

CITATION: 1943391 Ontario Ltd. v. Biosenta Inc., 2026 ONSC 3042
COURT FILE NO.: CL-26-00000161-0000
DATE: 20260525

ONTARIO SUPERIOR COURT OF JUSTICE

RE: 1943391 ONTARIO LTD.
Applicant

-and-

BIOSENTA INC.,
Respondent

BEFORE: FL Myers J

COUNSEL: *Gary M. Caplan and Aram Simovonian*, for the Applicant

Neil Colville-Reeves and Jaime Naumis, for the Respondent

HEARD: May 22, 2026

ENDORSEMENT

The Application

- [1] This is an unusual application for the appointment of a receiver and manager.
- [2] The Respondent Biosenta Inc. owes over \$7 million to the Applicant under a promissory note. The Applicant has limited security over a specific patent held by Biosenta and the product produced by working the patent, if any.
- [3] I have very little indication of where there is value for realization for creditors, if any, or of what the effect of the proposed appointment of a receiver and manager would be on the debtor or its creditors.

Biosenta

- [4] Biosenta is in the business of developing innovative, patented anti-microbial technology called Tri-Filler. When added to other products, Tri-Filler is said to eliminate harmful pathogens and reduce microbial growth and infection.

- [5] Biosenta is a public company. Its shares trade on the Canadian Securities Exchange.
- [6] I am troubled because there is no evidence of prior public disclosure of some facts adduced in evidence before me. I do not want to tread into territory where things that I might write could disclose previously undisclosed material facts that could impact public markets. I urge the parties to seek securities' law advice immediately.

The Debt and Security Interest

- [7] In 2017, the parties entered into a joint venture agreement. The purpose of the agreement was to establish terms for the Applicant to provide funding for Biosenta's product development purposes.
- [8] The terms of the joint venture were amended by the parties over time. In 2020, Biosenta agreed to repay funds borrowed from the Applicant. In May, 2021, Biosenta provided a security interest to the applicant to secure its repayment obligations under the amended joint venture agreement.
- [9] The security agreement recites:
 - The Debtor has developed a process, and has obtained a United States patent, being number 9,493,658, entitled Method and Apparatus for the Preparation of Calcium Carbonate Coated Calcium Hydroxide Particles (the "**Patent**"). The product resulting from working the Patent is known as and shall be referred to herein as "**Tri-Filler**";
- [10] In article 2.1 of the security agreement, Biosenta granted a security interest to the Applicant in "the Patent" and "Tri-Filler" and the proceeds of both.
- [11] Articles 4.1 and 4.2 of the security agreement prohibit Biosenta from encumbering, selling, licensing, or otherwise disposing of the collateral.
- [12] Upon a default, in addition to other enforcement steps, article 5.2 of the security agreement authorizes the Applicant to appoint receiver to take possession of and to sell the collateral. The security agreement recites that a privately appointed receiver will exercise its authority over the collateral as agent of the secured creditor.
- [13] In June, 2023, the parties agreed to terminate the joint venture. The parties negotiated terms to end any accrued or accruing obligations under the amended joint venture agreement.

- [14] Among the terms agreed upon, Biosenta agreed to issue to the Applicant 3 million common shares for the implicit subscription price \$1.2 million (40 cents *per share*).
- [15] In addition, Biosenta promised to pay the Applicant \$6.5 million under a promissory note to be signed in an agreed form.
- [16] For closing, the Applicant agreed to deliver an amended security agreement in a form and substance satisfactory to Biosenta so that the Applicant's ongoing security interest will refer to Biosenta's obligations under the joint venture termination agreement rather than the terminated amended joint venture agreement.
- [17] Article 4.6 of the joint venture termination agreement provided that Biosenta has the right to call on the Applicant to release its security over its US patent and Tri-Filler product as follows:

4.6 Undertaking regarding Security

[The Applicant] covenants, agrees and undertakes as follows: Following the Closing, (A) should the Company, acting reasonably, determine that a release or discharge of [the Applicant]'s security interest is required in order to enter into any license or similar agreement with a third party in connection with the commercialization of any product or otherwise, following consultation with, and the review of key terms of such agreement by, [the Applicant]; or (B) at any time at least \$3,000,000 of the Note is repaid, in each case, [the Applicant] shall release or discharge its security interest as evidenced by the Amended Security Document, and in connection therewith, [the Applicant] shall execute any documentation reasonably requested by the Company in connection with the foregoing (including, in the case of (A), any confidentiality agreement reasonably requested by the Company in order to receive applicable materials).

