

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N :

THE TORONTO-DOMINION BANK

Applicant

and

**OCTANE EXPORTS INC., OCTANE EXPORTS USA INC.,
1000318937 ONTARIO INC., JOHN JUNIOR SAVU and CYNTHIA NICOLE SAVU**

Respondents

**AIDE MEMOIRE OF THE APPLICANT,
THE TORONTO-DOMINION BANK
(Returnable November 10, 2025)**

October 31, 2025

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AIDE MEMOIRE

1. The Toronto-Dominion Bank ("**TD**") is seeking to appoint msi Spergel inc. as Court-Appointed Receiver over Octane Exports Inc. (the "**Borrower**"), 1000318937 Ontario Inc. ("**937**") and Octane Exports USA Inc. (the "**US Guarantor**") (collectively, the "**Debtors**").
2. Payment demands and notices to enforce security pursuant to section 244 ("**NITES**") of the Bankruptcy and Insolvency Act ("**BIA**") expired months ago.
3. The Borrower entered into the Credit Agreement as defined in the Affidavit of Ben Schu sworn October 24, 2025 (the "**Schu Affidavit**") where TD established a demand operating facility (the "**Demand Facility**").
4. As security for the Demand Facility, the Borrower provided a general security agreement, registration in respect of which were duly made under the Personal Property Security Act (Ontario).
5. In support of the Borrower's indebtedness to TD, 937 and the US Guarantor each provided an unlimited corporate guarantee supported by a general security agreement, registrations in respect of which were duly made under the Personal Property Security Act (Ontario) for 937 and under the Uniform Commercial Code (Delaware) for the US Guarantor.
6. In support of the Borrower's indebtedness to TD, John Junior Savu ("**John**") and Cynthia Nicole Savu ("**Cynthia**"), the directors and officers of the Debtors, also provided unlimited personal guarantees. The guarantees delivered by 937, the US

Guarantor, John and Cynthia (collectively the “**Guarantors**”) are collectively the “**Guarantees**”.

7. The general security agreements delivered by the Debtors to TD are collectively the “**Security Agreements**”.

8. Under the Security Agreements, an event of default entitles TD to appoint a receiver or dispose of TD’s collateral in a commercially reasonable manner.

9. The accounts of the Debtors were transferred to TD’s Financial Restructuring Group in November, 2024. TD was concerned with breaches of the Financial Covenant(s) and/or Reporting Covenant(s) under the Credit Agreement.

10. Six default letters were issued to the Borrower between January 9, 2024 and March 18, 2025. Following, *inter alia*, chronic breaches of the Borrowing Base Condition, the lack of a credible repayment plan, and the results from the review of msi Spergel inc. as TD’s consultant, TD issued payment demands in May 2025, together with NITES.

11. From April to August, 2025 (the “**Forbearance Negotiation Period**”), numerous communications were exchanged between counsel to discuss a forbearance agreement that TD offered the respondents. A forbearance agreement was not concluded.

12. For TD, the delivery of up-to-date financial reporting is paramount since TD has had no visibility on the Borrower’s assets and operations for months. To date,

no up-to-date financial reporting was delivered to TD and the Debtors offered no acceptable proposal to repay TD.

13. msi Spergel inc. (the “**Receiver**”) consents to the appointment.

The Test for Appointing a Receiver

14. Pursuant to section [243\(1\) of the BIA](#) and [section 101 of the CJA](#), a court may appoint a receiver if it “is just and convenient” to do so.

15. In deciding whether or not to appoint a receiver, the court must have regard to all of the circumstances, including “the nature of the property and the rights and interest of all parties in relation thereto”. These include the rights of the secured creditor pursuant to its security.¹

16. In *Sherco Properties*, Morawetz J. (as he then was) confirmed that where the security instrument provides for a right to appoint a receiver upon default, the burden on the applicant seeking to have the receiver appointed is relaxed:

“... While the appointment of a receiver is generally regarded as the extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties. See *Textron Financial Canada Limited v. Chetwynd Motels Limited*, [2010 BCSC 477](#); *Freure Village*, *supra*; *Canadian Tire Corp. v. Healy*, [2011 ONSC 4616](#) National Leasing Ltd. and *Bank of Montreal v. Carnival National Leasing Ltd. Carnival Automobile Ltd.*, [2011 ONSC 1007](#).”²

¹ [Bank of Montreal v. Sherco Properties Inc.](#), 2013 ONSC 7023 CanLII (“**Sherco Properties**”) at para. 41 and [Bank of Montreal v. Carnival National Leasing Limited](#), 2011 ONSC 1007 (CanLII) at para. 24.

² [Sherco Properties](#), para. 42.

