Court File No. CV-19-00628145-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

MERIDIAN CREDIT UNION LIMITED

Applicant

- and -

ADELAIDE STREET LOFTS INC.

Respondent

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, RSO 1990, c C 43, AS AMENDED

FACTUM OF THE APPLICANT
(Application to Appoint Receiver – Returnable November 1, 2019)

October 31, 2019

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TO: **SERVICE LIST**

PART I - OVERVIEW

1. Meridian Credit Union Limited ("**Meridian**") brings this application for the appointment of msi SPERGEL Inc. ("**Spergel**") as receiver (herein, the "**Receiver**") over the respondent Adelaide Street Lofts Inc. (the "**Debtor**") under section 243 of the *Bankruptcy and Insolvency Act* (the "**BIA**")[1] and section 101 of the *Courts of Justice Act* (the "**CJA**")[2]. Capitalized terms used herein not defined shall have the meanings given to them in the affidavit of Bernhard Huber sworn September 30, 2019 (the "**First Huber Affidavit**").

2. The Debtor is indebted to Meridian in connection with credit facilities made available by Meridian to the Debtor (the "**Credit Facilities**") pursuant to and under the terms of a credit agreement dated April 2, 2018 ("**Credit Agreement**"). The Credit Agreement provided for a loan in the amount of $16,414,000 in principal, plus all applicable interest, costs and other obligations owing thereunder (together, the "**Indebtedness**"). Meridian holds a first-ranking security over the Debtor's real and personal property.[3]

3. The Credit Agreement required that the Credit Facilities be repaid in full on or before February 28, 2019. The Debtor has failed to repay the Credit Facilities, which constitutes one of the numerous defaults committed by the Debtor under the Credit Agreement. Meridian has been proactive in attempting to come to a resolution in respect of this matter, but the Debtors have not been willing to facilitate such a resolution. After eight months, with no timely resolution in sight, Meridian has determined that the path forward that will be most beneficial to the Debtor's stakeholders is the bringing of this Application.

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[1] R.S.C., 1985, c. B-3.
[2] R.S.O. 1990, c. c.43.
[3] First Huber Affidavit at paras. 4 and 7.

4. Meridian has the right under its security documents to appoint a receiver. Further, it is just and convenient to appoint a Receiver to preserve the assets of the Debtor and prevent the dissipation of those assets through lack of care and maintenance, for the benefit of all of the Debtor's stakeholders.

PART II - FACTS

5. The facts of this application are more fully set out in the First Huber Affidavit and the affidavit of Bernhard Huber sworn October 30, 2019 (the "**Supplementary Huber Affidavit**").

A. The Parties

(i) Meridian

6. Meridian is a secured creditor of the Debtor. As security for its obligations to Meridian, including, without limitation, its obligations under the Credit Agreement, the Debtor provided security in favour of Meridian (collectively, the "**Security**"), including a general security agreement dated May 14, 2018, registration in respect of which was duly made pursuant to the *Personal Property Security Act* (Ontario); a notice of assignment of rents – general registered on May 14, 2018 in the Land Titles Office for the Registry Division of Toronto with respect to the real property municipally known as 63 Adelaide Street West, Toronto, Ontario (the "**Real Property**"); and a charge/mortgage registered on title on May 14, 2018 in the principal amount of $16,414,000 on the Real Property.[4]

[4] First Huber Affidavit at para. 7.

(ii) The Debtor

7. The Debtor is a corporation existing under the laws of the province of Ontario. The Debtor's registered office address is located at Suite 503 of the Real Property and Ioannis (John) Neilas is the sole director and officer of the Debtor. The Debtor's business is the development of the Real Property and the Debtor is the registered owner of the Real Property. Based on the most current financial statements in Meridian's possession, the ability of the project related to the Real Property to continue as a going concern is subject to an outside entity injecting funds into the project.[5] 263 Holdings Inc. ("**263**") is the beneficial owner of the property and has signed an Acknowledgement and Consent of the Beneficial Owner in connection with the security granted to Meridian.

(iii) The Guarantors

8. The obligations of the Debtor to Meridian, including, without limitation, the Debtor's obligations under the Credit Agreement, were guaranteed by John and Dimitrios (Jim) Neilas, and Neilas Inc. (now 263).[6]

(iv) Hi-Rise Capital Ltd.

