

CITATION: Mitsubishi HC Capital Canada Inc. v. Ribs Transport Inc., 2025 ONSC 3066
COURT FILE NO.: CV-25-00000262-0000
DATE: 2025-05-22

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Mitsubishi HC Capital Canada, Inc., Applicant

AND:

Ribs Transport Inc., Respondent

BEFORE: Kurz J.

COUNSEL: Gina Rhodes, for the Applicant

Olubunmi Ogunniyi, for the Respondent

HEARD: April 29, 2025

ENDORSEMENT

Introduction

[1] The Applicant, Mitsubishi HC Capital Canada, Inc. (“Mitsubishi”), applies for the appointment of a receiver over the undertaking and property of the Respondent, Ribs Transport Inc. (“Ribs”). It brings this application pursuant to s. 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “BIA”) and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, s. C43 (“CJA”). Mitsubishi asks the court to appoint BDO Canada Limited as the receiver, without security.

[2] Mitsubishi argues that Ribs is in default of a \$1.5 million financing credit agreement between the parties, dated March 22, 2023, which has been subsequently supplemented, replaced or extended (the “Credit Agreement”). Ishant Pajni (“Pajni”), the sole director of Ribs, signed an unlimited guarantee for the payment of the amounts which Ribs owes to Mitsubishi under the Credit Agreement. That guarantee is not the subject of this proceeding.

[3] Mitsubishi says that Ribs fell into default of the Credit agreement on April 26, 2024, when it defaulted on payments due under the Credit Agreement and failed to meet

its reporting terms. That day, Mitsubishi delivered a demand notice of notice of intention to enforce security to Ribs under s. 244 of the *BIA*.

[4] On June 14, 2024, the parties entered into a settlement agreement (the “First Settlement Agreement”). Among the terms of the First Settlement Agreement were the following:

- a. Ribs acknowledged its default under the Credit Agreement;
- b. Acknowledged that Mitsubishi was free to enforce its security without further notice to Ribs or its principal, Pajni;
- c. Agreed to make specific payments to Mitsubishi;
- d. Agreed to specific reporting requirements towards Mitsubishi; and
- e. Agreed to pay the entire indebtedness under the Credit Agreement by September 30, 2024.

[5] As part of the First Settlement Agreement, Ribs executed a consent to a receivership order similar to the one being sought in this motion.

[6] On September 17, 2024 Ribs missed a weekly payment required under the First Settlement Agreement. It also failed to repay its entire indebtedness by September 30, 2024. Mitsubishi also states that Ribs failed in its reporting obligations.

[7] However, Mitsubishi did not seek the appointment of a receiver at that time. Instead, on October 3, 2024 it entered into an amended settlement agreement with Ribs (the “Amended Settlement Agreement”). Under the terms of that amended agreement, the parties agreed to, among other things, (a) extend the weekly payment schedule established in the First Settlement Agreement; and (b) extend the deadline for Ribs’ payment in full of its entire indebtedness to Mitsubishi to December 2, 2024.

[8] Ribs missed some weekly payments in November 2024 and failed to repay its entire indebtedness by December 2, 2024.

[9] On January 16, 2025, Mitsubishi brought this application. In it, Mitsubishi argues that it is concerned about its security and financial position as the first secured creditor of Ribs. It asserts that the appointment of a receiver is “essential to collect and realize on the [undertaking and personal property of Ribs]” for the benefit of itself and Ribs’ other stakeholders.

[10] Ribs opposes this application. It points out, without contradiction, that it has made payments totalling \$432,000 to Mitsubishi in the ten months prior to the argument of this application on April 29, 2025. It further relies on the agreement between the parties dated March 21, 2025 (the “Second Settlement Agreement”) and its adherence to that agreement as a full answer to this application. I set out the full terms of the Second Settlement Agreement and the steps which led to its execution below.

The Second Settlement Agreement

[11] The parties appeared before Chozik J. on January 22, 2025 for what turned out to be a contested adjournment. The hearing was scheduled on a regular (i.e. less than one hour) motion list. Ribs requested a brief adjournment in order to allow it to finalize financing which would allow it to pay its entire debt to Mitsubishi. Mitsubishi opposed the adjournment. Chozik J. found that Mitsubishi would not be prejudiced by the adjournment. She pointed out that Ribs had made approximately \$300,000 in payments since default. She also noted that this matter should not have been heard on a regular motion list. For those reasons, Chozik J. adjourned it to triage court to set a long motion date. On February 27, 2025, Coats J., sitting in triage court, set April 29, 2025, for two hours, to hear this application.

