



SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

COUNSEL SLIP / ENDORSEMENT

COURT FILE NO.: CV-22-00685439-00CL

DATE: August 9th 2023

REGISTRAR: Tiana Khan

NO. ON LIST: 7

TITLE OF PROCEEDING: **THE TORONTO-DOMINION BANK v 2314251 ONTARIO INC**
et al

BEFORE JUSTICE: **Justice Osborne**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
SPENCE, MIRANDA	Applicant	mspence@airdberlis.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
ROSENSTEIN, JONATHAN	Respondents	jrosenstein@rosensteinlaw.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
VINE, MELINDA	Receiver	mvine@harrisonpensa.com
CRILLY, MORGAN	Parkland Corp.	morgan.crilly@parkland.ca

ENDORSEMENT OF JUSTICE OSBORNE:

1. The Respondents brought this motion seeking an order that the Second Report of the Receiver and the activities described therein be approved together with the fees and disbursements of the Receiver and its counsel, that the Fee Accrual be approved and that the Receiver be authorized and directed to distribute the balance of remaining funds held after payment of the fees and disbursements described above, and an order that the claims and charges created by my order of November 15, 2022 be discharged as against the property of the Respondents. Finally, the Respondents sought an order that the Receiver be discharged upon the filing of the certificate.
2. The Receiver and the Applicant and Parkland consent to the relief sought, subject to the terms set out below. No other party appears to oppose the relief sought.
3. The Receiver was appointed at the request of the TD Bank following a default by 231 in the repayment of funds owed. 231 has now arranged a loan from one of its principals which ought to provide the Receiver with sufficient funds to repay the entire debt owed to TD together with costs of the receivership another outstanding obligations such as taxes and utilities. Accordingly, the discharge of the Receiver is sought pursuant to Rule 41.06.
4. The wrinkle in what might otherwise be a straightforward motion is that the funds that have been received are slightly short of what is required to discharge all of the obligations referred to above. There remains a balance owing to the Receiver of someone hundred \$68,000, and of the \$180,000 owed to Parkland for fuel (as described at paragraph 17 of the Second Report), counsel for the Respondents has received \$100,000 and advises the Court that he fully expects to receive the balance of the remaining \$80,000 no later than Friday, August 11.
5. There was a dispute between the Respondents and Parkland as to whether the full \$180,000 was in fact owing, but those parties entered into an agreement as described at paragraph 17 of the Second Report and which provided, in part, that Parkland would not oppose the discharge of the Receiver and the company would commence an application for a declaration as to the rights and obligations of the parties with respect to the Parkland Loan in the event the matter was not resolved on consent.
6. Ultimately, and on the consent of all parties, the court having heard submissions from all of the parties present, the requested relief is sought, on the terms of this Endorsement.
7. The activities of the Receiver, and the fees and disbursements of the Receiver and its counsel as set out in the Second Report and the fee affidavits filed, are appropriate and are approved.
8. The Fee Accrual is appropriate and is approved. The proposed distribution mechanism as set out in the motion materials is appropriate and is approved. It follows that when that occurs, the charges and encumbrances created by my order of November 15, 2022 can be discharged upon the filing of the certificate by the Receiver.
9. The discharge of the Receiver is also appropriate, subject to the rectification of the deficiency in the funds advanced to satisfy all of the obligations as stated above. Given the expectation of counsel for the Respondents that the funds will be received and available by August 11, and the consent of all of the other parties to the discharge of the Receiver if (and only if) that occurs, I am satisfied that the relief sought is appropriate, but must address this contingency.

10. Accordingly, order to go granting the relief as summarized above and discharging the Receiver. The effect of this order is suspended until counsel for the Respondents confirms to the Court via email expected on Friday, August 11, with a copy to counsel for all parties who appeared on this motion, that the additional funds required to make up the deficiencies have been received and all affected parties consent to the discharge.
11. In the event that the funds are not received and further steps are required, the parties may schedule a brief appointment before me.

Oswald, J.