COURT FILE NO.: CV-23-4340-0000

SUPERIOR COURT OF JUSTICE – ONTARIO

7755 Hurontario Street, Brampton ON L6W 4T6

RE:	CANADIAN WESTERN BANK, applicant
	AND:
	20 CALDARI DEVELOPMENT INC., respondent
BEFORE:	Justice TZIMAS
COUNSEL:	CORNE, Lisa, for the applicant Email: lcorne@dickinsonwright.com
	DaRe, Vern, for the Respondent, Jay Khanna, (50% shareholder of the respondent 20 Caldari Development Inc. Email: vdare@foglers.com
	AURORA, Akash, self-represented Email: akash@aurora-group.ca
	YAO, Allen: representative for Proposed Receiver, Ernst & Young Email: allen.yao@parthenon.ey.com
HEARD:	December 5, 2023, by video conference

ENDORSEMENT

[1] The Applicant, Canadian Western Bank ("CWB") has applied for the appointment of Ernst& Young Inc. (EY), as receiver and manager of the property, assets and undertakings of the respondent, 20 Caldari Development Inc, (the Debtor), including, without limitation, the property known municipally as 20 Caldari Road, Vaughan, Ontario (the Property).

[2] The Debtor is indebted to CWB in connection with a secured loan which has been in default since August 22, 2022. It matured on June 30, 2023. CWB accommodated numerous requests by the Debtor, to enable it to obtain financing. On September 29, 2023, CWB issued to the Debtor a demand

payment and a notice of intention to enforce its security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act,* R.S.C. 1985, c. B-3, as amended, (the *BIA*). As of September 28, 2023, the Debtor owed $8,431,306.98 to CWB, not including legal and other costs.

[3] CWB holds first-ranking security on all of the Debtor's property. CWB's security agreements with the Debtor include a contractual right to appoint a receiver on default.

[4] CWB advises this court that there is an ongoing dispute and deadlock between the Debtor's two equal shareholders and directors, Jay Khanna and Nakul Aurora. As a result, CWB has lost confidence in the Debtor's ability to repay its loan. CWB is also concerned that the Debtor appears to owe arrears of realty tax to the City of Vaughan and arrears of HST to Canada Revenue Agency. The suggested debts are secured by statutory liens and trusts on the Debtor's assets.

[5] Under these circumstances, CWB submits that it is just and convenient to appoint a receiver to manage the Property, conduct a fair and transparent sale process, and distribute the proceeds of realization among the stakeholders, in accordance with the priorities approved by the Court.

[6] The Debtor has not filed a Notice of Appearance and did not attend on the application.

[7] Jay Khanna served and filed a Notice of Appearance to the Application. Today, he was represented by counsel, who advised that Mr. Khanna consented to CWB's application for the appointment of EY as receiver and manger of the Debtor's property, assets and undertakings.

[8] Nakul Aurora is the other 50 per cent shareholder of the Debtor. He did not attend. His brother, Akash Aurora attended and asked that the application be adjourned because he was unable to retain counsel. He asked for what he called, "a very short" adjournment. When pressed on what he meant, he

suggested that he would require two to three weeks to retain counsel. Additional time would then be required to respond to the merits of the application.

[9] Mr. Akash Aurora suggested that he was short-served. When challenged by the court that there was nothing before the court to demonstrate *bona fides* efforts to retain counsel, Mr. Aurora suggested his counsel was out of town and he could not locate new counsel for this matter. He added that it would not be fair and just for the court to proceed without responding material, he challenged the suggestion that monies are owed on account of taxes and HST, and in event he suggested that CWB would not suffer any harm and could continue to wait for a few weeks.

[10] Both CWB and Mr. Khanna opposed the request for an adjournment. They submitted that the Application was served in a timely manner, Mr. Aurora has counsel who is representing him on two other related receiverships underway, Mr. Aurora is not nearly as unsophisticated as he suggests, and a 2-3 week adjournment would not result in anything.

