



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-22-688570-00CL

DATE: November 7, 2022

NO. ON LIST: 3

TITLE OF PROCEEDING: OWEMANCO MORTGAGE HOLDINGS CORP

BEFORE JUSTICE: JUSTICE CAVANAGH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
David P. Preger	Applicant	dpreger@dickinsonwright.com
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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Samir Chhina	Concept Lofts and Donald Desrochers	samirchhina@gmail.com
Brahm Rosen	Proposed Receiver	brosen@rosengoldberg.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE CAVANAGH:

This application was commenced by Owemanco Mortgage Holding Corporation by Notice of Application issued on October 12, 2022.

The Respondents are Concept Lofts Ltd. (“CLL”) and Donald Desrocher, the president of CLL. CLL is the owner of property at 1183 Dufferin Street, Toronto (the “Dufferin Property”). Mr. Desrocher is the registered owner of property at Suites 502 and 503, 1 Balmoral Avenue, Toronto (the “Balmoral Property”).

The Applicant is a secured lender to (i) CLL in connection with a loan in the principal amount of \$6.675 million, and (ii) CLL and Mr. Desrocher in connection with a further loan in the principal amount of \$2.05 million. The Applicant’s security for the \$6.675 million loan consists of, among other things, a first-ranking mortgage against the Dufferin Property and a first ranking general security agreement given by CLL. The loan is also guaranteed by CLL’s directors. The Applicant’s security for the \$2.05 million loan consists of, among other things, a charge blanketed in second position against the Dufferin Property and in first position against the Balmoral Property.

The loans are in default.

The Applicant seeks an Order appointing Rosen Goldberg Inc. as receiver and manager of the assets undertakings and properties of CLL including the Dufferin Property and the Balmoral Property.

The application came before Kimmel J. on October 20, 2022. The application materials were served on October 19, 2022. Mr. Desrocher received notice of this hearing as did a lawyer who had represented him in discussions with counsel for the Applicant, Samir Chhina. Although he was aware of the application, neither Mr. Desrocher nor any legal counsel representing CLL or Mr. Desrocher appeared at the hearing.

At the hearing before Justice Kimmel, counsel for the Applicant advised of an urgent issue that had recently been disclosed, that is, that the Dufferin Property was uninsured. Counsel for the Applicant requested on an urgent basis that the court appoint the receiver that day to address this concern. Since this issue was not part of what the service list was told would be raised that day, Justice Kimmel adjourned the urgent relief to a one-hour hearing the following day to allow the service list to be notified and a motion record to be put before the court.

This motion came before me on October 21, 2022. Mr. Desrocher had received the motion materials but he did not appear nor did counsel for CLL or Mr. Desrocher. I released an endorsement that day and granted the motion to appoint an interim receiver to take possession of and secure the Dufferin Property. In my endorsement, I wrote that the application for the appointment of a receiver under section 243 (1) of the *BIA* is scheduled to be heard on November 7, 2022 at 10 o’clock a.m. for one hour.

The application for the appointment of a receiver under s. 243(1) of the *BIA* and s. 101 of the *CJA* came before me today. In support of the application, the Applicant filed the affidavits of Graham Tobe sworn October 19 and October 20, 2022 and the affidavit of David Seifer, a lawyer in the firm representing the Applicant, sworn November 4, 2022. The First Report of Rosen Goldberg dated November 4, 2022 was also filed.

At the hearing today, Mr. Chhina appeared for CLL and Mr. Desrocher. He advised that he had just been retained by CLL and Mr. Desrocher the previous day, and he requested an adjournment of the hearing to allow them to file responding affidavit evidence.

I accept that Mr. Chhina was retained to represent the respondents for this application yesterday. However, this was clearly a choice made by Mr. Desrocher. It appears that this choice was made to delay the proceedings. I say this because Mr. Chhina had been representing Mr. Desrocher in discussions with the Applicant going back to September 29, 2022 as shown by email correspondence appended to Mr. Tobe's second affidavit at Exhibit "H". No affidavit was filed by Mr. Desrocher to explain why he had chosen not to formally retain counsel to respond to this application on a timely basis. No explanation was offered for why Mr. Desrocher waited until the day before the hearing to retain counsel, even where counsel had been retained to represent CLL and Mr. Desrocher in relation to the subject matter of the application in September 2022.

The evidence before me is that the loans are in default and have been in default since September 7, 2022. On September 16, 2022, the Applicant made written demand under the loans and issued notices of intention to enforce security pursuant to s. 244 of the *BIA*. Mr. Chhina explained the nature of the evidence his clients wish to file to respond to the application, but the evidence does not include evidence that the loans are not in default. The evidence includes an explanation for why the Dufferin Property was uninsured and the status of efforts made to refinance the loans (including an NOI from a lender). Mr. Chhina submits that the ability of the respondents to refinance is basically the defence to the application.

In the First Report of Rosen Goldberg Inc. as Interim Receiver dated November 4, 2022, the Interim Receiver reports that on September 15, 2022, the City of Toronto caused a notice of an Order issued on July 16, 2019 under the *Building Code Act, 1992* to be registered against the Dufferin Property. The Order prohibits footings, foundations, structural framing, ductwork and piping for heating and air conditioning systems from being covered or enclosed. The Interim Receiver observed that contrary to the Order, the footings, foundations, structural framing, ductwork and piping for heating and air-conditioning systems are in fact covered or enclosed.

The Interim Receiver also reports that two of the units at the Dufferin Property are occupied and that no occupancy certificates have been issued in respect of the project. According to the report of the Interim Receiver, based upon information provided by Mr. Sanjay Dubey, a principal of SDM Constructions Inc. who registered a construction lien against the Dufferin Property and who is an officer and director of CLL, unit 102 is rented by CLL and unit 108 is being rented by Mr. Desrochers notwithstanding that the condominium corporation has not yet been created and units have not yet been conveyed to buyers.

In the circumstances, I declined to grant the requested adjournment. In making this decision, I took into account the relevant circumstances outlined above including my conclusion, in the absence of evidence to the contrary, that Mr. Desrocher intentionally waited to retain legal counsel until yesterday for the purpose of delaying the hearing of the application to appoint a receiver.

The Respondents have had a considerable period of time to seek to refinance the loans but, so far, they have not been successful. It is open to CLL and Mr. Desrosiers to pursue refinancing opportunities after the appointment of a receiver. The fact that it is possible that the loans may be refinanced does not, in my view, justify delaying the appointment of a receiver in the circumstances.

Given the ongoing defaults under the loans, the potential marshaling concerns which the subordinate ranking mortgagees of the Dufferin Property may have in relation to the Balmoral Property, the interests of purchasers of residential units in the Dufferin Property, CLL's ongoing failure to resolve the Order issued by the City of Toronto in July 2019 and create the condominium corporation, and the occupancy of two units without occupancy permits having been issued, I am satisfied that it is just and convenient that a Receiver be appointed without delay to determine how best to realize on the Property for the benefit of all stakeholders.

Order to issue in form of Order signed by me today.