



Superior Court of Justice – East Region
161 Elgin Street
Ottawa, Ontario K2P 2K1

ENDORSEMENT OF CIVIL MOTION

SHORT TITLE OF PROCEEDINGS: NATIONAL BANK OF CANADA v. OCM AUTO FINANCING LTD.

COURT FILE NO.: CV-26-104791-0000 Justice K. Perron

HEARD ON: July 17, 2026

COUNSEL:

Haddon Murray and Asim Iqbal for the Applicant, National Bank of Canada
Thomas Conway, Chris Trivisonno and Emma Williams for the Respondents, OCM Auto Financing Group Ltd. and OCM Auto Financing Fund Ltd.
Pritesh Patel, proposed Interim Receiver, KPMG

RELIEF REQUESTED: Order to appoint an interim receiver

ENDORSEMENT

1. This is an application by the bank pursuant to section 47(1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act* seeking to appoint an interim receiver to preserve certain assets in bank accounts and related assets in the possession of OCM Auto Financing Group Ltd. and OCM Auto Financing Fund Ltd. (collectively the “Companies” or “OCM”).
2. KPMG consents to acting as the interim receiver.
3. The matter was originally before me on July 13, 2026 but I granted a short adjournment to today to permit the responding parties to prepare their responding materials.

Overview of Contractual Matrix

4. The Companies currently service auto loans. At the outset, the Companies’ business was primarily financed through debentures held by private investors. In 2023, to expand their business, the Companies entered into a lending arrangement with CWB Maxium Financial Inc.
5. Initially, CWB granted a bulk loan facility to the Companies. The loan commitment at one point reached \$60 million.
6. In October 2023, pursuant to a master purchase and servicing agreement, the arrangement



changed and CWB advanced funds to OCM Group for the purpose of OCM making auto loans. The transaction also provided that CWB purchased certain of OCM Group's accounts receivable from its auto loan contracts (the "Relevant Contracts"). The purchase funds were deposited into a "Reserve Account". The agreement requires the Companies to maintain a reserve floor threshold in the Reserve Account above which the Companies were entitled to a return of cash.

7. The Companies were also required to remit all collections under the Relevant Contracts to a "Blocked Account". The Blocked Account is held at TD Bank. It is undisputed that the Companies held all such collections in trust for CWB and that on the first day of each month, the Companies were required to make a payment to CWB.
8. The Companies' obligations under the agreement are secured by, amongst other things, a general security agreement between CWB Maxium and OCM Group dated February 6, 2023 and a general security agreement between CWB Maxium and OCM Fund dated February 6, 2023.
9. Article 3 of the master purchase and servicing agreement also grants a security interest against all of OCM Group's present and future Relevant Contracts, rights and remedies thereunder, reserve account monies, records, collections, and payments.
10. The GSAs grant CWB the right to appoint a receiver in the event of a default.
11. On March 1, 2025, the National Bank of Canada (the "Bank") and Canadian Western Bank amalgamated.
12. The Bank became the successor in interest to CWB Maxium under its agreements with the Companies and all related security and ancillary agreements. That said, the Bank had been administering the Companies' agreements since the Fall of 2024.
13. The Companies allege that there were a number of problems from the outset of the Bank's administration of the agreements. The Bank took the position that the Companies were in default of the agreements. The Bank stopped making purchases under the master purchase and servicing agreement. The parties disputed the interpretation of, and compliance with, certain provisions in the agreements.
14. In the fall of 2025, the Companies consented to the Bank's request that KPMG review the Companies' file. The applicable consent agreement provides that KPMG have "full and unrestricted access to all information concerning [OCM Group's] undertaking, property and affairs". The Companies' position is that it has cooperated with KPMG.
15. The Bank again asserted in the Fall of 2025 that the Companies were in default of the applicable agreements. The Companies disputed the defaults.