- [18] So, the security interest held by the Applicant is subject to discharge if Biosenta reasonably determines that it needs the security released to license its product to a third party for commercialization. The security is also subject to discharge once Biosenta pays \$3 million of its outstanding debt to the Applicant.

- [19] In July, 2023, the parties agreed to the terms of amendment to the Applicant's security agreement. All it does is substitute the debt under the promissory note in place of the terms of the terminated amended joint venture agreement as the secured "Obligations."
- [20] The agreed terms of the promissory note provide:
- (a) The debt will become due in full on December 31, 2025;
 - (b) Commencing 120 after the execution of the date of the note, interest accrues at CIBC's prime rate plus 3%;
 - (c) Interest is due and payable quarterly;
 - (d) Fixed portions of the debt will become payable before maturity in the event that Biosenta raises specified funds through share issuances; and
 - (e) The Applicant may elect to take payment of interest and principal in shares;

Biosenta's Default

- [21] Biosenta failed to repay the debt under the promissory note when it came due in full on December 31, 2025.
- [22] Mr. Gill, the President and CEO of Biosenta, swears that in July of 2025, he had lunch with Mr. Connor, the President of the Applicant, and asked for an extension of the due date of the note. He says that Mr. Connor agreed although he said he would only agree to one extension.
- [23] On November 2, 2025, a representative of the Applicant sought from Biosenta a formal written proposal for the extension of the note. The Applicant asked Biosenta to deliver its proposal by November 30, 2025.
- [24] On November 30, 2025, Biosenta provided a 20-page Commercialization Plan to the applicant. It included a request for a three-year extension to the maturity date of the note.
- [25] Mr. Gill swears that Biosenta's proposal was, "largely consistent with what Bill Connors and I had discussed and agreed to at our lunch meeting in July 2025."

- [26] He also swears, “I had relied for many months on the assurances provided by Bill Connor at our July 5, 2025 lunch that the Promissory Note would be extended.”

- [27] Mr. Colville-Reeves properly concedes that on the facts, there is no legal basis to find that a binding extension agreement exists or that the doctrine of promissory estoppel precludes the Applicant from enforcing its debt and security.
- [28] The oral agreement in July, 2025 does not appear to have included all the necessary terms including, for example, a new due date. Biosenta did not object to the Applicant's request that it submit a formal extension proposal on the basis that a deal had already been done. In fact, the proposal itself is a clear request for an extension with a lengthy rationale included to advocate for acceptance by the Applicant.
- [29] While Mr. Gill says that he relied on the Applicant's agreement to extend, the statement is wholly bald. He does not provide any evidence that Biosenta altered its position to its detriment between July and November, 2025. Nothing then precluded the Applicant from withdrawing whatever representation might have been made at the earlier date.
- [30] On December 13, 2025, Mr. Caplan, for the Applicant, gave notice to Biosenta that the Applicant did not agree to any extension to the maturity date of the promissory note. Rather, it expected payment on time as agreed.
- [31] Biosenta did not repay its debt on the due date or since that time.
- [32] On January 8, 2026, the Applicant registered its security agreement with the Canadian Intellectual Property Office.
- [33] On February 23, 2026, the Applicant demanded repayment of the debt under the promissory note and security agreement. It also delivered a s. 244 notice under the terms of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.

The Security Interest Asserted

- [34] In its notice under s. 244 of the *BIA*, the Applicant described the secured collateral as, "all of the assets, property and undertaking located at 18 Wynford Drive, Suite 704, Toronto, Ontario M3C 3S2."
- [35] Assuming that Wynford Drive is Biosenta's address, there is no basis before me for the Applicant to assert a security interest in Biosenta's assets and undertaking apart from the one patent described above and the Tri-Filler inventory produced by working that patent, if any.

