

**ONTARIO
SUPERIOR COURT OF JUSTICE
[IN BANKRUPTCY]**

B E T W E E N:

**IN THE MATTER OF THE PROPOSAL OF
NEPTUNE SECURITY SERVICES INC.**

**MOTION RECORD OF THE TORONTO-DOMINION BANK
(Returnable May 12, 2023)**

May 11, 2023

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TAB A

**ONTARIO
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**IN THE MATTER OF THE PROPOSAL OF
NEPTUNE SECURITY SERVICES INC.**

**NOTICE OF MOTION
(Lift Stay)**

THE TORONTO DONIMION BANK (“**TD**”) will make a motion to a judge of the Commercial List on a date to be fixed in Chambers before Justice Penny, on Friday the 12th day of May, 2023, at 10:00 am or as soon after that time as the motion can be heard, at 330 University Avenue in Toronto.

PROPOSED METHOD OF HEARING: The Motion is to be heard by judicial video conference via Zoom co-ordinates to be established by the Court prior to the motion date.

THE MOTION IS FOR AN ORDER:

1. abridging the time for service of the Motion Record and related Notice of Motion, validating service of the Motion Record and related Notice of Motion, and dispensing with further service thereof;
2. that the 30-day stay period (the “**Stay Period**”) provided for in s. 50.4(8) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (“**BIA**”), which commenced on May 5, 2023 when Neptune Security Services Inc. (“**Neptune**”) filed its Notice of Intention to Make a Proposal (the “**Neptune NOI**”), be terminated forthwith pursuant to s. 50.4(11) of the BIA;

3. in the alternative, that s. 69 of the BIA no longer operates in respect of TD, pursuant to s. 69.4 of the BIA;
4. costs of this motion on a substantial indemnity scale; and,
5. such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

Neptune Background

1. Neptune is a private security company that operates in various provinces, and whose main source of revenue is government contracts;
2. it recently came to the attention of TD that Neptune had also began operating as a construction company at some point;
3. on Friday, May 5, 2023, being the last business day before TD's demand for payment and s. 244 BIA Notice was set to expire on Monday, May 8, 2023, the Neptune NOI was filed pursuant to section 50.4(1) of the BIA (the "**Neptune NOI**"). Harris & Partners was named as Proposal Trustee;
4. Robert Butler ("**Butler**") is the actual principal of Neptune, and the sole decision maker in charge of Neptune's operations. He alleges that his spouse, Hanane Outair (the "**Spouse**"), is the sole owner and administrator of Neptune. However the Spouse is simply a figurehead;
5. in September, 2022, Butler inserted 13994929 Canada Corporation as Neptune's payroll administrator outside of Quebec (the "**Payroll Administrator**"). In January, 2023, this was expanded to include Quebec. Butler is the actual principal of 13994929 Canada

Corporation, and the sole decision maker in charge of the Payroll Administrator's operations. He alleges that his mother, Najat Raissouni (the "**Mother**"), is the sole owner and administrator of 1399499 Canada Corporation. However, the Mother is simply a figurehead;

6. it has recently come to light that Butler uses two identities. He is also known as Badreddine Ahmadoun, which is the name he uses when he is running a real estate agency called Land/Max;

TD's Lending Position

7. in or about August, 2017, TD established a Demand Operating loan facility for Neptune (the "**Operating Loan**"), pursuant to a Demand Operating Facility Agreement between TD and Neptune dated on or about August 8, 2017, as amended (the "**TD-Neptune Operating Loan Agreement**");
8. the Operating Loan is payable on demand;
9. the Operating Loan is secured by way of a General Security Agreement between TD and Neptune dated July 21, 2017, over all of Neptune's assets and undertaking (the "**GSA**");
10. TD holds properly perfect first ranking security over the assets and undertaking of Neptune, whose only asset of significance is its accounts receivable (the "**Neptune AR**");
11. as of April 28, 2023, Neptune was indebted to TD for the following amounts:
 - (a) Operating Loan: \$9,020,493.70; and
 - (b) \$87,906.01 in respect of a Visa credit card loan facility

TD Attempts to Investigate the Allegations Against Neptune

12. on or about March 23, 2023, Neptune's account at TD was transferred to TD's Financial Restructuring Group ("**TD FRG**") following the first of the four investigative stories about Neptune published by the Canadian Broadcasting Corporation/Radio Canada (collectively, the "**CBC**") beginning on March 23, 2023;

<https://www.cbc.ca/news/canada/montreal/public-contracts-private-security-government-police-double-identity-investigation-1.6788315> (March 23, 2023)

<https://www.cbc.ca/news/canada/montreal/private-security-firm-banned-quebec-identities-fraud-1.6792647> (March 27, 2023)

<https://www.cbc.ca/news/canada/montreal/neptune-private-security-firm-contracts-double-identity-1.6807730> (April 12, 2023)

