



**ONTARIO SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**COUNSEL/ENDORSEMENT SLIP**

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**TITLE OF PROCEEDING:** RIOCAN REAL ESTATE INVESTMENT TRUST *et al* v. RIOCAN-HBC LIMITED PARTNERSHIP *et al*

**BEFORE:** JUSTICE OSBORNE

**PARTICIPANT INFORMATION**

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## **ENDORSEMENT OF JUSTICE OSBORNE:**

1. RioCan Real Estate Investment Trust (the “REIT”), RC Holdings II LP (“RC Holdings”), RioCan Property Services Trust (“RC Property Services”), RioCan Holdings Inc. (“RioCan Georgian Mall”), RioCan Holdings (Oakville Place) Inc. (“RioCan Oakville Place”), RC NA GP 2 Trust (“RC NA Trust”) and RioCan Financial Services Limited (“RioCan Financial Services” and, together with the REIT, RC Holdings, RC Property Services, RioCan Georgian Mall and RC NA Trust, “RioCan” or the “Applicants”), brings this Application for an order:
  - a. Appointing FTI Consulting Canada Inc. (“FTI”) as receiver of all of the assets, undertakings and properties of RioCan-HBC Limited Partnership (the “RioCan-HBC JV”), RioCan-HBC General Partner Inc. (the “JV General Partner”), HBC YSS 1 Limited Partnership (“YSS 1”), HBC YSS 1 LP Inc. (“YSS 1 LP”), HBC YSS 2 Limited Partnership (“YSS 2”), HBC YSS 2 LP Inc. (“YSS 2 LP”), RioCan-HBC Ottawa Limited Partnership (the “Ottawa LP”), RioCan-HBC (Ottawa) Holdings Inc. (the “Ottawa Nominee”), and RioCan-HBC (Ottawa) GP, Inc. (collectively, the “JV Entities” and each individually, a “JV Entity”) acquired for or used in relation to a business carried on by the JV Entities (including all proceeds thereof, the “Property”) pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “BIA”) and section 101 of the *Courts of Justice Act* (Ontario) (the “CJA”), including, without limitation, the Owned Real Properties, the Co-Ownership Interests, and the Leasehold Interests;
  - b. authorizing the Receiver to borrow up to \$20 million for the purpose of funding the business of the JV Entities, or the exercise of the powers and duties of the Receiver, and granting a corresponding Receiver’s Borrowings Charge as security for the repayment of such borrowings;
  - c. granting a Receiver’s Charge;
  - d. ordering that the Receiver shall allocate the costs of this proceeding against each of the JV Properties against each of the JV Properties in such amounts as the Receiver determines to be fair and reasonable, subject to the consent of RioCan and the Secured Lenders, or further order of the Court;
  - e. ordering that any Priority Secured Lender made any time serve on the Receiver, RioCan and the other Secured Lenders and HBC, a Termination Certificate to terminate these receivership proceedings in respect of the relevant Priority Collateral;
  - f. staying all proceedings against the JV Entities or their Property; and
  - g. staying and suspending all rights and remedies against the JV Entities, the Receiver, or affecting the Property, except with the written consent of the Receiver or leave of the Court.
2. Defined terms in this Endorsement have the meaning given to them in the Application materials unless otherwise stated.
3. The relief sought today is unopposed. It is consented to by, among others, Hudson’s Bay Company and related entities (“HBC”) and the Court-appointed Monitor in the HBC CCAA Proceeding.
4. The test for the appointment of a receiver pursuant to section 243 of the *Bankruptcy and insolvency Act* (“BIA”) or section 101 of the *Courts of Justice Act* (“CJA”) is not in dispute. Is it just or convenient to do so?

5. In making a determination about whether it is, in the circumstances of a particular case, just or convenient to appoint a receiver, the Court must have regard to all of the circumstances, but in particular the nature of the property and the rights and interests of all parties in relation thereto. These include the rights of the secured creditor pursuant to its security: *Bank of Nova Scotia v. Freure Village on the Clair Creek*, 1996 O.J. No. 5088, 1996 CanLII 8258 (“*Freure Village*”).
6. As observed in *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186, the Supreme Court of British Columbia, citing *Bennett on Receivership*, 2<sup>nd</sup> ed. (Toronto, Carswell, 1999) listed numerous factors which have been historically taken into account in the determination of whether it is appropriate to appoint a receiver and with which I agree: *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para. 25):
  - a. whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;
  - b. the risk to the security holder taking into consideration the size of the debtor’s equity in the assets and the need for protection or safeguarding of assets while litigation takes place;
  - c. the nature of the property;
  - d. the apprehended or actual waste of the debtor’s assets;
  - e. the preservation and protection of the property pending judicial resolution;
  - f. the balance of convenience to the parties;
  - g. the fact that the creditor has a right to appointment under the loan documentation;
  - h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
  - i. the principle that the appointment of a receiver should be granted cautiously;
  - j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
  - k. the effect of the order upon the parties;
  - l. the conduct of the parties;
  - m. the length of time that a receiver may be in place;
  - n. the cost to the parties;
  - o. the likelihood of maximizing return to the parties; and
  - p. the goal of facilitating the duties of the receiver.
7. How are these factors to be applied? The British Columbia Supreme Court put it, I think, correctly: “these factors are not a checklist but a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient: *Pandion Mine Finance Fund LP v. Otso Gold Corp.*, 2022 BCSC 136 at para. 54).

