CITATION: The Bank of Nova Scotia v. Old Green Inc. et al., 2025 ONSC 6191
COURT FILE NO.: CV-25-91178
DATE: 2025-11-12

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
THE BANK OF NOVA SCOTIA Applicant	I. Klaiman, and J. Bogacki, Counsel for the Applicant
– and –	
OLD GREEN INC. and 2014EDIN INC. Respondents	R. Allan, Counsel for the Respondents
	HEARD: November 3, 2025

REASONS FOR JUDGMENT

M. BORDIN J.

Overview

[1] This is an application to appoint a receiver. The application was commenced in Hamilton.

[2] The real properties in question are in Burlington. The respondent corporations' head offices are in Burlington. Their principals are residents of Burlington. The loan agreement was proposed, negotiated and executed in Burlington. The respondents have no offices, assets, or business in Hamilton. The respondents' lawyer is in Hamilton. The applicant is a national bank. Its lawyer is in Toronto. The other parties listed on the service list are in Burlington, Oakville, Etobicoke, Toronto, Aurora, and Oshawa.

[3] The notice of application is dated June 22, 2025. The matter first came before MacNeil J. on August 5, 2025. The respondents raised the issue of whether the application should be heard in the Central West Region. The motion was adjourned to September 9, 2025. It is unclear to me what happened on that date as there is no endorsement in Case Center, an all-too-common problem. However, the matter came back before MacNeil J. on October 2, 2025. The application was adjourned to the week of October 20, 2025, for a long motion. The endorsement states that the "Brampton transfer motion" was to be withdrawn and the issue of transferring the application to

Central West would be considered on the return of the application, but a separate motion was not necessary.

[4] The application was not called that week or the next as no judge was available. It came before me on November 3, 2025.

[5] The respondents ask this court to "direct the Applicants to take the necessary steps to have this Application transferred to the appropriate Court Region."

The Practice Directions

[6] In Ontario, a motion to transfer a proceeding should be brought at the court location to which the moving party seeks to have the proceeding transferred: "Consolidated Civil Provincial Practice Direction", (February 1, 2024), at para. 49. The moving party must file a notice of motion with a supporting affidavit, as required under rule 13.1.02(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, *Provincial Practice Direction,* at para. 49. The Regional Senior Judge, or his or her designate, will hear all motions to transfer: *Provincial Practice Direction,* at para. 51. Motions are to be brought in writing and only heard orally if required and then by teleconference: *Provincial Practice Direction*, at para. 51. The onus rests with the moving party to satisfy the court that a transfer is desirable in the interest of justice, having regard to the factors listed in r. 13.1.02: *Provincial Practice Direction*, at para. 48. It is not sufficient to bring a transfer motion orally, on consent, or to file a consent for an order to transfer a case to another county under r. 13.1.02: *Provincial Practice Direction*, at para. 48.

[7] If a party seeks to transfer an action commenced in the Central South Region to another region, a motion to transfer shall be filed in the court office of the county to which the transfer is sought (the receiving region), as per rules 4.05(2)4 and 13.1.02(3.1): "The Regional Practice Direction for the Central South Region", (June 30, 2025), at para 194 ("*Central South Practice Direction*").

[8] Counsel are not required to provide affidavit evidence about the availability of judges and court facilities in the other county to satisfy subparagraph (viii) of r. 13.1.02(2). This shall be addressed by the Regional Senior Judge in the Region where the motion is brought, after consulting with the Local Administrative Judge or Regional Senior Judge for the other county: *Provincial Practice Direction*, at para. 50. I am presently the Local Administrative Judge in Hamilton.

[9] This "motion" to transfer fails to comply with the Provincial and Central South practice directions as it is brought in the wrong jurisdiction, before the wrong judge, and in the wrong format. Like the *Rules of Civil Procedure*, the applicable practice directions must be followed by counsel appearing in civil court.

[10] The transfer motion should have proceeded in accordance with the process set out in the practice direction.

[11] At the hearing before me counsel advised that the respondents did in fact file a motion with the R.S.J. in Central West, but the applicant objected to there being a motion before the R.S.J. in Central West as the application was in Hamilton and the parties agreed that the court in Hamilton could hear the transfer motion, without a formal motion, and either dismiss it as sought by the applicant, or direct the applicant to bring a transfer motion in Central West as sought by the applicant.