<https://www.cbc.ca/news/canada/montreal/neptune-pay-security-firm-quebec-1.6821031> (April 24, 2023)

13. as a result, representatives of TD FRG and of msi Spergel Inc. ("**Spergel**") attended at Neptune's premises on April 5, 2023;
14. on April 6, 2023, an engagement letter was forwarded to Neptune (the "**Engagement Letter**"), for the purposes of TD FRG appointing Spergel as TD's consultant to review and assess the assets, financial position, business and operations of Neptune, and to advise TD FRG in connection with Neptune's indebtedness to TD (the "**Consultant**");
15. as part of Spergel's proposed appointment as Consultant, by way letter dated April 6, 2023, Spergel also sought specific financial documentation from Neptune to commence its review and fulfill our mandate (the "**Financial Disclosure Request**");
16. Neptune repeatedly refused to comply the Financial Disclosure Request or execute the Engagement Letter;

Neptune Status

17. The reporting by from the CBC/Radio Canada recently revealed that:
 - (a) Butler was using two identities;
 - (b) Butler was not named in Neptune's corporate structure submitted to the *Autorité des marchés publics* (AMP), the agency that oversees public contracts in Quebec;
 - (c) as a result, the AMP added Neptune to Quebec's registry of companies inadmissible to public contracts. The AMP also said the company's use of multiple numbered companies unauthorized to hold contracts allows it to evade the law;
 - (d) Neptune was then banned for five years from accepting public contracts Quebec;
 - (e) Neptune is challenging that decision in court, and on April 6, 2023, a Quebec Superior Court judge issued a temporary suspension of the AMP decision until May 18, 2023, when arguments will be heard about Neptune's eligibility. Until that time, the company continues to be legally allowed to be awarded public contracts or subcontracts;
 - (f) however, on April 12, 2023, the federal government suspended Neptune's contracts until further notice. Neptune is now barred from bidding on federal contracts until a "full evaluation" is completed. In some cases, Neptune's federal contracts have been cancelled according to Public Services and Procurement Canada; and,
 - (g) in addition, on April 24, 2023, Neptune closed its operations in Quebec;

18. based on the Neptune NOI list of creditors, Neptune is facing a priority tax claim for almost \$18 million following an assessment from Revenue Quebec, consisting of \$6,587,000.00 in unremitted QST and \$11,148,600.00 in unremitted source deductions (the "**Neptune Tax Liability**");

19. Neptune alleges that the Neptune Tax Liability is an error;
20. as of April 24, 2023, the Neptune AR secured in favour of TD for Quebec was \$16,127,357.17 (most under 60 days), and \$13,754.953 for the rest of Canada (with almost \$5.5 million over 60 days);
21. however, by May 8, 2023, the Neptune AR had been depleted by \$10 million, to \$10,600,882.16 for Quebec and \$9,567,971.83 for the rest of Canada (over half of which is now over 90 days);
22. furthermore, the Neptune's indebtedness to TD under the Operating Loan increased from \$6,940,000.00 on April 4, 2023 to \$9,020,493.70 as of April 28, 2023;
23. Neptune cannot currently meet its payroll obligations. The Proposal Trustee alleges that Neptune is hoping to do so from the Neptune AR, which has already been significantly depleted over the last two weeks (from approximately \$30 million to \$20 million);
24. based on the contents of the Neptune financial production made by the Proposal Trustee to TD on the evening of May 10, 2023, no reliance can be placed on Neptune's financial books and records;

TD Demand and TD Position

25. on April 28, 2023, TD made demand on the Operating Loan and issued its Notice pursuant to s. 244 of the BIA;
26. on May 5, 2023, Neptune filed the Neptune NOI;
27. Neptune listed TD as its only secured creditor at almost \$9 million;

28. the Neptune Tax Liability represents 97% of its unsecured debt. If Neptune's allegation that the Neptune Tax Liability is in error, then Neptune's indebtedness to TD represents almost all of Neptune's total indebtedness. If it is not in error, the Neptune Tax Liability survives;
29. TD has lost all confidence in Neptune and its management;
30. Neptune is in breach of myriad terms of the TD-Neptune Operating Loan Agreement and the Neptune GSA;
31. Neptune has not acted, and is not acting, in good faith or with due diligence;
32. Neptune will not be able to make a viable proposal before the expiration of the Stay Period;
33. Neptune will not be able to make a proposal, before the expiration of the Stay Period that will be accepted by TD;
34. TD will be materially prejudiced if the Stay Period is not immediately lifted;
35. Rules 1.04, 2.03 and 3.02 and 37 of the *Rules of Civil Procedure*;
36. Sections 50.4(8), 50.4(11), 69 and 69.4 of the BIA;
37. such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED ON THE HEARING OF THE MOTION:

1. the affidavit of Kathryn Furfaro, to be sworn; and
2. such further and other grounds as counsel may advise and this Honourable Court may permit.

May 11, 2023

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