

CITATION: Royal Bank v. Dixie Chrysler
COURT FILE NO.: CV-25-0001143-0000
DATE: 2025 05 16

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

S. Mitra and S. Parsons, for the
Applicant

- and -

DIXIE CHRYSLER LTD.

Respondent

D. Nunes, for the Respondent

HEARD: March 18, 2025

RECEIVERSHIP APPLICATION

L. Shaw J.

Overview

[1] The applicant, Royal Bank of Canada, ("RBC") is a lender who made certain credit facilities available to the Respondent, Dixie Chrysler Ltd ("Dixie") under

terms of a credit agreement. Dixie operates a car dealership and also provides car service, repair work, and auto parts.

[2] RBC seeks an order appointing Zeifman Partners Inc. (“Zeifmans”) as receiver, without security, of all assets, properties, and undertakings of Dixie pursuant to s. 101 of the *Courts of Justice Act* (“CJA”) and s. 243 of the *Bankruptcy and Insolvency Act* (“BIA”). Zeifmans consents to the appointment.

[3] To secure its obligations, Dixie provided security to RBC through several security agreements. On February 10, 2025, Dixie owed RBC approximately \$10.5 million in principal and interest on a general secured basis. The general secured debt is repayable on demand. There is a term in each of the security agreements that upon default, RBC is contractually entitled to have a receiver appointed.

[4] On February 11, 2025, RBC made formal written demand on Dixie for payment of the amounts owing under the credit facilities. A Notice of Intention to Enforce Security pursuant to s. 244(1) of the *BIA* accompanied this demand.

[5] The debt remains unpaid.

[6] Dixie does not dispute the following:

- that RBC can move to appoint a receiver under the terms of the security agreements;
- the authority of the court to appoint a receiver pursuant to s 243 of the *BIA*;
- that it is indebted to RBC; and

- the amount owing on demand to RBC.

[7] Nonetheless, Dixie's position is that it is not just and convenient to order the appointment of a receiver at this time as it is engaged in discussions with potential purchasers of the business. Dixie requests that the court not grant the relief for a period of 90 days to continue those discussions. Dixie argues that if the court grants the application, that will have a negative impact on the sale price of the business or its assets.

[8] For the reasons set out herein, the application is granted.

The Applicable Legal Framework

[9] There is no dispute about the governing legal principals.

[10] 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 and convenient to do so.

[11] The appointment of a receiver is an extraordinary equitable remedy. The objective is to enhance and facilitate the preservation and realization of a debtor's assets, for the benefit of all creditors: *Hands-On Capital Investment Inc. v. DMCC Holdings Inc.*, 2023 ONSC 2417 at para. 22.

[12] In determining if it is just and convenient, the court must have regard to all of the circumstances, but in particular, the nature of the property and the rights and interests of all parties in relation thereto. The circumstances include the rights of

the secured creditor pursuant to its security: *Bank of Nova Scotia v Freure Village on the Clair Creek* 1996 O.J. No. 5088, 1996 CanLII 8258.

[13] In *Canadian Equipment Finance and Leasing Incl, v. The Hypoint Company Limited et al*, 2022 ONSC 6186 at para. 25, Osbourne J referred to the following factors to consider when determining whether it is appropriate to appoint a receiver:

- (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.

[14] These factors are not a checklist but should be considered using a contextual approach to determine if the appointment of a receiver is warranted: *Wang v Jin*, 2025 ONSC at para. 31.

[15] Osborne J. also found that it is not essential that the moving party establish that it will suffer irreparable harm or that the situation is urgent prior to the appointment of a receiver. Osborne J also note that where the evidence respecting the conduct of the debtor suggests that a creditor's attempts to privately enforce its security will be delayed or otherwise fail, a court-appointed receiver may be warranted: *Canadian Equipment* at para. 26.

[16] Where there is a contractual right to seek the appointment of a receiver, as in this case, the burden on the applicant seeking the relief is relaxed: *Acquisitions Limited v. The Cruise Professionals Limited*, 2013 ONSC 6886 and *iSpan Systems LP*, 2023 ONSC 6212.

Review of the Evidence

[17] As security for its obligations to RBC, Dixie entered into a number of security agreements which were registered pursuant to the *Personal Property Security Act*,

(“PPSA”). RBC has a PPSA registration against Dixie in respect of all collateral classifications other than consumer goods.

[18] The credit agreement provides floorplan financing to Dixie so that it can acquire vehicle inventory including new vehicles from the manufacturer. When a vehicle financed by RBC is sold, the proceeds must be used to repay the financing advanced by RBC in connection with that particular vehicle. Pursuant to this agreement, Dixie has failed to remit sums owing (the “unremitted funds”).

[19] The quantum of unremitted funds has been increasing. On January 29, 2025, the balance of unremitted funds was just over \$1 million. By February 24, 2025, the balance owing had increased to \$1,356,303.96. That amount grew by \$420,000 and by March 11, 2025, the amount of unremitted funds for the new car floor plan facility was \$1,476,538 and for the used car facility was \$301,167.

[20] Since serving the demand letter and the *BIA* notice, Dixie has not repaid the amounts owing to RBC and it has not presented any plan on how it intends to pay these unremitted funds. In addition, according to RBC, Mr. Hugh Brennan, the president and sole director of Dixie has refused to inject funds for Dixie’s working capital requirements.

[21] According to Mr. Brennan, the onset of Dixie’s financial difficulties commenced when he became ill in the latter part of 2022 and was eventually hospitalized in February 2023.