[12] Communications between the parties’ counsel continued after the attendance at triage court. The key area of their communication was Ribs’ attempt to refinance its debt with the Royal Bank of Canada (“RBC”). However, the only independent evidence which Ribs was able to supply to Mitsubishi regarding that refinancing attempt was an email from Balasubramaniam Chidambaram, Manager Commercial Financial Services, York

East Supply Chain, of RBC, dated January 17, 2025. In that email, Mr. Chidambaram wrote to Pajni, Ribs' principal:

I am writing to provide an update on your credit request. Please be assured that we are actively working on it, and it is currently under review by our Risk Management team. As part of their process, they are conducting a thorough risk assessment and due diligence to ensure all aspects of the request are carefully evaluated.

While these steps are essential and may require some time, we are committed to keeping the process on track. Tentatively, we are aiming to close the entire process by the last week of February, subject to final approval from the Risk Management team.

[13] On March 21, 2025 at 11:44 a.m., counsel for Ribs, Olubunmi Ogyన్నిyi, emailed counsel for Mitsubishi, Gina Rhodes, in contemplation of an upcoming telephone call, proposing terms of an agreement between the parties. The terms of that letter, which, with one amendment, formed an agreement between the parties, are very important to the determination of this application. They are reproduced below, with Mr. Ogyన్నిyi's explanatory comments to Ms. Rhodes included:

Gina,

Hope all is Well.

I am available anytime from 1:00p.m.

In contemplation of our Telephone Conference, below is my Client's Settlement Offer:

1. Payment in the amount of \$100,000 to Mitsubishi, received on or before March 21, 2025.

Gina: My client is in a position to forward this amount today upon our agreement today.

2. Weekly payments in the amount of \$7,000 each Friday beginning on March 21, 2025 until the repayment of the total amounts owing to Mitsubishi under the Credit Agreement.

3. As a condition of the within Settlement, Ribs will provide ongoing updates to Mitsubishi as to its refinancing efforts with RSC [sic]. This includes, but is not limited to, a conference among RSC [sic], Ribs and Mitsubishi by no later than March 25, 2025.

Gina: The rationale for this condition is that Mitsubishi can unilaterally refuse that Ribs' refinancing is not to its "satisfaction" no matter what Ribs presents.

This would be an albatross hanging over Ribs. Such an uncertainty will stunt Ribs' growth and impede its ability for any future expansion or growth.

4. As long as Ribs complies with items 1 and 2 above, Mitsubishi shall vacate its Receivership Application without prejudice to its right to reinstate the said Receivership Application upon sufficient Notice being provided to Ribs.

5. In the event of Mitsubishi's reinstatement of its Receivership Application, Ribs foregoes its right to cross- examinations.

6. If Ribs defaults with respect to Paragraphs 1 and 2 prior to the April 29, 2025 Receivership Application, Mitsubishi reserves the right to proceed with the said Application.

[14] Approximately 3 ½ hours later, at 3:29 P.M., Ms. Rhodes responded. She confirmed that her client agreed to the terms of Mr. Ogynniyi's offer on behalf of Ribs, that morning, with one "minor change". Her email stated:

Hi Olu,

We have instructions from our client to accept your client's offer, with one minor change to number 4, below.

4. As long as Ribs complies with items 1 and 2 above, Mitsubishi shall adjourn its Receivership Application sine die, and shall have the right to seek an urgent date for the Receivership Application upon Notice being provided to Ribs.

Per the parties' agreement, please have your client forward a total of \$107,000 to Mitsubishi today, and provide confirmation of payment as soon as possible. If such payment is not made or received by Mitsubishi, it will be a breach of the parties' agreement and our client reserves all rights, including moving forward with the receivership application on April 29, 2025.

[15] Ribs accepted that amendment to the terms of its offer. The terms of that offer, as amended by Ms. Rhodes' response, formed what I describe as the Second Settlement Agreement. Ribs forwarded the \$107,000 to Mitsubishi and has continued the \$7,000 weekly payments called for in the Second Settlement Agreement.

