



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00702221-00CL DATE: 25 July 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: **ROYAL BANK OF CANADA v. DR. ZABOROSKI DENTISTRY
PROFESSIONAL CORPORATION et al**

BEFORE JUSTICE: **KIMMEL**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
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Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE KIMMEL:

1. The applicant Royal Bank of Canada ("RBC") seeks an order appointing msi Spergel inc. as receiver (in such capacities, the "Receiver"), without security of all the assets, undertakings, and properties of Dr. Zaboroski Dentistry Professional Corporation ("ZDPC") and HRMJ Holdings Inc. ("HRMJ" and together with ZDPC are, in this capacity, the "Borrowers") and Balliol Financial Limited ("Balliol"), and 2037237 Ontario Inc. ("203" and together with Balliol are the "Corporate Guarantors").
2. The Credit Agreements, among other agreements signed by the Borrowers and the Corporate Guarantors, provide that RBC is entitled to appoint a receiver in the event of default. RBC not only has a contractual right to ask that a receiver be appointed, it has a signed consent from the Borrowers and the Corporate Guarantors to the appointment of a receiver.
3. The Borrowers are collectively indebted to RBC in the amount of \$5,743,323.41 plus interest and costs as at July 4, 2023, pursuant to credit facilities made available by RBC (the "Credit Facilities") more particularly described in credit agreements between RBC and each of ZDPC and HRMJ (the "Credit Agreements"). The Borrowers and the Corporate Guarantors granted general security agreements over their respective property in favour of RBC and various mortgages over real property.
4. Defaults have occurred under the Credit Agreements and on October 24, 2022 demands for repayment, together with notices pursuant to section 244 of the Bankruptcy and Insolvency Act' were issued (the "Demands").
5. RBC agreed to a forbearance agreement dated November 30, 2022 (the "Forbearance Agreement"), in part, to permit the Borrowers an opportunity to complete a proposed refinancing of their businesses. RBC agreed to two further extensions of the Forbearance Agreement at the request of the Borrowers to allow them more time. The last extension expired on June 21, 2023, at which time the indebtedness to RBC was to have been repaid in full. It was not. Accordingly, in accordance with the terms of the Forbearance Agreement, the consents of the Borrowers and the Corporate Guarantors to the appointment of a receiver by RBC were released from the escrow in which they were being held pursuant to the terms of Forbearance Agreement.
6. Even after that deadline passed and this application was commenced, RBC agreed to adjourn this application twice (and a third time it was adjourned due to a scheduling mix-up), during which time the Borrowers continued, unsuccessfully, to secure refinancing to repay RBC.
7. Even as recently as the return of this application today, RBC agreed to stand it down until the end of the court day to give the Borrowers yet a further opportunity to make arrangements satisfactory to RBC that would have resulted in a further adjournment and indulgence. However, the Borrowers were unable to do so. RBC is not prepared to grant any further indulgences or extensions.
8. Despite all of the time and accommodations that have been afforded by RBC, the Borrowers still do not have a firm financing commitment, or even credit committee approval from the proposed financier. In the meantime, priority payables have increased and are now approximately \$300,000, realty tax arrears are accruing and further interest arrears payable to RBC have accumulated. RBC's collateral is eroding and it is not prepared to wait any longer. It wishes to protect its position and the position of other stakeholders against the continuing accumulation of priority payables and tax arrears that are eroding the collateral.
9. The Receiver will take over the operating businesses but it has entered into an agreement with one of the other respondents, Dr. Beata E. Zaboroski, to continue to operate the dentistry practice during the receivership so as to try to minimize the disruption for patients. Dr. Beata Zaboroski is one of the personal guarantors in respect of whom RBC seeks to defer its enforcement and is not seeking the appointment of a receiver at this time.
10. Section 243(1) of the BIA and s. 101 of the *Courts of Justice Act* authorize this court to appoint a receiver where it is considered by the court to be "just and convenient" to do so.

11. The secured creditor does not need to demonstrate that it will suffer irreparable harm if a receiver is not appointed where that creditor has a contractual right to the appointment of a receiver. See *Callidus Capital Corp. v. CarCap Inc.*, 2012 ONSC 163, at para 42.
12. The appointment of a receiver is no longer considered to be an extraordinary remedy where, as here, the Borrowers and Corporate Guarantors against whom the receivership order is sought expressly agreed (and consented) to the appointment of a receiver. *Bank of Nova Scotia v. Freure Village on Clair Creek*, [1996] O.J. No. 5088 at paras 10-12 (Gen. Div.).
13. In a recent decision of this court (see *Royal Bank of Canada v. 1731861 Ontario Inc.*, 2023 ONSC 3292, at para 33), in similar circumstances it was found to be just and convenient to appoint a receiver where, among other things, the respondents:
 - a. did not serve affidavit evidence with respect to the receivership appointment;
 - b. have breached the terms of agreement between themselves and the applicant (and in particular credit agreement terms and/or forbearance agreement terms), and in particular an agreement to repay the indebtedness;
 - c. have consented to the appointment of the receiver; and
 - d. have not provided any evidence that there is "reasonable certainty" of the ability to repay the indebtedness in the near future, or at all.
14. All of these same circumstances exist here. The applicant has been more than reasonable and the Borrowers and Corporate Guarantors have simply not been able to present any concrete refinancing or sale proposals or commitments. Even the proposal that RBC was prepared to consider today (if certain assurances could be provided, which, in the end, they could not be) was not expected to generate sufficient funds to repay RBC in full after taking care of priority payables and realty taxes.
15. The Borrowers have acknowledged all of these circumstances but nonetheless asked for yet a further indulgence and time to repay RBC before a receiver is appointed.
16. Having considered all of the circumstances of the case, the property that is secured, the competing rights and interests and the common objective of the continued operation of the dental practice for the benefit of all stakeholders and RBC's stated intention to keep it operating (including through arrangements it has already made with Dr. Beata Zaborovski), I am satisfied that RBC has proceeded in a reasonable and sensible manner, and should not be required to wait any longer while its collateral continues to erode.
17. Accordingly, the requested receivership order is granted. The order may issue in the form signed by me today.



KIMMEL J.