



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL SLIP/ENDORSEMENT**

COURT FILE NO.: CV-25-00752340-00CL DATE: September 23, 2025

NO. ON LIST: 3

TITLE OF PROCEEDING: **DEUTSCHE BANK TRUST COMPANY AMERICAS et al v.  
GSC SOLAR FUND I LP, et al**

BEFORE JUSTICE: **J. DIETRICH**

**PARTICIPANT INFORMATION**

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## **ENDORSEMENT OF JUSTICE J. DIETRICH:**

### **Introduction**

- [1] Deutsche Bank Trust Company Americas (the “**Agent**”), and Deutsche Bank AG, Canada Branch and The Bank of Nova Scotia (together, the “**Lenders**”, and collectively with the Agent, the “**Applicants**”) seek to appoint Alvarez & Marsal Canada Inc. (“**A&M**”) as the receiver over certain entities (the “**Debtors**”) and assets related to the Grasshopper group of solar generation companies (“**Grasshopper**”) pursuant to s. 243 of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and s. 101 of the *Courts of Justice Act* (the “**CJA**”).
- [2] The Applicants also seek certain protective relief for other members of the Grasshopper group and seek the appointment of Spark Power Renewables Canada Inc. (“**Spark**”) and FAAN Advisors Group Inc. (“**FAAN**”) to manage and perform certain of Grasshoppers operations, maintenance and administration functions.
- [3] The Lenders have been working with Grasshopper to facilitate an orderly transition into receivership since May 2025. Management of the Grasshopper entity with responsibility for operating and maintaining Grasshopper's business has advised the Lenders that they intend to resign at the end of September, 2025.
- [4] There is no opposition to the relief sought today, including by any of the respondents or entities to which the requested order would apply.
- [5] Defined terms used but not defined herein have the meaning provided for in the factum of the Applicants filed for use on this application.

### **Background**

- [6] The Grasshopper group consists of approximately 60 corporations and partnerships, most of which hold the assets, contracts and bank accounts associated with its various solar projects. Grasshopper co-owns 16 of those entities with third parties consisting of First Nations groups, municipalities, hospitals and other communities.
- [7] The Grasshopper group focuses on two primary portfolios. A commercial and industrial portfolio consisting of approximately 133 projects (the “**C&I Portfolio**”) and a residential portfolio consisting of approximately 3,338 projects (the “**Residential Portfolio**”).
- [8] There are eight Debtors: GSC Solar Fund I LP and GSC Solar Fund II LP along with their respective general partners, GSC Solar Fund I GP Inc. and GSC Solar Fund II GP Inc.; and GSC Solar Leasing LP and GSC Solar Leasing II LP along with their respective general partners, GSC Solar Leasing GP Inc. and GSC Solar Leasing II GP Inc.
- [9] There are 51 Non-Debtor Obligors – being 49 companies which hold projects in the C&I Portfolio and two companies which hold equity in the certain of the Debtors.
- [10] The Debtors and the Non-Debtor Obligors owe the Applicants approximately \$148 million (the “**Indebtedness**”) pursuant to a second amended and restated credit agreement dated June 29, 2023 (as further amended or otherwise modified from time to time, the “**Credit Agreement**”), and certain agreements, documents and instruments related to the Credit Agreement (collectively with the Credit Agreement, the “**Loan and Security Documents**”).
- [11] The Agent serves as the administrative and collateral agent under the Loan and Security Documents and holds first ranking security for its and the Lenders’ benefit over, among other

things all or substantially all of the property of the Debtors and Non-Debtor Obligor and a bank account that is held by the MSA Provider for the benefit of the Residential LPs (the “**Residential Redirected Account**”).

