

Court File Number: CV-21-00668237-00CL

**Superior Court of Justice**  
Commercial List

**FILE/DIRECTION/ORDER**

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**DUCA FINANCIAL SERVICES CREDIT UNION LTD.**

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Applicant

AND

**1725859 ONTARIO INC., 1941275 ONTARIO LTD., and 1941276 ONTARIO INC.**

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Respondents

Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Email/Facsimile No:
Timothy Hogan and Rob Danter for Applicant		
Sanjeev Mitra for proposed receiver, msi Spergel inc.		
Sumit Tangri for Amit Lekhi as Estate Trustee for the Estate of Vijay Lekhi		

Order     Direction for Registrar **(No formal order need be taken out)**  
 Above action transferred to the Commercial List at Toronto **(No formal order need be taken out)**

Adjourned to: \_\_\_\_\_  
 Time Table approved (as follows): \_\_\_\_\_

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**Date of Hearing: November 1, 2021**

## ENDORSEMENT

[1] The Applicant, DUCA Financial Services Credit Union Ltd. (“DUCA”), moves for (i) an order validating service of the application materials in respect of its application for appointment of a receiver, and (ii) an order appointing MSI Spargel Inc. as Receiver (the “Receiver”), without security, of all of the assets, undertakings and properties of the Respondents 1725859 Ontario Inc. (“859”), 1941275 Ontario Ltd. (“275”), and 1941276 Ontario Inc. (“276”) (collectively, the “Debtors”) acquired for or used in relation to a business or businesses carried on by the Debtors, and of the real property described in Schedule “A” to the appointment order (the “Property”).

### **Motion for Order validating service**

[2] Aneel Jackson Shaukat (“Mr. Shaukat”) is the sole officer and director of each of the Respondents, and is a guarantor of the obligations of the Respondents to DUCA.

[3] On December 17, 2020, Mr. Shaukat provided DUCA a Personal Net Worth Form in which he stated his address was 22 Banks Drive, Brampton, Ontario. A title search of the Banks property shows that it was transferred from Jackson Shaukat and Nargis Shaukat to 5022278 Ontario Inc. (“502”). The corporate profile report for 502 lists Mr. Shaukat as the sole officer and director of 502. A Ministry of Transportation Report against Mr. Shaukat lists his address as the Banks property. A Canada Revenue Agency notice of assessment lists Mr. Shaukat’s address as the Banks property.

[4] On September 9, 10, and 12, 2021, a process server attended the Banks property, a residential property, to serve the Respondents but was unable to deliver a copy of the motion materials to a resident there.

[5] On October 15, 2021, a process server left copies of the Application Record for each of the Respondents at the front door of the Banks Property and on October 18, 2021, mailed copies of the Application Record by regular mail to each of the Respondents at the Banks property.

[6] On September 22, 2021, a process server mailed a copy of the Application Record to each of the Respondents at their registered office address, 200-1920 Yonge Street, Toronto, Ontario.

[7] On the Personal Net Worth Form provided by Mr. Shaukat to DUCA, his email address was shown. On October 20, 2021, Timothy Hogan, counsel for DUCA, sent an email to Mr. Shaukat at this email address providing details of the application to be heard on November 1, 2021, the attempted service of the Application Record on the Respondents, and he attempted to speak with him by calling the telephone number provided on the Personal Net Worth Form. There was no response to this email and it did not bounce back as undeliverable.

[8] On October 21, 2021, Corey Taylor, a process server, swore an affidavit of attempted service which detailed his attempts to serve the Application Record. These are set out in the supporting affidavit for the motion to validate service at para. 15.

[9] On October 22, 2021, the deponent of the affidavit delivered in support of the motion for an order validating service received an email from Nikola Grguric of Elite Property Management Inc., property manager of the 859 property, who confirmed that Mr. Shaukat is the “off-site owner” and the address they have on record for him is the Banks property.

[10] October 26, 2021, copies of the Application Record were couriered to the addresses of the properties owned by the three Respondents, the 859 property, the 275 property, and the 276 property.

[11] I am satisfied on the evidence before me that the Application Record came to the notice of Mr. Shaukat. DUCA also complied with rule 16.03 (6) of the *Rules of Civil Procedure* with respect to service on a corporation by an alternative to personal service.

[12] I make an order pursuant to rule 16.08 of the *Rules of Civil Procedure* validating service.

### **Application to appoint receiver**

[13] The Debtor, 859, is the owner of real property municipally known as 629 King Street West, Suite 217, Toronto, Ontario comprising a residential condominium unit (the "859 Property"). DUCA holds a first priority charge over the 859 Property (the "859 Mortgage").

