



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-22-00692309-00CL

DATE: December 18, 2024

NO. ON LIST: #3

TITLE OF PROCEEDING: PWC IN ITS CAPACITY AS RECEIVER OF BRIDGING FINANCE INC.
v. SKYMARK FINANCE CORPORATION et al

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For the Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Mitch Stephenson	Counsel for the Receiver, Alvarez and Marsal Canada.	mstephenson@fasken.com
Julia Chung		jchung@fasken.com
Greg Karpel	The Court Appointed Receiver.	gkarpel@alvarezandmarsal.com

For Others:

Name of Person Appearing	Name of Party	Contact Info
Adam Driedger	Counsel for PwC as Receiver of Bridging Finance Inc. et al.	adriedger@tgf.ca
Daniel Alievsky		dalievsky@tgf.ca
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Alexander Andruss	Self-represented Unsecured Creditor.	model73c@hotmail.com
Paul Kowalczyk	Self-represented Unsecured Creditor.	sbspaul@gmail.com

ENDORSEMENT OF JUSTICE STEELE:

[1] Alvarez and Marsal Canada (“A&M”), the Receiver of 2305145 Ontario Inc. (“230 Ontario”) and Merk Investments Ltd. (“Merk”) (the “230 Receiver”), seeks an order, among other things:

- a. Approving an assignment, assumption and consent agreement between the 230 Receiver and PwC in its capacity as receiver of Bridging Finance (the “Bridging Receiver”), and approving the assignment of the VTBN, assigned agreements and the reserve funds;
- b. Authorizing the 230 Receiver to make an interim distribution to the Bridging Receiver;
- c. Approving the Fifth Report;
- d. Approving the fees and disbursements.

- [2] The 230 Receiver filed and served their materials on or about December 10, 2024. No other person filed materials prior to the attendance, nor did any person notify the 230 Receiver or the Court that they opposed or intended to oppose the relief being sought.
- [3] At the attendance, two self-represented unsecured creditors attended. Despite no materials (or evidence), having been filed, one of the unsecured creditors in attendance, Mr. Kowalczyk, read a statement opposing the proposed distributions to the Bridging Receiver.
- [4] The 230 Receiver and the Bridging Receiver informed the Court that a similar statement had been read at a prior sale approval hearing. Accordingly, this was not Mr. Kowalczyk’s first court appearance. The 230 Receiver and the Bridging Receiver asked the Court to proceed to grant the relief sought on the basis that, among other things, Mr. Kowalczyk is an unsecured creditor whose claim could not rank ahead of Bridging’s claim. They indicated that he had ample time to file materials and that the Court and the parties should not spend more time and money on a subsequent motion the outcome of which would not change given the priorities.
- [5] Having considered the record before me and having heard the oral submissions, I am satisfied that it is appropriate to grant the relief sought, for the reasons set out below.
- [6] While Mr. Kowalczyk and other unsecured creditors are understandably frustrated having made investments with 230 Ontario and/or Merk, the evidence before the Court is that Bridging is the senior secured lender, with a valid registered *PPSA* security, and is owed approximately \$65 million. Bridging has priority over the other creditors (other than the 2 priority claims – HST and Receiver’s Charge - discussed below). The proposed distributions to the Bridging Receiver will not satisfy the sizable debt 230 Ontario owes to Bridging.

Background

- [7] The 230 Receiver was appointed by order of this Court dated March 6, 2023.
- [8] Before these proceedings, 230 Ontario’s primary business was providing financing and leasing to consumer borrowers for home renovations and HVAC systems, among other things (the “Consumer Portfolio”).
- [9] Following the 230 Receiver’s appointment, it sought and received court approval to engage in a SISP process to market 230 Ontario’s assets for sale, including the Consumer Portfolio.

- [10] The sale transaction for the Consumer Portfolio was authorized by Court Order on September 26, 2023, when the court issued an Approval and Vesting Order. The sale transaction closed on September 29, 2023.
- [11] The 230 Receiver subsequently sought court approval in respect of certain settlements, which were approved by Court Orders dated Feb. 22, 2024, and April 5, 2024.
- [12] When the Consumer Portfolio was sold, under the terms of the agreement the Purchaser bought the portfolio in exchange for an interest-free promissory note (the “VTBN”) with payment terms over a 48-month term ending on September 29, 2027. In addition to the VTBN, the 230 Receiver and the Purchaser executed various other agreements, including a general security agreement, two assignment and assumption agreements and a share pledge agreement (the agreements collectively are described and defined in the 230 Receiver’s Fifth Report as the “Assigned Agreements”).
- [13] Following closing of the transaction, the Purchaser has administered the Consumer Portfolio and made monthly payments to the 230 Receiver pursuant to the VTBN.
- [14] Bridging is the senior secured lender of 230 Ontario. As of October 31, 2024, the outstanding indebtedness of 230 Ontario to certain Bridging investment funds (collectively the “Bridging Lender”) totals almost \$65 million (the “230 Indebtedness”). As security for the 230 Indebtedness, 230 Ontario delivered security agreements under which it granted the Bridging Lender a security interest over all its present and after-acquired personal property and any proceeds.