- [12] As well, there are four Non-Debtor Service Providers being Grasshopper Solar Corporation and its affiliate, Grasshopper Solar Asset Management Inc. (together, the “**MSA Provider**”) and TwentyFifty Inc. and TwentyFifty Asset Management Inc.
- [13] The Non-Debtor Service Providers and the Debtors have common ownership. The Non-Debtor Service Providers are entities in the Grasshopper group that have historically provided operations, maintenance and administrative services to the Debtors and the Non-Debtor Obligor (or were incorporated for that purpose). The Non-Debtor Service Providers are not obligors in respect of the Indebtedness and have not granted any security interests to the Agent or the Lenders, except for the granting by the MSA Provider of a security interest in the Residential Redirected Account.
- [14] In May 2025, the MSA Provider informed the Applicants that its management and key personnel intend to resign on or before September 30, 2025. The MSA Provider is currently responsible for all operations, maintenance and administrative services for Grasshopper’s entire solar portfolio. As such, these departures pose a substantial risk to Grasshopper’s business and the Lenders’ collateral. The Lenders have been in discussions with the MSA Provider since that time with a view to facilitating an orderly transition – which has resulted in this receivership application.
- [15] The Applicants seek a full receivership over the Debtors and the Residential Redirected Account. This relief will install the Receiver in place over the “top-level” Borrowers and Borrower GPs that collectively own the equity interests in the project-level entities (save for the equity in the various C&I Portfolio entities which are owned by the Third-Party Project Co-Owners and the general partnership units in the Residential LPs owned by the Residential GPs).
- [16] The Residential Redirected Account is held by the MSA Provider on behalf of the Residential LPs. The Receiver’s appointment over those accounts is intended to ensure funds continue to flow through those accounts in the ordinary course in accordance with the Credit Agreement.
- [17] The Applicants seek tailored relief in respect of the Non-Debtor Obligor and Non-Debtor Service Providers that is designed to maintain the status quo while the Receiver stabilizes and eventually markets Grasshopper’s business. This Protective Relief includes a stay of proceedings for those entities, a direction that each of those entities continue to comply with its obligations under contracts relating to Grasshopper Business; authority for the Receiver to pay various operating expenses on behalf of those entities; and authority for the Receiver to exercise the Borrower’s governance rights.
- [18] In light of the anticipated resignation of key personnel from the MSA Provider, the proposed Receiver, with the assistance of its counsel and in consultation with the Lenders’ counsel, prepared and negotiated draft agreements with each of Spark and FAAN. The agreements provide that FAAN will provide the following services, among others: (i) accounting and financial reporting; (ii) contract management; (iii) tax return assistance; and (iv) client management services, including communicating with and tracking requests from residential homeowners, coordinating responses to such requests and managing revenue collection activities. As well, the agreements provide that Spark will provide the following services, among others, for both the C&I and residential sides of Grasshopper’s business: (i) planned maintenance of the solar projects and the equipment located thereon; (ii) monitoring and performance analysis for the solar projects; (iii) corrective maintenance and onsite communications.

## Issues

- [19] The issues before this Court are whether
- a. it is just and equitable to appoint the Receiver over the Debtors;

- b. the requested Protective Relief over the Non Debtor Obligors and Non Debtor Service Providers is appropriate; and
- c. the appointment of Spark and FAAN is appropriate.

### Analysis

- [20] Section 101 of the CJA provides courts with the ability to appoint a receiver where it is “just or convenient.” Similarly, s. 243(1) of the BIA provides that, on an application by a secured creditor, this Court may appoint a receiver to do any of the following if it considers it to be “just and convenient” to do so to: (a) take possession over the assets of an insolvent person; (b) exercise any control that the Court considers advisable over the insolvent person’s property and business; or (c) take any other action that the Court considers advisable.
- [21] The Loan and Security Documents provide the Lenders with a security interest in: (i) all of the assets, property and undertaking of the Debtors and each of the Non-Debtor Obligors, save for the Fund Equity HoldCos, which have instead pledged their shares in the Borrowers and Borrower GPs; and (ii) the MSA Provider’s interest in the Residential Redirected Account.
- [22] The maturity date under the Credit Agreement has passed without repayment of the obligations owed to the Lenders, and numerous other significant defaults have occurred under the Loan and Security Documents. The Debtors and Non-Debtor Obligors do not have the means to satisfy the Indebtedness.
- [23] The Applicants are therefore secured creditors (with respect to the Debtors and Non Debtor Obligors) in accordance with the BIA and the Debtors and Non-Debtor Obligors are each 'insolvent persons' within the meaning of the BIA.
- [24] The Lenders sent demand letters and notices of intention to enforce security to each Debtor and Non-Debtor Obligor under section 244 of the BIA on June 26, 2025, and applicable statutory notice periods have expired.
- [25] The test for the appointment of a receiver under s. 243 of the BIA or s. 101 of the CJA is whether it is just or convenient.
- [26] In determining whether it is just or convenient to appoint a receiver the Court must have regard to all of the circumstances of the case particularly the nature of the property and the rights and interests of all parties in relation to the property: see *Bank of Nova Scotia v Freure Village of Clair Creek*, [1996] OJ No 5088 at para 10. While the appointment of a receiver is generally an extraordinary equitable remedy, where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: see *Elleway Acquisitions Ltd. v. The Cruise Professionals Limited*, 2013 ONSC 6866 at para 27.
- [27] A number of factors have historically been taken into account in the determination of whether it is appropriate to appoint a receiver. The factors are not a checklist, but rather a collection of considerations to be viewed holistically, they include:
  - a. whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;
  - b. the risk to the security holder taking into consideration the size of the debtor’s equity in the assets and the need for protection or safeguarding of assets while litigation takes place;
  - c. the nature of the property;
  - d. the apprehended or actual waste of the debtor’s assets;
  - e. the preservation and protection of the property pending judicial resolution;
  - f. the balance of convenience to the parties;
  - g. the fact that the creditor has a right to appointment under the loan documentation;

