KING'S BENCH FOR SASKATCHEWAN
In Bankruptcy and Insolvency

Citation: **2024 SKKB 132**

Date: **2024 07 18**
Docket: KBG-SA-00824-2024
Judicial Centre: Saskatoon

IN THE MATTER OF THE INTERIM RECEIVERSHIP
OF ANWAR & ANWAR CONSULTING INC.
AND 102050413 SASKATCHEWAN INC.

BETWEEN:

H & R BLOCK CANADA, INC.

Applicant

- and -

ANWAR & ANWAR CONSULTING INC. and 102050413 SASKATCHEWAN INC.

Respondents

Counsel:

Afshan Naveed and David P. Konkin	for the applicant
Wafa Anwar	director of the respondents
Paul E. Fedoroff	for the proposed interim receiver, Ernst & Young Inc.

FIAT — ROTHERY J.
July 18, 2024

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[1] H & R Block Canada, Inc. [Block], applied, on short notice, for the appointment of an interim receiver of all the assets of the respondents, Anwar & Anwar Consulting Inc. [AAC] and 102050413 Saskatchewan Inc. [102 Sask], collectively

[Debtors]. Block terminated twenty franchise agreements it had with the Debtors as a result of multiple breaches of the franchise agreements and monies owed to Block in excess of $1 million.

[2] At the application heard July 9, 2024, Wafa Anwar, director of the Debtors, requested a two-week adjournment to permit her an opportunity to consult legal counsel. Because the evidence confirmed she had already sought legal counsel as early as June 4, 2024, and the evidence indicated urgency in hearing the application for an interim receiver, her request was denied.

[3] Furthermore, Rule 6-41 of *The King's Bench Rules* permits an interim order for preservation of property on an application without notice or any notice the Court may direct. The circumstances of this case warranted short notice.

[4] Block was permitted to argue its application, and the order appointing Ernst & Young Inc. as interim receiver of the Debtors was granted July 9, 2024, with written reasons to follow. These are my reasons.

[5] Block is a tax preparation, bookkeeping and financial products corporation with its registered office in Calgary, Alberta. Block also operates a franchising business wherein it enters franchise agreements with franchisees to operate tax preparation businesses using the proprietary standards, products, services, methods and intellectual property developed by Block, and with training, advertising, promotion and other support provided by Block to the franchisees.

[6] 102 Sask has two franchise agreements in Swift Current and Assiniboia, Saskatchewan. AAC is a federally registered corporation, extraprovincially registered in Québec, with a registered address in Saskatoon, Saskatchewan. AAC has thirteen franchise agreements in thirteen smaller communities in Québec and five franchise agreements in five locations in New Brunswick.

[7] The twenty franchise agreements provide for the Debtors to use Block's intellectual property and its clients' personal information to conduct Block's business in accordance with applicable privacy laws and Block's manuals. The franchise agreements provide that Block's system, marks, intellectual property, confidential information and client lists developed by the Debtors remain the property of Block, and the Debtors agree to not assert any ownership or rights to Block's property.

[8] The franchise agreements provide for the Debtors to pay Block royalties on the fees the Debtors earned from providing tax preparation and other services. AAC also obtained two term loans from Block's affiliate, Franchise Partner, Inc.

[9] In early April 2024, the Debtors were unable to pay the monthly royalties, and by April 30, 2024, Block issued a notice of default under the franchise agreements and demanded payment of the royalties. The Debtors did not pay the amounts owed to Block.

[10] On June 10, 2024, Block notified the Debtors that it was exercising its right to terminate all the franchise agreements. The termination notice included the following grounds for termination:

1. defaults on royalties and supplies payments, in the amount of $790,916.78 as at May 30, 2024;

2. default on the term loan payments in excess of $436,000;

3. unlawful use of Block software;

4. misrepresentation of the Debtors' true ownership;

5. unauthorized transfer of the Debtors' ownership interest; and

6. setting up competition services.

[11] On June 12, 2024, Wafa Anwar advised Block's offices by email that the Debtors were unable to pay all the indebtedness owing.

[12] As of July 7, 2024, the Debtors owed Block in excess of $1.05 million in unpaid royalties. The amounts outstanding on the two term loans exceeded $1.01 million.

[13] Block applied for an interim receiver on July 9, 2024, in accordance with s. 10-15 of *The King's Bench Act*, SS 2023, c 28 [*KB Act*] and s. 47 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [*BIA*]. Block submitted that an interim receiver was necessary because the Debtors are insolvent and unable to repay their creditors. The Debtors had indicated they would continue to operate tax preparation services using Block's client files. Block is concerned the Debtors will improperly deal with the confidential information of the customers in contravention of the franchise agreements and Canadian privacy laws. An interim receiver is necessary for the protection and preservation of customers' personal information and the preservation of Block's assets, which were in the possession of the Debtors.

[14] At the time of the application, Block had served the requisite notice pursuant to s. 244(1) of the *BIA* on the Debtors. Block submitted that the appointment of an interim receiver was necessary for both the protection of the Debtors' estates and for Block's interests as a secured creditor in accordance with s. 47(3) of the *BIA*.

