (“APA”) and the *Fraudulent Conveyances Act* (“FCA”).

[35] The Subordinate Secured Creditors have also brought motions pursuant to s. 38 of the BIA seeking to have the rights of Grant Thornton in its capacity as trustee of the bankrupt estates of CIM Bayview to pursue remedies against Bryton and/or the purchasers of the Property under, among other things, ss. 95 and 96 of the BIA assigned to the participating creditors.

Analysis

A. Application by Bryton Applicants

[36] The following issues arise on Bryton’s application:

- a. Should a vesting order be granted so that title to the Property can be conveyed free and clear of all creditors’ claims pursuant to the Option?
- b. Are the Bryton Applicants entitled to a declaratory order that proceedings relating to the validity of the Option are barred?
- c. Is the Creditors’ application to challenge the Option barred by the December 3, 2020 Order and the principles of *res judicata*?

Should a vesting order be granted?

[37] Bryton brings the application for a vesting order pursuant to s. 100 of the *Courts of Justice Act* (“CJA”). Section 100 of the CJA provides that a court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

[38] Bryton submits that although RSM as privately appointed receiver has the power to convey title to the Property under its security documentation, it requires the assistance of the Court to discharge certain encumbrances and, therefore, a vesting order is necessary in the circumstances.

[39] Under the proposed vesting order, the first and second mortgages would be discharged, and the third mortgage and Certificate of Pending Litigation would also be discharged. The DIP Charge made pursuant to my November 27, 2020 order would also be discharged if the requested vesting order were to be made.

[40] Bryton’s application is opposed by the Third Mortgagees and by the Debentureholders.

[41] Bryton cites *Third Eye Capital Corporation v. Dianor Resources Inc.*, 2019 ONCA 508 in support of their application for a vesting order by which title to the Property would vest in the purchaser, Bryton Residences, on a “free and clear” basis. Bryton submits that there is a proper basis to grant such an order both conveying title and extinguishing claims against the Property pursuant to principles of equity, as explained in *Third Eye*.

[42] In *Third Eye*, the Court of Appeal considered the jurisdiction of the Court to extinguish an interest in land, using a vesting order, under s. 100 of the CJA and s. 243 of the BIA. The Court, at para. 25, described the effect of a vesting order as one that effects the transfer of purchased assets to a purchaser

on a free and clear basis, while preserving the relative priority of competing claims against the debtor / vendor with respect to the proceeds generated by the sale transaction.

[43] Bryton does not seek a vesting order under both s. 100 of the *CJA* and s. 243 of the *BIA*. Bryton seeks this order only under s. 100 of the *CJA*. In *Third Eye*, the Court of Appeal addressed whether, absent an independent basis for jurisdiction, s. 100 of the *CJA* may be the sole basis on which to grant a vesting order. The Court of Appeal cited the statement by Lang J.A. in *Trick v. Trick* (2006), 81 O.R. (3d) 241 (C.A.), at para. 19, in *obiter*, that s. 100 of the *CJA* “does not provide a free standing right to property simply because the court considers that result equitable” and described this statement as supporting the conclusion that “absent an independent basis for jurisdiction, the *CJA* could not be the sole basis on which to grant a vesting order”.

[44] The Court of Appeal then cited a passage from an academic paper on vesting orders addressing whether s. 100 of the *CJA* confers jurisdiction to vest title to property on a free and clear basis and held:

This would suggest that provided there is a basis on which to grant an order vesting property in a purchaser, there is a power to vest out interests on a free and clear basis so long as the terms of the order are appropriate and accord with the principles of equity.

[45] The Court of Appeal went on to consider whether jurisdiction exists under s. 243 of the *BIA* to grant a vesting order and concluded, at para. 81, that a receiver has jurisdiction under s. 243 of the *BIA* to convey property “free and clear of any liens or encumbrances”, noting that the use of vesting orders is in essence incidental and ancillary to the power to sell.

[46] The Court of Appeal cautioned, at para. 82, that, while jurisdiction for this aspect of vesting orders stems from s. 243 of the *BIA*, the exercise of that jurisdiction is not unbounded. The Court noted that its conclusion facilitates the maximization of proceeds and realization of the debtor’s assets but “at the same time operates to ensure that third party interests are not inappropriately violated”.