[22] While Mr. Brennan was away from the dealership dealing with his health issues, Dixie developed an inventory problem as Chrysler invoiced and shipped to Dixie numerous high-priced and oddly equipped vehicles financed by RBC which he described as slow-moving units. In early 2024, efforts were made to sell older units in Dixie's inventory but RBC's requirement that Dixie repay a percentage of the loan amounts related to these older units began to create financial issues for Dixie.

[23] According to Mr. Brennan, the inventory issues were exacerbated in the summer of 2024 by a global ransomware attack which crippled certain software used by dealerships across the continent.

[24] In August 2024 Mr. Brennan says he raised concerns with RBC regarding its requirement that Dixie repay a percentage of the loan amounts related to older units and the impact that was having on Dixie's cashflow. According to Mr. Brennan, he was not told that RBC had any serious concerns with Dixie's financial affairs or with its lending relationship at that time.

[25] By September/October 2024, Dixie began to suffer substantial losses as it struggled to move its older inventory.

[26] Zeifmans was retained by RBC in early 2025 to review and report on the financial affairs of Dixie. Zeifmans requested financial information including a cash

flow forecast from Dixie. RBC alleges that to date, no information has been provided by Dixie.

[27] According to Mr. Brennan, in January 2025, he agreed to Zeifmans' engagement and Dixie and its accounting firm provided information requested by Zeifmans. It is Mr. Brennan's evidence that he believed cooperating with Zeifmans and being transparent with RBC would provide Dixie with the time it needed to explore options such as refinancing or a sale/investment that would see RBC's indebtedness repaid in an acceptable timeframe.

[28] Mr. Brennan acknowledges that Zefmans requested a cash flow forecast on January 28, 2025. His evidence is that it was agreed it would be done by February 11, 2025. Mr. Brennan was therefore surprised when Dixie was served with a formal demand for repayment of RBC's indebtedness along with the notice under the *BIA* that same day.

[29] There is no evidence that Dixie has ever provided the cash flow forecast as requested.

[30] On January 28, 2025, counsel for RBC was advised that Dixie had consulted a trustee in bankruptcy. Dixie does not agree as it says that a trustee in bankruptcy was first consulted on February 11, 2025 to consider its options in light of the demand letter.

[31] To protect its collateral, RBC filed this application to appoint a receiver on March 3, 2025. After being served with the application and retaining counsel, Dixie determined that the option most likely to result in repayment of the debt owing to RBC was a sale of the business.

[32] According to Mr. Brennan, in March 2025, he had discussions with three parties who expressed an interest in acquiring the dealership. RBC was informed of these discussions.

[33] On March 17, 2025, the broker representing one of the interested parties provided Dixie with a non-binding letter of intent to purchase Dixie's assets with a proposed closing date of May 30, 2025. No evidence was filed with respect to this letter of intent.

Analysis

[34] Dixie is currently using proceeds of RBC's collateral from the financed vehicles it sells, to fund its operations rather than repaying amounts owing to RB when the vehicle is sold. Unlike other collateral such as real property (land), the collateral in issue is on wheels and can be moved - or sold. Given this nature of the collateral, there is a real risk that it is deteriorating.

[35] It is also concerning that the balance of unremitted funds owing has been steadily increasing. This is evidence of Dixie's increasing financial distress as it

cannot meet its debt obligation to RBC but is using funds owing to RBC to pay for its operations.

[36] Dixie does not dispute that it is indebted to RBC or that there is an ongoing breach of the terms of the floorplan financing agreement. Dixie provides no plan on how it intends to pay the outstanding sums owing to RBC, even pending a possible sale of the business. Dixie's only proposal is to ask for more time to pursue a potential sale. Dixie also proposes that pending a sale, it will provide Zeifmans with the necessary financial reporting to allow it to review and monitor Dixie's financial affairs and report to the bank. Given Dixie's failure to provide a cash flow report when requested, I have concerns that timely financial reporting will occur.

[37] A receiver is a court-appointed officer who is obligated to design and run a sale process with a view to monetizing the assets of the debtor for the benefit of all creditors: *Canadian Equipment Finance and Leasing Inc., v. The Hypoint Company Limited et al*, 2022 ONSC 6186 at para. 33. It will be for the receiver to determine if the business should be sold as a going concern or not. The receiver is obligated to ensure that there is an orderly process in place that benefits all creditors.

[38] While there is a letter of intent from an interested party to purchase the assets of Dixie, a letter of intent is not a binding agreement. There is, therefore, no confirmed sale of Dixie's assets. I have, however, considered this letter of intent in determining whether a receiver ought to be appointed.

[39] Given Dixie's increasing indebtedness, the deterioration in RBC's security position, Dixie's ongoing use of unremitted funds in its operations that ought to be remitted to RBC, Dixie's failure to propose any plan to address its indebtedness to RBC, even pending a sale, and RBC's contractual right to appoint a receiver, I am satisfied that it is just and convenient that a receiver be appointed.

[40] The appointment of a receiver should be granted cautiously. However, given the undisputed evidence of Dixie's increasing indebtedness to RBC with no plan to address repayment other than a non-binding letter of intent to sell Dixie's assets, Zeifmans ought to be appointed as receiver. Zeifmans will determine if the business should be sold as a going concern or not.

[41] In my view, RBC is acting in a commercially reasonable manner in seeking the appointment of a receiver, even when there is the possibility of a potential sale of Dixie's assets. The receiver will be able to determine if that is the best course of action and then administer an orderly sale process that is in the best interest of all creditors.

[42] Counsel may forward to my attention a draft order, in word format. The order is to be sent to scj.csj.general.brampton@ontario.ca



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Released: May 16, 2025