9. Hi-Rise Capital Ltd. ("**Hi-Rise**") is a mortgage broker and mortgage administrator which receives and advances, on behalf of investors, funds to a variety of companies that undertake real

[5] First Huber Affidavit at para. 3 and 19.
[6] First Huber Affidavit at para. 8.

property developments. Hi-Rise is licensed by the Financial Services Regulatory Authority of Canada ("**FSRA**").[7]

10. In its capacity as a mortgage broker and administrator, Hi-Rise arranged syndicated mortgage financing for the Debtor through receiving funds from certain individuals (collectively, the "**Investors**") and then advancing them to the Debtor. The authorized principal amount under the Hi-Rise syndicated mortgage is $60,000,000.[8]

11. Meridian and Hi-Rise are the only entities with PPSA registrations against the Debtor. Hi-Rise and Community Trust Company ("**CT**") jointly hold a charge/mortgage in respect of the Real Property, with Meridian holding the only other mortgage registered in respect of the Real Property. While the registrations of Hi-Rise (and with respect to the mortgage, CT) precedes Meridian's, Hi-Rise and CT subordinated and postponed their indebtedness and security to Meridian in all respects.[9]

B. Default and Demand

12. Numerous defaults under the Credit Agreement have occurred and are continuing, including (among other things):

(a) The debtor failing to repay the Credit Facilities in full on or before February 28, 2019;

(b) The debtor failing to pay the property taxes that have arisen in respect of the Real Property and failing to pay interest installments due thereunder;

[7] First Huber Affidavit at paras. 12 and 14.
[8] First Huber Affidavit at para. 22.
[9] First Huber Affidavit at paras. 10 and 11.

(c) The debtor failing to keep interest payments under the Credit Agreement current; and

(d) A significant adverse change in the amount and timing of cash flow from the financial asset has resulted in the declaration of an impairment. [10]

As of September 16, 2019, a total of $16,828,734.56 was owing under the Credit Agreement (plus accruing interest and recovery costs and expenses).[11]

13. Starting in February 2019 and continuing through May 2019, Meridian approached the Debtor regarding the Credit Facilities and issues surrounding the Credit Agreement, options for repayment, and eventually, to attempt to negotiate a forbearance agreement. The Debtor was generally unresponsive to Meridian's efforts to resolve these issues [12]

14. On June 14, 2019, Meridian made demand on each of the Debtor and Guarantors for repayment of the obligations owing to those respective parties. Meridian also delivered a notice of intention to enforce security ("**NOI**") pursuant to s. 244(1) of the *Bankruptcy and Insolvency Act*. To date, none of the Debtor or Guarantors have responded to the demands.[13]

C. Appointment of Representative Counsel and Vote on the Proposed Settlement

15. For reasons articulated in the First Huber Affidavit, the development of the Real Property is being wound down. The wind down included a proposed sale of the Real Property in a

[10] First Huber Affidavit at paras. 17, 18 and 19.
[11] First Huber Affidavit at para. 43.
[12] First Huber Affidavit at para. 20.
[13] First Huber Affidavit at para. 21.

transaction (the "**Transaction**") pursuant to which it was uncertain whether the Investors, who rank subordinate to Meridian, would recover their investments in full.[14]

16. In order to deal with the potential shortfall to the Investors, Hi-Rise commenced an application (the "**Hi-Rise Proceeding**"), and received an order of the Ontario Superior Court of Justice (Commercial List) on March 21, 2019, *inter alia*:

(a) appointing Miller Thomson as representative counsel ("**Rep Counsel**") to represent the Investors;

(b) permitting Hi-Rise to call, hold and conduct a meeting (the "**Investors' Meeting**") of the Investors in order for the Investors to consider and, if deemed advisable, pass a resolution approving a proposed settlement to Investors pursuant to which the Transaction and a distribution would take place (such settlement, the "**Proposed Settlement**"); and

(c) scheduling a further hearing in the Hi-Rise Proceeding regarding court approval of the Transaction and a distribution if the Investors approve same at the Investors Meeting. [15]

17. In order for the vote in respect of the Proposed Settlement to pass, Investors representing $66^{2/3}$% in value and a majority in number had to vote in favour.[16]

18. On August 27, 2019, Hi-Rise delivered a notice to Investors that the Investors Meeting would be held on September 25, 2019. Rep Counsel issued a statement opposing the holding of