8. 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. However, where the evidence respecting the conduct of the debtor suggests that a creditor's attempts to privately enforce its security will be delayed or otherwise fail, a court-appointed receiver may be warranted: *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007 at paras. 24, 28-29. See also *Freure Village* at para. 10.
9. Accordingly, is it just or convenient to appoint a receiver in the particular circumstances of this case? In my view, it is.
10. This receivership Application is in all practical respects a companion proceeding to the HBC CCAA Proceeding, and is the result of the circumstances in which HBC sits today.
11. RioCan is a partner with HBC in the real estate joint venture carried on by the RioCan-HBC JV. The REIT holds an approximately 22% limited partnership interest in the RioCan-HBC JV, and HBC holds the remaining limited partnership interest of approximately 78% indirectly, through its wholly owned subsidiary, HBC Holdings, LP.
12. The RioCan-HBC JV and its subsidiaries, YSS 1, YSS 2 and the Ottawa LP, own or co-own interests in twelve separate freehold and head leasehold properties, as well as certain additional property interests (collectively, the "JV Properties" and each individually, a "JV Property").
13. Nominee entities hold legal interest in the JV Properties and the JV Entities hold the beneficial interest in such properties. The nominee entities do not have any beneficial interest in the JV Properties and are required to deal with the applicable JV Property in accordance with the instructions of the applicable JV Entity.
14. HBC is party to lease or sublease agreements with the applicable JV Entity and/or its nominee or bare trustee in respect of store locations at each of the JV Properties (collectively, the "JV Leases").
15. The JV Entities are subject to nine secured financing arrangements with various secured lenders, including RioCan and certain other third-party lenders (all secured lenders, collectively, the "Secured Lenders"), in respect of which there are significant secured claims.
16. HBC was granted protection from its creditors under the CCAA by Initial Order made on March 7, 2025. The JV Entities, other than YSS 1 LP and YSS 2 LP, are Non-Applicant Stay Parties in the HBC CCAA Proceedings and thus are not applicants in the HBC CCAA Proceedings but benefit from certain protections of the Initial Order.
17. In the HBC CCAA Proceedings, this Court approved the conduct of the SISP and Lease Monetization Process, which included marketing efforts in respect of the JV Entities (including, for example, HBC's 78% interest in the RioCan-HBC JV) and the JV Leases, respectively, subject to various reservations of rights in favour of RioCan and the Secured Lenders.
18. The SISP did not result in any bid for HBC's 78% interest in the RioCan-HBC JV or a transaction that provided for the assumption or assignment of the JV Leases on their current terms, and the Lease Monetization Process did not generate any transactions in respect of the JV Leases on their current terms.
19. HBC has subsequently taken steps to disclaim certain of the JV Leases and has ceased paying monthly rents to the JV Entities.

20. The monthly rents payable by HBC under the JV Leases represented the main source of funds from which the JV Entities would fund operations, service their secured debt obligations, and pay rent obligations owing to the JV Landlords under the head leases relating to the Leased Properties, among other things.
21. Based on the current circumstances, the JV Entities will be unable to meet their secured debt obligations to the Secured Lenders and any other obligations owed to stakeholders from and after receiving the June rent payments from HBC.
22. On May 29, 2025, RioCan made a repayment demand to the RioCan-HBC JV (subject to the written consent of HBC (now given) or an order of the Court lifting the stay of proceedings in the HBC CCAA Proceedings as necessary).
23. The JV Properties consist of owned properties, co-own properties and lease properties as follows:
  - a. five wholly owned freehold properties in Vancouver, Calgary, Montréal, Windsor and Ottawa;
  - b. an undivided 50% Co-Ownership Interest in the Oakville Place and Georgian Mall shopping Centre; and
  - c. the beneficial leasehold interest (the “Leasehold Interests”) in respect of five head leases in the following locations: (i) Yorkdale Shopping Centre; (ii) Scarborough Town Centre; (iii) Square One; (iv) Carrefour Laval; and (v) Promenade St. Bruno.
24. Each of the head leases are long-term ground leases or emphyteutic leases (as contemplated in the Québec Civil Code) of certain premises leased to ABC pursuant to the JV Leases for HBC stores.
25. RioCan has provided financing to the JV Entities pursuant to two facilities:
  - a. the Ottawa Second Mortgage Financing in the amount of \$16,650,000; and
  - b. the Georgian Mall Second Mortgage Financing in the amount of \$24.5 million.
26. As of May 27, 2025, the total amount outstanding to RioCan under those facilities was \$38.2 million in the aggregate.
27. RioCan holds several security interests against the JV Entities and their assets. The JV Entities are also subject to first mortgage financing arrangements with Secured Lenders other than RioCan, including:
  - a. the \$75 million Yorkdale RBC Financing;
  - b. the \$105 million BMO First Mortgage Financing in respect of the Calgary property and the Carrefour Laval and Promenade St. Bruno Leasehold Interests;
  - c. the \$202 million Vancouver HSBC First Mortgage Financing;
  - d. the \$161 million Montréal RBC First Priority Financing;
  - e. the \$56,525,000 Ottawa First Mortgage Financing;
  - f. the \$87,400,000 Oakville First Mortgage Financing; and
  - g. the \$110 million Georgian Mall First Mortgage Financing.