[11] In my review of request for an adjournment, I have serious reservations with its *bona fides* of Mr. Akash Aurora's allegations. To begin with, based on the affidavits of service, the Debtor was served personally on November 23, 2023; the process server served the Debtor with the Application Record by leaving a copy of the Application Record with Pretty Kaur, at Accounting. Mr. Akash Aurora was also served personally with a copy of the Application Record by email on November 23, 2023. Nakul Aurora was served personally on November 24, 2023. In advance of these dates, on November 21, 2023, CWB, through its counsel served the application record by email on a number of individuals, including akash@aurora-group.ca , nick@aurora-group.ca , and rshastri@ksllp.ca . Mr. Shastri is identified by CWB as counsel for Akash Aurora, The Aurora Hotel Group Inc, Ravi Aurora, and Nakul Aurora. This leads me to conclude that if not by November 21, then certainly, by November 23, 2023,

Messrs. Aurora and their counsel had notice of the Application. Service was within the required timelines and the parties all had plenty of time to respond.

[12] Second, there is no evidence before the court that there were any communications whatsoever from Messrs. Aurora or their counsel about obtaining a short adjournment. To be clear, there is nothing before this court on behalf of Messrs. Aurora, to suggest that they intended to participate, that the proposed date was not possible for them, or that they would require additional time to retain counsel. There is no Notice of Appearance, and there is no credible timetable for the retention of new counsel and the service and filing of responding materials.

[13] There is also no credible evidence on why they did nothing to respond to the Application between November 23 and today's date. I am especially troubled by the fact that initially, Mr. Aurora said he did not have any counsel, he lacked sophistication, he did not know how to respond, he needed time to retain counsel, and that at this time of the year, it is hard to retain new counsel. It was only after CWB and Mr. Khanna drew the court's attention to the fact that Mr. Aurora has counsel who is representing him on related receiverships that Mr. Aurora varied his explanation and suggested that his counsel is out of the country, and therefore he had to locate other counsel to represent him.

[14] That last explanation made no sense. Counsel may be unavailable for any number of reasons but on being advised of a court date, they will typically write to opposing counsel and request an accommodation and / or agree to a timetable for a response. It is most unusual that a client would look for new counsel just because his existing counsel is away or unavailable.

[15] In this instance, Mr. Akash Aurora attended today, asking for an accommodation without any evidence whatsoever on whether he has counsel, whether counsel is actually away, and whether counsel sought an adjournment in advance of today's

date. Mr. Akash Aurora had plenty of time to undertake those efforts, but squandered over ten days from the date of service to advance such requests.

[16] Third, Mr. Aurora's submission concerning his lack of sophistication is not credible. His engagement to date with the Debtor and CWB, as well as his interaction with Mr. Khanna paint a very different picture. His attitude towards CWB and the suggestion that CWB really has nothing to lose by waiting a few weeks betrayed Mr. Aurora's *bona fides* before the court and revealed his real intention to play for time.

[17] Against these considerations, on the facts before this court, and especially in light of CWB's contractual right to appoint a receiver on default, I have little difficulty concluding that the appointment of EY is just and convenient for the following reasons. The loan at issue matured on June 30, 2023, without repayment, the Debtor has failed and continues to fail to pay the loan, the statutory notice period under the BIA has expired, and the mortgage and General Security Agreement contain contractual entitlements to appoint a receiver upon default. The deadlock between the shareholders and the alleged arrears in taxes compound the gravity of the situation.

[18] That said, even if the contractual right to a receiver diminishes the extraordinary nature of the court's appointment of a receiver, in light of Mr. Aurora's complaints about unfairness and his indication that there are actually no outstanding taxes, I am prepared to adjourn today's attendance to Thursday, December 7, 2023 to allow Mr. Aurora to file responding materials to this Application.

[19] In particular, Mr. Aurora shall have until tomorrow at 4 pm tomorrow, December 6m, 2023 to serve and file with the court a response that must include, though would not be limited to evidence that, i. no taxes (realty and HST), are owing as Mr. Aurora said today, ii. his current counsel is away and unavailable to assist or attend on the application, iii. efforts made in advance of today to request from the parties a short adjournment; iv. efforts to retain new counsel, including the names

of candidate counsel Mr. Aurora approached and the dates of those communications; v. a specific timetable for the service and filing of responding materials; and vi. an explanation on why it would not be fair and just for a receiver to be appointed, in the face of the Debtor's very significant, substantial, and persisting default.

[20] The Application will return before me at 9 a.m. by zoom on December 7, 2023. No confirmations will be required. At that time, if Mr. Aurora satisfies the requirements of the foregoing paragraph, I will be prepared to discus with he parties next steps. If Mr. Aurora fails to address the court's concerns, then I will proceed to make the requested appointment. I ask that CWB attend with a proposed draft order for my review.

[21] The parties may address costs on December 7, 2023.