[14] First Huber Affidavit at para. 24.
[15] First Huber Affidavit at paras. 22-26.
[16] Supplementary Huber Affidavit at para. 9.

the Investors Meeting absent additional documentation from the Debtor regarding the Transaction on the timeline proposed.[17]

19. During the Hi-Rise Proceeding, both Rep Counsel and counsel to FSRA expressed concerns with the conduct of the sales process, the lack of disclosure regarding the Transaction (including the refusal to provide copies of the purchase agreement itself) and the possibility that other, better offers have not been pursued. Both Rep Counsel and counsel to FSRA have also expressed concerns about improper communications between Hi-Rise and Investors, as well as improper potential communications between John and one or more Investors.[18]

20. In part in order to address concerns about the conduct of the sales process and the Transaction that resulted, Rep Counsel determined that it required a third party financial adviser to review and assess the circumstances surrounding all transactions relating to the Real Property and sought an order in respect of same. Pursuant to a court order (the "**IO Order**") dated September 17, 2019, Alvarez & Marsal Canada Inc. was appointed as the information officer (in such capacity, the "**Information Officer**") to, among other things, report on the sales process (the totality of such mandate and as set out in the IO Order, the "**Mandate**").[19]

21. In part in order to give the Information Officer sufficient time to complete the Mandate and disseminate the results to the Investors, the date of the Investors Meeting was postponed nearly a month to October 23, 2019.[20]

[17] First Huber Affidavit at para. 28.
[18] First Huber Affidavit at paras. 34 and 35.
[19] First Huber Affidavit at paras. 29 and 31.
[20] First Huber Affidavit at para. 32.

22. In the interests of allowing the Investors, the Debtor and Hi-Rise the opportunity to come to a resolution in respect of the Investors' rights, Meridian did not object to the appointment of the Information Officer or the delay of the Investors Meeting, even though it would result in Meridian not being repaid under the Credit Agreement for at least another month. Meridian requested, and was granted, unopposed, a provision in the IO Order that the order does not affect Meridian's rights under any agreement or under law, including the right to appoint a receiver under the BIA, the CJA or otherwise. Meridian also indicated that in order for it to agree to delay an application to appoint a receiver, which it was permitted to do under law, it was imperative that the Debtor enter into a forbearance agreement with Meridian.[21] Meridian and the Debtor were not able to come to terms on a forbearance agreement.

23. On October 7, 2019, the Information Officer filed its report (the "**IO Report**") with the Court in respect of its Mandate and the Proposed Settlement. The IO Report included the finding that nothing has led the Information Officer to conclude that the Transaction was improvident. The IO Report also noted that Investors may realize higher or lower recoveries than the recovery proposed in the Proposed Settlement, but that there would be additional uncertainty as compared to the Proposed Settlement.[22]

24. On October 18, 2019, Rep Counsel reported that the official committee of Investors (the "**Official Committee**") did not support the Proposed Settlement and was unable to recommend that Investors approve it. The Official Committee came to this conclusion despite the "considerable

[21] First Huber Affidavit at para. 33.
[22] Supplementary Huber Affidavit at at paras. 3, 4 and 5.

uncertainty with respect to the outcome of any alternative to implementation of the Proposed Settlement."[23]

25. On October 21, 2019, Rep Counsel provided a further communication advising that the Official Committee recommended voting against the Proposed Settlement.[24]

26. The Investors Meeting took place on October 23, 2019. 66.17% of the Investors voted and of those, 70.636% voted against the Proposed Settlement. The vote did not pass.[25]

D. Meridian's Efforts to Resolve the Debtor's Defaults Without Resorting to a Formal Insolvency Proceeding Since August

27. On September 6, 2019, counsel to Meridian delivered a letter to Debtor's counsel noting among other things that Meridian was no longer inclined to wait any longer for repayment of the Indebtedness under the Credit Agreement. Meridian proposed general terms for a strict forbearance agreement, to be settled by the end of business on September 12, 2019, which terms included the full repayment of the Indebtedness by October 31, 2019. The Debtor did not respond to the terms proposed in the letter.[26]