[14] There are two subsequent mortgagees of the 859 property, being 1226460 Ontario Inc. ("122 Ontario") and Dominic Nano ("Nano"), which charges were granted without the knowledge or consent of DUCA.

[15] There are property tax arrears owing in relation to the 859 property as at July 7, 2021: (a) for the tax year 2021, the sum of \$27.25; and (b) for the tax year 2020, the sum of \$1,315.46.

[16] The Debtor, 275, is the owner of real property municipally known as 3 Glenmanor Drive, Brampton, Ontario, a residential property (the "275 Property").

[17] DUCA holds a first priority charge over the 275 Property (the "275 Mortgage").

[18] There are three subsequent mortgagees of the 275 Property, being 122 Ontario, Nano, and Vijay Lekhi ("Lekhi"), which charges were granted without the knowledge or consent of DUCA.

[19] Lekhi is deceased and is represented by Amit Lekhi, as Estate Trustee for the Estate of Vijay Lekhi. The Lekhi Estate has commenced enforcement proceedings as against the 275 Property, and issued statutory notices to 275, including a Notice of Sale under Mortgage/Charge to 275. The Lekhi Estate has commenced an action naming 275 as a defendant in a proceeding in the Ontario Superior Court of Justice at Brampton.

[20] There are property tax arrears owing in relation to the 275 Property, as at July 7, 2021: (a) for the tax year 2021, the sum of \$5,379.37; and (b) for the tax year 2020, the sum of \$2,832.23.

[21] The Debtor, 276, is the owner of real property municipally described as 50 Queen Street East, Brampton, Ontario, a commercial property (the "276 Property"). The three properties, together, are referred to as the "Real Properties").

[22] DUCA holds a first priority charge over the 276 Property (the "276 Mortgage").

[23] There are two subsequent mortgagees of the 276 Property, being 122 Ontario and Nano, which charges were granted without the knowledge or consent of DUCA.

[24] There are property tax arrears owing in relation to the 276 Property as at July 7, 2021: (a) for the tax year 2021, the sum of \$27,009.75; and (b) for the tax year 2020, the sum of \$29,125.56.

[25] As of August 23, 2021, the Debtors were indebted to DUCA in the amount of \$2,826,327.15 plus accruing interest and DUCA's continuing costs of enforcement (the "Obligations"), in respect of certain financing advanced to the Debtors pursuant to the terms of the Commitment Letter dated June 6, 2018, as amended by way of Amendment to Commitment dated June 22, 2018 (collectively, the "Letter Agreement"). The credit facility established by the Letter Agreement, upon which funds were advanced by DUCA to the Debtors, is a mortgage loan in the sum of \$2,900,000. The Mortgage Loan matured on August 30, 2021.

[26] The Obligations are secured by, among other things, (a) a General Security Agreement from the Debtors dated June 22, 2018 (the "GSA"); (b) collateral Charge/Mortgage from 859 in the principal sum of \$2,900,000 as governed by a schedule of additional provisions attached thereto (the "Charge Provisions"); (c) assignment of rents from 859 dated June 22, 2018; (d) assignment of condominium voting rights dated June 22, 2018 from 859 to DUCA with regard to the 859 Property; (e) collateral charge/Mortgage from 275 and 276 in the principal sum of \$2,900,000 over the 275 and 276 Properties (the "275 Mortgage" and the "276 Mortgage" and, collectively with the 859 Mortgage, the "Mortgages") as governed by the Charge Provisions; and (f) assignment of rents from 275 and 276 dated June 22, 2018.

[27] The Financing is governed by, among other things, the terms and conditions contained within the Letter Agreement which include (i) that the Debtors would pay, when due, all taxes levied against the Real Properties; (ii) that the Debtors would pay, when due, all amounts owing to any government authority which, if unpaid, would give such authority recourse for such amounts ranking in priority to the security; (iii) that the Debtors would not register any encumbrances on the Real Properties aside from the Mortgages; (iv) that DUCA would have the right to terminate the Letter Agreement and seek full repayment of the Obligations on the occurrence of any of the following: (a) in the sole opinion of DUCA, a material adverse change in the condition of any of the Real Properties, the Borrowers, or the actual or anticipated revenues from any of the Real Property; and (b) the Debtors become subject to any insolvency proceedings; and (v) that the non-compliance with any terms of the Letter Agreement constituted a Default by the Debtors thereunder, and that on such Default, DUCA was entitled, among other things, to appoint a Receiver over the Real Properties.