16. That said, it is undisputed that on November 21, 2025, the Bank told the Companies that it wanted to exit the relationship. The Companies acknowledged the Bank's request and they confirmed their intention to continue meeting all obligations under the agreements while working towards an orderly payout.
17. On December 31, 2025, the parties entered into an Amending Agreement which reflected their new arrangement. Pursuant to the Amending Agreement, the Bank purchased all of OCM Group's rights to payments from a book of auto financing contracts (the Relevant Contracts). The purchase price was approximately \$18.2 million.
18. The GSAs are the first registered security interests in the Alberta and Ontario personal property security registries as against the Companies' assets except for a registration by Computershare which has contractually subordinated its security interest to the Bank. The Bank is therefore the first-ranking secured creditor over the Companies' assets.
19. As an accommodation to the Companies, the Amending Agreement provided the Companies until May 29, 2026 to refinance their affairs to payout the obligations owing to the Bank. Pursuant to the Amending Agreement, the Companies agreed to provide a binding commitment for third party capital by April 17, 2026.
20. Pursuant to the Amending Agreement, the Companies also agreed that they would no longer receive the excess distributions from the Reserve Account until after delivery of the commitment letter.
21. In addition, the Companies agreed to make certain payments including payment of the Bank's legal fees in this matter, KPMG's consulting fees and an administration fee.

The Companies' Failure to Produce a Binding Commitment and Other Defaults Triggered the Bank's Request to Appoint an Interim Receiver

22. From January to June 2026, the Companies pursued a refinancing transaction with Encina Lender Finance. The Companies produced a term sheet regarding the proposed Encina transaction to the Bank in April 2026. The Bank reminded the Companies of the obligation to produce a binding commitment letter.
23. The Bank provided the Companies with two extensions to provide a binding commitment letter: a first extension was provided to May 29, 2026 and then a second extension to June 30, 2026. The extensions were set out in accommodation agreements.
24. The accommodation agreements expressly provided that the Bank was not waiving the Companies' default despite the extensions. The agreements also confirmed that the Companies would not receive any distribution of excess from the Reserve Account until the refinancing occurred. The Companies again agreed to pay the Bank's legal fees,



KPMG’s consulting fees and accommodation fees.

25. The Companies admit that it became clear to them in “late June 2026” that the Encina transaction would not close by the June 30th deadline. The Companies therefore engaged Sinclair Range Inc. as its chief restructuring officer to pursue alternative financing opportunities. The Companies admit that by June 19th, they had also begun efforts to seek alternate financing.
26. For reasons that are not in evidence, the Encina transaction appears to have collapsed entirely.
27. On June 30, 2026, the Companies informed the Bank that they could not repay the indebtedness. The Companies also informed the Bank that they had engaged Sinclair and requested that they have until July 10, 2026 to prepare a preliminary plan to repay the Bank in full.
28. The Companies’ evidence during this timeframe is somewhat perplexing when contrasted with the Bank’s evidence. The Bank’s evidence is that it sent an email to the Companies on June 17, 2026 setting out the requirements for any further extension, including that any extension request should be made 5 days before the closing deadline. No response was received from the Companies therefore the Bank sent another email on June 24th setting out the Bank’s assumption that the refinancing would close by the end of the month. The Companies then requested a payout statement from the Bank on June 26th despite being aware, on their own evidence, that the Encina transaction would not be closing.
29. On July 1, 2026, the Bank sent an invoice for the collections that were due to the Bank for the preceding month in the amount of \$906,557.46. Pursuant to the agreements set out above, funds from the collections ought to have been held by the Companies in the Blocked Account.
30. On July 3, 2026, The Bank also delivered a termination notice declaring that an event of termination had occurred under the master purchase and servicing agreement. Pursuant to the terms of the agreement, the Companies were now required to receive and hold all post-termination collections in trust for the sole benefit of the Bank and to deposit all collections into the Blocked Account.
31. In the termination notice, the Bank also exercised its rights, pursuant to section 7.1(a) of the agreement, to provide notice that it would be designating a replacement service provider to succeed the Companies. The Bank also delivered an activation notice to TD Bank to prevent withdrawals from the Blocked Account.
32. On or about July 6th, the Bank discovered that there had been no deposit activity in the Blocked Account from July 1st to July 6th and that the Blocked Account had a negative



balance of \$11,217. The negative balance was not consistent with previous account activity. For example, the total collections deposited by the Companies to the Blocked Account were \$809,697.54 for May 2026 (\$135,387.19 for the first six days of May) and \$769,034.82 for June 2026 (\$164,922.68 for the first six days of June).