28. Meridian and its counsel met with the Debtor and its counsel on September 11, 2019, to discuss the status of the Hi-Rise Proceeding. Meridian again advised that it was prepared to forbear on terms, which terms were set out in a letter to the Debtor's counsel on September 12, 2019 (the "**September 12 Forbearance Letter**"). Among other things, Meridian required that the Investors Meeting take place by September 25, 2019, that in the event a settlement with the Investors was

[23] Supplementary Huber Affidavit at paras. 5.
[24] Supplementary Huber Affidavit at para. 6.
[25] Supplementary Huber Affidavit at paras. 7, 8, 9 and 10.
[26] First Huber Affidavit at para. 36.

approved, an interim payment be made to Meridian within a set period of time thereafter, and provided for a date by which the remaining Indebtedness would be repaid in full. The Debtor did not respond to the substance of the September 12 Forbearance Letter.[27]

29. At the September 16, 2019 chambers appointment in respect of the motion in support of the IO Order, Meridian also noted the importance of the timely repayment of the Indebtedness and that its lack of opposition to the IO Order and its permitting the Hi-Rise Proceeding to continue was based in all respects on the execution by the Debtor and Meridian of a forbearance agreement by September 20, 2019, on mutually acceptable terms.[28]

30. On September 18, 2019, counsel to Meridian delivered a formal forbearance agreement to counsel to the Debtor. On September 20, 2019, counsel to the Debtor delivered a mark up to the forbearance agreement which provided none of the protections Meridian had been demanding since September 6, 2019, and Meridian lost confidence that the Debtor intended to attempt, in good faith, to enter into a forbearance agreement. Meridian has made its position known that it would seek a receivership application if a mutually agreeable forbearance agreement could not be executed by September 20, 2019.[29]

PART III - LAW & ARGUMENT

31. The issue on this Application is whether the Court should appoint Spergel as the Receiver over the Debtor pursuant to section 243 of the BIA and section 101 of the CJA.

[27] First Huber Affidavit at para. 37.
[28] First Huber Affidavit at para. 39.
[29] First Huber Affidavit at para. 40.

The Test for Appointing a Receiver under the BIA and CJA

32. Subsection 243(1) of the BIA provides that on application by a secured creditor, a court may appoint a receiver to, *inter alia*, take possession over the assets of an insolvent person and exercise any control that the court considers advisable over that property and over the insolvent person's business, again where it is "just or convenient".[30] Similarly, the CJA enables the court to appoint a receiver where such appointment is "just or convenient".[31]

33. In determining whether it is "just or convenient" to appoint a receiver under either the BIA or CJA, Ontario courts have applied the decision of Blair J. (as he then was) in *Bank of Nova Scotia v. Freure Village on Clair Creek.* In *Freure Village*, Blair J. set out that, in deciding whether the appointment of a receiver is just or 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," which includes the rights of the secured creditor under its security.[32]

34. Where the enumerated rights of the secured creditor under its security include the right to seek the appointment of a receiver, the burden on the applicant seeking the relief is relaxed. As stated by Morawetz J. (as he then was) in *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*:

> ... while the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties.[33]

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[30] *BIA*, s. 243.
[31] *CJA*, s. 101.
[32] *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 40 CBR (3d) 274 (Ont Ct J) ["***Freure Village***"] at para. 11, Applicant's Book of Authorities, Tab 1; *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 ["***Elleway***"] at para. 26, Applicant's Book of Authorities, Tab 2.
[33] *Elleway* at para. 27, Applicant's Book of Authorities, Tab 2.

35. Where a creditor is entitled under its security to seek the appointment of a receiver, a court will consider in its discretion whether, on an examination of the surrounding circumstances, it is in the interests of all concerned to have the receiver appointed by the court.[34]

36. Where the history and evidence of the behaviour of a debtor indicate that a creditor's attempts to privately enforce its security will be delayed or otherwise fail, a court-appointed receiver is warranted.[35]

It is Both Just and Convenient to Appoint the Receiver in the Circumstances

37. The Credit Agreement and the GSA provide that Meridian is entitled to appoint a receiver in an Event of Default under the Credit Agreement.

