



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00709616-00CL DATE: November 21, 2023

NO. ON LIST: 4 & 5

TITLE OF PROCEEDING: **THE TORONTO-DOMINION BANK v. RAMO CANADA INC.**

BEFORE JUSTICE: **KIMMEL**

**PARTICIPANT INFORMATION**

**For Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
Robert Danter	Counsel for the Applicant, the Toronto-Dominion Bank	rdanter@harrisonpensa.com

**For Respondent:**

Name of Person Appearing	Name of Party	Contact Info

**For Other:**

Name of Person Appearing	Name of Party	Contact Info
Nyna Bishop (observer)	from Wells Fargo Equipment Finance Company	nyna.bishop@wellsfargo.com

## **ENDORSEMENT OF JUSTICE KIMMEL:**

1. The Applicant, The Toronto-Dominion Bank (the "Bank") brings this application for the appointment of msi Spergel inc. ("Spergel") as receiver (herein, the "Receiver"), without security, of all of the assets, undertakings and properties of the Respondent, Ramo Canada Inc. (the "Debtor") acquired for or used in relation to a business or businesses carried on by the Debtor. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the applicant's factum filed in support of this application.
2. The Bank previously applied to this court under Court File No. CV- 23-00704072-00CL seeking an Order appointing Spergel as Receiver of the Property of the Debtor (the "Initial Application").
3. The Bank provided certain Financing to the Debtor, and the Debtor committed certain defaults under the Financing, all of which were detailed in the material filed in support of the Initial Application and are also relied upon in support of the within receivership application.
4. As a result of the ongoing Defaults, the Bank issued Notices of Intention to Enforce the Bank's Security pursuant to s. 243 of the *Bankruptcy and Insolvency Act* ("BIA") that were delivered to the Debtor on May 9, 2023 (the "Demand"). They remain valid and in effect.
5. Following the expiration of the Demand, the Bank commenced the Initial Application. The Initial Application was adjourned several times, and ultimately withdrawn on October 5, 2023, on a without prejudice basis, in light of the Forbearance Agreement that the parties had entered into. The Initial Application was withdrawn by the Bank despite the Debtor's defaults under the Forbearance Agreement, and without waiving same, on the condition that, *inter alia*, the Debtor complied with the remaining terms of the Forebearance Agreement. The Debtor made the next required weekly payment on October 6, 2023 but has defaulted on all weekly payments since then.
6. The Forebearance Agreement expressly contemplates that if the Debtor defaults under it the Bank can commence a new application for the appointment of a receiver pursuant to its security.
7. On October 16, 2023, the Bank advised the Debtor that it would bring a new receivership application as a result of the Debtor's defaults under the Forbearance Agreement. The Debtor advised that it would not oppose same. The Debtor's counsel confirmed this in an email the evening before the return of the application on November 21, 2023.
8. As of November 6, 2023, the Debtor was indebted to the Bank in the amount of \$1,548,308.08, plus accruing interest and the Bank's continuing costs of enforcement including legal and professional costs (the "Obligations"), in respect of the Financing, and inclusive of a \$60,000.00 Canada Emergency Business Account loan.
9. The Financing is secured by, *inter alia*, a General Security Agreement from the Debtor dated October 29, 2020 (the "GSA"). The Bank has registered Financing Statements as against the Debtor pursuant to the provisions of the *Personal Property Security Act* (Ontario) to perfect its security interest in the personal property of the Debtor secured under the GSA. The GSA grants the Bank the right to appoint a receiver over all personal property of the Debtor, as a result of the Defaults of the Debtor under the Financing and the Forbearance Agreement.
10. The Obligations due pursuant to the Demand have not been paid. The ten (10) day period under section 244 of the BIA has expired. The Debtor is in default of the Financing and the Forbearance Agreement. The Bank is unwilling to provide any further forbearance or credit to the Debtor.
11. The requirements for the appointment of a receiver over the assets and property of the Debtor pursuant to section 243 of the BIA have been satisfied.
12. The Debtor is in Default of its obligations to the Bank under the Financing and the Forbearance Agreement. The Debtor is insolvent and has had more than sufficient opportunity to cure the Financing Defaults since the Demands were made and to cure the Forebearance defaults since notice was provided of the Bank's intention to commence this application, and has failed to do so.
13. Section 101 of the *Courts of Justice Act* R.S.O. 1990, c. C.43 (the "Courts of Justice Act") also serves as a ground upon which a receiver may be appointed in circumstances where the court is satisfied that it is just or convenient to do so.

14. The fact that the moving party has a right under its security to appoint a receiver is an important factor to be considered. In such circumstances, the court remains concerned with the question of whether or not an appointment by the Court is necessary to enable the receiver to carry out its work and duties more efficiently. See *Bank of Montreal v. Carnival National Leasing Limited* (2011) ONSC 1007, at para. 24. However, where the applicant has a contractual right to appoint a receiver upon default, this has the effect of relaxing the burden because the applicant is merely seeking to enforce a term of its bargain with the debtor. See *Bank of Montreal v. Sherco Properties Inc.*, 2013 ONSC 7023, at para. 42.
15. The lack of opposition of the Debtor is another important consideration.
16. The Debtor is in default of the Financing and the Forebearance Agreement, has ceased operating from its registered office in Toronto, appears to be insolvent and the applicant has identified concerns about unusual account transactions (detailed in the Initial Application and relied upon in support of this application as well). The Receiver will be tasked with preserving the property of the Debtor, completing the orderly sale of same, and ensuring that the proceeds of any such sale are applied to the Debtor's obligations. In relation to any such sale, the appointment of the Receiver will facilitate any claims to the proceeds.
17. Having examined of all of the circumstances, and the other secured creditors having been notified of this application and not raising any objection, it would appear that the court appointment of a receiver will assist in the preservation of the Debtor's property and enhance the likelihood of maximizing the return on the Debtor's property for the benefit of all stakeholders, and that it is the best way of facilitating the work and duties of the receiver or receiver-manager. See *Bank of Nova Scotia v. Freure Village of Clair Creek*, 1996 CanLII 8258 (ON SC), at para. 13 and *Textron Financial Canada Limited v. Beta Limitee/Beta Brands Limited*, 2007 CanLII 297 (ON SC), at para. 11.
18. Having considered the evidence and the written and oral submissions of the applicant, I find it to be just and convenient for the protection of the estate of the Debtor and the interests of the Bank and other stakeholders to grant the appointment order requested (which is in a form consistent with the model appointment order), pursuant to s. 243 of BIA and s. 101 of the Courts of Justice Act.
19. Spergel has consented to act as Receiver, should this Honourable Court so appoint it.
20. Order to go in the form signed by me today with immediate effect and without the necessity of formal issuance and entry, although a formal order may be taken out by following the procedure under Rule 59.



KIMMEL J.