

Court File Number: CV-18-00604717-00CL,
CV-18-00604725-00CL and CV-18-00604721

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Marchant Realty Partners Inc., as agent

Applicant

-and-

**2407553 Ontario Inc., 2384648 Ontario Inc., 2384646 Ontario Inc., 24000196
Ontario Inc. and 2396139 Ontario Inc. (604717 file)**

4267 River Road LP and 4267 River Road GP Inc. (604725 file)

4544 Zimmerman Avenue LP and 4544 Zimmerman Avenue GP Inc. (604721 file)

Respondents

Case Management ☐ Yes ☐ No by Judge: _____

Counsel	Telephone No:	Email/Facsimile No:
Kenneth Kraft and Sara-Ann Van Allen for the Applicant		Kenneth.kraft@dentons.com Sara.vanallen@dentons.com
Steven Graff for the Respondents		sgraff@airdberlis.com
Steven Nadler for the Guarantor Kepinski		sn@friedmans.ca

☐ 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):

Heard: July 31, 2020

Judge: C. Gilmore, J.

Endorsement on Applications

Overview

1. The Applicant Marchant Realty seeks an Order appointing Ziefman Partners Inc, as receiver and manager of all assets, undertakings and properties of the Respondent Debtors including the subject real property.
2. The Receivership is opposed by the Respondents. They seek an adjournment of 60 to 70 days to obtain financing which they have evidenced by way of a recent Letter of Intent and Term Sheet. The proposed financing would pay out the Applicant completely.
3. The Applicant opposes any adjournment on the grounds that the lender has lost patience given the amount of time this has gone on. The forbearance agreement has expired and the lenders do not wish to wait any longer.

Brief Background and the Positions of the Parties

4. The three receivership Applications relate to three separate but related loans advanced to separate Debtors by groups of lenders. The Applicant agent acted as agent in relation to all three loans. The principals/personal guarantors behind each of the Debtors are Charles Hunter Milborne and Andrzej Kepinski.
5. The total indebtedness under the loans as of July 20, 2020 was \$15,914,207.19 exclusive of legal fees and disbursements.
6. The loans matured in 2016 and 2017 without repayment. The Application was originally scheduled to be heard in September 2018 but was adjourned on five separate occasions to allow time for the Debtors to refinance.
7. On November 22, 2018 the parties entered into a forbearance agreement which terminated on December 31, 2019. The Debtors ceased making all payments after February 2020.
8. On March 31, 2020 the Debtors requested further forbearance to June 2025 with no payments until March 2021. The Lenders are not agreeable to the Debtors' requests and submit they have given the Debtors ample time to organize their affairs. Further, interest on the loans continues to accrue and property taxes have not been paid and are significantly in arrears.
9. The Applicant submits it has a right under the Security Agreements to appoint a Receiver and there is no reason to forbear any longer. The appointment of a Receiver is just and convenient in the circumstances.

10. The Debtors concede there has been default but seek what is only a short delay considering the request in the context of the last four years. The Debtors submit the subject properties are part of larger project which is on the verge of moving forward. The appointment of a receiver would likely have a significant detrimental effect on the project. There are also significant fees and expenses associated with a receivership.
11. After the hearing of this matter, Mr. Graff provided a copy of a Letter of Intent dated August 4, 2020 from Advanced Knowledge Development and Holdings Limited – AKD Group (“AKD”). AKD proposes to purchase a 10% equity stake in the Niagara Academic Development initiative for \$10,000,000.00. The proceeds of the purchase may be used to pay out the indebtedness of the Debtors and is intended to be completed by October 9, 2020.
12. Mr. Graff also provided a Term Sheet from Maynbridge Capital dated July 24, 2020 with respect to an \$18,000,000.00 refinancing of the existing mortgages.
13. The Debtors submit that an adjournment would be beneficial to the Applicant who can be paid out and the development of the property by AKD can proceed.

Analysis and the Law

14. This is a request for an adjournment resisted by the Applicant who submits that appointment of a Receiver would be just and convenient in all of the circumstances.
15. It is clear that the Applicant has been more than patient in waiting for the Debtors to arrange their affairs. However, the Debtors have provided some evidence of the possibility of the Applicant's mortgages being completely taken out, a scenario which would likely be the best result for both parties.
16. The Applicant complains that the Debtor has made similar promises in the past which have never come to fruition and they are no longer prepared to wait or forbear.
17. The fairest solution for both would be to grant the Receivership Orders requested but suspend their effect for an amount of time that would allow the Applicant to complete its debt or equity refinancing. As such, the Orders requested by the Applicant will be signed as of August 6, 2020 but will not take effect until October 14, 2020.

Judge's Signature:



August 5, 2020