38. In addition to Meridian's contractual right to appoint a receiver, the appointment of the Receiver over the Debtor is just and convenient as a result of, among other things:

(a) the Debtor's defaults pursuant to the terms of the Credit Agreement and the Security;

(b) the IO Order which expressly provides that the order does not affect Meridian's rights under any agreement or under law, including the right to appoint a receiver under the BIA, the CJA or otherwise;

(c) the Debtor's refusal to consider forbearance terms that would provide any meaningful protection to, or a path to recovery for, Meridian;

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[34] *Freure Village* at para. 12, Applicant's Book of Authorities, Tab 1.
[35] *Freure Village* at para. 13, Applicant's Book of Authorities, Tab 1.

(d) the concerns of FRSA and Rep Counsel with the conduct of the sales process and the Debtor and other parties' conduct in the Hi-Rise Proceeding;

(e) the inability of the parties to the Hi-Rise Proceeding to resolve the issues that are the subject of the proceeding since it was commenced in March 2019;

(f) the results of the Investor Meeting, which was that 66.17% of the Investors voted and of those, 70.636% voted against the Proposed Settlement;

(g) the fact that the Investors voted against the Proposed Settlement despite being advised that in the event the vote did not pass, Meridian would likely be bringing a receivership application;

(h) the lack of any articulated alternative path forward for the Investors at this point; and

(i) the fact that a further sales process, if one is determined to be necessary, would be more efficient if conducted through a receivership proceeding.[36]

39. The technical requirements for the appointment of a Receiver are also met:

(a) Meridian is a secured creditor entitled to make an application under section 243 of the BIA;

(b) as required by subsection 243(1.1) of the BIA, the demand letter and NOI was delivered to the Debtor on June 14, 2019;

[36] First Huber Affidavit at paras. 17, 18, 19, 41 and 44.

(c) in accordance with subsection 243(4) of the BIA, Spergel is qualified and consents to act as the Receiver; and

(d) the Debtor is incorporated under the laws of Ontario, conduct business exclusively in Ontario and their locality is in Ontario, in accordance with subsection 243(5) of the BIA.[37]

40. Meridian has noted on multiple occasions that the repayment of the Indebtedness in a timely manner is critically important to Meridian.[38] Meridian has been exceedingly patient during the Hi-Rise Proceedings, but with a failed vote on the Proposed Settlement and no other opportunity to resolve the Investors' issues in a timely manner on the table, the time has come for a greater level of control over the Debtor and its property.

41. A Court-appointed receivership, involving the Court's supervision, a forum for all stakeholders, the presence of fiduciary obligations, and maximum transparency, is the best way to ensure that the realization of the Debtor's assets is conducted fairly and equitably, in recognition of the interests of all stakeholders.

PART IV - ORDER REQUESTED

42. Meridian respectfully requests an Order substantially in the form of the draft Receivership Order contained in the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 31st day of October, 2019.

[37] First Huber Affidavit at paras. 1, 21, 47, 48 and 3.
[38] See, ie, the First Huber Affidavit at para. 38.

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SCHEDULE "A"

LIST OF AUTHORITIES

1. *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CarswellOnt 2328 (Ont Ct J).
2. *Elleway Acquisitions Ltd v. Cruise Professionals Ltd*, 2013 ONSC 6866.
3. *1529599 Ontario Ltd v. Dalcor Inc*, 2012 ONSC 5707.
4. *Business Development Bank of Canada v. 2197333 Ontario Inc*, 2012 ONSC 965.
5. *Textron Financial Canada Ltd. v. Chetwynd Motels Ltd*, 2010 BCSC 477.

SCHEDULE "B"

RELEVANT STATUTES

***Bankruptcy and Insolvency Act*, RSC, 1985, c B-3**

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

> (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
>
> (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
>
> (c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

> (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
>
> (b) the court considers it appropriate to appoint a receiver before then.

Definition of receiver

(2) Subject to subsections (3) and (4), in this Part, receiver means a person who

> (a) is appointed under subsection (1); or
>
> (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
>
> > (i) an agreement under which property becomes subject to a security (in this Part referred to as a "security agreement"), or
> >
> > (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of receiver — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of disbursements

(7) In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

Advance notice

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

(a) the inventory,

(b) the accounts receivable, or

(c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after

sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

No advance consent

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

Exception

(3) This section does not apply, or ceases to apply, in respect of a secured creditor

> (a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or
>
> (b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

Idem

(4) This section does not apply where there is a receiver in respect of the insolvent person.

Courts of Justice Act, **RSO 1990, c C 43**

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just

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