



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00731923-00CL

DATE: Dec 01, 2025

NO. ON LIST: 2.

TITLE OF PROCEEDING: EMPIRICAL CAPITAL CORP. v. TERRABONA 7115 YONGE LTD.

BEFORE: JUSTICE J. DIETRICH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Wendy Greenspoon-Soer	Lawyers for the Applicant	wgreenspoon@garfinkle.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
DAVID ULLMAN	Lawyers for the Respondent	dullmann@blaney.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE J. DIETRICH:

[1] Empirical Capital Corp. (the “**Lender**”) seeks an order appointing MSI Spergel Inc. (“**MSI**”) as receiver (the “**Receiver**”) of the property of TerraBona 7115 Yonge Ltd. (the “**Debtor**”) including the land municipally known as 7115 Yonge Street and 8-14 Grandview Avenue, Markham, Ontario (the “**Real Property**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c C.43, as amended (the “**CJA**”).

[2] Defined terms used but not otherwise defined herein have the meaning provided to them in the affidavit of Abraham Strahl sworn January 6, 2025.

[3] This application was originally scheduled to be heard on February 10, 2025. A forbearance agreement was entered into to provide the Debtor further time to refinance the Lender and to complete certain zoning matters. As part of the forbearance, the Debtor provided a consent to the appointment of the Receiver dated September 17, 2025 in the event the indebtedness owing to the Lender was not satisfied prior to today. The indebtedness has not been satisfied, accordingly this matter is proceeding on consent.

[4] The Debtor is incorporated pursuant to the laws of Ontario, with its head office in Markham, Ontario. The Debtor's primary asset is the Real Property which a 0.95 acre parcel of land located on Yonge Street, north of Steeles Avenue East. It consists of vacant land and four residential detached dwellings. The Debtor's plan was to develop the Real Property into a high density mixed use condominium building.

[5] The Lender made a credit facility available to the Debtor under a commitment letter dated October 17, 2022 as amended. The facility was in the total amount of \$31 million and was secured by a mortgage/charge on the Real Property registered on November 25, 2022 and a general security agreement dated November 24, 2022.

[6] The Debtor first defaulted in making monthly interest payments in May of 2024. On September 5, 2025, the Lender demanded repayment and issued a notice under s. 244 of the BIA. As of November 15, 2024 the amount owing by the Debtor to the lender exceeded \$33 million.

[7] As noted above, a further forbearance was entered into, but the terms of that forbearance have expired. As part of the forbearance the Debtor consented to the relief sought today if the Lender was not repaid in full by today.

[8] Lender's counsel advises that the Lender remains owed over \$33 million, and in fact the number has increased to approximately \$36 million.

[9] There only issue to be determined today, is whether it is just or convenient to appoint a receiver over the assets, properties and undertakings of the Debtor including the Real Property.

[10] The test for the appointment of a receiver under s. 243 of the BIA or s. 101 of the CJA is whether it is just or convenient.

[11] In determining whether it is just or convenient to appoint a receiver the court must have regard to all of the circumstances of the case particularly the nature of the property and the rights and interests of all parties in relation to the property: see *Bank of Nova Scotia v Freure Village of Clair Creek*, [1996] OJ No 5088 at para 10. While the appointment of a receiver is generally an extraordinary equitable remedy, where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: see *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc*, 2020 ONSC 1953, at para 43-44.

[12] As summarized by Justice Osborne in *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186 at para 25, a number of factors have historically been taken into account in the determination of whether it is appropriate to appoint a receiver. The factors are not a checklist, but rather a collection of considerations to be viewed holistically

[13] In this case, it is just and convenient to appoint a receiver.

[14] The Lender has not acted precipitously. Default first occurred over 18 months ago.

[15] The Lender demanded repayment in September of 2024, over 14 months ago, and has not been repaid. The notice period under the notices required by s. 244 of the BIA has long since lapsed.

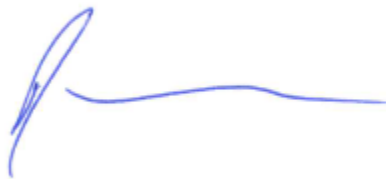
[16] The Lender is entitled to apply to the Court for the appointment of a receiver upon default under the terms of its loan documents and security.

[17] A Court-supervised process will provide best protect the interests of the Lender and other stakeholders, and maximize value for all stakeholders. It will be beneficial to all parties for the Real Property to be sold in an orderly, efficient and transparent process.

[18] MSI is qualified to act as receiver and has consented to do so.

[19] The terms of the proposed receivership order, as modified during today's hearing, are appropriate and consistent with the Model Order of the Commercial List.

[20] Accordingly, I grant the receivership order in the form signed by me today.

A handwritten signature in blue ink, consisting of a stylized, elongated loop followed by a horizontal line.

Date: December 01, 2025

Justice J. Dietrich