

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 E. R. Tzimas

COUNSEL: L. Corne, for the applicant lcorne@dicksonwright.com
V. DaRe for Jay Khanna, 50% shareholder of respondent corporation vdare@foglers.com
A. Aurora, self-represented for 50% shareholder of respondent corp. akash@aurora-group.ca
Allen Yao representative of Ernst & Young Inc, the proposed Receiver allen.yao@parthenon.ey.com

HEARD: December 7, 2023, by video conference

ENDORSEMENT

[1] In my endorsement of December 5, 2023, I adjourned this matter and required Mr. Akash Aurora to address certain specific questions that were intended to understand and evaluate the *bona fides* of his request for a two-three week adjournment.

[2] Mr. Aurora uploaded onto Caselines three documents: i. a statement from CRA concerning HST; ii. an email exchange between Mr. Shastri and Ms. Lorne advising that he is not retained on this application; and iii. a memo from Mr. Aurora, purporting to address the court's concerns about being presented with credible evidence to obtain satisfactory refinancing and a settlement with Mr. Khana. These documents were not filed with the court as required. Mr. Aurora was previously directed to follow the court's Practice Direction and requirements.

- [3] Mr. Aurora's submissions, even if unsworn, did not do anything to satisfy my concern that his request for an additional two to three weeks to respond to the plaintiff's application is nothing more than either a delay tactic, or wishful thinking that he will be able to refinance the respondent's debts successfully. My specific reasons for this conclusion are the following.
- [4] To begin with, Mr. Aurora has still not retained counsel. The formal evidence before the court is that Mr. Shastri is not retained for this application. In the course of a few minutes, Mr. Aurora gave various explanations to the court about the status of his efforts to retain legal counsel. In the materials filed he referenced the name of counsel from Friedmans Law Firm but said that counsel could not attend court on December 5, 2023. Clearly that counsel was not retained. Then, Mr. Aurora said that Mr. Shastri was in the process of reviewing the Application. He said that Mr. Shastri was on board, and then that he was not on board. But Mr. Shastri is also away and unavailable. Mr. Aurora could not say by when he would have counsel retained. Whatever the situation may be, there is credible plan of action by Mr. Aurora as that relates to retaining counsel to represent him on the application.
- [5] Second, Mr. Aurora suggested that he had lenders lined up and was even close to a settlement with Mr. Khanna. Mr. Aurora provided the name of a lender but he could not produce even a draft term sheet or other credible documentation to verify that submission. He eventually admitted that he did not have a term sheet because Mr. Khanna's signature would be required, which he did not have. On the prospects of settling with his partner, he said that he and Mr. Khanna were close to a settlement and had been talking almost daily since November 17, 2023. When asked to provide specific dates and the contents of those conversations, Mr. Aurora could not provide any additional details. The reality is that on the record before the court, the shareholders continue to have differences between them. Mr. Aurora admitted as much when he said that he could not produce a term sheet because he did not have Mr. Khanna's agreement.

- [6] Third, there is no evidence before the court from Mr. Khanna to suggest that there was any merit to Mr. Aurora's representations. Counsel for Mr. Khanna repeated his position that two to three weeks would not accomplish anything, his instructions were to push forward and consent to the appointment of a receiver, there was no settlement or prospect of a resolution between the shareholders, and that ultimately the absence of counsel was telling. If counsel had a retainer, they could come before the court to verify the retainer and request an adjournment. But that was not forthcoming.
- [7] In light of the foregoing, it is appropriate that a receiver be appointed as requested by the plaintiff. An order is to issue in accordance with the draft order filed by the plaintiff and uploaded onto Caselines for this court's review. The plaintiff may deliver a clean copy of the proposed draft order to my assistant, Brenda Berger, at Brenda.berger@ontario.ca for my review and signature.

E. Lisa Zinner J.