

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O 1990 C. C.43, AS AMENDED AND SECTION 68 OF THE *CONSTRUCTION ACT*, R.S.O., 1990, C. c.30, as AMENDED

B E T W E E N:

HOMEDALE-EAGLE CORPORATION

Applicant

and

253 QUEEN STREET INC.

Respondents

FACTUM OF THE APPLICANT

(Application returnable on January 30, 2024, at 10 a.m.)

January 26, 2024

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AND TO:	ROSEN GOLDBERG INC. 5255 Yonge Street North York, ON M2N 5P8 Brahm Rosen Email: brosen@rosengoldberg.com Proposed Receiver
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PART I – OVERVIEW

1. The Applicant, Homedale-Eagle Corporation (“**Homedale**”), applies for the appointment of Rosen Goldberg Inc., as receiver and manager of the property, assets and undertakings of the Respondent, 253 Queen Street Inc. (the “**Debtor**”), including, without limitation, the real property known municipally as 253 Queen Street East, Brampton, Ontario (the “**Property**”).
2. The Debtor is indebted to Homedale in connection with a vendor take-back mortgage loan in the principal amount of \$10 million (the “**Loan**”). The Loan has been in default since November 2, 2023, when the Debtor failed to pay \$400,000.00 in interest due under the Loan.
3. On November 22, 2023, Homedale made formal demand for payment of \$10,447,829.55 then owing, and delivered a notice of intention to enforce its security (“**NITE**”) pursuant to section 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended (the “**BIA**”). Notwithstanding the expiry of the 10 day statutory notice period, the Debtor has failed to make any repayments under the Loan.

PART II – SUMMARY OF FACTS

A. Background

4. The Debtor is an Ontario company with its registered head office at 500 Eglinton Avenue East, Suite 200, in Toronto.¹
5. The Debtor owns the real property municipally known as 253 Queen Street East, in Brampton, Ontario (the “**Property**”). The Property is a 1.57 hectare site, with a multi-unit commercial plaza and surface parking, located on the south side of Queen Street East, east of

¹ Affidavit of Haim Klein sworn December 22, 2023 (“Klein Affidavit”), para 6 and Exhibit A, Application record, pp 11, 19-26

Hansen Road. In April 2022, when the most recent rent roll was provided to Homedale, there were 7 tenants renting units in the plaza.²

6. The Debtor has been pursuing a plan to develop the Property for a multiphase mixed-use development consisting of 3 residential towers (33, 32 and 39 storeys in height) with a total of 1,026 residential units, 8,154 square metres of office space and 1,860 square metres of retail space.³

B. Loan and Security

7. On May 2, 2018, Homedale completed a sale of the Property to the Debtor for \$15.5 million. On closing, Homedale took back the Loan for a term of 5 years, with interest at 3% per annum, pursuant to a first-ranking vendor take-back mortgage (the “**Mortgage**”).⁴

8. By Amending Agreements dated April 28, 2022 and May 3, 2022, the Mortgage was amended to, among other things, extend the maturity date of the Loan to May 2, 2024 and increase the interest rate to 8% *per annum*, payable in quarterly installments of \$200,000.00 on August 2, 2023, November 2, 2023, February 2, 2024 and May 2, 2024.⁵

9. The Property is subject to a subordinate mortgage in the principal amount of \$2 million registered in favour of Sky Mortgage Corporation (“**Sky**”). Sky has also registered security over the Debtor’s personal property under the *Personal Property Security Act* (Ontario).⁶

C. Default and Demand

10. In late July of 2023, the Debtor’s principal, Madhi Tajbaksh, requested and Homedale, as an accommodation, agreed to defer the quarterly interest installment of \$200,000.00 due under the Loan on August 2, 2023 until November 2, 2023, at which time \$400,000 would be payable on account of interest installments for August 2, 2023 and November 2, 2023⁷

² Klein Affidavit, para 7, Application Record p. 11

³ Klein Affidavit, para 8 and Exhibit B, Application Record, p.11, and pp24-38

⁴ Klein Affidavit, para 9 and Exhibit C, Application Record pp. 12, 40-41

⁵ Klein Affidavit, para 10 – 11 and Exhibits D and E, Application Record. pp.12 and 44-46

⁶ Klein Affidavit, para 13 – 14, Application Record p 12

⁷ Klein Affidavit, para 15, Application Record p 13

11. On November 7, 2023, after depositing post-dated cheques for the \$200,000 interest installments due on August 2, 2023 and November 2, 2023, Homedale received notice from its banker that stop payments had been placed on the cheques by the Debtor.⁸

12. On November 14, 2023, Homedale’s counsel advised the Debtor that Homedale would be applying to Court for the appointment of receiver to assume management of the Property, control cash flow and sell the Property.⁹

13. The Sky mortgage is now also in financial default and Sky is supportive of the proposed receiver being appointed.¹⁰

PART III – THE ISSUE

14. The sole issue on this application is whether it is just or convenient for the Court to appoint Rosen Goldberg Inc. as receiver on the terms of the proposed receivership order.