[15] The determination of whether the appointment under the *KB Act* when it appears to a judge to be "appropriate or convenient" or under s. 243 of the *BIA* when a judge considers it to be "just or convenient" are similar tests. See: *Pelican Lake First Nation v Bill*, 2003 SKQB 566 at paras 16-18, [2004] 6 WWR 314.

[16] The factors a judge ought to consider in the exercise of this discretion for the appointment of a receiver or interim receiver are outlined in *Affinity Credit Union*

2013 v The Lighthouse Supported Living Inc., 2023 SKKB 82 at para 13:

> [13] Affinity applies to have MNP Ltd. appointed as receiver-manager over all the assets of The Lighthouse as provided by s. 243(1) of the BIA. Affinity argues that it is "just and convenient" for the Court to make the receivership appointment. Factors to be considered by the Court in exercising the judicial discretion include those referred to in *Lemare Lake Logging Ltd. v 3L Cattle Company Ltd.*, 2014 SKCA 35 at paras 98-100, 371 DLR (4th) 663 (rev'd on constitutional grounds 2015 SCC 53, [2015] 3 SCR 419), and citing from *Bennett on Receiverships*, 2d ed (Toronto: Carswell, 1999):
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> > 98 The case law relating to the appointment of receivers has identified a broad range of considerations that can bear on the issue of whether an appointment is appropriate. A number of decisions refer to the list of factors found in the second edition of *Bennett on Receiverships*, *supra* at pp. 130-132. These include matters such as:
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> > - Whether irreparable harm might result if the order is not made;
> > - The risk to the security holder taking into consideration the size of the debtor's equity in the collateral;
> > - The nature of the property or collateral;
> > - The need to protect or safeguard the debtor's assets while litigation takes place;
> > - The need to prevent waste of the debtor's assets;
> > - The balance of convenience as between the parties;
> > - The fact that the creditor has a right to appoint a receiver under the loan agreement in question;
> > - The conduct of the parties;
> > - The impact of the order on the parties;
> > - The cost of the receivership to the parties;
> > - The likelihood of maximizing return to the parties.
> >
> > See, for example: *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527, 60 C.B.R. (5th) 142 at para. 25.
> >
> > 99 The third edition of *Bennett on Receiverships*, (Toronto: Carswell, 2011), at pp. 155-162, suggests that the following factors are typically taken into consideration in deciding whether to appoint a receiver: (a) whether irreparable harm might be caused if no order is made; (b) whether the security holder's position will be prejudiced if no receivership order is made; (c) whether it is necessary to apprehend or stop waste of the debtor's assets; (d) whether it is necessary to preserve and protect property pending a judicial resolution of matters outstanding; and (e) the balance of convenience between the parties. See also:

> Houlden, et al, *The 2013 Annotated Bankruptcy and Insolvency Act* (Toronto: Carswell, 2013) at p. 1005.
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> 100 These sorts of factors will inform judicial reasoning on an application such as the one brought by Lemare Lake in this case but, of course, the bottom-line issue remains the one specified in s. 243(1) of the *BIA*: Is the appointment of a receiver "just or convenient"?
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> Also see *Affinity Credit Union 2013 v Vortex Drilling Ltd.*, 2017 SKQB 228 at para 19, 50 CBR (6th) 220.

[17] Block explained in the court application that it was suffering from significant reputational harm and loss of goodwill from the ongoing failure of the Debtors to return the client files to Block. Block has received hundreds of inquiries and complaints from clients who are not being serviced by the Debtors and whose income tax returns remain outstanding. These clients face increasing penalties and interest for failure to file their tax returns or pay income tax owing.

[18] Furthermore, the client files that the Debtors have been refusing to return to Block consist of personal information of individuals, which is governed by privacy law. In Saskatchewan and New Brunswick, the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 [*PIPEDA*], governs. Similar legislation is in effect in Québec, in the *Act respecting the protection of personal information in the private sector*, CQLR, c P-39.1 [*ARPPIPS*].

[19] Pursuant to *PIPEDA* and *ARPPIPS*, Block is merely the custodian of the clients' personal information. While Block, as the custodian, is permitted to transfer personal information to its service provider, Block remains the organization accountable for the information under *PIPEDA* and *ARPPIPS*. The Debtors' ongoing use of the clients' personal information is in violation of *PIPEDA* and *ARPPIPS*. That personal information must now be returned to Block.

[20] It is clear that the appointment of an interim receiver is necessary. Otherwise, Block will suffer irreparable harm. Preservation of the clients' personal information is of the utmost importance.

[21] Oppositely, the appointment of an interim receiver will not cause any real prejudice to the Debtors. The franchise agreements are terminated, and the Debtors have no right to operate the business. Accordingly, the interim receivership order was granted.

[22] The powers granted in the interim receivership order are limited to those that are necessary for the protection and preservation of the clients' files, the assets and the continuation of services to be provided to customers. As well, the Debtors are obligated to assign the leases for the former franchise locations. The interim receiver now has the power to enter into these leases.

[23] The interim receivership order only continues in force until a receiver takes possession of the Debtors' property under s. 243(2) of the *BIA*, a trustee takes possession of the Debtors' property under s. 71 of the *BIA*, or the expiry of 30 days from July 9, 2024. The Debtors will have an opportunity for these issues to be reviewed upon such further application to the Court.

"A.R. Rothery" J.
A.R. ROTHERY