

CITATION: Royal Bank of Canada v. Smart Super Mart Ltd
COURT FILE NO.: CV-24-86229
DATE: 2025-01-30

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Royal Bank of Canada, Applicant

AND:

Smart Super Mart Ltd, Respondent

BEFORE: M. Bordin J.

COUNSEL: T. Masterson, for the Applicants

R. Chohan, for the respondent corporation

S. Chauhan, for the respondent corporation

HEARD: January 30, 2025

ENDORSEMENT

- [1] The applicant seeks the appointment of a receiver without security of all the assets, properties and undertakings of the respondent corporation. The application was commenced over six months ago, in July 2024.
- [2] The respondent operates an Esso gas station in St. Catharines. The applicant granted credit facilities to the respondent. The respondent has been in default for over a year. Notice of default was issued. The applicant made formal written demand for payment. Notice of intention to enforce security has been served. The respondent has requested and received time to refinance. The respondent owe the applicant more than \$1.7 million. The respondent has not paid the amounts owing. The proposed receiver consents to the appointment.
- [3] The applicant has been adjourned at least 3 times and marked peremptory on the respondent. The adjournments were for the purpose of the respondent obtaining financing.
- [4] On November 28, 2024, Goodman J. ordered that the application was adjourned to January 16, 2025, peremptory on the respondent to allow time for the respondent to obtain financing and to repay the applicant in full. Further, Goodman J. ordered that if the respondent failed to pay in full by January 16, 2025, the respondent consents to the appointment of the receiver over the respondent's property on that date and pursuant to the provision of the draft appointment order.

- [5] No affidavit has been filed by the respondent. The respondent has filed some materials in Case Centre which are not appended to an affidavit. I have reviewed those materials. The respondent uploaded more documents this morning which are not appended to an affidavit, which I have also reviewed. The respondent did file an affidavit.
- [6] I heard submissions from Mr. Chohan as a representative of the respondent. The respondent points to work done by the city on the road and bridge near the gas station that affected their business. The respondent sought a purchaser for the property. The respondent filed an agreement of purchase and sale from October 2024. Although the owner of the property is the corporation, the agreement lists Mr. Chohan and Mrs. Chauhan as the vendor. When asked how they could sell a property they do not own, Mr. Chohan said it must be a mistake on his part.
- [7] Mr. Chohan referred to refinancing he has been attempting to obtain. He filed a series of text messages in January about financing. The name of the lender is not clear from the exchange of messages. Mr. Chohan asserts that the commitment letter he has filed in Case Centre is confirmation of the financing requested in writing in the text exchange in January. However, the commitment letter is dated December 2, 2024. The prospect of refinancing is far from clear.
- [8] The respondent's representatives say that they are prepared to pay installments. I was not taken to any evidence that installments have been voluntarily paid.
- [9] The applicant seeks one last chance to find refinancing. Mr. Chohan submits he has another possible lender in the wings.
- [10] As explained by Osborne J. in *Macquarie Equipment Finance Limited v. Validus Power Corp. et al.*, 2023 ONSC 4772 at paras. 54 and 55, if it is appropriate to appoint a receiver, nothing prevents or prohibits the Receiver from continuing discussions with the proposed lender or lenders to pursue this proposed commitment and determine whether it is in the best interests of stakeholders. Further, if the asserted funding commitment closed relatively quickly, it follows that the cost of the receivership would be minimized. The receiver could pursue this possible commitment together with, and in addition to, any possible alternative commitments such as might be revealed through a court supervised sales process. If there is a legitimate sale that is in play, including the one put forward by the respondent, a receiver could investigate and pursue a sale if appropriate.
- [11] The security granted by the respondent to the applicant allows for the appointment of a receiver over the property of the debtors upon default. The security includes a mortgage which also grants the applicant power to appoint a receiver over real property. In such circumstances the burden on the applicant is relaxed as the applicant is merely seeking to enforce a term of an agreement between the parties. The appointment of a receiver is less extraordinary when dealing with default under a mortgage.
- [12] The applicant's materials satisfy me, having regard to all the circumstances but in particular the nature of the property and the rights and interest of all parties in relation thereto that it is just and convenient to appoint a receiver.

[13] Order to go in accordance with the draft order at pages A650-A666 of the Case Centre master bundle.



M. Bordin, J.

Date: January 30, 2025