- [36] The Applicant's counsel must have recognized this issue because on March 18, 2026, the Applicant delivered to Biosenta a *Notice of Sale or Other Disposition* under s. 63 (4) of the *Personal Property Security Act*, RSO 1990, c P.10. The *PPSA* notice properly defines the collateral as
- a United States patent, being number 9,493,658, entitled Method and Apparatus for the Preparation of Calcium Carbonate Coated Calcium Hydroxide Particles and the product resulting from working the Patent known as as "Tri-Filler"
- [37] Between May 1 and 7, 2026, the Applicant served Biosenta and known governmental creditors with its application record returnable May 22, 2026.
- [38] Biosenta made no substantive response to any of the Applicants' demands or notices until it delivered its responding material on May 21, 2026 the day before the scheduled court hearing. (Biosenta delivered its Notice of Appearance on May 15, 2026.)
- [39] In its Notice of Application, the Applicant seeks:
- an Order...appointing Crowe Soberman Inc ., as a Receiver and Manager ("Receiver") of all of the assets, property, and undertaking, of the Respondent, secured under the GSA, and otherwise, without security and pursuant to Section 243 of the *Bankruptcy and Insolvency Act* (R.C.S., 1985, c. B-3 ("BIA"), Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 ("CJA"), and Sections 59 and 60 of the *Personal Property Security Act*, R.S.O ., 1990, c. P.10 ("PPSA");
- [40] In its factum, the Applicant explains its request for the appointment of a receiver over the entire property and undertaking of Biosenta. Counsel writes:
30. In the circumstances of this case, it is just and convenient to appoint the Receiver for the following reasons:
- a. the Respondent is deeply indebted to the Applicant and an event of default has occurred, and is continuing;
- b. the appointment of the Receiver is necessary to properly manage matters pertaining the Property;

c. the appointment of the Receiver will help to avoid any potential dispute regarding expenses incurred in and the value obtained for the sale of the Respondent's assets;

d. the Applicant submits that a Receivership over the undertaking and assets of the Respondent will facilitate the sale of the Collateral and the management of the undertaking pending sale. More to the point, the value of the Collateral and the ability to sell it is likely dependant on information, documents, formulae, testing information, and data, that is integral to the patented formulations themselves; and

e. Crowe has consented to its Court appointment.
[Notes omitted.]

- [41] In subpara. 30 (b) above, the Applicant uses the capitalized word "Property." It is undefined, however. Does it mean just the secured collateral or Biosenta's operating business?
- [42] In subpara. 30 (d) the Applicant submits that a receiver over the full business will facilitate a sale of the secured collateral i.e.. the US patent and any inventory made using it. I am nowhere told why this might be so.
- [43] Counsel then submits in the same paragraph that the realizable value of the collateral likely turns on information about the patented formulations. That is not in evidence. Moreover, I have no idea what information might be readily available from the extensive public disclosure required to obtain a patent or that an owner may be required by law or practice to provide to any receiver that takes possession of a patent alone.
- [44] Has the Applicant asked for whatever information its proposed receiver might need to formulate a sales process? Did Biosenta refuse to provide information asked of it by its creditor? I am not told.
- [45] As to evidence, Mr. Connor for the Applicant swears:
21. I am advised by the Applicant's lawyers, and do verily believe that, the Applicant has its rights and remedies at law to appoint a receiver and manager over the assets, property,

and undertaking, including the Collateral, as defined in the GSA, of the Respondent.

22. As of February 23, 2026, the indebtedness owing under the Promissory Note was \$7,129,388.79, plus \$25,000, plus HST for legal fees.

23. It is my opinion and I do verily believe that the Applicant has lost all confidence in the Respondent and is concerned that the Respondent is now insolvent and is incapable of honouring the indebtedness due under the Promissory Note.

24. I am advised by the Applicant's lawyers, and do verily believe that, in accordance with the terms of the GSA, as amended, and its remedies at law, the Applicant is entitled to seek the appointment of a Court appointed Receiver and Manager.

25. I believe that the appointment of a Receiver and Manager in respect of the assets, undertaking, and property, including the Collateral, as defined in the GSA, is necessary and appropriate in the circumstances so that the said property can be marketed and sold in an efficient, transparent, and orderly manner, for the benefit of the Applicant, and any other creditors.