17. In 2806401 Ontario Inc. o/a Allied Track Services Inc., Osborne J. stated at paragraph 13:

“Factors considered by courts when determining whether it is just or convenient to appoint a receiver include: the existence of a debt and a default, the quality of the security in issue, the fact that the creditor has a right to appoint a receiver under the loan documentation, the likelihood of maximizing the return to the parties, and the risk to the security holder, among others. [See, for example: *Central 1 Credit Union v. UM Financial Inc. and UM Capital Inc.*, [2011 ONSC 5612](#) (Commercial List) at para 22; *RMB Australia Holdings Limited v. Seafield Resources Ltd.*, [2014 ONSC 5205](#) (Commercial List) at para 28; *Bank of Montreal v. Carnival National Leasing Limited and Carnival Automobiles Limited*, 2011 ONSC 1007 (Commercial List) at [paras 24](#) and [27](#) [*Carnival Leasing*]; and *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, [2009 BCSC 1527](#) at para 25].”³

18. TD issued payment demands and NITES to the Debtors on May 20, 2025 in connection with the Demand Facility.

19. With respect to the Demand Facility, on a demand loan, a debtor must be allowed a reasonable time to raise the necessary funds to satisfy the demand. Reasonable time will generally be of a short duration, not more than a few days.⁴

20. Under the Credit Agreement, the Borrower agreed to repay the Demand Facility on demand, if TD demands repayment. TD has demanded payment. The failure to pay constitutes an Event of Default under the Credit Agreement and the Security Agreements.

³ [2806401 Ontario Inc. o/a Allied Track Services Inc.](#), 2022 ONSC 5509 CanLII at para. 13.

⁴ [Bank of Montreal v. Carnival National Leasing Limited](#), 2011 ONSC 1007 (CanLII) at para. 13.

21. The Debtors have failed to comply with their contractual obligations owed to TD under the Credit Agreement, the applicable Guarantees and the Security Agreements. Justifiably, RBC has lost confidence in the Debtors.

22. TD has met the test for the appointment of a Receiver. TD is a secured creditor. It is owed over \$4.4 million under the Credit Agreement. TD has made payment demand and issued the NITES. TD is entitled to appoint a receiver under its security. TD requires the assistance of a court-appointed receiver to realize on its security.

23. TD respectfully submits that it is just and convenient to appoint msi Spergel inc. as receiver at this time for the following reasons:

- a) the Demand Facility is repayable on demand and remain outstanding;
- b) the Debtors have demonstrated continuous failures to comply with their obligations under the Credit Agreement, the applicable Guarantees and the Security Agreements, as evidenced by the payment defaults under the Demand Facility and failing to comply with its financial and reporting obligations;
- c) TD was unable to conclude a satisfactory forbearance agreement with the Debtors despite extensive efforts to negotiate as detailed in the Schu Affidavit;
- d) the Debtors' actions have resulted in Events of Default under the Credit Agreement and the Security Agreements and the Events of Default still continue;

- e) the terms of the Security Agreements expressly permit the appointment of a receiver on default and the Debtors agreed to these contractual terms when they signed and delivered the Security Agreements to TD in consideration of the loans;
- f) payment demands and the NITES to the Debtors have long since expired;
- g) the indebtedness remains outstanding;
- h) TD has provided the Debtors with more than sufficient time to repay the indebtedness;
- i) the Receiver will be in a position to address any issues related to the assets and undertakings of the Debtors for the benefit of all stakeholders; and
- j) msi Spergel inc. has consented to act as Receiver.

Judgment against the Guarantors

24. A proceeding can be commenced by application where it is unlikely that there will be any material facts in dispute requiring a trial.

25. The Guarantors guaranteed the debts of the Borrower pursuant to the Guarantees.

26. Section 5 of the Guarantees provides that:

“The obligations of the Guarantor hereunder will constitute and be continuing obligations and will apply to and secure any ultimate balance due or remaining due to the Bank and will not be considered as wholly or partially satisfied by the payment or liquidation at any time of any sum of money for the time being due or remaining unpaid to the Bank...”

27. Section 6 of the Guarantees provides that:

“The Guarantor shall make payment to the Bank under this Guarantee immediately upon receipt of a written demand for payment from the Bank. If any Obligation is not paid by the Customer when due, the Bank may treat all Obligations as due and payable by the Customer and may demand immediate payment under this Guarantee of all or some of the Obligations whether such Obligations would otherwise be due and payable by the Customer at such time or whether or not any demands, steps or proceedings have been made or taken by the Bank against the Customer or any other person respecting all or any of the Obligations.”

28. In *Toronto-Dominion Bank v. Konga*, the Court interpreted TD’s form of guarantee on a motion for summary judgment and held that TD was not required to realize on its security before obtaining judgment. TD was therefor granted judgment on the guarantee. The Court of Appeal upheld this decision.⁵

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⁵ [Toronto-Dominion Bank v. Konga, 2016 ONSC 1628 \(CanLII\)](#); [Toronto-Dominion Bank v. Konga, 2016 ONCA 976 \(CanLII\)](#)

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Court File No. CL-25-00753534-0000

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