33. On July 8, 2026, the Bank issued a demand letter whereby the Bank demanded that the outstanding collections be deposited into the Blocked Account. The Bank also delivered a notice of intention to enforce its security pursuant to section 244 of the BIA.
34. On July 8th, the Bank also informed the Companies that it had designated Go To Loans Inc. as the replacement servicer under the agreement. The Bank also demanded that, among other things, the Companies remit all payments and assemble its records so that the Bank could deliver them to Go To Loans.
35. The Companies responded to the Bank on July 9, 2026. In their letter, the Companies disputed the Bank's entitlement to appoint a replacement service provider on the basis that the NITES had not expired (among other grounds). They also informed the Bank that a fraudulent cheque was deposited in the Blocked Account and that TD Bank required that a new account be opened within 60 days.
36. The Companies also admitted to transferring \$63,000 from the Blocked Account, which they say was required to avoid compromising the funds and to comply with TD Bank's instructions. However, the Companies denied any trust obligations pursuant to the agreement regarding collections received prior to June 29th.
37. In their letter of July 9th, the Companies also stated that they could not confirm if the quantum of the invoice was the correct calculation for amounts to be deposited to the Blocked Account for the applicable period. That said, under reservation of rights, they consented to the Bank debiting the amounts set out in the July 1st invoice from the Reserve Account.
38. The Companies also informed the Bank that pursuant to the established practice – known to the Bank – the Companies had been using collections to pay routine operational costs while remitting amounts due to the Bank at month's end. The Companies stated that they had not paid any expenses from collections received after July 3, 2026 - the date on which they received the Bank's notice of termination.
39. Although the Companies learned of the fraud on June 29, 2026, and the TD Bank informed them of the need to open a new account on that same day, the Companies did not offer any explanation as to why they waited until July 9, 2026 to notify the Bank of the fraud and their transfer of funds from the Blocked Account. In addition, the Companies have not offered an explanation as to why a new account has not yet been opened with TD Bank into which they could deposit collections received. They simply state that they are prepared to



work with the Bank to get this done. It is also unclear where the funds that should have been deposited into the Blocked Account are currently located and/or what the quantum of those funds is.

40. The Bank is not prepared to debit funds from the Reserve Account to pay the July 1st invoice. The Bank's position is that the Reserve Account exists as a purchase price adjustment that the Bank can look to when a Relevant Contract is in default and that these funds are not meant to replace collections that the Companies are now withholding from the Bank. In other words, the Bank's position is that the Reserve Account is meant to act as security for other obligations due by the Companies pursuant to the applicable agreement.
41. There is also a dispute between the parties as to whether the Companies would meet the minimum reserve floor threshold if they were to draw down on the Reserve Account to cover the July 1st invoice.
42. In addition, although section 2.6 (c) of the master purchase and servicing agreement provides that the Bank may debit the Reserve Account to cover overdue obligations, the agreement expressly states that such a debit does not constitute waiver/satisfaction of the default. The agreement also provides that the Companies are required to promptly pay to the Bank an amount equal to the debit.
43. The Companies would not be able to repay the amount of any debit from the Reserve Account because they admit that they do not have sufficient funds to pay the July 1st invoice because its expenses for June 2026 exceeded collections received. The Companies have incurred significant expenses associated with the extension agreements entered into between them and the Bank and due to the professional fees they have incurred due to their ongoing refinancing and/or restructuring efforts.
44. The Bank brought the within motion and served its materials on July 10 and 11, 2026.
45. Between Monday's adjournment of the motion and today, after KPMG made certain requests for information, the Bank also discovered that the Companies made a number of transactions between June 22 and July 6, 2026 across the Blocked Account and its Operating Account totaling approximately \$420,000. These transactions include payment of professional fees (for the restructuring and legal fees) but also payments to shareholders, to an investor and to a non-arm's length party.
46. The Bank appears to have been aware of, and consented to, the Companies' use of funds from the Blocked Account to cover expenses in the ordinary course of business provided that sufficient funds would remain in the Blocked Account to cover the monthly amounts due to the Bank. However, the transactions that occurred at the end of June and early July are not in the ordinary course of business and the Bank did not consent to those transactions.