26. I do not believe that any other interested party will be prejudiced by the granting of the proposed Receivership Order.

- [46] I accept the debt calculation. It is contested by Biosenta but without a single particular of what is a simple arithmetic calculation. In any event, the precise calculation of interest and costs is not a today issue. The precise payment due to the Applicant must await realization and distribution of proceeds. There is no debate about the principal amount of the debt being due and owing.
- [47] Counsel's purported advice recited in para. 21 of Mr. Connor's affidavit is not correct if it is purporting to say that the security agreement provides the Applicant with a right to appoint a receiver over all property, assets and undertaking of Biosenta. It entitled the Applicant to appoint a receiver over the collateral as defined in the agreement i.e., the US patent and inventory made working it, if any; nothing more.

- [48] If para. 21 is simply suggesting that the law entitles the Applicant to ask for the appointment of a receiver despite its lack of security over the business undertaking of its debtor, then it is just inadmissible evidence of the law of Ontario.

- [49] Mr. Connor says he has lost confidence in management of Biosenta. Apart from reciting the debtor's inability to pay, he does not particularize any concern about management. In fact, the Applicant has allowed management to remain in place for almost five months since the indebtedness came due.
- [50] The Applicant's slow approach is not consistent with it having a significant reason to distrust or lack confidence in management. The bald assertion then lacks much weight.
- [51] Para. 24 of Mr. Connor's affidavit is another statement of inadmissible law that appears to be incorrect. Nothing in the security agreements between the parties entitled that Applicant to move for a court appointed receiver. That right, to the extent that it exists, flows from the applicable statutes.

The Contractual Right to Appoint a Receiver is not a Court Appointed Receiver

- [52] There is confusion in the material arising from the case law that says that the court will view a request to appoint a reliever as much less extraordinary when the parties have agreed in their security documentation that the creditor has a right to appoint a receiver on its own.
- [53] Para. 31 of the Applicant's factum states:

31. The Applicant, a secured creditor, is within its right to seek the appointment of a receiver as outlined in the GSA. This contractual right significantly reduces the extraordinary nature of the appointment: Courts do not regard the appointment remedy as "extraordinary" when the appointment is being sought pursuant to the terms of an agreement already made by the contracting parties.²⁰

²⁰ *Elleway Acquisitions Limited v. The Cruise Professionals Limited*, 2013 ONSC 6866 (CanLII), [\[https://canlii.co/t/g22q3\]](https://canlii.co/t/g22q3), at para 27.

- [54] There are two distinct types of receivers. A privately appointed receiver takes its authority from the parties' agreement. As noted above, under the parties' agreements in this case, the Applicant is entitled to appoint a receiver that will function as its agent implementing the Applicant's instructions to enforce its rights against the secured collateral as agreed.

- [55] That is different than a court appointed receiver, however.
- [56] A court appointed receiver takes its authority from the order that appoints it. The order is usually made under s. 101 of the *Courts of Justice Act* or s. 243 of the *BIA*, or both. Other statutes may also provide for receivership remedies.
- [57] A court appointed receiver does not take instructions from its appointing creditor. Its authority is not dependent upon the terms of the security agreement agreed upon by the parties.
- [58] A court appointed receiver is a neutral officer of the court exercising stewardship over assets under its charge as directed by the court.
- [59] The test to appoint a court appointed receiver involves an assessment of what is “just and convenient” in all the circumstances. Cases like *Kingsett Mortgage Corp. v. Maplevue Developments Ltd.*, et al., 2024 ONSC 1983 (CanLII) at para. 24, include lengthy lists of all potentially relevant considerations.
- [60] I find the more general approach adopted by Blair J. (as he then was) in *Bank of Nova Scotia v. Freure Village of Clair Creek*, 1996 CanLII 8258 (ON CTGD), very instructive. At para. 10 of *Freure Village*, Blair J. wrote:

