



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-23-00701877-00CL

DATE: 18 July 2023

NO. ON LIST: 4

TITLE OF PROCEEDING: **THE TORONTO-DOMINION BANK v.  
IMAGES LIFE MEDIA INC. et al.**

BEFORE JUSTICE: **MADAM JUSTICE STEELE**

**PARTICIPANT INFORMATION**

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

Name of Person Appearing	Name of Party	Contact Info
Rachel Moses	For the Plaintiff, The Toronto-Dominion Bank	<a href="mailto:rmoses@mindengross.com">rmoses@mindengross.com</a>

**For Other:**

Name of Person Appearing	Name of Party	Contact Info
Wendy Greenspoon-Soer	For the Proposed Receiver, Albert Gelman Inc.	<a href="mailto:wgreenspoon@garfinkle.com">wgreenspoon@garfinkle.com</a>

**ENDORSEMENT OF JUSTICE STEELE:**

1. The Toronto-Dominion Bank seeks the appointment of Albert Gelman Inc. as receiver of Images Life Media Inc. (“Images”) and 2531509 Ontario Inc. (“253”, and collectively with Images, the “Debtors”) pursuant to section 243 of the BIA and section 101 of the *Courts of Justice Act*.
2. Images registered head office is located at 113-115 Walnut Avenue, Toronto (the “Walnut Property”). 253 owns the Walnut Property. The Walnut Property is the primary asset.

3. Mr. Henriques is the founder and sole director of Images, and an officer and director of 253. Mr. Henriques personally guaranteed the debts of the Debtors to TD. Mr. Henriques had listed the Walnut Property for sale, but it has not sold.
4. TD has five credit facilities in favour of the Debtors. As security for the Credit Facilities, the Debtors granted TD a GSA, which entitles TD to appoint a receiver upon default. TD also is entitled to appoint a receiver upon default under the terms of the Mortgage Security.
5. The Debtors owe TD in excess of \$3.8 million under the Credit Facilities.
6. As a result of numerous concerns, TD transferred the Debtor's accounts to its financial restructuring group in February 2023. TD's concerns are set out at para. 33 in the affidavit of Abner Pennings, sworn June 28, 2023, including: the Debtors' accounts were regularly overdrawn, and the Debtors did not respond in a timely manner to communications from TD or provide requested financial information. TD was concerned whether Images was carrying on normal business operations, if at all.
7. TD has requested, since at least February 2023, that the Debtors provide year to date financial statements and information on priority payables (i.e., source deductions, harmonized sales tax and realty taxes).
8. On April 13, 2023, TD issued a non-tolerance and reservation of rights letter to the Debtors advising of various breaches under the Credit Facilities, including Payment Defaults, Realty Tax Default and Encumbrance Default. The Debtors were requested to remedy the defaults, which the Debtors have not done.
9. On April 20, 2023, TD issued payment demands and Notices of Intention to Enforce Security to the Debtors. Following the issuance of TD's demand, TD and Mr. Henriques had discussions, including an attempt to reach a forbearance agreement. TD sent a copy of the proposed forbearance agreement to Mr. Henriques. He did not sign the agreement prior to the sign back deadline. TD unilaterally extended the sign back deadline on the forbearance agreement. Mr. Henriques again did not sign the forbearance agreement. TD's lawyer sent a revised forbearance agreement to Mr. Henriques by email on June 5, 2023 and advised, among other things:

We again strongly recommend that you retain a lawyer and that this matter be treated with urgency. The date to repay the Bank is July 31, 2023 [in the event that the forbearance agreement was executed, which it was not] and payment demands have been outstanding since May 1, 2023. The status quo cannot continue, especially as realty taxes are not being paid.

10. The Debtors have not signed the forbearance agreement. No good faith payment has been made by the Debtors. The defaults identified in the Non-Tolerance and Reservation of Rights Letter have not been remedied. The indebtedness remains outstanding. TD wishes to enforce its rights.
11. Mr. Henriques did not attend the motion, nor did he send a representative on his behalf. Mr. Henriques did not file any materials. Mr. Henriques sent an email to TD's counsel sometime after midnight last night indicating that he did not receive the motion materials and was not aware of the proceeding and was unable to attend based on personal circumstances. Based on the record before me, including the affidavit of Christine Cavarzan, sworn July 18, 2023, and the affidavits of service, in addition to the submissions from counsel, I am satisfied that Mr. Henriques was aware of the motion today. He was served with the motion record by email to the same email address as he used to correspond with Ms.

Moses today: joao@vybelife.com. TD's factum was also served on Mr. Henriques on July 6, 2023. As noted in the email from Ms. Moses to Mr. Henriques, dated July 18, 2023 7:23 AM:

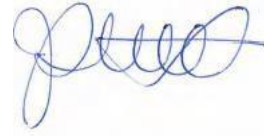
You were served at the email address [noted] above on **June 29, 2023** – there is no short notice. In addition, I personally left two separate voice messages for you advising of the receivership, the last voice message being left on **July 4 2023 which message lasted 55 seconds**. With all due respect, TD has been more than patient and has provided many accommodations to you, which you have ignored. By way of example, I sent the below email to you on June 5, 2023, which you failed to respond to. Your failure to address the concerns has put the Bank's security at risk. The Bank is proceeding with the receivership hearing today as previously advised.

12. Under s. 243 of the BIA and section 101 of the CJA, the Court may appoint a receiver if it is "just and convenient" to do so.
13. In determining whether to appoint a receiver, the Court must have regard to all of the circumstances, including "the nature of the property and the rights and interests of all parties in relation thereto:" *Bank of Montreal v. Sherco Properties Inc.*, 2013 7023 CanLII, at para. 41. In *Bank of Nova Scotia v. Freure Village on the Clair Creek*, 1996 CanLII 8258 (ONSC), at paras. 10-13, the Court identified certain considerations that are relevant:
  - The moving party has a right under its security to appoint a receiver;
  - The security is in jeopardy; and
  - Whether it is in the interests of all concerned to have a receiver appointed by the Court. This analysis includes an examination of the potential costs, the relationship between the debtor and the creditors, the likelihood of maximizing the return on and preserving the subject property, and the best way of facilitating the working duties of the receiver and manager.
14. In *Sherco*, Morawetz J. (as he then was) confirmed that the appointment of a receiver is not an extraordinary remedy where a secured creditor is merely seeking to enforce a contractual term:

... While the appointment of a receiver is generally regarded as an 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 and *Bank of Montreal v. Carnivale National Leasing Ltd. and Carnivale Automobile Ltd.*, 2011 ONSC 1007.
15. TD notes that there are other stakeholders, including the City of Toronto, Apple Canada, and Olympia Trust, all of whom were served. Olympia Trust advised counsel for TD that they would not attend the motion and were not taking a position.
16. TD does not want to risk its security being further eroded.
17. I am satisfied that it is just and convenient to appoint a receiver at this time. TD is a secured creditor. The Debtors have breached their obligations under the Credit Agreement, which has resulted in events of default. TD has made demands and the indebtedness remains outstanding in full. The contractual terms of the GSA and the Mortgage Security permit the appointment of a receiver on default. TD continues to be concerned because, among other things, the Debtors have refused to provide the

financial information requested by TD under the Credit Agreement. Accordingly, TD has no line of sight on priority payables (other than realty tax, which is in arrears). With the lack of information TD cannot assess the extent to which there are priority payables that may jeopardize their position.

18. Order attached.

A handwritten signature in blue ink, appearing to be "J. [unclear]". The signature is written in a cursive style with a horizontal line through the middle of the letters.