



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CL-25-00753534-0000

NO. ON LIST: 4

TITLE OF PROCEEDING: THE TORONTO-DOMINION BANK v. OCTANE EXPORTS INC. et al  
BEFORE: JUSTICE CAVANAGH

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**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

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

Name of Person Appearing	Name of Party	Contact Info
Howard Manis	Counsel for the Respondent	<a href="mailto:hmanis@manislaw.ca">hmanis@manislaw.ca</a>

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info

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**ENDORSEMENT OF JUSTICE CAVANAGH:**

[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] TD also seeks judgment against the Debtors.

[3] This motion by TD is not opposed by the Debtors.

[4] Payment demands and notices to enforce security pursuant to section 244 ("NITES") of the *Bankruptcy and Insolvency Act* ("BIA") expired months ago.

[5] 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").

[6] 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).

[7] 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.

[8] 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".

### ***Order appointing a receiver***

[9] 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.

[10] Pursuant to section 243(1) of the BIA, on application by a secured creditor, a court may appoint a receiver if it is just or convenient to do so. Pursuant to s. 101 of the CJA, a receiver may be appointed by an interlocutory order where it appears to a judge of the court to be just or convenient to do so.

[11] 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.

[12] I am satisfied that it is just and convenient for a receiver to be appointed for the following reasons:

- a. the Demand Facility is repayable on demand and remains outstanding;
- b. the Debtors have failed 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 the Borrower failing to comply with its financial and reporting obligations;
- c. the Debtors' actions have resulted in Events of Default under the Credit Agreement and the Security Agreements and the Events of Default still continue;
- d. 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;
- e. 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.

***Judgment against Borrower and Guarantors***

[13] Section 5 of the Guarantees provides:

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 ...

[14] Section 6 of the Guarantees provides:

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.

[15] I am satisfied that judgment should be granted in favour of TD against the Borrower and against the Guarantors. See *Toronto-Dominion Bank v Konga*, 2016 ONSC 1628.

[16] Order and Judgment to issue in forms signed by me today.



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