

**CITATION: THE LAWRENCE PHOENIX INC. v. 2531961 ONTARIO INC.
and MELANIA AGUSTIN, 2026 ONSC 5043
COURT FILE NO.: CL-26-00000313-0000
DATE: 20260903**

**SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)**

**APPLICATION UNDER SUBSECTION 243(1) OF *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C., 1985, C. B-3, AS AMENDED, AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990,
C. C.43, AS AMENDED**

RE: THE LAWRENCE PHOENIX INC., Applicant

AND

2531961 ONTARIO INC. and MELANIA AGUSTIN, Respondents

BEFORE: W.D. Black J.

COUNSEL: *Sharon Kour and Gabrielle Schachter*, for the Applicant

Trent Morris, for the Respondents

George Benchetrit, for the Proposed Receiver

Darren Frank, for Consortia Equity Capital Ltd.

HEARD: August 31, 2026

ENDORSEMENT

Overview

- [1] This application concerns a somewhat unusual set of circumstances in which the Applicant, (in this endorsement I will use this and other terms as defined in the parties' materials), seeks the appointment of AlixPartners as Receiver over the assets, properties and undertakings of the Debtor, including the Real Property, seeks approval of the proposed Sale Process, and other related and ancillary relief.

- [2] What makes these (otherwise familiar) requests somewhat unusual is the procedural backdrop against which the current relief is sought. In particular, on August 24, 2023, RBC commenced receivership proceedings against the Debtor (and against Ms. Augustin and Mr. Smith in their capacities as guarantors), in respect of the same assets, properties and undertakings of the Debtor, and obtained an order on February 29, 2024, appointing FLG as the RBC Receiver. As such, the order sought before me, if granted, will be the second receivership order within these proceedings. The respondent raises various objections to this second receivership order being made.

Relevant Aspects of Procedural History

- [3] The Applicant alleges, fairly having regard to the record in these proceedings, that the RBC Receivership was characterized by delays and obstruction on the part of the RBC Respondents. It is certainly the case that this court was called upon to intervene to facilitate various steps proposed by the RBC Receiver, including evicting certain tenants for non-payment of rents, and accessing the Real Property in circumstances in which there were serious issues identified about the condition of the Real Property and the buildings thereon.
- [4] In addition to obstructing, and (ultimately unsuccessfully) opposing the RBC Receiver's efforts to access the Real Property, the RBC Respondents also periodically purported that they wished to refinance and redeem the Real Property. Despite various opportunities to do so, the RBC Respondents have yet to turn up with funds to take out RBC's (or subsequently the Applicant)'s position.
- [5] While it appears to be a matter of consensus that RBC's expectation was that the RBC Receivership would lead to a sale of the Real Property (and related relief), RBC instead determined, based in particular on an environmental remediation proposal that it obtained in April of 2025, that the estimated costs of clean-up undermined (or at least severely attenuated) the prospects for a cost-efficient realization on the Real Property, and that the risks of being associated with the sale of a contaminated property were also problematic from the bank's perspective.
- [6] In the circumstances, RBC reconsidered its plans and sought and obtained the discharge of the RBC Receiver by (my) order dated May 11, 2026.
- [7] In its materials filed relative to the discharge hearing, RBC's evidence was that:
- (a) The scope and extent of the environmental remediation of the Real Property was not anticipated by RBC when the Receivership Application was commenced; and
 - (b) RBC did not believe that it was economically feasible to complete a proper environmental remediation of the Real Property and therefore did not wish to be associated with any sales process for environmentally contaminated property.
- [8] The uncontested evidence before me is that, since the time that RBC made formal demands for repayment of the amounts owing under the 253 Credit Agreement and the 253

Guarantee, in July and August of 2023, the Debtor has made no payments, either to RBC or, since the execution of the Assignment Agreement on June 5, 2026, to the Applicant.