[10] The Court has the power to appoint a receiver or receiver and manager where it is “just or convenient” to do so: the Courts of Justice Act, R.S.O. 1990, c. 43, s. 101. In deciding whether or not to do so, it 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. The fact that the moving party has a right under its security to appoint a receiver is an important factor to be considered but so, in such circumstances, is the question of whether or not an appointment by the Court is necessary to enable the receiver-manager to carry out its work and duties more efficiently; see generally *Third Generation Realty Ltd. v. Twigg* (1991) 6 C.P.C. (3d) 366 (Ont. Gen. Div.) at pages 372-374; *Confederation Trust Co. v. Dentbram Developments Ltd.* (1992), 9 C.P.C. (3d) 399 (Ont. Gen. Div.); *Royal Trust Corp. of Canada v. D.Q. Plaza Holdings Ltd.* (1984), [1984 CanLII 2343 \(SK QB\)](#), 54 C.B.R. (N.S.) 18 (Sask. Q.B.) at page 21.

- [61] The question is always, “what is just and convenient for all concerned?” Lists of possible factors can provide some guidance where some factors will be relevant in one case and some in others. But in each case it is the particular confluence of facts and circumstances that require analysis.
- [62] The fact that a security instrument may allow a creditor to appoint privately its own receiver is an important fact. But that is *not*, as intimated by the Applicant, because that somehow gives the creditor a contractual right to a court appointment.
- [63] The relevancy of a right of private appointment is more nuanced. The question can be asked as to why a creditor needs a court appointed receiver when the creditor can already appoint its own receiver privately under the parties’ security agreement?
- [64] Sometimes the answer to that question is crucial. For example, a receiver appointed privately under a security agreement has no ability to force its way on to a debtor’s land or into its office. A court appointed receiver can seek enforcement assistance from the court and the sheriff if necessary. If a debtor barricades the doors, literally or figuratively, to exclude a privately appointed receiver, a court appointed receiver will be required to vindicate the creditors’ rights.
- [65] In *Freure Village*, Blair J. looked at whether or not an appointment by the court is necessary to enable the receiver to carry out its work and duties more efficiently than a privately appointed receiver.
- [66] This concept has been broadened so that if the debtor and creditor are in a contentious relationship, a court appointment is often viewed as propitious. So too if there are multiple creditors competing for recovery of value from the same assets. *Freure*, at para. 13; *Kingsett*, at para. 24 (b), (e), and (h). In each case there must be some reason or confluence of relevant facts that make it just and convenient for a court to appoint a receiver. Why is it needed? It is not extraordinary to be sure. The parties agree that the creditor may appoint a receiver. But why then is the creditor asking the court to appoint a receiver rather than doing what it bargained to do?

A court appointment is an expensive and complex process. But it also cloaks the appointing creditor and the receiver with the imprimatur of the court. It can protect them from attack from opposing parties. It creates a process where the business is protected from management and creditors alike while disputes may be resolved among interested parties.

It protects the assets and undertaking of the business while issues that arise are dealt with in the courtroom. A court appointed receivership avoids a race by creditors to seize assets. It avoids the risk of improper conduct by management or shareholders to prefer their interests ahead of creditors.

- [67] There are many more good reasons for a creditor to seek a court appointed receiver. Sometimes, a creditor's entitlement to enforce substantial debt may be a nearly conclusive factor on its own. Other times, it may appear that the costly apparatus of a court appointment is not really required or helpful in the circumstances.
- [68] In all these cases, context is everything.

Biosenta is Insolvent

- [69] The Applicant has put into evidence the MD&A from Biosenta's fiscal 2025 financial statements. It contains some selected financial information. It discloses no assets of significance. There is no value of IP shown in the MD&A.
- [70] The proposal made to the Applicant last November discusses the current state of the business and management's projections for the next 20 years. According to this document, the company is in the final stages of commercial validation and early customer adoption of its product. It needs time to run pilot programs with key industrial partners, manufacturing scale-up, and regulatory certification efforts. Management projects that these steps may lead to accelerating revenue generation and increasing long-term repayment certainty for investors.
- [71] Management projects that the company will earn no material revenue for 2027 with hopes of substantial sales leading to a \$1 million profit in 2028.
- [72] Until then, the company survives month to month by injections of \$50,000 made by Mr. Gill or other funds being raised.
- [73] The MD&A leaves no doubt that the company is insolvent on a cash flow basis. It is entirely dependent on securing additional funding to meet obligations.

