



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-25-00741138-00CL

DATE: Mon. July 7th, 2025

Before: Justice CAVANAGH

NO. ON LIST:1 @10am

MARPER HOLDINGS LIMITED

-v-

FOXPARK DEVELOPMENT CORPORATION

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
QUIGLEY, JAMES STEVENSON	Applicant's Counsel for MARPER HOLDINGS LIMITED	jsquigley@szklaw.ca
GROBER, J	(Applicant's Summer Student)	

**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info
STRAND, Carl	Respondent (Self Represented) for FOXPARK DEVELOPMENT CORPORATION	carl@foxparkdevelopments.com

**For Other, Self-Represented:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Contact Info</b>
<b>RUSSO, Joanne</b>	<b>Proposed Receiver</b>	<b>russo@russocanhhelp.com</b>
<b>Hogenhout, Gerry</b>	<b>2<sup>nd</sup> &amp; 3<sup>rd</sup> Mortgagee</b>	<b>gerry@hogenhout.com</b>
<b>GILBERT,</b>	<b>OBSERVER</b>	

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**ENDORSEMENT OF JUSTICE CAVANAGH:**

- [1] The Applicant, Marper Holdings Limited ("Marper"), makes an application for an Order appointing Russo Corp. as receiver and manager (in such capacity, the "Receiver"), without security, over the real property municipally known as of 77 Fox Street, Penetanguishene, Ontario (the "Fox Street Property"), which is registered in the name of the Respondent, Foxpark Development Corporation (the "Debtor"), including all proceeds thereof.
- [2] Marper holds the first mortgage on the Fox Street Property.
- [3] The Applicant is an Ontario business corporation. Gilbert Kuiper is the president of the Applicant. The Respondent Debtor, Foxpark Development Corporation, is a federal business corporation whose directors are William Carley and Carl Strand.
- [4] The Debtor is the registered owner of the Fox Street Property. The Debtor was developing the Fox Street Property into a residential community aimed at senior citizens. The project is called "Sunshine Village".
- [5] The Debtor was constructing 56 self-contained, residential townhouse units. The housing units were to be rental and exclusively targeted to low-income seniors. The Debtor marketed "leases" of the town homes and solicited deposits for each unit. The Debtor has collected deposits from prospective life tenants.
- [6] Construction at the Fox Street Property was interrupted and ceased sometime in 2023. The construction of the town homes is incomplete.
- [7] Pursuant to a commitment letter dated January 4, 2023, and executed on behalf of the Debtor, the Applicant agreed to provide the Debtor with a 12-month term loan in the amount of \$2,000,000.00, with interest to accrue thereon at the rate of 12 per cent per annum (the "Loan").

- [8] The full amount of the Loan, being the sum of \$2,000,000.00, was advanced to the Debtor, or for the Debtor's benefit at its direction, on January 18, 2023.
- [9] The Debtor granted a first charge on the Property to the Applicant on January 18, 2023, securing the principal sum of \$2,000,000 which was registered as Instrument No, SC1958297 (the "Mortgage"). The interest rate was stated as being 12 per cent with monthly payments of \$20,000 commencing February 13, 2023, with a balance due date of December 13, 2023.
- [10] The Debtor failed to make the scheduled November 1, 2023, loan payment and has failed to make any payments under the Loan and Mortgage since the last payment of October 1, 2023. The Loan matured on December 13, 2023, and the Debtor failed to repay the Loan upon maturity.
- [11] The Applicant, through its lawyers, made demands upon the Debtor by correspondence dated November 13, 2023, and enclosed a notice of intention to enforce security pursuant to s. 244 of the *Bankruptcy and Insolvency Act*. Despite demands being made, no payment was received by the Applicant.
- [12] The Applicant has obtained judgment against the Debtor and guarantors in the amount of \$2,363,654.56.
- [13] The following encumbrances have been registered against title to the Fox Street Property in addition to the Mortgage:
- a. second-priority Charge registered in favour of 1599841 Ontario Inc. in the amount of \$650,000.00 on November 15, 2021, as Instrument No. SC1843679;
  - b. a third-priority Charge registered in favour of 1599841 Ontario Inc. in the amount of \$2,350,000.00 on August 12, 2022, as Instrument No. SC1921855;
  - c. a Construction Lien registered by Toromont Industries Ltd. on July 11, 2024, as Instrument No. SC2068826 claiming the sum of \$16,174.80; and
  - d. a Certificate of Action registered by Toromont Industries Ltd. on September 10, 2024, as Instrument No. SC2081694.28.
- [14] The loans secured by the second and third mortgages are fully advanced and in default.
- [15] There are currently property tax arrears owing with respect to the Fox Street Property in the amount of \$16,640.94.

[16] The Applicant attempted to arrange insurance for the construction project but was advised by its insurance broker that abandoned construction sites are not insurable. The Applicant could only obtain insurance if it were to seize possession of the Foxpark Property, install fences and hire 24-hour security.