47. The Bank's position is that the payments are also problematic in view of the Companies' admission that they are not in a position to pay the July 1st invoice and the Companies may therefore be insolvent. If the Companies are insolvent, these payments may constitute preferential payments.
48. The Companies admitted that some of the payments, for example the payments to shareholders, were inappropriate given the timing of the Bank's notice of termination. The Companies stated that the funds have since been reimbursed into the Companies' Operating Account. The Companies' principal has also given an undertaking that OCM will not make any further shareholder loan repayments or similar payments without the Bank's agreement or until the within application is determined.
49. As part of its opposition to the appointment of the interim receiver, the Companies rely on a letter of intent from Ark Capital Ltd dated July 9, 2026 with respect to a proposed financing transaction involving the OCM Group. The parties consented to a sealing order, which I find is appropriate, regarding the LOI.
50. I have reviewed the LOI. The proposed refinancing transaction remains subject to Ark completing its due diligence. The LOI is a far cry from a binding commitment to provide financing sufficient to payout the indebtedness owing to the Bank.

The Test to Appoint an Interim Receiver

51. Section 47(1) of the BIA provides that the Court may appoint an interim receiver where a NITES has been delivered. Section 47(3) provides that an interim receiver may only be appointed where it is necessary: a) for the protection of the debtor's estate; or b) the interests of the creditor who sent the 244 notice.
52. The Bank has delivered its section 244 notice therefore the satisfaction of that requirement is not in dispute.
53. Section 101 of the *Courts of Justice Act* enables the Court to appoint a receiver or a receiver and manager where it is just or convenient. The courts examine all circumstances, in particular the nature of the property and the rights and interests of all parties when determining whether it is just and convenient to appoint a receiver. A secured creditor is not required to establish that it will suffer irreparable harm in the absence of a receiver being appointed.¹
54. The Bank submits that on the appointment of a receiver pursuant to section 243 of the BIA and section 101 of the *Courts of Justice Act*, the courts have developed a list of factors to

¹ *Bank of Nova Scotia v. Freure Village of Clair Creek*, 1996 CanLII 8258 (ON CTGD) at para 10.



consider in determining whether the request for a receiver is appropriate².

55. The Bank also submits that a relaxed burden applies when a creditor moves to appoint a receiver where the applicable security instrument provides a right to such an appointment. However, the two cases³ relied upon by the Bank in support of this principle are cases dealing with the appointment of a full receiver.
56. The Companies' position is that the Bank has not cited the appropriate test to appoint an *interim* receiver. The Companies submit that the relaxed burden set out above does not apply, and that the appointment of an interim receiver is an extraordinary remedy. The Companies rely on the articulation of the test in *Highbreed Financial Corporation v Canada Tax Reviews Inc.*⁴ and the framework set out in *Peel Condominium Corporation No. 49 v Zaffino*⁵.
57. In *Highbreed*, the Court held that the appointment of an interim receiver included the immediate need for protection of the debtor's estate due to the grave danger that assets will disappear or the estate is otherwise in jeopardy.
58. Because the Companies' caselaw deals specifically with the appointment of interim receivers, I will consider the framework and principles set out in the Companies' caselaw.
59. That said, the Bank did provide an authority where the Court held that the moving party is not required to establish actual misfeasance and wrongdoing, such as misappropriation or dissipation of assets, to meet its onus for the appointment of an interim receiver⁶.
60. Even if I apply the more stringent test, I find that it is necessary to appoint an interim receiver to protect the debtor's estate and the interests of the Bank and that it is just and convenient to do so.
61. The Bank has provided sufficient evidence to support that the appointment of an interim receiver is necessary and that there is an immediate need for protection.
62. The Companies are in default of providing a binding commitment pursuant to their applicable agreements with the Bank. The Companies admit that they cannot pay the July 1st invoice which is another default.
63. The Companies have not been forthcoming with the Bank regarding adverse material