Analysis of the Applicant's Case

- [74] In para. 25 of his affidavit quoted above, Mr. Connor says that the appointment of a receiver by the court over the entire business of

Biosenta is “necessary and appropriate” so that all of its property can be sold in an “efficient, transparent, and orderly manner.”

- [75] Why? What is the scope of its assets? Will the sale of the secured collateral by the Applicant or a privately appointed receiver yield sufficient funds to pay the Applicant in full? Why would a private receivership sale not be convenient? Why should the entire business be put into receivership?
- [76] There is no evidence before me to assist me to understand the state of play. I know nothing of the value of the collateralized US patent or the other property of Biosenta. I do not know if the US patent and inventory made by working it, if any, can be conveniently hived off from the business and leave the business to operate for another day. Or perhaps, there is nothing else so that selling the secured collateral is tantamount to a sale of the entire business undertaking.
- [77] Mr. Caplan submits, without any evidence, that there are three patents held by Biosenta that are registered in the US. In addition to the patent that is subject to the Applicant’s security, there are two others that provide different ways to make the proposed product. That is why I keep referring to Tri-Filler made by working the secured patent *if any*. There is no evidence that Biosenta continues to use or to need the secured patent at all. Perhaps it does. I do not know.
- [78] Biosenta submits that it consents to a receivership of the secured US patent. It also gives evidence, that I will not specify, that seems to suggest that the business can do great things.
- [79] I do not know whether the secured patent is obsolete or if it is necessary to realize on management’s optimism.
- [80] Appointing a receiver for the full business will require the receiver to fund the debtor’s monthly shortfall plus its fees and disbursements, including the fees of its counsel. Alternatively it will have to shut down the business. Why would the court impose the funding burden on creditors when the company, management, and shareholders seem to be content to continue their *ad hoc* funding? It seems to me that before I appoint someone who may shutter the business, I should know whether the secured patent has more or less realizable value if the company closes its doors before the current testing, pilot projects, and scale-up are complete. I am not told anything about the realizable value of the secured collateral, however.

- [81] I was referred to only one case where a party who had less than a full security package sought the appointment of a receiver over the entire property, assets, and undertaking of the debtor. In *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186 (CanLII), Osborne J. found that this is an available remedy under the *CJA* and *BIA*.
- [82] In *Hypoint*, the business of the debtor had shut down completely. An equipment financier and a land mortgagee were in a dispute as to the better mechanism to sell assets. Each wanted to maximize its own recovery of course. Osborne J. held:
- [32] However, in circumstances where all parties agreed that all of the assets of both Hypoint and 909 should be sold to maximize recovery for all creditors, but cannot agree on the process pursuant to which that should be undertaken with the result that the entire process is stalled, I am satisfied that this represents a classic example of a situation in which it is just and convenient to appoint a receiver.
- [33] The receiver is a court-appointed officer. It has the obligation to design and run a process with a view to monetizing the assets of the debtor for the benefit of all creditors. Further delay is in the interest of no one. There is no activity at the Premises, electricity has been cut off for a significant period of time, and winter is coming. Proof of insurance was requested by CEF and has not been provided.
- [34] I am concerned about the real and immediate risk of dissipation of assets and diminution in value of those assets, with the result that I am satisfied that it is important and beneficial to all creditors to accelerate the process. The fair and transparent way to do that is to have a court-appointed receiver run the process. Order needs to be brought to the chaos, and the status quo of competing processes cannot continue unsupervised.
- [35] To do otherwise would be to permit CEF to enforce against the Collateral only and the Mortgagees to enforce as against the real property. This has the potential in the circumstances for further conflict requiring further Court intervention, delay, increase in cost and decrease in asset value.