- [9] In connection with the Assignment Agreement, following the termination of the RBC Receivership proceedings, RBC assigned certain security and indebtedness to the Applicant, including the 253 GSA, the \$15.2 million Collateral Charge, and the \$1 million 253 Guarantee in respect of amounts borrowed by TNT International Leasing Inc., as well as the Assigned Indebtedness (totaling approximately \$13.7 million). RBC did not assign approximately \$2 million of the amount owing under the 253 Credit Agreement, and also retained as security a \$3.55 million personal guarantee given by Ms. Augustin and Mr. Smith, jointly and severally, under the 253 Credit Agreement (in respect of which, I am advised, there are separate proceedings underway between and among RBC, the Debtor and Ms. Augustin).
- [10] The Applicant, after taking the assignment, issued its own repayment demands on June 19, 2026. In those demands the Applicant provided notice to the Debtor that it was the assignee of RBC's loans and security under the Assignment Agreement, and enclosed NITES under s. 244 of the BIA. The Applicant expressly advised that absent payment of the full amount of the indebtedness, it would commence enforcement proceedings.
- [11] The Debtor has not responded to the Demands and, as noted, has paid no amount in respect of the indebtedness. It has given no indication that it can or will satisfy the Outstanding Indebtedness, and, as set out above, has tried and failed on multiple occasions earlier in these proceedings to refinance and redeem the Real Property.

Grounds Asserted for Proposed Receivership

- [12] It is uncontested that, under the 253 GSA, the Applicant is entitled, in the event of default, to appoint a receiver over the Debtor's Collateral (as defined in the 253 GSA), including the Real Property legally or beneficially owned by the Debtor.
- [13] It is also uncontested – at least on the basis of any substantive evidence - that the Real Property is deteriorating. Based on recent assessments, the RBC Receiver had directed the remaining tenant (which operates a retail mattress store at the Real Property), to “cease all operations and vacate the leased premises” because “based on recent inspections and assessments, the building has been determined to be unsafe for continued occupancy and operations due to, among other things, roof failure and electrical hazards caused by water leaking from the roof.”
- [14] Despite these significant concerns, the tenant has yet to vacate the premises, and the Debtor has taken no steps to address the stated issues, such that there is currently an unacceptable situation in which there are concerns about the structural integrity of the roof of a building in which the tenant continues to operate a retail business involving would-be customers entering the premises on an ongoing basis. As reflected in the respondents' materials, it also appears that there are security issues at the Real Property.

- [15] The status of existing insurance policies is uncertain, including whether or not the policies cover all Real Property and are current, whether premiums have been paid, and whether the Applicant is identified as a loss payee in any policy.
- [16] To address these myriad concerns, the Applicant asserts that the proposed Receiver should be appointed “to take any and all steps necessary to preserve and protect the Real Property, including obtaining appropriate insurance coverage, addressing any and all safety and security concerns, and facilitate the marketing and sale of the Real Property under a Court-supervised process.”

The Respondents’ Evidence

- [17] In the respondents’ responding materials, there is really no attempt to address the Applicant’s assertions regarding the Outstanding Indebtedness, nor the safety and security concerns about the Real Property. Rather, in the affidavits of Ms. Augustin and Mr. Smith, the respondents point to recent events at the Real Property at which various unidentified persons (whom the respondents assume to have been representatives of the Applicant), have shown up at the Real Property threatening to change the locks, necessitating the police being called to the scene. In addition, there have been threatening calls (the details of which are not specified) that the respondents have received from unknown callers. As noted, if anything, these events underline the need for added security at the Real Property.
- [18] The respondents’ affidavits do not address the concerns about the structural integrity of the roof and the related safety issues related to a retail tenant continuing to occupy those premises. Ms. Augustin does, in her affidavit, take issue in a general way with the report obtained by RBC concerning environmental contamination, In that regard, Ms. Augustin says:
- “We are aware of other environmental assessments prepared by qualified environmental consultants which, in our understanding, materially differ from the environmental information relied upon by RBC in that they show no environmental contamination deeper than approximately sixteen feet which is immaterial for development considerations.”
- [19] I observe that Ms. Augustin does not identify the “qualified environmental consultants” who have purportedly reached materially different conclusions, and does not specify what those materially different conclusions were, except to say that those unknown consultants confirmed environmental contamination to a depth of 16 feet. Ms. Augustin asserts but does not explain (and so far as I am aware is not qualified to explain), how environmental contamination to a depth of 16 feet is “immaterial for development considerations.”
- [20] In short, the respondents’ evidence is general, largely in the nature of hearsay, and does not provide specific or really any appreciable evidence to counter the Applicant’s factual contentions.

