

Court File Number: CV-20-00640633-00CL

**Superior Court of Justice
Commercial List**

FILE/DIRECTION/ORDER

HILLMOUNT CAPITAL INC

Plaintiff(s)

AND

CELINE BRITTANY PIZALE and RICHARD STANLEY PIZALE

Defendant(s)

Case Management Yes No by Judge: Koehnen J.

Counsel	Telephone No:	Email/Facsimile No:
R. Macdonald for Hillmount		
S. Nodel for the second mortgagee		
P. Mand for the third mortgagee		
J. Rosenstein for the respondents		

- Order Direction for Registrar (**No formal order need be taken out**)
 Above action transferred to the Commercial List at Toronto (**No formal order need be taken out**)

- Adjourned to:
 Time Table approved (as follows):

Date Heard: June 19.2020

1. The applicant applies to appoint a receiver over 83 Lyndhurst Ave., Toronto. Today's hearing before is the result of my direction of June 11, 2020 and should be read in conjunction with it.
2. The respondents seek an adjournment for approximately one month. They submit that they initially thought they had until July 21 to redeem the property and have now presented a term sheet from Benson Capital for a loan of up to \$4,000,000 which would pay out the applicants. I disagree with that analysis. The July 21 date was set to allow the respondents to file materials to resist the appointment of a receiver. The respondents then indicated that they had no materials to file. In those circumstances there was no need to wait until July 21 to appoint a receiver because the applicant's mortgage documents give the applicant the right to do so. The respondents are as free to argue today any legal reason that would lead me to refuse to appoint a receiver as they would be on July 21.
3. I declined the request for an adjournment and appointed a receiver as the applicant requested.
4. In response to the respondents' suggestion that they had a term sheet which demonstrated their ability to finance the property, the applicant delivered the affidavit of its president, Yitz Levinson. Attached as exhibits to the affidavit are emails from Benson Capital indicating that the term sheet the respondents have produced is a forgery.

5. The respondents take issue with this and say that I cannot determine on this motion whether the Benson Capital term sheet is or is not a forgery.

6. I make no determination in that regard on this motion. However, even if I look at the Benson Capital term sheet on its face, it provides me with no level of comfort that financing is available. It is clear from the term sheet that the intention would be to put more funds in front of the second mortgagee on the property. That requires the consent of the second mortgagee. They appeared on the motion and did not consent. They support the appointment of a receiver.

7. The term sheet is also conditional on an AACI appraisal from an appraiser acceptable to Benson Capital. The appraisal the respondents have proffered is not an AACI appraisal. There is no indication from the respondents that the appraisal is acceptable to Benson Capital. Benson says it never accepted the appraisal.

8. The respondents have been in default of the mortgage for approximately 19 months. The applicant has granted numerous extensions and forbearances to allow the applicants to bring the mortgage into good standing. The applicants have failed to do so. The applicant peacefully sought to take possession of the property as it was entitled to do pursuant to its mortgage documents. When it tried to do so, the respondent Richard Pizale forcibly removed the receiver's representative from the property.

9. There is no doubt in my mind of the equities here support the appointment of a receiver.

10. Appointment of a receiver does not preclude the respondents from paying out their debt and resuming control of the property provided they can do so before the sales process begins in any meaningful way. Even after the sales process begins, they have the ability to take control of the property by participating in the sales process. Given these continued rights to resume control of the premises, they are significantly less prejudiced by the appointment of a receiver than the applicant is by the failure to appoint a receiver. In articulating this concern I am not suggesting that this is the test for the appointment of a receiver. The applicant clearly has the right to appoint a receiver by virtue of its contractual documents with the respondents. I merely set out this factor to underscore the absence of any equitable concern that would support the respondents' position.

June 22, 2020

Koehnen J.