### Analysis

[17] The Applicant seeks the appointment of a receiver pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act* (the "BIA") and section 101 of the *Court of Justice Act* (the "CJA"). Both statutes enable the Court to appoint a receiver where such appointment is "just or convenient".

[18] In deciding whether the appointment of a receiver is just or convenient, the court "must have regard to all 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. See *Bank of Nova Scotia v. Freure Village of Clair Creek*, 1996 CanLII 8258 (ON SC) at para. 10.

[19] Numerous factors have been cited in decisions of this court as proper ones to be taken into account on an application for the appointment of a receiver. The factors should be viewed holistically to determine whether, in all the circumstances, the appointment of a receiver is just or convenient. See *Wang v. Jing*, 2025 ONSC 413 at para. 31, citing *Metropolitan Partners Group Administration, LLC v. International Credit Experts Inc .*, 2024 ONSC 4601 at para. 24.

[20] At the hearing of this application, the President of the Debtor, Carl Strand, appeared to make submissions on behalf of the Debtor. I heard Mr. Strand even though no motion was brought for leave for him to represent the Debtor in this application. Mr. Strand filed his affidavit sworn July 4, 2025 in opposition to this application.

[21] At the hearing of this application, the Applicant provided to the court a copy of an email sent by Mr. Strand to Gilbert Kuiper, the Applicant's representative, on July 6, 2025. Although the email is marked "without prejudice" it does not contain any settlement offer or other content that would be protected from disclosure by settlement privilege. In the email, Mr. Strand states that if Mr. Kuiper proceeds with the receivership application, then his lawyer "has walked you into a very real multimillion dollar lawsuit".

[22] In his affidavit, Mr. Strand deposes that the Debtor has a letter of interest from a long-established mortgage broker that states that the mortgage broker has investors to invest \$5.7 million, "subject to basic lending terms". Mr. Strand deposes that the Debtor "has acquired a Mortgage Guarantor" who has a very strong financial net worth and belief in the project and is willing to guarantee the new mortgage of \$5.7 million. Mr. Strand deposes that the new mortgage financing would be allocated, first, to pay off the Applicant with the balance being used to complete the existing 18 townhouse units to "rehouse the Senior Deposit Holders".

[23] The letter of interest and letter of guarantee are appended as exhibits to Mr. Strand's affidavit.

[24] The letter of interest is dated June 20, 2025 and is said to replace a letter of June 13, 2025. The letter is clear that it is not an offer of finance. The security for the financing includes personal guarantees from Mr. Strand and another principal of the Debtor and from companies, secured by mortgages on certain properties (the locations of which are redacted). Property insurance would need to be assigned. There would need to be confirmation in writing that the second mortgage holder will postpone. Other information requirements are stated. The letter of intent states that it must be accepted by the borrowers and guarantors in the space provided by no later than June 25, 2025. There is no indication of such acceptance on the document in evidence.

[25] The letter of guarantee is dated July 4, 2025 and it confirms that the author, Ray Davis, intends to personally guarantee the new mortgage in the amount of \$5.7 million.

[26] The letter of interest is non-binding and highly conditional. The second mortgagee was represented by its principal at the hearing, and he expressed support for the application to appoint a receiver. He did not indicate that the second mortgagee would agree to postpone its security to new mortgage financing. Without a postponement, the letter of interest is unviable. The letter of interest which, apparently, is expired, is not likely to result in a successful refinancing of the Fox Street Property, even if it were to be renewed.

[27] The Debtor has had many months to arrange refinancing to pay out the existing mortgages and has been unsuccessful. The development of the Fox Street Property is not progressing. There is no insurance coverage. I see no reason why the proposed lender and guarantor cannot make a proposal to a court-appointed receiver if there is a viable path to successful completion of the Fox Street Property development.

[28] I have considered the circumstances and I am satisfied that it is just and convenient for a receiver to be appointed for the following reasons:

- a. The Mortgage is in default and has been so for many months. The Applicant has a 2.5 million dollar interest in the equity of the Fox Street Property and management of the construction site located thereon and the protection thereof would be challenging for the Applicant as a mortgagee-in-possession;
- b. The Fox Street Property contains an unsecured, uninsured construction site which needs to be properly secured and insured. A receiver would be best-equipped to handle the preservation and protection of the Fox Street Property;
- c. Mr. Strand's threat of legal action if the Applicant proceeds with its application favours the appointment of a receiver because a court-appointed officer would be

protected from any frivolous litigation. If a proposed claim is meritorious, leave may be sought from the Court to assert the claim.

- d. The fact that there are depositors and a construction lien claimant support a court supervised process, as opposed to private mortgage enforcement, because a court supervised process will allow interested parties to have their interests represented in a transparent process.
- e. A receiver would be an officer of the court with duties to all interested parties. A sale by a court-appointed receiver would need approval from the court on notice to interested parties. A court-appointed receivership is preferable to private enforcement of the Mortgage.

[29] For these reasons, I grant the application.

[30] Order to issue in form of Order signed by me today.

Released: July 8, 2025

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