The Respondents’ Arguments Opposing the Relief Sought

- [21] In their factum, the respondents raise two main grounds in opposition to the relief sought by the Applicant. While the respondents make other arguments, these other submissions are mostly intertwined with or subsumed within the two primary positions (with perhaps the exception of a single-paragraph suggestion that the transfer of the indebtedness achieved by way of the Assignment Agreement was somehow improvident. I note that this argument appears to have been raised by the respondents before Myers J. at a case conference a few weeks ago (on July 16, 2026), and dismissed out of hand – and persuasively – by His Honour. Justice Myers pointed out, and I agree, that the consideration paid for the assignment was “not a partial realization on the debt. The debt has been assigned at full face value. The debtors obtain no benefit by whatever haircut the bank took. The debtors did not pay anything”).

A. First Argument: A Second Receivership is not Just or Convenient

- [22] In terms of the two main positions on which the respondents focus in argument, first, they advance an argument that further receivership proceedings, generally, have not been recognized by the court to be a just or convenient means of protecting the interests of all parties, and that the attempt to bring further receivership proceedings here is in any event outside the relevant limitation period.
- [23] They also argue that in the particular circumstances of this case, there is reason to doubt the *bona fides* of the actions of at least RBC, and allege that RBC and the Applicant are “colluding in order to ensure that there is a deficiency,” such that, again, the relief sought by the Applicant cannot be construed as just or convenient.
- [24] This latter argument that RBC and the Applicant are colluding to create a deficiency is not supported by any direct or specific evidence. Moreover, it makes no sense to me. As Applicant’s counsel pointed out, there would seem to be no incentive for a creditor, in the course of seeking to realize on its security, to drive down the value of the collateral on which it seeks to realize. Without evidence or any obvious rationale, I reject this argument summarily.
- [25] The arguments about the suggested prohibition against a further receivership find their origins in the decision of Morawetz CJC, as he then was, in *West Face Capital Inc. v. Chieftain Metals Inc.*, 2020 ONSC 5161.
- [26] In that case, His Honour was dealing with a receivership in which Grant Thornton Limited (“GTL”), as receiver, sought, among other relief, a provision for “the possible revival of the Receivership and the re-appointment of GTL as Receiver of the Companies in the Receivership Proceedings on the same terms as provided for in the Appointment Order...providing that, if the Re-Appointment Certificate is not filed with the Court within two years from the date of the Discharge Order, the Receivership Proceedings shall be terminated.”
- [27] In a “Revised Discharge Order” the operative proposed paragraph provided:

“[14] THIS COURT ORDERS that this Order, including the discharge of the Receiver as Receiver of the Property of Chieftain granted hereunder, shall be without prejudice to West Face’s right to bring a motion before this Honourable Court to seek the appointment of a receiver and/or manager of the Companies and the Property pursuant to section 243(1) of the [BIA] and section 101 of the [CJA] in the within receivership proceedings...and any such motion shall be served on [British Columbia].”

- [28] Chief Justice Morawetz noted that since the date of a recent report of the Receiver, there had been ongoing discussions among the Receiver, West Face, and various departments of the government of British Columbia leading to the proposed language in the Revised Discharge Order.
- [29] The Receiver had reported that, by late January 2020, there were no credible and interested parties willing to submit any bid or proposal on the relevant Project (the Tulsequah Mine Project) on terms acceptable to the Receiver and West Face, and that a draft Closure and Reclamation Plan for the Project had been finalized.
- [30] In a Supplementary Report, the Receiver had also reported that, with one remaining exception, all issues in the proposed Revised Discharge Order had been settled among the Receiver, West Face and the Province. The one unresolved concern related to the proposed language of paragraph 14 of the Revised Discharge Order set out above.
- [31] Chief Justice Morawetz was satisfied that the agreed relief was appropriate, and granted it.
- [32] With respect to the one remaining issue about the terms of paragraph 14, His Honour noted that the Receiver’s position was that it ought to be discharged at that time, since a continuing receivership, with its attendant costs and with no credible purchaser(s) on the horizon, would no longer be beneficial to the stakeholders of the Companies.
- [33] West Face agreed, and accepted the proposed language of paragraph 14.
- [34] The Province, for its part, wanted the language of paragraph 14 augmented to provide that if West Face failed to bring the motion to seek the appointment of a receiver/manager within two years of the date of the Revised Discharge Order, it would thereafter be precluded from doing so without first obtaining the Province’s written consent.
- [35] TRTFN, a First Nation, did not oppose the discharge of the Receiver, but took issue with the application of the proposed “without prejudice” provision.
- [36] In his analysis of the competing considerations, Morawetz CJC noted that in the vast majority of receivership proceedings, the discharge of the receiver is intended to bring finality to the receivership proceedings. However, His Honour observed, in certain circumstances there may be ancillary work that remains to be completed, such that in those cases, the discharge may be granted subject to finalization of outstanding work confirmed by the filing of a certificate. This kind of arrangement is in fact commonly contemplated

