

**CITATION:** Rathcliffe Properties Inc. v. 2184698 Ontario Inc., 2024 ONSC 5077  
**COURT FILE NO.:** CV-23-00003812-0000  
**DATE:** 2024-09-13

**SUPERIOR COURT OF JUSTICE – ONTARIO**

7755 Hurontario Street, Brampton ON L6W 4T6

**RE:** Rathcliffe Properties Limited

**AND:**

2184698 Ontario Inc.

**BEFORE:** Mandhane J.

**COUNSEL:** Tushar Sabharwal, for the Defendant/Moving Party

Kenneth Page, for the Court-Appointed Receiver/Responding Party

Christine Jonathan, for the Plaintiff/Responding Party

**ENDORSEMENT**

1. The Defendant/218 Ontario (“the Debtor”) owns a property that includes an autobody shop and that was also approved for future development as an Esso gas station (“the Property”). The Plaintiff/Rathcliffe Properties Ltd. (“the Lender”) loaned the Debtor \$2.9 million dollars to develop the Property and registered a first mortgage on it as security. On August 1, 2023, the Debtor defaulted on the mortgage and, despite significant efforts, has not been able to secure financing to redeem it.

2. After a contested hearing, Doi J. ordered the appointment of Schwartz Levitsky Feldman Inc. as receiver (“the Receiver”) on March 7, 2024 (“the Receiver Order”). The Receiver Order authorized the Receiver to take possession and control of the Property; engage appraisers, agents and experts; and market the Property for sale (collectively, “the sale process”). Clause 2(l) of the Receiver Order requires the Receiver to obtain court approval prior to selling the Property.

3. Since March 7, 2024, the Receiver has taken steps to sell the Property. The Receiver took possession; arranged for two appraisals; interviewed and selected a realtor; obtained an environmental assessment; listed the property on MLS for \$4,500,000; posted “for sale” signs; solicited potential buyers; set a bid date of July 9, 2024; and received eleven offers. By way of court order, the Receiver was restrained from continuing the sale process pending the hearing of this motion. The Receiver has not yet sought court approval for the sale, but is expected to do so after the sale process resumes and is completed (“Sale Motion”).

4. The Debtor now moves before this Court for interlocutory relief to stop the Receiver’s sale process, for a declaration that the Receiver is in breach of its duties under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3

(“the *Act*”) and imposing various terms and conditions on the Receiver and the sale process (for example, a minimum list and sale price).

5. The Receiver and Lender ask me to dismiss the motion and to allow the sale process to move forward.

**What relief is being sought?**

6. As a preliminary matter, the parties disagree on what relief is being sought before me. Indeed, the purpose of today’s motion is not entirely clear based on the procedural record. The Debtor submits that Wilkinson J. has already granted the injunctive relief it sought in the Notice of Motion, such that the only issue before me is its claims for substantive relief pursuant to the *Act*.

7. The Receiver and Lender disagree; they say that this is a procedural motion to determine the ongoing claim for interlocutory relief. They say that Wilkinson J. only granted an interim injunction at the last appearance. They say that I should deny the request for ongoing interlocutory relief because the Debtor has not provided the mandatory undertaking under Rule 40.03, and because it cannot satisfy the common law test for granting an injunction: *RJR v. MacDonald Inc. v. Canada*, [1994] 1 SCR 311. To the extent that I propose to deal with the merits, the Receiver and Lender say that the Debtor’s request

for remedies flowing from breach of the *Act* is premature and should be addressed when the Receiver brings a Sale Motion.

8. Notably, the consent order signed by Wilkinson J. is not timebound or interim on its face. Further, her endorsement explicitly states that the motion before me was scheduled to address the Debtor's concerns about the list price and sale process. This is confirmed in the endorsement from the triage judge who indicated that the matter was being set down for a hearing pursuant to ss. 247 and 248(1) of the *Act*.

9. On the whole, I am prepared to deal with the substance of the Debtor's submissions because doing so is the most effective use of court resource. It provides certainty for the parties going forward and avoids excessive delay in terms of scheduling another long motion date and associated delays with the sale process.

**Has the Receiver breached the *Act*? If so, what remedies should flow?**

10. The Debtor says that the Receiver has breached its obligation to act in good faith and to deal with the Property in a "commercially reasonable manner" pursuant to s. 247 of the *Act*. If I find that there has been a breach of s. 247, s. 248 allows me to impose terms on the Receiver and sale process.

