



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00735381-00CL

DATE: February 13, 2025

NO. ON LIST: 5

TITLE OF PROCEEDING: PEAKHILL CAPITAL INC. V METAMORE INC.

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Dominique Michaud	Lawyer for the Applicant/Lender	dmichaud@robapp.com
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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Peter Robertson Chris Belsito	Lawyers for the Respondent/Borrower	peter@kdalaw.ca chris@belsitolaw.ca

Other:

Name of Person Appearing	Name of Party	Contact Info
Daniel Baldwin	Lawyer for 995451 Ontario Inc./Quality Mechanical/Lien Claimant	dbaldwin@baldwinlaw.ca

Roberto Ghignone	Lawyer for Tenant-Canadian Mental Health Association Hatings and Prince Edward	rghignone@blg.com
Farza Khan	Lawyer for the Potential Lender	faraz@khanllp.com

ENDORSEMENT OF JUSTICE KIMMEL:

The Application

- [1] Peakhill Capital Inc. ("Peakhill") seeks an Order appointing msi Spergel Inc. ("msi Spergel") as receiver and manager (the "Receiver") of the property municipally known as 228 Dundas Street East, Belleville, Ontario (the "Property") owned by the Respondent, Metamore Inc. (the "Borrower") pursuant to section 101 of the *Courts of Justice Act* (the "CJA") and section 243(1) of the *Bankruptcy and Insolvency Act* (the "BIA").
- [2] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the applicant's factum dated February 12, 2025.
- [3] Peakhill is the first ranking mortgagee and there were no other charges registered against the Property as at January 23, 2025. None of the Ontario PPSA registrations against the Borrower pertain to the Property other than Peakhill's registration. As at January 23, 2025, 995451 Ontario Inc./Quality Mechanical had registered two construction liens on title to the Property.
- [4] The Borrower went into default under its loan from Peakhill in July of 2024, demands were made in August of 2024 and a forbearance agreement was entered into on September 12, 2024 (the "Forbearance Agreement"). After some initial defaults by the Borrower under the Forbearance Agreement, it was revised and extended in November 2024. Thereafter, the Borrower again defaulted and breached the terms of the Forbearance Amendment Agreement by, inter alia, failing to make monthly interest payments as required.
- [5] Pursuant to the Forbearance Agreement, upon an event of default, "The Borrower and Guarantors hereby consent to the appointment of a private or court appointed Receiver and covenant not to take any steps to oppose or interfere with such appointment and to provide all reasonable assistance, access to all books, records, assets and documents of the Borrower to permit such Receiver to properly fulfil its duties."
- [6] Peakhill has lost faith in the Borrower's ability to repay the Loan indebtedness and commenced this application for the appointment of a Receiver over the Property. As of January 24, 2025 when the application was commenced, the Borrower owed Peakhill

\$12,811,967.35 plus per diem interest, costs, legal fees and disbursements, and other expenses incurred by Peakhill.

- [7] The Property is listed for sale and remains tenanted. The Property requires active management in order to preserve this Borrower's asset. Recent concerns have come to light about the Borrower's failure to pay Property Utilities and janitorial services, which may impair the value of the Property and also have implications for the tenants. There have also been conflicting communications from the Borrower to the tenants in respect of the applicant's attempt to attorn rents under its security.

The Respondent's Request for an Adjournment

- [8] Until yesterday, the applicant had understood that this application would proceed on the basis of the consents previously provided by the Borrower and the Guarantors in a Forbearance Agreement, and their contractual agreement not to oppose the appointment of the Receiver.
- [9] Mr. Robertson appeared gowned today with a limited retainer to ask for an adjournment on behalf of the Borrower. Mr. Belsito also appeared, ungowned because he was not in Toronto. He confirmed that he has been retained by the Borrower and will be delivering a Notice of Appearance and is instructed to seek an adjournment to allow the Borrower to deliver a response to the Application, part of which is expected to include a refinancing proposal from another lender. Counsel for that other lender also appeared today to confirm that his client is working on its due diligence for this loan and that it has some familiarity with the Property because it was a former lender in connection with this Property.
- [10] Peakhill, the primary tenant of the Property and the construction lien claimant all opposed the adjournment request, citing the contractual agreement to the appointment of the Receiver, the course of conduct detailed in the applicant's factum, the eleventh hour request to adjourn (despite being on notice of this application for a number of weeks) and concerns about the Borrower's failure to pay the Property Utilities and other services that could impair the condition and value of the Property to the detriment of the secured lenders and also to the detriment of the tenants who are occupying the Property. Until the hearing today, none of the other parties were aware of the prospective new lender and its due diligence.

The Court's Decision on the Adjournment

- [11] The adjournment was granted at the conclusion of the hearing today to March 18, 2025. The following is a summary of the brief oral reasons and directions that were provided at the hearing:

- a. The contractual commitments in the security documents and the affirmative contractual commitment in the Forbearance Agreement to consent to, and not oppose, the appointment of the Receiver are very compelling and strong reasons for this application to proceed today. However, the receivership application will not be entirely determined on the basis of those contractual commitments. They are compelling but not determinative factors that the court will consider in deciding whether it is just and convenient to appoint a receiver.
- b. The applicant has acted reasonably and has afforded many indulgences to the respondent and there is nothing untoward about the timing of this application or service of the application materials.
- c. That said, on the condition that the respondent brings all outstanding Property Utilities and janitorial service obligations into good standing by the end of the day tomorrow, and keeps them current (so as to protect against any further impairment of the Property during the period of the adjournment), the court is prepared to grant a short adjournment to afford the respondent the opportunity to respond and bring forward a refinancing commitment from another lender, since that other lender appears to be serious and has asked their counsel to appear today to reinforce that.
- d. On this basis, this application is adjourned to March 18, 2025 for a two hour hearing commencing at 10:00 a.m. by zoom.
- e. The Borrower shall have until March 10, 2025 to come up with firm refinancing commitment to be provided to counsel for the applicant and all other stakeholders in attendance today. If that commitment is available sooner, it shall be provided as soon as it is received by the Borrower.
- f. The Borrower's responding application record (that includes the firm refinancing commitment, if one is available) shall be delivered by March 13, 2025, together with Borrower's factum in response to the application.
- g. Peakhill's reply record and/or further supplementary application record to update on the status of the Property or any other relevant matters, together with its reply factum, if deemed appropriate, shall be delivered by March 17, 2025 at 2:30 p.m.
- h. All materials to be considered by the court on this application shall have been served, filed and uploaded into the appropriate hearing bundle in Case Center by no later than 3:00 p.m. on March 17, 2025.
- i. The Borrower shall provide proof to counsel to the applicant and other stakeholders in attendance today of having brought the Property Utilities and janitorial services contract into good standing by 4:30 p.m. on Friday February 14,

2025. If that is not done, or if these obligations of the Borrower are not kept in good standing thereafter, then any interested party may request an urgent case conference before me through the Commercial List Scheduling office. All parties should come prepared to that case conference to address the merits of the receivership application, which the court may decide to grant that day on the basis of the applicant's materials already filed, if the Borrower is not in compliance with this condition of the adjournment.

[12] This endorsement and the orders and directions contained in it shall have the immediate effect of a court order without the necessity of a formal order being taken out.

A handwritten signature in dark ink, appearing to read "Kimmel J.", with a stylized, cursive script.

KIMMEL J.