[12] Parties cannot arrogate to themselves the authority to supersede a practice direction. They should not have done so in this case.

Place of commencement of application

[13] There is no statute or rule requiring this proceeding to be brought in a particular county. Therefore, subject to my comments below and unless r. 13.1.01(3) applies, r. 13.1.01(2) on its face allows this application to be commenced at any court office in any county named in the application.

Rule 13.1.01(3) and mortgage claims

[14] Rule 13.1.01(3) provides:

> In the case of an originating process, whether it is brought under Rule 64 (Mortgage Actions) or otherwise, that contains a claim relating to a mortgage, including a claim for payment of a mortgage debt or for possession of a mortgaged property, the proceeding shall be commenced in the county that the regional senior judge of a region in which the property is located, in whole or in part, designates within that region for such claims.

[15] The *Central South Practice Direction* provides at para. 203 that "[p]ursuant to rule 13.1.01(3), Brantford, Cayuga, Hamilton, Kitchener, St. Catharines, Simcoe, and Welland are designated as places where mortgage proceedings may be commenced for property located anywhere in the Central South Region". The subject properties are not located in the Central South Region. They are in the Central West Region.

[16] The *Central South Practice Direction*, at para. 32, provides that, "[p]ursuant to Rule 13.1.01(3) of the *Rules of Civil Procedure*, Brampton, Milton, Orangeville, or Owen Sound have been designated as the place for commencement of mortgage proceedings for property located anywhere in the Central West Region".

[17] The applicant advised the court that it could find no cases which have considered whether r. 13.1.01(3) applies to receiverships. The applicant resorts to the principles of statutory interpretation to argue that it does not. There is nothing in the respondents' factum on this issue and the respondents made virtually no submissions on the issue. Given it was not fully argued before me, and given my findings below, it is not necessary for me to determine whether r. 13.1.01(3) applies to receivership applications.

Rule 13.1.02(2) and the transfer of proceedings

[18] Both parties rely on factors in r. 13.1.02(2)(b) in support of their positions. The respondents say the factors support a transfer to Central West and the applicant says the factors support the matter remaining in Hamilton.

[19] Rule 13.1.02(2) provides that:

> …the court may, on any party's motion, make an order transferring the proceeding to a county other than one where it was commenced, if the court is satisfied,
>
> (b) that a transfer is desirable in the interest of justice, having regard to,
>
> (i) where a substantial part of the events or omissions that gave rise to the claim occurred,
>
> (ii) where a substantial part of the damages were sustained,
>
> (iii) where the subject-matter of the proceeding is or was located,
>
> (iv) any local community's interest in the subject matter of the proceeding,
>
> (v) the convenience of the parties, the witnesses, and the court,
>
> (vi) whether there are counterclaims, crossclaims, or third or subsequent party claims,
>
> (vii) any advantages or disadvantages of a particular place with respect to securing the just, most expeditious and least expensive determination of the proceeding on its merits.
>
> (viii) Whether judges and court facilities are available at the other county, and

(ix) Any other relevant matter.

[20] Firestone R.S.J., in *The Toronto-Dominion Bank v. The Other End Inc.* et al., 2025 ONSC 85, considered a motion to transfer an action to Toronto that came before him from London pursuant to r. 13.1.02 and the *Provincial Practice Direction*. With respect to the principles to be applied on a motion to transfer, I adopt the law as summarized by Firestone R.S.J., in paragraphs 11, and 13 – 15, of *Other End* as follows:

