



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00743600-00CL

DATE: May 23, 2025

NO. ON LIST: 4

TITLE OF PROCEEDING: THE TORONTO-DOMINION BANK v. DAYMAK INC.
BEFORE: JUSTICE CAVANAGH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Craig Mills Matthew Cressatti	Applicant - Toronto-Dominion Bank	cmills@millerthomson.com mcressatti@millerthomson.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Harvey Chaiton	Proposed Receiver – Albert Gelman Inc.	Harvey@chaitons.com
Robert Crowe	Representative of Proposed Receiver – Albert Gelman Inc.	crowe@albertgelman.com

ENDORSEMENT OF JUSTICE CAVANAGH:

- [1] The Toronto-Dominion Bank ("TD" or the "Bank") brings this application for the appointment of Albert Gelman Inc. ("AGI") as court-appointed receiver (the "Receiver")

over the Respondent, DAYMAK Inc. (the "Debtor") under section 243 of the *Bankruptcy and Insolvency Act* (the "BIA") and section 101 of the *Courts of Justice Act* (the "CJA").

- [2] Capitalized terms used herein not defined shall have the meanings given to them in the affidavit of Kathryn Furfaro, sworn May 22, 2025 (the "Furfaro Affidavit").
- [3] TD is the senior secured and largest creditor to the Debtor. The Debtor is indebted to TD in connection with various credit facilities made available to the Debtor (the "Facilities") pursuant to and under the terms of a letter of agreement dated December 8, 2022 ("Letter of Agreement"). TD holds a first-ranking security over the Debtor's personal property.
- [4] As of April 7, 2025, the Debtor's total indebtedness to the Bank, exclusive of the Bank's costs of enforcement, was \$15,774,442.83CAD and \$506.99 USD. Per a statement of affairs filed in the Debtor's NOI Proceeding (defined below) this constitutes approximately 72% of the Debtor's indebtedness.
- [5] The Debtor has been in default of the Letter of Agreement since March 31, 2024. The Bank initially did not enforce on its collateral as the Debtor made various representations that it would be refinancing its indebtedness to the Bank elsewhere.
- [6] As a result of these defaults, the Bank delivered a demand letter and notice pursuant to Section 244 of the BIA on April 15, 2025. The Debtor responded by filing a notice of intention to make a proposal pursuant to Section 50.4 of the BIA (the "NOI"), commencing the "NOI Proceedings". The Debtor has given an outline of a proposal (defined below as the "Proposal Outline") to the Bank. The Bank is not prepared to support the Proposal Outline and instead brings this motion for an order (the "Appointment Order"), seeking to:
 - a. lift the statutory stay of proceedings pursuant to section 69.4 of the BIA;
 - b. terminate the NOI Proceedings pursuant to section 50.4(11) of the BIA;
 - c. appoint AGI as trustee in bankruptcy of the Debtor, in lieu of its proposal trustee Dodick Landau Inc. (in such capacity, the "Proposal Trustee") pursuant to section 57.1 of the BIA; and
 - d. appoint AGI as receiver and manager, without security, over all of the current and future assets, undertakings, and properties of the Debtor, pursuant to section 243 of the BIA and section 101 of the CJA.
- [7] The Debtor has advised, through its counsel, that it does not oppose the relief sought by the Bank in this application.

Should the Stay of Proceedings Be Lifted and NOI Proceedings Terminated?

[8] Pursuant to section 69(1) of the BIA, on the filing of a notice of intention under section 50.4 of the BIA by an insolvent person, no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution, or other proceedings for the recovery of a claim provable in bankruptcy. Pursuant to section 69.4 of the BIA, the Court may order that the stay period does not operate in respect of a creditor if it is satisfied:

- a. that the creditor is likely to be materially prejudiced by the continued operation of those sections, or
- b. that it is equitable on other grounds to make such a declaration. Accordingly, the lifting of the stay is discretionary.

[9] I accept that TD will be prejudiced if the stay of proceedings is not lifted. The Debtor, by its own admission via filing an NOI, is insolvent and intends to liquidate. TD, being the largest creditor, is the fulcrum creditor. I accept that TD should be able to control and direct how its collateral is liquidated. TD should also have access to the investigatory powers of a receivership to ensure that its recovery is maximized.

[10] The Debtor has also advised through its counsel that it does not oppose the appointment of a receiver or the Appointment Order sought.

Should the Court Terminate the NOI Proceedings?

[11] Pursuant to Section 50.4(11) of the BIA, the Court may, on application of a creditor, declare NOI proceedings terminated prior to the expiration of the 30 day period if the Court is satisfied that, *inter alia*, either (1) the insolvent person will not likely be able to make a proposal before the expiration of the 30 day period that will be accepted by the creditors or (2) the insolvent person will not likely be able to make a viable proposal before the expiration of the 30 day period. The Bank has, for the reasons stated in the Furfaro Affidavit, reviewed the Proposal Outline and determined that it will not support either the Proposal Outline or any other proposal offered by the Debtor.

[12] I am satisfied in the circumstances, and given the Debtor's non-opposition to this application, that the NOI Proceedings should be declared terminated, effective immediately, without need for the 30 day period to expire.

Appointment of AGI as Bankruptcy Trustee in Lieu of Proposal Trustee

[13] The effect of a declaration under Section 50.4(11) of the BIA is that the Debtor will be deemed a bankrupt. Pursuant to Section 57.1 of the BIA, a court may, following a declaration under Section 50.4(11) of the BIA, if satisfied that it is in the best interest of the creditors to do so, appoint a trustee to act as bankruptcy trustee in lieu of the proposal trustee appointed in the terminated NOI proceedings.

[14] I am satisfied that it is in the interest of the creditors for AGI to be appointed as bankruptcy trustee because it would be more efficient for a single person to act as both bankruptcy trustee and as receiver. The Bank, as the largest and fulcrum creditor, supports AGI acting in both roles. The Proposal Trustee has also indicated that it does not oppose this relief being sought.

Is TD is entitled to the appointment of a Receiver?

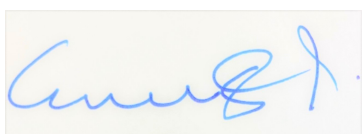
[15] This Court has the power to appoint a receiver or a receiver and manager under section 243(1) of the BIA and section 101 of the CJA. Subsection 243(1) of the BIA provides that on application by a secured creditor, a court may appoint a receiver to, inter alia, take possession over the assets of an insolvent person and exercise any control that the court considers advisable over that property and over the insolvent person's business, again where it is "just or convenient". Similarly, the CJA enables the court to appoint a receiver where such appointment is "just or convenient".

[16] This Court has set out a number of factors, not as a checklist, but as a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient. See *Kingsett Mortgage Corp. v. Maplevue Developments Ltd. et al.*, 2024 ONSC 1983, at paras. 24-25.

[17] I am satisfied in the circumstances of this case, that the appointment of a receiver is just and convenient.

Disposition

[18] Order to issue in form of Order signed by me today.

A handwritten signature in blue ink, appearing to be "C. M. S.", is written on a light-colored rectangular background.