in orders discharging receivers. Chief Justice Morawetz emphasized that this was not the situation before him, in that a court-supervised sale transaction involving the Project – the prospect for which would be the trigger to reviving the Receivership - is the fundamental purpose of the Receivership Proceedings, and not ancillary.

- [37] His Honour observed that, in seeking to discontinue funding Receivership Proceedings, while at the same time “seeking to preserve a route to revive the Receivership Proceedings,” West Face was seeking extraordinary relief, and had the onus to justify it.
- [38] In that context, Morawetz CJC discussed the differences between a bankruptcy in which the assets of the bankrupt vest in the trustee and a receivership, in which there is no statutory vesting of assets in the receiver, and found West Face’s reliance on sections 40 and 41 (in Part XI of the BIA) relating to the discharge of a trustee and treatment of remaining assets, to be of limited assistance.
- [39] However, Morawetz CJC was satisfied that it was open to the court to consider terms in a discharge order that would provide for the re-appointment of a receiver in certain circumstances. In this regard, His Honour noted that the Court of Appeal for Ontario, in *Grand River Railway Co. Limited*, [1933] O.J. 151, specifically contemplated the re-appointment of a receiver. In addition, Morawetz CJC found no express provision in the BIA that would prevent the court from re-appointing a receiver.
- [40] His Honour tempered these observations with the proviso that the Province should not be faced with “an unlimited period of time of uncertainty”, and noted that there were environmental concerns with the project that would still have to be addressed.
- [41] After weighing these various considerations, Morawetz CJC concluded:

“In balancing the interests of the Receiver, the secured creditor West Face, the Province and TRTFN, I have concluded that the Receiver is to be discharged at this time, without prejudice to the right of West Face to bring a motion to seek the appointment of a receiver in these proceedings no later than August 11, 2022, this date being two years from the date of this hearing. This gives West Face time to assess its options.

I have also concluded that it is not appropriate, in the circumstances to include a provision that would potentially extend the timeline beyond August 11, 2022. To do so would just prolong a period of uncertainty that could be detrimental to the TRTFN and the Province. If circumstances are such that require this issue to be revisited on or before August 11, 2022, it is open to West Face to bring its motion in the Receivership Proceedings and, if reappointed, the Receiver can seek further direction from this court.”

- [42] I distill from *West Face* that it is open to the court, in appropriate circumstances, to order a re-appointment of a receiver. It follows, contrary to the respondents’ submission, that a

conclusion that such re-appointment would necessarily fail to satisfy the criteria of “just or convenient”, is not apt.

- [43] While the circumstances in which such a request might arise will, I expect, be relatively few and far between, I see no principled reason why, if an applicant justifies the request, the court ought to reflexively reject it.
- [44] I also note that in this court’s decision in *Environmental Waterproofing Inc. v. Huron Tract Holdings Inc.*, 2023 ONSC 405, Nicholson J. observed not only that *West Face* confirms the court’s jurisdiction to re-appoint a receiver where appropriate, but also that, contrary to another of the respondents’ submissions, it is not necessary that the original discharge order expressly preserve that possibility. This is because, as His Honour explained, the discharge of a receiver does not generally terminate a secured creditor’s underlying security interest or its available enforcement rights.
- [45] In other words, the court always retains the jurisdiction and discretion to re-appoint a receiver, depending on the circumstances and the interests at issue.
- [46] In my view, in the circumstances at hand, the Applicant’s request to appoint AlixPartners as Receiver is reasonable, just and convenient.