> [11] …Rule 13.1.02 and the Practice Directions direct how a change of venue motion should proceed….
>
> [13] The factors set forth in Rule 13.1.02(2)(b) are to be applied holistically. No one of the enumerated factors is more important than the other. These factors are to be examined together and balanced in order to determine whether a requested transfer is desirable in the interests of justice: *Darteh v. Gross,* 2017 ONSC 2479, at paras. 8-9*; Hilson v. 1336365 Alberta Ltd.,* 2017 ONSC 4990*,* at paras. 12-13*; Chatterson et. al. v. M&M Meat Shops Ltd.*, 2014 ONSC 1897, 68 C.P.C. (7th) 135 (Div. Ct.), at para. 22; *Siemens Canada v. Ottawa (City)* (2008), 2008 CanLII 48152 (ON SC), 93 O.R. (3d) 220 (S.C.), at para. 25; and *Walcott v. Zheng,* 2021 ONSC 4679, at paras. 20, 22-23.
>
> [14] In applying the "holistic approach" it is important to recognize that the balancing of the Rule 13.1.02(2)(b) factors is not a purely numerical or mathematical counting exercise: *Bruce Power L.P. v. BNT Canada, L.P.*, 2018 ONSC 5968, at para.16
>
> [15] At first instance a plaintiff(s) is entitled to commence a proceeding at any court location: *Chatterson*, at para. 14. If the plaintiff's choice of venue is reasonable and the defendant challenges that venue, then a comparison of the two venues is required. The defendant must establish that its proposed choice of venue is significantly better than the one chosen by the plaintiff: *Chatterson*, at paras. 28-29; *Walcott*, at para. 28.

[21] I also adopt the following statements by Firestone R.S.J., in *Other End*:

> [26] … while plaintiffs are generally entitled at first instance to choose where they commence proceedings, their decisions must be informed and reasonable. They do not have "carte blanche" to choose a particular venue without first considering whether the proposed Judicial Region and location has a rational connection to the matters at issue in the proceeding. In making

> this determination, consideration should be given to the relevant factors enumerated under Rule 13.1.02(2). Forum shopping is never appropriate.
>
> [28] Delay in a particular location on its own, without due consideration of other connecting factors, is not a valid basis to choose one location over another.
>
> [29] The same is true with respect to the availability of virtual hearings across regions. The introduction of virtual platforms as a method of appearance is meant to provide greater flexibility and proportionality and enhance access to justice. They are not intended as a means for circumventing the requirement to choose a venue rationally connected to the matters at issue or to otherwise engage in forum shopping. The availability of this mode of proceeding is not, on its own, a valid basis to choose a particular Region.
>
> [30] The practice of forum shopping must stop. It is not fair to other litigants or the court system as a whole.

[22] I agree with the concerns of Firestone R.S.J., in *Other End* at para. 27, and of I.F. Leach J., as cited in *Other End* at para. 10, that the court must be mindful of the increased burden on judicial resources and delay that result from commencing a proceeding in a judicial region which has no rational connection to the matter. Such concerns include that litigants whose matters have clear and obvious connections with Central South Region have their access to justice delayed by litigants whose matter has no rational connection to Central South.

[23] Finally, I note that the language of r. 13.1.02(2) is permissive, not mandatory. The court may but is not required to transfer a proceeding.

[24] The applicant argues there is a connection to Hamilton because the respondents' lawyer is in Hamilton, there is no Superior Court that sits in Burlington, Burlington is 8 kilometers closer to Hamilton than Milton, which is the closest courthouse in the Central West Region of which Burlington is a part.

[25] The fact that the respondents' counsel is in Hamilton is a weak connection to Hamilton. All other factors point to Milton as the appropriate center to hear this matter. In addition, other parties on whom the application was served are from areas closer to Milton than Hamilton. The eight kilometer difference in distance for the respondents to the Hamilton and Milton courthouses is, in my view, inconsequential.

[26] The applicant submits that "judicial resources in Hamilton are far more accessible than those in Milton". The applicant says that the moving party "must put forward evidence of the

anticipated timing to have the Application heard in Milton." This is incorrect. The parties are not required to put forward this evidence. Further, it is for the appropriate R.S.J. to determine the availability of judges and court facilities, as stated in the *Provincial Practice Direction*.

[27] The applicant focuses on expediency for itself. It asserts and has unilaterally decided that the "Ontario Superior Court of Justice in Hamilton also has readily accessible judicial resources, particularly on short civil motions." It says that the delay for a short motion in Milton is too long. Further, that the process for obtaining a long motion in Milton is more complicated than in Hamilton. It prefers Hamilton because Hamilton is easier and earlier dates are available.

[28] At the time of writing this decision, Hamilton is short two of its current complement of seven generalist judges (excluding the Regional Senior Judge).