Analysis

Should the Court approve the proposed assignment of the VTBN and the Assigned Agreements?

- [15] The 230 Receiver seeks court approval of the proposed assignment of the VTBN and the Assigned Agreements to the Bridging Receiver.
- [16] The 230 Receiver states that largely due to legislative changes in the consumer financing space, time spent by the 230 Receiver and Bridging Receiver in administering the VTBN, among other things, has increased substantially, resulting in increased costs for both estates.
- [17] The 230 Receiver states that the proposed assignment will reduce costs and mitigate potential duplication of efforts given that the economic interest in the VTBN resides with the Bridging Receiver and there is a significant length of time remaining on the VTBN (term ends Sept. 29, 2027). The intention is that the VTBN assignment will partially repay the indebtedness 230 Ontario has to Bridging Finance. Instead of the 230 Receiver collecting the note payments under the VTBN then making distributions of the note payments to Bridging Finance in respect of the 230 Indebtedness, the VTBN payments will be made directly to the Bridging Receiver. The 230 Receiver states that the proposed assignment is therefore analogous to an interim distribution, which, as discussed below, the Court has jurisdiction to approve.
- [18] The 230 Receiver’s Fifth Report states that: “The 230 Receiver, the Bridging Receiver, the Company, and the Pledgor all agree and consent to the VTBN Assignment and support the relief sought on this motion. The 230 Receiver is not aware of any stakeholder or other person who would be prejudiced by the

proposed VTBN Assignment.” As noted above, one of the unsecured creditors orally noted his objection to the assignment at the proceeding.

- [19] As set out in the 230 Receiver’s Fifth Report, the 230 Receiver’s legal counsel has issued an opinion confirming the validity, enforceability, and perfection of Bridging’s security interest in respect of 230 Ontario. The 230 Receiver’s counsel has advised that the Bridging Agent (as defined in the Fifth Report) and the Bridging Lender were the sole registrants under Ontario’s *Personal Property Security Act* (“PPSA”) in respect of 230 Ontario as of Dec. 8, 2024, and there were no third-party PPSA registrations against 230 Ontario. Further the 230 Receiver states that it is not aware of any claim that ranks in priority to the claim of the Bridging Receiver except for certain limited priority claims (that are to be addressed by a proposed holdback). The priority claims consist of (i) approximately \$206,000 that 230 Ontario owes Canada Revenue Agency in respect of unremitted HST, and (ii) the 230 Receiver’s Charge in respect of these proceedings.
- [20] The unredacted agreement of purchase and sale in respect of the Consumer Portfolio, which includes the purchase price, was provided to me. Because it is confidential and commercially sensitive, it has been sealed by Court Order pending further Order of the Court.
- [21] I agree with the 230 Receiver that given that Bridging is the senior secured creditor and given the magnitude of the 230 Indebtedness to Bridging and the amount of the proceeds in respect of the Consumer Portfolio, the proposed assignment should be approved. Among other things, currently there is a duplication of efforts (and cost) as between the 230 Receiver and the Bridging Receiver related to the VTBN. By assigning the VTBN and agreements to the Bridging Receiver, duplicative costs and efforts in administering should be reduced. I agree with the 230 Receiver that the assignment “represents a practical and efficient way of collecting the remaining proceeds of the Sale Transaction without duplication of efforts and costs among the 230 Receiver and the Bridging Receiver.”

Should the Court approve the interim distribution to Bridging?

- [22] The 230 Receiver also proposes to make an initial interim distribution to the Bridging Receiver of up to \$6.9 million from the funds currently held by the 230 Receiver and holdback approximately \$1.5 million in respect of the priority claims and other amounts needed to complete these proceedings. The 230 Receiver states that it is not aware of any stakeholder or other person who will be prejudiced by the proposed interim distribution.
- [23] Under section 243(1)(c) of the *Bankruptcy and Insolvency Act* (Canada), the Court has broad discretion to direct an interim receiver to do what “practicality demands:” *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019, ONCA 508, para. 53. As noted by the 230 Receiver, orders authorizing a receiver to make an interim distribution to stakeholders are commonly granted in insolvency proceedings: *Ontario Securities Commission v. Bridging Income Fund L.P.*, 2022 ONSC 4472, at para. 8.
- [24] In determining whether to approve an interim distribution, the Court must consider “the advantages, disadvantages and potential prejudice of [the] interim distribution to all the stakeholders of the debtor entity:” *Re SemCanada Crude Company*, 2009 ABQB 90, at para. 27. Further, the Court must consider the validity and enforceability of the relevant security, interest savings and the liquidity of the debtor after the distribution is made: *Re AbitibiBowater Inc.*, 2009 QCCS 6461, paras. 63, 68, 70, 75.