Conclusion that the Applicant Retains the Right to Appoint a Receiver

- [47] First, there is no question that the Applicant has the right under its security to appoint a Receiver.
- [48] While it is true, as the respondents assert, that the Applicant does not come forward with a comprehensive environmental remediation plan, I do not believe it is incumbent on the Applicant to do so. The condition of the Real Property will, I expect, be transparently disclosed in the proposed court-supervised sale process, and buyers can consider and account for not only environmental remediation, but also the evident requirement for substantial repairs to the structures on the property, including in particular, to the roof of the building in which the mattress business had been operating. As is always the case, any proposed transaction emerging from the sale process (or otherwise), will be carefully considered by the court, with the assistance and recommendation(s) of the Receiver, and the court will not be inclined to approve a transaction that perpetuates environmental contamination or risk, or is otherwise not in the best interests of stakeholders.
- [49] Moreover, apart from (yet again) complaining about aspects of the proceeding and the proposed further receivership, the respondents offer no constructive solutions or even suggestions as to how to deal with the Property in the absence of a sales process.
- [50] It is evident that the respondents continue to harbour a wish to redeem or purchase the Real Property, and in my view, there is no reason why they cannot submit a bid within the proposed sale process to do so. Indeed, given their direct and intimate knowledge of the

Real Property, the respondents should be well-positioned to make an informed purchase proposal (whether styled as a redemption or otherwise).

- [51] It is not in my view desirable that, owing to the respondents' nonspecific and insubstantial allegations, a potential process to sell the Real Property and other assets be derailed or delayed; in general and specifically in this case, it is in the interest of all concerned that the properties at issue be exposed to the market in the relatively near term and, hopefully, sold.
- [52] The proposed receivership is also desirable having regard to the safety and security concerns, described above, arising in relation to the Real Property. The circumstances are essentially crying out for a court officer to take control, and to approach those issues and the potential sale in an orderly, structured and accountable fashion.

B. Respondents' Second Argument, re Statutory Limitation

- [53] I also find no merit to the respondents' argument that the Applicant's proposed receivership is statute-barred.
- [54] As noted, the respondents have acknowledged their mortgage debts throughout the first receivership proceeding, and since. The acknowledgement of debt can in certain circumstances serve to refresh any applicable limitation period (see, e.g. *Bank of Nova Scotia v. Reed*, 2025 ONCA 445).
- [55] Moreover, while in my view the proceeding would thus not be barred in any event under the *Limitations Act*, 2002, I find that the relevant limitation here is the 10-year limitation under s. 43(1) of the *Real Property Limitations Act*, RSO 1990 c.L.15 (RPLA).
- [56] As a general proposition, proceedings relating to enforcement over real property are governed by the RPLA and not the *Limitations Act*, 2002.
- [57] Section 43(1) of the RPLA provides a 10-year limitation period for an action on a covenant in a mortgage instrument to repay money secured by a mortgage. Section 23(1) of the RPLA separately establishes a 10-year limitation period for an action to recover out of land a sum secured by a mortgage or lien.
- [58] The Applicant argues, and I agree, that the Applicant's claim falls under the RPLA on either basis. The receivership application is, at its core, a mortgage enforcement proceeding directed to the preservation, management and realization of the mortgaged collateral. It is not a free-standing claim on an unsecured obligation or a claim for damages.
- [59] The Applicant relies on the Court of Appeal for Ontario's decision in *The Equitable Trust Company v. Marsig et al.*, 2012 ONCA 235, for the related proposition that the RPLA applies to the enforcement of a guarantee of a mortgage instrument, notwithstanding the guarantor's argument that the guarantee was a demand obligation subject to the two-year limitation under the *Limitations Act*, 2002.

[60] Even where real property has been disposed of, as it is expected will likely occur here, such that at that stage there will be no real property to enforce against, courts have confirmed that the RPLA nonetheless applies (see *1250140 Ontario Inc. v. Bader*, 2022 ONCA 197, and *Mikhailova v. Dabic*, 2025 ONSC 7201).

Final Conclusion

[61] In the circumstances, and having rejected the various positions asserted by the respondents, I find that it remains just and convenient to grant the relief sought by the Applicant and to appoint AlixPartners as Receiver. I also find that the proposed Sale Process is reasonable and appropriate, and that there is no evidence before me to suggest that the Sale Process is in any way problematic, and I grant that relief as well.

W.D. BLACK J.

DATE: SEPTEMBER 3, 2026