² *KEB Hana Bank as Trustee et al v Mizrahi Commercial (The One) LP et al*, 2023 ONSC 5881 (CanLII) at para 38.

³ *Bank of Montreal v Sherco Properties Inc*, 2013 ONSC 7023 at para 42; *Elleway Acquisitions Limited v The Cruise Professionals Limited*, 2013 ONSC 6866 at para 27.

⁴ 2025 ONSC 7014 (CanLII) at para 92.

⁵ 2024 ONSC 473 (CanLII) at para 18.

⁶ *Royal Bank of Canada v Canadian Print Music Distributors Inc.*, 2006 CanLII 21048 (ON SC) at para 16.



developments in a timely manner, for example, the failure of the Encina transaction and the issues with the fraudulent cheque and closure of the Blocked Account.

64. The Companies transferred and/or diverted funds from the Blocked Account and have yet to advise the Bank where the collections have been, and are being, deposited. The timing of the Companies' actions in this regard falls on the heels of the failure of the Encina transaction and its inability to pay the July 1st invoice. In addition, this serious breach is ongoing and the gravity of the breach is accentuated by the fact that the collections are trust funds that the Companies have an obligation to hold and remit to the Bank. The Companies did not produce any evidence of the quantum of any funds they may be continuing to hold from the May/June collections or the early July collections.
65. Moreover, the Bank is quite correctly concerned that the Companies appear to be funding their operations, or at least part of them, using funds that ought to have been remitted to the Bank through the collections they are receiving from the Relevant Contracts. Furthermore, it is not clear whether the collections are being deposited in an account which may be used by the Companies for their broader operations (i.e. the Operating Account that was referenced on this motion).
66. In response to the Companies' submission that the Bank is overreaching or being overly aggressive by moving to appoint an interim receiver, it is apparent that KPMG's current mandate in this matter is not sufficient to protect the Bank's interests nor is the draft "monitorship" order being proposed by the Companies in support of its position that alternative measures are more appropriate than an interim receiver in the circumstances.
67. The Bank did not rush to bring this motion as its first recourse. The Bank has provided accommodations to the Companies since last November and provided the Companies with two extensions of time to produce a binding commitment to payout the Bank's interests.
68. In addition, KPMG's current level of involvement did not deter the Companies from making payments that may be preferential payments on the eve of insolvency and payments that were not in the normal course of business and contrary to its arrangement with the Bank. Although some funds have now been returned to the Companies' Operating Account, that was done only after KPMG was provided with additional records from Monday's adjournment. The very fact that those transactions occurred supports the Bank's loss of confidence in the Companies and, in my view, supports that it is necessary for all stakeholders to appoint an interim receiver.
69. The evidence before the Court on this motion is not sufficient to draw the conclusion that the funds held in the Reserve Account and/or that the other security held by the Bank pursuant to the GSAs is sufficient to secure the Bank's interests. The appointment of the interim receiver will likely be helpful in this regard to provide the Court, as an officer of the Court, evidence on the quantum of the reserve floor calculation and such other



information that is the subject of disagreement between the parties such as the value of the Bank's portfolio.