[47] In *Clarkson Co Ltd. v. Credit Franco Canadien*, 1985 CanLII 2651 (SK CA), the Saskatchewan Court of Appeal held, at para. 6, that a vesting order should not be made unless or until the rights of all interested parties have either been relinquished or have been extinguished by due process.

[48] The Option is a private contract and does not provide for extinguishment of claims upon exercise of the Option and completion of the sale provided for thereby. The rights of RSM as a private receiver do not extend beyond the contractual rights of Bryton. These rights do not include the right to convey the Property “free and clear” of third party interests.

[49] In my January 12, 2021 Order, I made an order that Bayview Creek Residences is at liberty to exercise its rights under the Option. I addressed the request made by Grant Thornton as Proposal Trustee for relief under ss. 95 and 96 of the *BIA* and made the following order:

THIS COURT DECLARES that the Proposal Trustee lacks statutory authority to seek orders under s. 95 and 96 of the *BIA* prior to the filing of a proposal or a bankruptcy and that the Proposal Trustee Request may not be pursued until the Debtor makes a proposal or becomes bankrupt and, accordingly, this order does not preclude the bankruptcy trustee or any other person from pursuing relief under s. 95 or 96 of the *BIA*.

[50] Bryton, through RSM as receiver, is able to complete the APS and convey title to the Property to Bayview Residences as purchaser. A vesting order is not needed for this purpose. The vesting order is requested by Bryton to vest out third party claims.

[51] At this stage of the bankruptcy proceedings, the Debentureholders and the Third Mortgagees have not been given a fair opportunity to pursue claims for oppression, under the APA and the FCA, and based on an alleged transfer at undervalue. In these circumstances, it would not be equitable to vest out these claims without adjudication of their merits.

[52] To extinguish the claims for relief under s. 95 or 96 of the *BIA* without adjudication would conflict with the January 12, 2021 Order. To grant the requested vesting order without adjudication of the claims of third parties under s. 241 of the *CBCA*, the *APA* and the *FCA*, and s. 95 or 96 of the *BIA*, would also conflict with the principles set out by the Court of Appeal in *Third Eye* with respect to vesting orders under s. 100 of the *CJA* and would not be appropriate or in accord with the principles of equity.

[53] The motion by Bryton for a vesting order is dismissed.

Is Bryton entitled to a declaratory order that proceedings relating to the validity of the Option are barred?

[54] Bryton seeks an order declaring that any proceedings commenced after December 21, 2020 relating to the validity of the Option are barred by the principles of *res judicata* and abuse of process under s. 97 of the *Courts of Justice Act*. Bryton submits that courts may grant declaratory relief in these circumstances to provide commercial certainty and define the parties' respective rights.

[55] Bryton relies on the decision of the Supreme Court of Canada in *S.A. v. Metro Vancouver Housing Corp.*, 2019 SCC 4 in which the Court held that declaratory relief is granted by the courts on a discretionary basis, and may be appropriate where (a) the court has jurisdiction to hear the issue, (b) the dispute is real and not theoretical, (c) the party raising the issue has a genuine interest in its resolution, and (d) the responding party has an interest in opposing the declaration being sought.

[56] Bryton submits that they meet these requirements because (a) rule 14.05(3)(e) authorizes a proceeding by application where the relief claimed is the settling of the priority of interests or charges; (b) the dispute is real because the Third Mortgagees have issued a Notice of Application to challenge the validity of the Option which will be supported by the Debentureholders; (c) the declaratory relief is necessary to provide commercial certainty to permit financing and development of the Property; and (d) the Third Mortgagees and any creditors aligned with their position have been given notice of this application and are able to make submissions in opposition to the relief sought.

[57] Bryton submits that the Third Mortgagees and the Debentureholders were required to tender any evidence upon which they rely in response to the application for declaratory relief and, like on a motion for summary judgment, put their best foot forward. They submit that in the absence of evidence on the issues involving alleged transfers at undervalue the application for declaratory relief should be granted.