[29] Further, unlike many jurisdictions, the short motion lists in Hamilton, are, for the time being, not capped. This means that it is not uncommon for there to be over 20 motions on a short motions day; at times there are over 25 matters on the list. Such lists also occur in other centers in Central South. Often, the short motions list contains several motions for summary judgment, applications for receivership, and other important and time sensitive requests for final dispositive relief. It is not entirely uncommon for the motions court in Hamilton to sit late and that some matters cannot be reached and must be adjourned because of the length of the lists.

[30] There are currently 15 matters waiting to be called on the long motion list in Hamilton. The oldest matters on the running long motion lists have been waiting to be called since August. Four are from September. This matter took up a time slot that could have been allocated to a long motion with a rational connection to Hamilton.

[31] Too often there are matters on the Hamilton lists which belong in another jurisdiction. It is plain and obvious that when parties bring or schedule matters to be heard in Hamilton that do not belong in Hamilton, it delays access to justice for those who are properly before the court.

[32] The applicant asserts that there is inherent time sensitivity in receivership matters. Many other matters which come before the court are also time sensitive. Observing the timeline in this matter, it has been significantly delayed by the applicant's choice of venue which resulted in this motion by the respondents, which has delayed this matter by three months. It has been further delayed by the failure of both parties to comply with the practice directions.

[33] On my reading of the factors in 13.1.02(2)(b), the connection to Hamilton is tenuous at best. This matter does not have a rational connection to Hamilton. It may well be appropriate to transfer the application to Milton. However, as set out in the practice direction, that is not my decision to make. While I could direct that the application be stayed while a motion is brought before the R.S.J. in Central South to determine whether the application should be transferred in

accordance with the practice direction, the result would be further delay in a matter in which there appears to be little to no defence to the relief sought by the applicant.

[34] In the unique circumstances of this case, I will determine the matter on its merits as that is the just, most expeditious and least expensive manner of determining the application. Having said that, this is not to be taken as an endorsement of the parties' choices, or an acknowledgment that Hamilton will hear matters which have no rational connection to Hamilton.

The merits of the application

[35] The applicant filed affidavits in support of its application. The respondents filed responding affidavits. No evidence was drawn to my attention that disputes the following facts:

a. The respondent Old Green Inc. is the borrower and the respondent 2014Edin Inc. is the corporate guarantor. The borrower owns 227 Green Street, Burlington ("Green Street Property"), and the corporate guarantor owns 2014 Edinburgh Drive, Burlington ("Edinburgh Property")

b. The borrower entered into a loan agreement as described in the application materials.

c. The borrower's indebtedness is secured by:

    i. A first-ranking collateral mortgage granted by the borrower to the applicant in the principal amount of $4,400,000.00 registered on title to the Green Street Property and a first-ranking collateral mortgage granted by the corporate guarantor to the applicant in the principal amount of $3,800,000.00 registered on title to the Edinburgh Property.

    ii. A general assignment of leases or rents on both aforementioned real properties.

    iii. A general security agreement granted by both respondents.

    iv. Guarantees from the corporate guarantor, and Mr. Campagnaro and Mr. Hall personally.

d. PPSA searches disclose that the applicant bank is the only party with a registered security interest against the borrower and the corporate guarantor.

e. The mortgages on the two properties and the general security agreements provide a contractual right to the appointment of a receiver in the event of default.

f. A subsequent mortgage in the amount of $1,400,000 was registered on the Green Street Property in favour of Magnus Holdings Inc.

g. A subsequent mortgage in the amount of $2,105,000 was registered on the Edinburgh Property in favour of District REIT GP Inc. and District REIT Limited Partnership.

h. The subsequent mortgages were registered without the consent of the applicant in breach of the terms of the loan agreement.

i. There are outstanding property taxes of approximately $40,000 on the two properties which take priority to the applicant's security. This is a breach of the terms of the loan agreement.

j. As of February 2025, the respondents were in default of the loan agreement. The default included the failure to provide annual financial statements, corporate notices of assessment, a summary of personal finances, copies of tax returns and notices of assessment for the personal guarantors.

k. On February 11, 2025, the applicant delivered a default letter to the borrower. The bank delivered an exit letter to the borrower to give the borrower until March 31, 2025, to cure the defaults. Default was not cured by that date.

l. By letters dated May 1, 2025, the applicant made demands on the borrower and guarantors declaring the entire amount of the indebtedness to be immediately due and payable. The applicant enclosed notice of intention to enforce security.