PART IV – LAW AND ARGUMENT

D. Rosen Goldberg Inc. Should be Appointed as Receiver and Manager

i. Test to Appoint a Receiver

15. Pursuant to section 243(1) of the *BIA* and section 101 of the *Courts of Justice Act* R.S.O. 1990,c. C43, as amended, the Court may appoint a receiver and manager where it is “just or convenient” to do so.

16. In determining whether it is just and convenient to appoint a receiver, the Court must have regard to “all of the circumstances, but in particular the nature of the property and the rights and interest of all parties in relation thereto”.

17. In making this determination, courts have been informed by the following factors, among others:¹¹

- (a) the need to preserve and maximize the return on the subject property;

⁸ Klein Affidavit, para 17 and Exhibit I , Application Record p 13 and pp 78-79

⁹ Klein Affidavit, para 18 and Exhibit J, Application Record p 13 and pp 81-84

¹⁰ Klein Affidavit, para 19, Application Record p 13

¹¹ *BCIMC Construction Fund Corporation et al v. The Clover on Yonge Inc.*, [2020 ONSC 1953](#) at para 45.

- (b) the relationship between the debtor and its creditors;
- (c) the risk of the lender's security deteriorating; and
- (d) loss of confidence in the debtor's management.

18. The applicant need not establish that it will suffer irreparable harm if the proposed receiver is not appointed.¹² The appointment of a receiver "becomes even less extraordinary when dealing with a default under a mortgage".¹³

ii. It is Just and Convenient to Appoint Rosen Goldberg Inc. as Receiver and Manager

19. Having regard to the foregoing considerations, in the case at bar it is just and convenient to appoint Rosen Goldberg Inc., as receiver and manager given that:

- (a) notwithstanding Homedale's accommodation in agreeing to defer the quarterly interest installment due on August 1, 2023 to November 2, 2023, the Debtor placed stop payments on cheques totaling \$400,000 on November 3, 2023;
- (b) notwithstanding that the Property is presumably generating rent, each of the Loan and the Sky mortgage are in financial default;
- (c) notwithstanding Homedale's issuance of demand and NITE, the Debtor has failed to repay the Loan;
- (d) the statutory notice period under the BIA has expired;
- (e) equity in the Property is eroding with the passage of time and the associated accrual of interest under the Loan and the Sky mortgage;
- (f) Homedale is not equipped to manage the Property and collect rents, whereas a Court-appointed receiver would be empowered to both manage the Property and compel payment of rents from tenants;
- (g) the Property is ill-suited to a power of sale proceeding. The proposed development plan for the Property is substantial and complex and will require considerable skill and expertise to market and sell effectively;
- (h) Rosen Goldberg Inc. is well regarded for its skill and experience in marketing and selling development sites such as the Property in southern Ontario; and

¹² *Bank of Montreal v Carnival National Leasing Limited*, [2011 ONSC 1007](#) at paras 24 and 28.

¹³ *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc.* [2020 ONSC 1953](#) at paras 43-44.

- (i) a Court-appointed receiver will ensure that the interests of all of the Debtor's stakeholders are considered and facilitate a fair and transparent marketing and sale process with a view to maximizing realizations and achieving a definitive sale of the Property within a reasonable timeframe.

PART V – ORDER REQUESTED

20. For the reasons set out above, Homedale respectfully requests an order appointing Rosen Goldberg Inc. as receiver and manager of the Debtor and the Property.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 24th day of January, 2024.



Lisa S. Corne

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Lawyers for the Applicant

SCHEDULE “A”
LIST OF AUTHORITIES

1. *Bank of Montreal v Carnival National Leasing Limited*, 2011 ONSC 1007.
2. *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc*, 2020 ONSC 1953.

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

Bankruptcy and Insolvency Act, RSC 1985, c B-3

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

Courts of Justice Act, R.S.O. 1990, c. C.43

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2)

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Applicant

-and- **253 QUEEN STREET INC.**
Respondent

Court File No. CV-24-00084027-0000

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PROCEEDING COMMENCED AT
HAMILTON

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