70. In addition, I do not find that the Companies' request to debit the Reserve Account to corrects its default in paying the July 1st invoice is reasonable seeing as the terms of the master purchase and servicing agreement would require the Companies to immediately repay that amount to the Bank, and the Companies admit that they cannot do so from another source of available funds.
71. When balancing the interests of all parties, the Companies have not satisfied me that the appointment of the interim receiver prevents them from pursuing their refinancing efforts or that these efforts would be adversely affected by the appointment. Even on a full receivership appointment, the Court has held that nothing prevents the continuation of discussions with a proposed lender and that such ongoing discussions would be expected if the transaction is in the best interest of stakeholders⁷.
72. The Companies have also not established that the appointment of the interim receiver would adversely affect the rights and interests of the subsequent ranking debenture holders. To the contrary, the appointment of an interim receiver will ensure that the relevant assets are preserved which is for the benefit of all stakeholders, including any creditors subordinate to the Bank's security.
73. Although I have found that the appointment of an interim receiver is necessary, I do have concerns regarding the scope of the proposed interim receivership. Although the case of *Suitor*⁸ dealt with the appointment of an interim receiver over an individual's assets, I find the discussion therein about the purpose and scope of an interim receiver to be helpful.
74. In *Suitor*, the Court clearly sets out that the purpose of the interim receivership is to identify and preserve assets in the interim period. Although subsection 47(2) of the BIA provides that the Court may direct an interim receiver to exercise control over the debtor's business if the Court deems it advisable, this does not deter from the overarching principle that the powers of the interim receiver should be limited to those steps that are necessary to take in the interim, pending the outcome of an application for a full receivership or such other resolution of the matter.
75. In this case, the Bank has delivered its notice of termination and notice of its appointment of another service provider to carry out the servicing requirements under the relevant loan agreements. The Bank appears to be contractually entitled to change the service provider, however, I do not think it is necessary or in the best interest of all stakeholders for the changeover to be implemented or facilitated by the interim receiver as proposed in the draft

⁷ *Macquarie Equipment Finance Limited v Validus Power Corp. et al.*, 2023 ONSC 4772 (CanLII) at para 54.

⁸ *Suitor v Libro Credit Union Inc.*, 2025 ONSC 3751 (CanLII) at paras 22-26.



Order at this time. That power may very likely be appropriate on a full receivership application but I agree with the Companies that ordering the interim receiver to “manage, operate and carry on the business of the Companies” is not necessary in this case as an interim measure and the costs associated with a change in service provider would not be beneficial to the stakeholders.

76. That said, the interim receiver must, at minimum, have full oversight of the Companies’ operations regarding that part of its business that is related to the Bank’s portfolio to ensure, among other things, that the collections are being collected and preserved. Some degree of control may be appropriate but it should be limited to reflect the interim nature of the receiver’s appointment.
77. I also do not think it is appropriate, or necessary given my finding above, for the interim receiver to be permitted to borrow funds to pay its reasonable fees and disbursements. The parties should further discuss payment of the interim receiver’s fees. I note that the Companies have, up to the time of the notice of termination, paid the Bank’s legal fees and professional fees incurred including those of KPMG.
78. There was also insufficient information available to counsel at the hearing to properly delineate the terms of the draft Order to ensure that the interim receiver does not interfere or take control of any assets that are subject to the Companies’ broader operations that are unrelated to their agreements with the Banks.
79. With respect to the term of the interim receiver’s appointment, I agree with the Bank’s proposed duration being the earliest of August 12, 2026 (one month from the original hearing date of the motion) or such other date that the parties may agree to.
80. The motion is granted. The parties shall have further discussions to revise the draft Order to address the issues set out above. The revised draft Order, if on consent, may be emailed to my judicial assistant for review and signature. If the parties cannot settle the terms of the revised draft Order by July 27th, they may request a short conference before me to settle the order.
81. Subject to my availability, the matter should also be returned before me given my familiarity with the issues.

Date July 23, 2026

Madame Justice K. Perron