BLG wins the appointment of a receiver for distressed residences for seniors

May 26, 2025

Following a contested hearing, BLG obtained the appointment of Raymond Chabot Inc. as receiver of the assets of 9444-4486 Québec inc., 9444-4494 Québec inc., 9444-4411 Québec inc., and 9444-4445 Québec inc. (collectively the Debtors).[1]

Facts

In the wake of the COVID-19 pandemic, the Debtors acquired two seniors' residences. The transaction was financed by The Toronto-Dominion Bank (the Bank).

In May 2023, the Debtors began encountering financial difficulties and defaulting under their financial covenants with the Bank.

A forbearance agreement was entered into and then renewed, amended and extended on multiple occasions. Nevertheless, despite many attempts to bring the business out of its financial deadlock, the Debtors' defaults continued to accumulate. In particular, they failed to pay property taxes as they became due, to comply with certain ratios, and to make capital injections. Meanwhile, their bank accounts were repeatedly overdrawn without authorization.

In January 2025, the Bank, represented by BLG, ultimately applied to appoint a receiver to initiate a process to sell the Debtors' assets.

The Debtors challenged the application, claiming that the appointment was not required, that they were not insolvent, that they were able to manage their operations, and that the Bank would not suffer irreparable harm if a receiver were not appointed.

Analysis

The Superior Court, in a ruling by the Honourable Janet Michelin, S.C.J., reviewed the principles applicable in this context.

Bankruptcy and Insolvency Act **and** ***Séquestre de Media5 Corporation***

The Court first considered the provisions of section 243(1) of the *Bankruptcy and Insolvency Act*, which set out the possibility of appointing a receiver. In this regard, the Court notes that secured creditors do not enjoy a right to the appointment of a receiver: this is a discretionary power of the Court. The Court must take into consideration the applicable criteria (procedural and substantive) set out in the Quebec Court of Appeal's decision in in *Séquestre de Media5 Corporation*,[2] which are now well known.

Irreparable harm is not a criterion

The Court stated that only the criteria set out in this decision are applicable in determining whether it is just or convenient to appoint a receiver. It noted that other authorities confirm that the applicant secured creditor need not demonstrate that it will suffer irreparable harm if the appointment order is not issued.

The Court further noted that when a right to receivership is set forth in the security agreement, the extraordinary nature of appointing a receiver is considerably reduced. In such a case, the factors to be considered in determining whether it is just or convenient to appoint a receiver include:

> *(i) The lender's security is at risk of deteriorating;*
> *(ii) There is a loss of confidence in the debtors' management;*
> *(iii) There is a need to stabilize and preserve the debtors' business; and*
> *(iv) The positions and interests of other creditors militate in favour of appointing a receiver.*[3]

Insolvency criteria

Section 2 of the *Bankruptcy and Insolvency Act* lays down the definition of "insolvent person." This definition establishes three (3) tests, namely:

1. the person is unable to meet its obligations as they generally become due;
2. the person has ceased paying its current obligations in the ordinary course of business as they generally become due;
3. the aggregate of the person's property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all its obligations, due and accruing due.

The Court added that these are not cumulative tests: only one (1) of the three (3) tests need be met.

> [Translation]
>
> *The person need only meet one of the three tests for it to be considered insolvent. Accordingly, a person can meet the definition of an "insolvent person" under the BIA when it fails to pay its creditors even if it holds assets with an estimated value that exceeds the value of its liabilities. If the secured creditor establishes that the person has ceased to cause its obligations to be honoured as they become due, the burden of proof is reversed and the onus is on the debtor to establish that it can pay its financial obligations.*[4]

(references omitted)

Decision

The Court granted the Bank's application.

First, the Court ruled that the Debtors had been demonstrated to be insolvent persons, despite having alleged that their assets outvalued their liabilities, as the Bank had shown that the Debtors were not able to manage their cashflow and meet their obligations as they became due.

This matter is unique in that, although the way in which the Debtors managed their *operations* was not challenged, their significant shortcomings in managing their *finances* warranted the appointment of a receiver.

Second, on the basis of the evidence on record, the Court ruled that the Bank had acted in good faith. On this point, the Court underscored the importance of trust in the business relationship between the Bank and its clients, and that they do not have an absolute right to such relationship.

> [Translation]
> *In the present case, the Court finds the Bank to be acting in good faith. The Bank no longer trusts the Debtors. Accordingly, it has the right to terminate its relationship with the Debtors after having given them ample opportunity to remedy the situation, sell the Immovables or seek refinancing. … the Debtors may have had to carry on their business in difficult circumstances as a result of the COVID-19 pandemic. … This may be the case, but such circumstances do not oblige the Bank to remain their partner while they resolve the situation.*[5]

Takeaways

The Court acknowledged that a sale process overseen by the receiver is preferable to a sale under judicial authority pursuant to the *Civil Code of Québec* where a seniors' residence remains in operation, since the latter can continue as a going concern throughout the sale process. This, in turn, meets the *Bankruptcy and Insolvency Act*'s objective to avoid, as much as possible, the social and economic losses resulting from the liquidation of an insolvent business.

Contact us

Should you have any questions about this decision or for assistance in an insolvency proceeding, feel free to reach out to BLG's Insolvency and Restructuring group, starting with the contacts below.

Footnotes

[1] *Séquestre de 9444-4486 Québec inc.*, 2025 QCCS 1611.

[2] 2020 QCCA 943, para. 97-98.

[3] *BCIMC Construction Fund Corporation et al.* v. *The Clover on Yonge Inc*., 2020 ONSC 1953, para. 43; *JBT Transport Inc (re)*, 2025 ONSC 1436, para. 37.

[4] Para. 41.

[5] Para. 95 et 96.

By

Daphné Pomerleau-Normandin, François D. Gagnon, Eugénie Lefebvre

Expertise

Insolvency & Restructuring, Banking & Financial Services, Disputes, Financial Services

---

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal
1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription

preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.