- [83] I agree with these findings completely. Competing creditors whose self-interested positioning threatened to cause asset value erosion or dissipation to the prejudice of all interested parties created a prime example of a case where it is just and convenient to appoint a receiver.
- [84] I agree as well that the lack of a complete security package is not fatal to the Applicant's request for the appointment of a full receiver over all of Biosenta. There is case law establishing that the court is entitled to appoint a receiver under s. 101 of the *CJA* at the request of a party that holds no security interest in the debtor at all. See, for example, *Hands-On Capital Investments Inc. v DMCC Holdings Inc.*, 2023 ONSC 2417 (CanLII).
- [85] But, the question remains, why is a court appointed receiver just and convenient in this case? Why, for example, can the Applicant not realize on the US patent and any secured inventory by a private appointment? Biosenta consents to such a limited appointment. In what way will the receiver's realization efforts be impeded or inefficient so that a court appointment will be beneficial?
- [86] This is nothing new. It is just a particular example of the nature of the balancing of factual and evidentiary issues involved in a receivership application as discussed in *Freuere Village* and *Kingsett* to name but two leading authorities.
- [87] Mr. Caplan submits that you cannot sell just one wheel of a car. *Au contraire*. Where there is a willing vendor and a willing purchaser, a sale of assets at fair market value can be attained by definition. Here, I have no idea which, if any, of the three patents (assuming I accept counsel's unsworn evidence) is in use. I have no idea about the sale of the secured patent and whether it is feasible or possible or better or worse with or without the debtor being in receivership.
- [88] I am also unsure about the scope of the Applicant's security. If Biosenta has a license lined up with a third party in connection with the commercialization of Tri-Filler, it could call on the Applicant to release its security. As an unsecured creditor, who couldn't or why wouldn't the Applicant just put Biosenta into bankruptcy to realize on its assets in the interest of the general body of creditors? I have no idea if the going concern has value.

- [89] Mr. Caplan then submits that if a full receivership is not in the cards, the court should appoint the receiver to some kind of investigative or monitorship role. It could then report to the court on the desirability of funding the going concern and mechanisms for the efficient realization on its assets including its intellectual property.
- [90] If there was something secret or being hidden surreptitiously by Biosenta, perhaps some form of limited “eyes and ears” appointment could be just and convenient.
- [91] But it seems to me that this is overkill in this case. There is no shortage of expertise in patents in this province and country. I know of no reason the Applicant cannot obtain evidence about the nature and roles of the different patents at play, the market for realization of these types of patents or for businesses seeking to develop and exploit these types of patents, and come to court on evidence that takes the guesswork out of the issues.
- [92] I am not about to put a public company into receivership for a licensed insolvency trustee to go and take a look around to save the Applicant the cost of retaining an IP specialist who will be needed by a receiver in any event.
- [93] I am concerned that Biosenta did not respond to the Applicant’s demand for payment for over four months. But I am not told if the Applicant made any requests for information from Biosenta during that period. **Biosenta’s counsel will know that if it wants to avoid realization efforts (if it can) a failure to be transparent and cooperative in disclosure with the company’s lead creditor and a major shareholder will be a quick ticket to a bad ending.**
- [94] The parties should be able to negotiate a mechanism for realization on the secured collateral if doing so makes sense apart from putting the entire enterprise on the block for sale or liquidation. Biosenta is not even paying interest at this time. The time for it to fish or cut bait has arrived.
- [95] If the Applicant wants to move on appropriate material for a receivership or a different form of order, after consulting with IP and industry experts and with Biosenta to obtain evidence on the key issues underlying such a request, the court remains available.
- [96] Biosenta will also need to pay particular attention to its securities disclosures in any further proceedings.

- [97] At this stage, on this evidence, I am not satisfied that it is just or convenient to appoint a receiver as sought. There is simply too little information on what may be achieved by doing so and at what cost and to whom. I do not know how a receiver will make realization better or if it will make things worse than the company continuing to limp along or go bankrupt, or make a proposal to creditors, or pursue any number of other creative possibilities.
- [98] Nothing precludes the Applicant from enforcing its debt in the ordinary course. I simply have no evidence to allow me to make a finding that a court appointed receiver is necessary, helpful, appropriate, just, or convenient at this time for this company.
- [99] The motion is dismissed. Biosenta may deliver costs submissions by June 1, 2026. The Applicant may deliver costs submissions by June 8, 2026.
- [100] Costs submissions shall be no longer than 750 words. They shall be accompanied by each party's Costs Outline. In addition, the parties may provide me with a copy of any offers to settle on which they rely for costs purposes.

FL Myers J

Date: May 25, 2026