- h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
- i. the principle that the appointment of a receiver should be granted cautiously;
- j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
- k. the effect of the order upon the parties;
- l. the conduct of the parties;
- m. the length of time that a receiver may be in place;
- n. the cost to the parties;
- o. the likelihood of maximizing return to the parties; and
- p. the goal of facilitating the duties of the receiver.

see *Maple Trade Finance Inc. v CY Oriental Holdings Ltd*, 2009 BCSC 1527 at para 25.

[28] I am satisfied the appointment of A&M as receiver over the Debtors and the Residential Redirected Account is just and convenient, given, among other things:

- a. Grasshopper's lack of operations, maintenance and administrative functionality come October;
- b. the presence of multiple operational and financial defaults, including a maturity default, and the resulting insolvency of Grasshopper;
- c. the Lenders' efforts to date to accommodate Grasshopper and find solutions to its challenges; and
- d. the Lenders' contractual right to appoint a receiver.

[29] The above analysis regarding just and convenient also applies to the Protective Relief sought by the Lenders against the Non-Debtor Obligors (as the Lenders have security over the assets of these entities as well). The Non-Debtor Obligors hold the key assets of the Grasshopper business, including land leases, FIT program contracts, solar installations and equipment and bank accounts into which project revenues are deposited. In the present circumstances the requested Protective Relief is necessary to minimize disruptions to contractual relationships or potential litigation and to ensure the receiver had a reasonable opportunity to determine how to maximize value for stakeholders. In many respects the requested Protective Relief is similar to that granted by Justice Osborne in the Order (Appointing Receiver) dated October 18, 2023, *KEB Hana Bank v Mizrahi Commercial (The One) LP et al.*, Court File No CV-23-00707839-00CL (Ont. Sup. Ct. J. (Commercial List)), paras 4(d), 14-18.

[30] Although the Lenders do not have security over the assets of the Non-Debtor Service Providers (and therefore s. 243 of the BIA is not applicable), I am satisfied that in the circumstances, the relief is just or convenient under s. 101 of the CJA. Where a related entity is central to the effective operation of a debtor's business, the Court has appointed a receiver over that related entity, despite a lack of security held by the applicant over its assets (for example see: *WestLB AG, Toronto Branch v Rosseau Resort Developments Inc.*, 2009 CarswellOnt 6182, para 37 and 43). Here, the operations, maintenance and administrative functionality that the MSA Provider has to date provided to Grasshopper's business are central to Grasshopper's operations. As well, while the Applicants do not at this time have sufficient information to determine whether any services were in fact transitioned from the MSA Provider to TwentyFifty, the Lenders are aware of transition discussions in 2023 to that effect.

[31] As well, the Protective Relief in respect of the Non-Debtor Service Providers extends only to matters that are related to the Grasshopper business or Grasshopper property. The Protective Relief is therefore appropriately tailored and limited to what is required to preserve the value and operations of the Grasshopper business and is approved.

[32] I am satisfied that the Receiver should also be entitled to exercise governance rights held by the Debtors in other entities. However, I am not prepared at this time to grant any directors which may be appointed by the Receiver immunity from liability as requested by the Applicants. If additional relief is

necessary in this regard it may be requested in the future on a full factual record – it may also be appropriate at that time to expand the appointment of the Receiver.

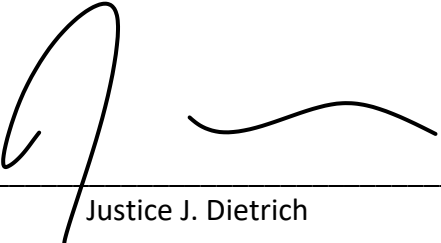
[33] The Spark and FAAN engagements are intended to replace the operations, maintenance, and administrative services that the Non-Debtor Service Providers have been providing to the Grasshopper group in light of the expected resignations of their key personnel. The proposed Receiver is of the view that the terms of those engagements including pricing—are consistent with similar agreements for these types of services, and the Lenders have been consulted with respect to their terms and support the Receiver entering into these agreements. In the circumstances the requested approval is appropriate.

[34] A&M is qualified to act as Receiver and has consented to do so.

[35] The terms of the proposed receivership order, as amended during the hearing today, are appropriate and, in large part consistent (with the amendments required to reflect the above relief) with the Model Order of the Commercial List.

**Disposition**

[36] Order to go in the form signed by me this day.



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Justice J. Dietrich

Date: September 23, 2025