



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-22-00690513-00CL

DATE: November 29, 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: 2046245 ONTARIO INC. et al v. 2244039 ONTARIO INC. et a

BEFORE: JUSTICE PENNY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
	Lawyer for	

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Jeffrey Larry	Lawyer for Receiver	Jeff.larry@paliareroland.com
Howard Manis	Respondents	hmanis@manislaw.ca

For Other, Self-Represented Etc.:

Name of Person Appearing	Name of Party	Contact Info
	Lawyer for	
	Lawyer for	

ENDORSEMENT OF JUSTICE PENNY:

[1] The Receiver brings a motion for orders:

(i) approving the Second Report to the Court of the Receiver dated October 13, and the Receiver’s conduct and activities;

(ii) approving the Receiver’s interim statement of receipts and disbursements for each of the Debtors as of October 12, 2023;

(iii) authorizing the Receiver to assign each of the Debtors into bankruptcy and entitling, but not obligating, Albert Gelman Inc. to act as Trustee in Bankruptcy of the Debtors; and

(iv) approving the fees of the Receiver and its counsel for the periods detailed in the Second Report.

[2] The two main assets of the Debtors, real properties, have been sold. There has been an interim distribution paid to the secured lenders. The Receiver has held in reserve sufficient funds to cover what it has calculated to be various tax obligations owed by the Debtors to CRA. This includes capital gains taxes which the Receiver’s accountant has calculated, arising out of the realizations on the two properties, to be in excess of \$2 million. The main issue on the motion is whether the Debtors are bankrupt; this essentially turns on the \$2 million of capital gains tax owing to CRA.

[3] This motion was returnable on October 25, 2023. Mr. Manis, counsel for a principal of the Debtors, Mr. Tiawana, raised a question about the calculation of the capital gains tax. In an effort to resolve the issue, the Receiver agreed to an adjournment to today.

[4] On November 23, 2023 Mr. Manis forwarded to the Receiver an email from Mr. Tiawana which included a link to an article written on ‘replacement property’ rules. No additional analysis or information was provided by Mr. Tiawana. In Mr. Manis’ email, he requested that the Receiver seek its discharge without seeking to assign the Companies into bankruptcy and return the balance of the proceeds from the sale of the real properties to the Debtors. The suggestion seems to be that if the Debtors purchased replacement properties, they could roll over the capital gains tax, thus deferring payment to a future time. In the alternative to this relief, Mr. Manis seeks another adjournment to allow for more evidence about and analysis of the ‘replacement property’ rules and their possible application to the facts of this case.

[5] The Receiver believes that Mr. Tiawana’s request that the Receiver seek its discharge and remit the balance of the funds back to the Companies would cause significant prejudice to the CRA for the following reasons: (a) it is uncertain whether the ‘replacement property’ rules which Mr. Tiawana purports to rely on are applicable in the circumstances; (b) the Companies, under Mr. Tiawana’s management, have a history of non-payment of all CRA accounts for income taxes, HST and payroll source deductions; (c) the ‘replacement property’ rules provide only for a deferral of taxes which means that, in the event that these rules did apply, Mr. Tiawana would be required to remit payment to the CRA in the future; and, (d) Mr. Tiawana provided only a

link to an article without any opinion or advice he received from an accountant that such rules could or would apply in these circumstances.

[6] I am not prepared to order the payment of the funds representing the reserve for capital gains tax to the Debtors. Nor am I prepared to adjourn this matter further.

[7] If Mr. Tiawana wished to obtain relief from the court, in the face of the Receiver's reports, it was his obligation to put relevant evidence before the court in support on his position. Sending a link to an article about the effect of purchasing replacement property under the capital gains regime is a wholly inadequate basis for granting the relief sought or even another adjournment. At the very least, Mr. Tiawana was obliged to put before the court evidence that the Debtors had the financial wherewithal to finance the purchase of replacement property and, if they did, opinion evidence about the application of the replacement property rules and the deferral of capital gains tax otherwise owing. He has utterly failed to do either.

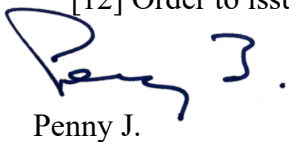
[8] The evidence before the court is that the Debtors were given the opportunity prior to the appointment order to refinance the debt but were unable to do so. Even following the appointment of the Receiver, the effect of the appointment order was stayed to give the Debtors another opportunity to refinance. They were again unable to do so. There is no evidence that today, the Debtors (or Mr Tiawana for that matter) are in any position to purchase new properties to replace the two that were just sold. The Receiver and its accountant are of the view that the Debtors owe in excess of \$2 million in capital gains tax to CRA. There is no contrary evidence, notwithstanding the adjournment of this motion from October 23 to allow Mr. Tiawana a chance to understand and correct the Receiver's calculations. The Receiver and its accountant are of the view that the capital gains tax liability renders the Debtors insolvent. There is no contrary evidence.

[9] On the available evidence, the Receiver's concerns are well founded. There is no evidence supporting the notion that a tax deferral is available at all. There is a history of non-payment of tax obligations. And, at best, there would only be a deferral of tax (even if there was any hope of the Debtors purchasing replacement property – which there is not).

[10] For these reasons, the requests by counsel for Mr. Tiawana are denied.

[11] I am satisfied that the relief sought, vis-à-vis the Receiver's report, the interim statement of receipts and disbursements, authorizing the Receiver to assign each of the Debtors into bankruptcy, and the Receiver's fees and those of its counsel is appropriate and warranted.

[12] Order to issue in the form signed by me this day.

A handwritten signature in blue ink, appearing to read "Penny J.", with a stylized flourish at the end.

Penny J.