[58] In *S.A.*, the application for declaratory relief was made pursuant to the British Columbia Supreme Court Rules which authorized an application where the sole or principal question at issue is one of construction of an oral or written contract or other document.

[59] The Third Mortgagees and the Debentureholders have not yet commenced proceedings under s. 95 or s. 96 of the BIA. There are no pleadings or evidence before me with respect to the merits of such claims.

[60] The jurisdiction conferred on the court by s. 97 of the *CJA* to make binding declarations of right is not a free-standing provision that allows a judge to do whatever seems fair. It allows the court to confirm legal rights that already exist: *T.T.K.O., S.P.O. G.D.K.* 2011 ONSC 6601, at para. 43.

[61] Bryton seeks an order barring claims that have not been made from being adjudicated on their merits. It is not open to them to do so, simply because they seek declaratory relief in this application. The attempt by Bryton to pre-emptively bar creditors' claims that have not yet been made is, in my view, misconceived.

[62] Bryton's claim for declaratory relief is denied.

Are the claims by creditors to challenge the validity of the Option barred by the doctrine of *res judicata*?

[63] Bryton, in addition to its claim for declaratory relief, seeks, in the alternative, an order that creditors' challenges to the validity of the Option should be barred by operation of the doctrine of *res judicata*.

[64] Bryton relies on an Order dated December 3, 2020 made at a scheduling conference in which the following Order was made:

THIS COURT FURTHER ORDERS that any motions or cross-motions relating to whether the Bryton Option is valid and whether the stay of proceedings in respect of CIM Bayview ("CIM Bayview") should be lifted to allow for the Bryton Option to be enforced at this time shall be heard at the time of hearing the Bryton Option Motion (the "Bryton Option Validity and Enforcement Motions").

[65] All creditors on the service list for the proposal proceeding, including the Third Mortgagees and Debentureholders, were given notice of this Order.

[66] Bryton submits that the creditors' claims to challenge the validity of the Option, including the Third Mortgagees' claims under the *FCA*, *APA*, oppression remedy and as assignees under s. 38 of the BIA are precluded by the doctrine of cause of action estoppel. Bryton submits that the doctrine of cause of action estoppel applies to all causes of action that a party had the opportunity to raise in the prior proceedings and, in all of the circumstances, should have raised. Bryton submits that the January 12, 2021 Order is a final order and that the Third Mortgagees and the Debentureholders were privy to the proposal proceedings in which that Order was made and, as such, they were required to make any claims challenging the Option as part of the motion heard on December 21, 2020.

[67] Bryton submits that the Third Mortgagees, the Debentureholders, and any other creditor with notice of the proposal proceedings were required to file materials and advance their claims in that proceeding. Bryton submits that the causes of action that the Third Mortgagees wish to litigate were already argued in December 2021 and, although the Third Mortgagees now advance claims under different legal theories, any claims seeking to challenge the validity of the Option should have been made and adjudicated at the prior hearing.

[68] At the time that the motions were heard in the proposal proceeding on December 21, 2020, CIM Bayview, Bayview Creek LP, and 10502715 Canada Inc. were not bankrupt. CIM Bayview made an assignment for the benefit of its creditors on February 8, 2021, and Grant Thornton was appointed as trustee of the bankruptcy estate. Bayview Creek LP and 10502715 Canada Inc. made assignments for the benefits of their creditors on May 4, 2021 and MNP was named as trustee of their bankruptcy estates. The causes of action that the Third Mortgagees and other supporting creditors seek to acquire under s. 38 of the BIA could not have been asserted in the proposal proceedings in December 2020. The causes of action that became vested in the trustees in bankruptcy could not have been acquired by creditors until the debtors were bankrupt.

[69] In my January 21, 2021 endorsement, at para. 105, I wrote that “if CIM Bayview is deemed to have made an assignment of all its property for the general benefit of its creditors, ... the trustee in bankruptcy would then have statutory authority to seek orders under s. 95 and s. 96 of the BIA”. Any other causes of action to be acquired from Grant Thornton and MMP under s. 38 of the BIA could not have been pursued until after the debtors became bankrupt. With respect to direct claims by the Third Mortgagees, these claims involve inter-creditor matters that relate to the claims to be obtained by assignment under s. 38 of the BIA. These claims are properly brought by way of an application or action. In the circumstances, I do not agree that it was incumbent on the Third Mortgagees to seek relief by way of a motion in December 2020, particularly in circumstances where the debtors were not bankrupt.