m. As of April 30, 2025, the borrower was indebted to the applicant in the amount of $5,963,534.31, exclusive of costs.

n. By letter dated May 26, 2025, the applicant set out the terms on which it would agree to forbear on bringing this application to the court. The letter was signed by the borrower and the guarantors. Pursuant to the terms of the letter, all arrears were to be paid by May 30, 2025, and confirmation was to be provided that no money was owed to CRA or on account of property taxes. Each of the borrower and corporate guarantor were to provide consent to the appointment of a receiver to be held in escrow, pending default pursuant to the forbearance agreement.

o. None of the above terms were satisfied.

p. On June 12, 2015, the borrower advised that work was being done to finalize refinancing of both properties. The refinance was said to be impending.

[36] The respondents have tendered an appraisal of the Green Street Property of $4,750,000 and an appraisal of the Edinburgh Property of $4,650,000. The total of the appraisals is $9,400,000. The appraisals are attached as exhibits to the affidavit of a representative of the respondents. There are no affidavits from the appraisers. As such, the evidence is hearsay.

[37] In the respondents' affidavit of August 14, 2025, the respondents state that replacement financing is imminent and should be completed prior to the next court date in this matter or immediately after that, that financing of the Green Street Property is scheduled to close on or before August 20, 2025, and they expect financing of the Edinburg Property to be completed in a matter of weeks. That was almost three months ago.

[38] In the respondents' affidavit of September 17, 2025, the respondents state they are in the process of seeking refinancing to pay out the applicant's indebtedness in its entirety, which was to be completed within 30 to 45 days. They attached an unsigned mandate letter. The 45 days has passed.

[39] No further affidavits were filed by the respondents. There is no cogent evidence of refinancing.

[40] It was open to the respondents to tender evidence that the amounts owing on the second mortgages was less than the face value of the mortgage. It did not do so. The second mortgages secured against the two properties together with the debt owed to the applicant total approximately $9,468,000. This exceeds the appraised value of the property without taking into account the outstanding property taxes, ongoing interest, which is accruing, and costs.

[41] The respondents suggest that a receiver is not necessary, and that the applicant can proceed by way of power of sale or judicial sale, or by taking possession of the properties, collecting rent, and selling the properties.

[42] Pursuant to s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3, and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c C.43, the court may appoint a receiver where it is just and convenient to do so.

[43] In determining whether it is just and convenient to do so, 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 to the property. The court may also consider the following:

a. The lenders' security is at risk of deteriorating;

b. The need to stabilize and preserve the debtors' business;

c. The loss of confidence in the debtors' management; and

d. The positions and interests of other creditors.

[44] There are numerous other factors which may be considered. Osborne J. in *Canadian Western Bank v. 2563773 Ontario Inc*., 2023 ONSC 4766, at para. 9, listed many of them. The factors are not a checklist but a collection of considerations to be viewed holistically.

[45] It is well established and not disputed by the respondents that when the rights of the security creditor include a specific contractual right to the appointment of the receiver, the burden on the applicant is relaxed and the appointment of a receiver is not regarded as an extraordinary or equitable remedy. The applicant is merely seeking to enforce a term of the parties' agreement. The appointment of a receiver becomes even less extraordinary when dealing with a default under a mortgage.

[46] It is not essential that the moving party establish, prior to the appointment of a receiver, that it will suffer irreparable harm or that the situation is urgent.

[47] Numerous cases have set out the above principles. I do not set them out here. However, many of the cases and principles are referred to in *Canadian Western Bank*.

[48] It is just and convenient to appoint a receiver as sought by the applicant. The borrower and corporate guarantor have been in default for many months. The charge/mortgage and the general security agreement granted by the respondents to the applicant allows for the appointment of a receiver over the property of the respondents upon default. Property taxes are owing. The applicant has lost confidence in the respondents' management. The respondents have had months to refinance or sell the properties. The respondents' strategy appears to be to delay matters further. Further erosion of the security must be prevented. Appointing a receiver will ensure fairness to all stakeholders and an orderly process of monetizing the assets and maximizing realization.

Disposition

[49] There shall be an order to issue in accordance with the draft order at pages A553 to A571 of the master bundle in case center.

M. Bordin J.

Released: November 12, 2025

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