11. A court-appointed receiver has a fiduciary duty to the court, must act “fairly and honestly,” has a mandate broader than any one stakeholder, and must “act in the best interests of all stakeholders”: *KEB Hana Bank v. Mizrahi Commercial (The One) LP et al.*, 2024 ONSC 3739, para. 86. A “commercially reasonable” sale process requires identifying and contacting potential buyers, marketing the property to more than one person, finding competing offers, and providing a package of information sufficient to encourage bids: *Sullivan v. Letnik*, 2002 CanLII 9856 (ONSC), para. 33-35.

12. Here, the Debtor says that there are red flags suggesting that the purpose of the receivership has been solely to satisfy the Lender’s debt without the Receiver making an earnest effort to obtain the best price for the Property. To support its claim that the Receiver has breached s. 247, the Debtor alleges certain deficiencies in the listing and alleges an asymmetrical sharing of information vis-a-vis the Debtor and Lender.

13. The Receiver listed the Property for \$4,500,000. Since then, the Debtor has become preoccupied with obtaining the Receiver’s appraisals. The Debtor suspects that the Receiver obtained the appraisals on a “liquidation basis” as opposed to “fair market value,” and that they undervalue the

Property. The Debtor's concerns arise in part from its own 2024 appraisal that valued the property at \$10,375,000 "as is."

14. As a preliminary matter, I find that the Receiver was not required to share the appraisals with either the Lender or Debtor pursuant to s. 287. I accept that the Receiver had good reason not to share the appraisals with the Debtor in particular because it would have given the Debtor an unfair advantage in the sale process.

15. I also do not accept that the Receiver's decision to list the property at \$4,500,000 breaches s. 287. The list price was based on the recommendation of a real estate professional selected through a competitive process, and after receipt of two independent appraisals. While the list price is lower than the Debtor's 2024 appraisal, I note that the Debtor also received an appraisal valuing the Property at \$5,670,000 in 2022. In any event, the Debtor's preoccupation with the list price is misguided. The market determines the value of a Property, not the listing. Because the Debtor has brought this motion prior to the Receiver's anticipated Sale Motion, the Debtor does not yet know how much has been offered for the Property whatsoever.

16. The Debtor alleges favoritism because the Receiver consulted the Lender about the selection of the realtor and the potential listing price. The

fact that a Receiver consults with a Lender does not necessarily breach the requirements of the *Act*. Again, the question is whether the asymmetrical sharing of information was in good faith and in furtherance of acting in the best interests of all stakeholders. Here, it was. The Receiver consulted the Lender because the Lender is knowledgeable about gas station properties and could identify potential buyers (which it did). The Receiver did not consult the Debtor because that it did not have helpful information to assist with the sale process; it was a family-owned business that consistently over-estimated the Property's value such that it was now over-leveraged.

17. Overall, I find that has been no breach of the *Act* to date. Indeed, this motion was premature. If the Debtor had concerns about the sale process, it should have waited until the anticipated Sale Motion to raise them at them. At the Sale Motion the Court will be required to consider whether the Receiver made sufficient effort to obtain the best price and will have the benefit of a complete evidentiary record: *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ONCA), pp.9-10.

**What costs should be ordered?**

18. The Receiver and Lender were successful on this motion and are entitled to costs After considering the factors set out in Rule 57.01(1) of the Rules

of Civil Procedure, R.R.O. 1990, Reg 194, I have a broad discretion when it comes to awarding costs: *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 131(1).

19. I am prepared to order substantial indemnity costs to the Receiver in the amount of \$10,000 all inclusive; and partial indemnity costs to the Lender in the amount of \$7,500 all inclusive. This motion was premature, wasteful, and was not approached with the best interests of all the parties with an interest in the Property in mind. Doi J. justified appointing a receiver six months ago on the basis of the Lender's contractual rights, the fact that the Debtor could not obtain financing to redeem the mortgage, the rapidly mounting indebtedness, the fact that no mortgage payments were being made, the uncertain market conditions, and the acrimony between the Lender and Debtor. All of these factors remain true today and are amplified by the delays occasioned by the Debtor.

**Order**

20. The motion is dismissed.

21. The interlocutory injunction ordered by Justice Wilkinson on July 10, 2024 is vacated effective immediately. The Receiver may proceed with the sale process forthwith.



22. The Debtor shall pay the Receiver \$10,000 in costs and shall pay the Lender \$7,500 in costs, within 10 days.

23. Order to go without the need for the Debtor or Lender's consent as to form and content.

24. The Debtor shall not bring further motions without leave of the court.

25. I am not seized.

Mandhane J.

**Released:** September 13, 2024

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Appointed Receiver/Responding  
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Christine Jonathan, for the  
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**ENDORSEMENT**

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Mandhane J.

**Date:** September 13, 2024