[70] Although Bryton made separate submissions in their factum in relation to their claim for declaratory relief and their submission that creditors’ claims to challenge the validity of the Option are barred by *res judicata*, I regard these submissions to be related. For the reasons I have given, Bryton’s claim for declaratory relief is misconceived and opposition to claims made by the Third Mortgagees or the Debentureholders should be made in proceedings they commence and not by seeking declaratory relief.

[71] I conclude that the Third Mortgagees and the Debentureholders are not precluded by operation of the doctrine of cause of action estoppel from asserting claims under the FCA, APA, oppression remedy, or as assignees under s. 38 of the BIA.

[72] Bryton submits that the Third Mortgagees and the Debentureholders are bound by findings made in my January 21, 2021 endorsement and that such findings give rise to issue estoppel which has the effect of precluding them from relitigating such findings in a subsequent proceeding.

[73] Bryton, in substance, seeks a declaration that the doctrine of issue estoppel applies to claims by the Third Mortgagees and the Debentureholders that have not yet been made. Until such claims are made, it would not be proper to determine whether the doctrine of issue estoppel applies to preclude relitigation of any issues decided in my January 21, 2021 decision.

[74] The doctrine of issue estoppel is not applicable.

B. DUCA’s application for appointment of a receiver

[75] DUCA brings an application for the appointment of msi Spergel inc. as receiver of the assets, undertakings and properties of Bayview Creek (CIM) LP and CIM Bayview Creek Inc. and CIM Invests Development Inc. including the property at 10747 Bayview Avenue, Richmond Hill, Ontario (the “Property”) pursuant to s. 243 of the BIA and s. 101 of the CJA. The Third Mortgagee supports DUCA’s application.

[76] DUCA has a first ranking \$20,720,000 mortgage charge on the Property. DUCA's mortgage is in default and has matured. There is no forbearance period in effect. DUCA's security provides for the appointment of a receiver.

[77] Spergel is a licenced trustee and qualifies to be appointed as a receiver under s. 243(1) of the *BIA*. See *Colour Box Ltd. (Re)*, 1995 CanLII 7143, at para. 17 *et seq.*

[78] Bryton Capital and Bryton Creek oppose DUCA's application. They submit that there is no need for such an appointment and that the appointment of a receiver by the court would only lead to increased delay and costs.

[79] DUCA's decision not to seek the appointment of a receiver earlier does not weigh against the appointment of a receiver, as Bryton submits. The circumstances have changed, and DUCA is entitled to take the changed circumstances into account in deciding whether to seek the appointment of a receiver.

[80] I am satisfied that, in the circumstances, it would be just and convenient to appoint Spergel as receiver. A court appointed receiver will be able to take possession of the Property, ensure that it is secure and protected, address issues relating to property taxes and, generally, act having regard to the interests of all of the stakeholders. A court appointed receiver will be in a position to deal with any issues relating to disposition of the Property, or any distribution issues. The structure and discipline that will be provided by the appointment of a receiver will assist the parties and the Court in dealing with the contentious issues before the court. Under the proposed receivership order, Spergel will be able to seek advice and directions from the court when appropriate. Notwithstanding the opposition from Bryton, I do not see prejudice to Bryton that will arise from the appointment by the court of a receiver.

[81] I grant DUCA's application.

Disposition

[82] For these reasons,

- a. The application by Bryton Capital and Bryton Creek is dismissed.
- b. The Application by DUCA is granted, and an order is made appointing Spergel as receiver in the form of order requested by DUCA and posted on CaseLines. The Order of Schabas J. dated September 18, 2020 is varies to the extent necessary to permit the Receiver to exercise its powers under the appointment order. I ask counsel for DUCA to provide me with an approved form of order to be issued.

[83] If the parties are unable to resolve costs, I ask that they agree on a timetable for written submissions and provide it to me for approval.

Cavanagh J.

March 2, 2022