



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CL-25-00753615-0000

DATE: January 13, 2026

NO. ON LIST: 1

TITLE OF PROCEEDING: PORTAGE CAPITAL NOMINEE CORP. v. R & B PROPERTIES (2011) INC.

BEFORE: JUSTICE Sean Dunphy

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Chris Burr	Counsel PORTAGE CAPITAL NOMINEE CORP.	chris.burr@blakes.com
Monteyne, Jules	Co-Counsel for PORTAGE CAPITAL NOMINEE CORP.	Jules.Monteyne@blakes.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Peter-Paul E. Du Vernet	Counsel for R & B PROPERTIES (2011) INC.	Peter-PaulE.DuVernet@glaholt.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Maria Knyukhova,	Counsel for KSV (proposed Receiver)	mkonyukhova@stikeman.com

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ENDORSEMENT OF MR. JUSTICE DUNPHY:

- [1] The is an application for a court-appointed receiver. Notice was given to the Debtor in mid-December. The principal of the debtor has been out of the country and subsequently ill and has had little opportunity to instruct counsel. They request a short adjournment to file responding materials. The applicant opposes.
- [2] The request for an adjournment is denied. Ample notice has been given. It is unfortunate that the principal of the debtor's vacation schedule and health issues have impeded his ability to file responding material. However, there is no indication that the evidence sought to be filed in any way challenges the existence of default or the enforceability of the security, all of which appear on the record before me to be both patent and undisputed. The secured creditor can appoint a private receiver today. A court-appointed receiver is preferred for a variety of reasons and has the advantage of providing all stakeholders – debtor included – with a forum in which to resolve disputes that may arise about the process and or the distribution of proceeds. The debtor has been attempting to resolve, refinance or sell since October 2023 when default first occurred if not earlier. Every reasonable opportunity to repay the debt and maintain control has been accommodated. While the debtor has made some efforts to pay down property tax arrears, the fact remains that very substantial arrears have accumulated and two major tenants have vacated the property in the last year. I appreciate the debtor wishes an opportunity to make the case for delay because of "opportunities". Whether those opportunities persuade the creditor that the status quo is preferable to a receivership is a matter of the business judgement of the creditor in effect. There comes a time when the creditor is entitled to take control of the process of getting itself repaid. That time is now.
- [3] I am satisfied that it is just and convenient to appoint a receiver at this time. As the chronology demonstrates, the debtor's original default was more than two years ago and the intervening time has consisted of negotiated forbearance arrangements to allow the debtor an opportunity to refinance or sell, none of which efforts have borne fruit. The security documentation possessed by the receiver permits the appointment of a receiver. The failed restructuring efforts to date strongly suggest that the secured creditor is either on the hinge or underwater but at all events is the dominant affected stakeholder. The business, such as it is, is a building that a long-term owner will either re-develop, or tenant out. Finding such a long-term owner through a sales process is one thing that receiverships are fairly efficient at.

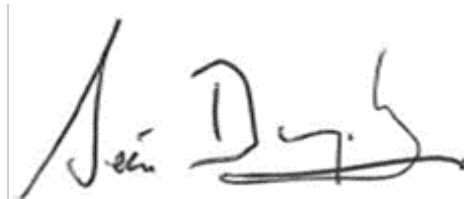
Given the vacancies and tax arrears, the building is clearly not cash flow positive – hence the request for borrowing authority. I can infer from the circumstances that the debtor’s ability to fund those on-going losses from outside assets is doubtful or exhausted. In other words, this is to some degree a melting ice cube. The prejudice if any to the debtor is a function of the lost opportunity to control the sales process– a prejudice that two years plus of negotiated forbearance places in its proper context. Sales proceeds will be distributed according to legal priorities and if a surplus should arise, the debtor will receive it just as it would were it to remain in control. All of the statutory notice requirements have been satisfied. In my view, it is just and convenient that a receiver should be appointed.

[4] The terms of the proposed receivership order closely track the model order. The latest draft order (item 10 on Case Centre) has redefined “Property” to track the charging language of the applicant’s security documents (which is not general security but security over personal property in or used in connection with the charged realty).

[5] On consent of the parties, I have restricted the Receiver’s borrowing charge to \$50,000 instead of the \$500,000 requested. There is no present intention to use the borrowing power at all at this point. Should the need for a greater amount arise, there should be time to make the appropriate appointment to seek court approval and provide evidence of why it is needed.

[6] I am somewhat concerned by the scope of para. 3(c) of the proposed order as it relates to the power to repudiate agreements. Fourteen day’s notice of repudiation of a lease would permit time to bring such an application were it required. The final draft should be amended to provide this notice (the Receiver indicates no presently identified intention to utilize this power and does not object to a notice requirement to enable affected parties to bring the matter to court).

[7] Paragraph 24 strikes me as unnecessary – the order will be effective when issued in any event and it is issued when signed later today.

A handwritten signature in black ink, appearing to read "Sean Dunphy", is written over a horizontal line.

Sean Dunphy

Date: Jan 13, 2026