28. Given the circumstances surrounding HBC and its *CCAA* Proceedings, RioCan and the various other Secured Lenders are the fulcrum creditors in the JV Entities.
29. The interest of HBC in the JV Entities is subject to the secured claims of RioCan and the other Secured lenders, and any unsecured claims against the JV entities.
30. As a result of all of the above, RioCan submits, and I accept, that a Receiver should be appointed over the JV Entities at this time in order to preserve and maximize value for the JV Entities and their stakeholders.
31. Since the JV Entities hold numerous properties and have multiple secured creditors with differing claims and interests, a single global receivership proceeding in respect of the JV Entities is most efficient in the circumstances, and provides the best opportunity to preserve and maximize the value of the JV Entities and their assets.
32. There is no single secured creditor with the general security interest over all of the property and assets of the applicable debtor entities. As a result, I accept the submission of RioCan, made in consultation with HBC and the HBC Monitor, that it is appropriate for RioCan to bring this receivership Application as limited partner of the RioCan-HBC JV, secured creditor of certain of the JV Entities, and guarantor of certain obligations of the RioCan-HBC JV. HBC previously managed the JV Properties on a global basis, including from the perspective of record-keeping and accounting. A global solution is required in the circumstances to ensure that stability of the situation continues for the benefit of all stakeholders.
33. The Application is brought on notice to all of the other principally affected creditors. RioCan has also engaged in discussions with the other Secured Lenders and their respective counsel in an effort to develop a broadly supported transition plan, and has proposed a form of Appointment Order that permits Priority Secured Lenders to elect to terminate the receivership proceedings in respect of the relevant Priority Collateral (subject, among other things, to payment by the Priority Secured Lender to the Receiver, or arrangements for payment satisfactory to the Receiver, of any Receivership Costs allocated to the relevant Priority Collateral) In my view, such a term is appropriate in the particular circumstances of this case.
34. FTI is qualified to act as Receiver and has consented to act in that capacity.
35. I am satisfied that a receivership at this time, on the terms proposed, will preserve and maximize value for stakeholders. In this case, the RioCan-HBC JV is a complex corporate structure that effectively lacks a steward given the HBC *CCAA* Proceedings and in particular, the fact that the SISP and Lease Monetization Process did not result in offers for the properties and interests in respect of which the receivership is sought today.
36. I am further satisfied that there is no material prejudice to any party. RioCan has consulted with the other Secured Lenders with respect to both the proposed appointment of the Receiver and the terms of the proposed Appointment Order, and will continue to engage with them.
37. As noted above, the proposed terms of the receivership address the requirement for the Receiver to allocate Receivership Costs against each of the JV Properties and provide for a mechanism that enables each Secured Lender (other than RioCan) to elect to terminate the receivership proceedings in respect of their priority collateral should they wish to do so.
38. At the same time, the JV Entities continue to remain liable for obligations under the applicable head leases, with RioCan agreeing to provide sufficient interim secured funding to enable the JV Entities to meet such obligations going forward, all with the result that there is no material economic prejudice to the JV Landlords.

39. It follows that the proposed receivership funding should also be approved, together with the ability of the Receiver to borrow up to a maximum amount of \$20 million, secured by the Receiver's Borrowings Charge. The terms of that funding, and the quantum of the borrowing limit and corresponding charge, are fully explained in the Application materials.
40. In the result, and for all of the above reasons, I am satisfied that the Application should be granted, and the Receiver appointed on the terms proposed.
41. Order to go in the form signed by me which is effective without the necessity of issuing and entering.
42. This Endorsement should be read in conjunction with my Endorsement of today's date made in the HBC CCAA Proceeding, as that Endorsement addresses the stay of proceedings originally granted and how that relief, together with the relief granted today in that HBC CCAA Proceeding intersects with the relief granted today in this proceeding.

A handwritten signature in green ink, appearing to read "Oliver J.", followed by a comma.