- [25] As noted above, Bridging is the senior secured lender and is owed almost \$65 million. The proposed interim distribution will not repay the 230 Indebtedness in full. The 230 Receiver's counsel have provided an opinion that Bridging is the sole PPSA registrant and that they are not aware of any claim that ranks in priority to the Bridging Receiver's claim other than the limited priority claims addressed in the holdback. Further, the 230 Receiver states that it is not aware of any person who would be prejudiced by the relief sought on this motion.
- [26] I am satisfied that it is appropriate in the circumstances to approve the proposed interim distribution of \$6.9 million.
- [27] The 230 Receiver seeks authorization to make additional interim distributions without further Court order because, among other things, the initial proposed distribution will only pay a small portion of the 230 Indebtedness. The aggregate distributions to the Bridging Receiver are not permitted to exceed the 230 Indebtedness. The 230 Receiver notes at para. 42 of its factum that the Court has made such orders in numerous other proceedings. The 230 Receiver submits that this relief is reasonable and appropriate and will maximize the efficiency of these proceedings.
- [28] The proposed Order contains language that any further interim distributions may not exceed the aggregate value of 230 Ontario's secured obligations to Bridging.
- [29] I agree that further interim distributions to Bridging not to exceed the amount of 230 Ontario's secured obligations are appropriate. Among other things, avoiding unnecessary distribution motions will help minimize future fees and costs of this receivership.
- [30] Any future interim distributions made to the Bridging Receiver in respect of the 230 Indebtedness shall be reported on by the 230 Receiver in a timely manner in its reports.

Should the Court approve the 230 Receiver's Fifth Report and activities?

- [31] As noted by this Court in *Re Target Canada Co.*, 2015 ONSC 7574 at para. 22, there are good policy and practical reasons for the Court to grant approval of a court-appointed officer's reports and the activities set out in the report.
- [32] The 230 Receiver's activities since the Fourth Report are set out in the Fifth Report and include the activities listed at section 8.1 of the Fifth Report. The 230 Receiver states that all its activities undertaken in the Fifth Report were reasonable, necessary and undertaken in good faith in accordance with the 230 Receiver's powers and duties.
- [33] I am satisfied that the 230 Receiver's Fifth Report and activities should be approved,

Should the Court approve the fees and disbursements of the 230 Receiver and its counsel for the period from Feb. 1, 2024 to November 30, 2024?

- [34] The 230 Receiver seeks approval of its fees and disbursements and those of its counsel for the period from February 1, 2024 to November 30, 2024 (the "Billing Period"). The 230 Receiver's total fees and

disbursements for the Billing Period are \$321,215.09. The 230 Receiver's counsel's fees and disbursement for the Billing Period are \$303,501.88.

[35] In *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at para. 45, the Court of Appeal noted that "it is not for the court to tell lawyers and law firms how to bill." The Court is to ensure that the fees sought are "fair and reasonable." When assessing whether the fees are fair and reasonable, the focus needs to be on what was accomplished, not the time taken to do so.

[36] In *Re Nortel Networks Corporation et al*, 2017 ONSC 673, at para. 14, citing the New Brunswick Court of Appeal in *Belyea v. Federal Business Development Bank* (1983), 44 N.B.R. (2d) 248 (C.A.), the court set out a non-exhaustive list of factors for the court to consider when reviewing a receiver's fees:

- a. The nature, extent and value of the assets;
- b. The complications and difficulties encountered;
- c. The degree of assistance provided by the debtor;
- d. The time spent;
- e. The receiver's knowledge, experience and skill;
- f. The diligence and thoroughness displayed;
- g. The responsibilities assumed;
- h. The results of the receiver's efforts; and
- i. The cost of comparable services when performed in a prudent and economical manner.

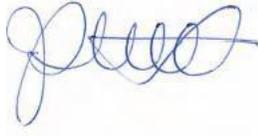
[37] The court is not to examine the dockets and hours line by line but should focus on the overall value: *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at para. 45.

[38] Fee affidavits have been filed. The 230 Receiver states in the Fifth Report its view that "the fees and disbursements of the 230 Receiver and its legal counsel described in [the fee affidavits] are reasonable and appropriate in the circumstances having regard to the scope of activity undertaken in these Proceedings."

[39] As noted by the 230 Receiver, A&M is a specialized licensed insolvency trustee and has staffed this file with insolvency specialists at various levels of seniority. Similarly, the 230 Receiver's counsel, Fasken, is a sophisticated law firm, which has staffed the matter with subject matter experts at various levels of seniority. I agree with the 230 Receiver's submission that A&M's and Fasken's hourly rates are consistent with the rates charged by comparable firms in the Toronto market practicing in the insolvency space.

[40] I am satisfied that the fees and disbursements of the 230 Receiver and its counsel are reasonable and appropriate in the circumstances, and reflect the time spent to complete the activities.

[41] Order attached.

A handwritten signature in blue ink, appearing to be "J. Lee", is centered on the page.

Date of Release: December 19, 2024