[28] DUCA has registered financing statements as against the Debtors pursuant to the provisions of the *Personal Property Security Act* (Ontario) to perfect its security interest in the personal property of the Debtors secured under the GSA.

[29] By letter dated May 31, 2021 (the "Default Letter"), DUCA advised the Debtors of certain of the Defaults and stated that absent payment in full of the Obligations within 30 days, DUCA would commence enforcement proceedings as against the Debtors. The Debtors failed to repay the Obligations within 30 days of the Default Letter, which constitutes a further default under the financing.

[30] As a result of the continuing defaults, DUCA delivered to each of the Debtors a demand for payment and a Notice of Intention to Enforce Security pursuant to section 244 (1) of the *Bankruptcy and Insolvency Act* ("BIA"), each dated July 16, 2021. All statutory notice periods under the demands have expired, and the Debtors have failed to cure the defaults.

[31] The Charge Provisions and the Letter Agreement grant DUCA the power to appoint a Receiver over the Real Properties, as a result of the defaults.

[32] The GSA grants DUCA the right to appoint a Receiver over all personal property of the Debtors secured by the GSA, as a result of the defaults of the Debtors under the financing.

[33] msi Spergel inc. has consented to act as Receiver.

[34] Subsection 243(5) of the BIA provides that an application under subsection 243(a) of the BIA is to be filed in a court having jurisdiction in the judicial district of the “locality of the debtor”, which is defined in s. 2 of the BIA. The debtors are Ontario companies with registered addresses in Toronto. One of the three properties is in Toronto. I am satisfied that this application is properly before the Ontario Superior Court of Justice (Commercial List).

[35] Section 244 (1) of the BIA requires that a secured creditor provide an insolvent person with the requisite advance notice of its intention to enforce security. DUCA sent the demands together with its Notice of Intention to Enforce Security pursuant to the BIA to the Debtors on July 16, 2021. Any applicable notice periods have expired.

[36] Section 101 of the *Courts of Justice Act*, as amended, provides for the appointment of a receiver where it is “just and convenient”. Section 243 (1) of the BIA also provides that on an application by a secured creditor, this Court may appoint a receiver if it considers it to be just and convenient to do so to (a) take possession over the assets of an insolvent person; (b) exercise any control that the Court considers advisable over the property and business; or (c) take any other action that the Court considers advisable.

[37] The existence of a contractual right to appoint a receiver in the loan agreement and related transaction documents is a key factor, and transforms the appointment of a receiver from an extraordinary remedy to relief that is more granted as a matter of course, especially in cases in which the circumstances further support such an appointment. This relief is less extraordinary when dealing with a default under a mortgage. See *RMB Australia Holdings Limited v. Seafield Resources Ltd.*, 2014 ONSC 5205 (Commercial List), paras. 28-29; *Confederation Life Insurance Co. v. Double Y Holdings Inc.*, 1991 CarswellOnt 1511 (Ont. S.C. (Commercial List)), at para. 20.

[38] When the factors in *Confederation Life* are considered, I am satisfied that DUCA has shown that it is just and convenient to appoint a receiver for the following reasons:

- a. the Debtors contractually agreed to the appointment of a receiver.
- b. The loan agreement is in default, demand was made on the indebtedness, and the applicable notice periods have elapsed.
- c. DUCA is concerned that the Debtors do not have the working capital needed to repair or maintain the Real Properties. In such circumstances, there is a risk that the realizable value of the Property would continue to diminish.
- d. The Debtors’ liquidity crisis will continue to worsen in the absence of action. A receiver will be able to take the necessary steps to preserve the Property, including conducting an orderly sale process that will generate recoveries for creditors.
- e. DUCA has lost confidence in the Debtors’ management. This is described more fully in the supporting affidavit filed for the receivership application.

- f. The Applicant is not the only creditor of the Debtors. No creditor has come forward to oppose the receivership application. The Receiver will be able to properly and equitably deal with the interests of creditors other than the Applicant. A receivership provides parties with an effective forum in which to deal with any issues including any competing claims that may arise in respect of the Debtors at the Property.

[39] The terms of the proposed receivership order are substantially the same as the terms of the Commercial List model receivership order.

[40] For these reasons:

- a. I am satisfied that an order validating service should be made; and
- b. I am satisfied that it is just and convenient to appoint a Receiver.

[41] Orders to issue in form of attached Orders signed by me.

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Cavanagh J.

November 1, 2021