[16] However, Mitsubishi did not adjourn this application *sine die*. It asserts that Ribs violated the terms of the Second Settlement Agreement by failing to provide, per the agreement, "ongoing updates to Mitsubishi as to its refinancing efforts with RBC. This includes, but is not limited to, a conference among RBC, Ribs and Mitsubishi by no later than March 25, 2025." Mitsubishi's prime concern in that regard is that Ribs failed to arrange a conference among RBC, Ribs and Mitsubishi by March 25, 2025.

[17] The correspondence between the parties showed some gaps in Ribs' responses to Mitsubishi but also Mitsubishi insisting on an in-person meeting with an RBC representative, a condition which RBC was not willing to accept. That refusal is not surprising as RBC is not a party to this proceeding or any agreement between the parties.

[18] However, a telephone conference between Panji for Ribs, Samuel Leblond, senior credit analyst and portfolio manager at Mitsubishi and Mr. Chidambaram of RBC, did take place. It occurred on April 28, 2025, the day before this application was heard. There is some dispute between the parties as to what Mr. Chidambaram had to say during the call. However, there is no dispute that Ribs made an application to RBC for credit of at least \$1 million and that RBC is still considering the request. There is also no dispute that RBC is awaiting Ribs' 2024 financial documents before making its decision. I have not been advised whether those documents have yet been provided to RBC.

Applicable Law

Appointment of a Receiver

[19] Both *BIA* s. 243(1) and *CJA* s. 101 grant the court broad discretion to appoint a receiver where it is just or convenient to do so. Those provisions read as follows:

BIA s. 243(1):

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

CJA s. 101:

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

[20] In deciding whether to appoint a receiver, the court must consider all of the circumstances. But in particular, the court must consider:

- 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;
- It is not essential that the moving party, a secured creditor, establish that it will suffer irreparable harm if a receiver-manager is not appointed.

Bank of Nova Scotia v. Freure Village on Clair Creek (1996), 40 C.B.R. (3d) 274, at para. 10, cited with approval in *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007, at para 24.

[21] While the appointment of a receiver is an extraordinary remedy, that factor is “significantly reduced when dealing with a secured creditor who has the right to a receivership under its security arrangements”: *BCIMC Construction Fund Corp. v. Clover on Yonge Inc.*, 2020 ONSC 1953, at para. 43.

[22] Four other factors that a court may consider regarding the appointment of a receiver are:

- (a) The lenders' security is at risk of deteriorating;
- (b) There is a need to stabilize and preserve the debtors' business;
- (c) Loss of confidence in the debtors' management;
- (d) Positions and interests of other creditors.

Clover on Yonge, at para. 45, citing *Confederation Life Insurance Co. v. Double Y Holdings Inc.*, 1991 CarswellOnt 1511 (Ont. S.C.J. (Commercial List) at paras. 19-24.

[23] The various factors for the court’s consideration 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, as cited in *RBC v. 2531961 Ontario Inc. et al.*, 2024 ONSC 1272, at para. 13.

Contractual Interpretation

[24] In *Weyerhaeuser Co. v. Ontario (Attorney General)*, 2017 ONCA 1007, at para 64 – 65, D.M. Brown J.A., writing for the Court of Appeal for Ontario, summarized the general principles which apply to the interpretation of a contract. Those principles follow the decision of the Supreme Court of Canada in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53. Brown J.A. wrote:

64 The overriding objective of contractual interpretation is to determine "the intent of the parties and the scope of their understanding": *Sattva*, at para. 47.

65 The general principles guiding adjudicators about "how" to interpret a commercial contract were summarized in *Sattva*, at para. 47, and by this court in two 2007 decisions - *Ventas, Inc. v. Sunrise Senior Living Real Estate Investment Trust*, 2007 ONCA 205, 85 O.R. (3d) 254, at para. 24, and *Dumbrell v. The Regional Group of Companies Inc.*, 2007 ONCA 59, 85 O.R. (3d) 616, at paras. 52-56. When interpreting a contract, an adjudicator should:

- i. determine the intention of the parties in accordance with the language they have used in the written document, based upon the "cardinal presumption" that they have intended what they have said;
- ii. read the text of the written agreement as a whole, giving the words used their ordinary and grammatical meaning, in a manner that gives meaning to all of its terms and avoids an interpretation that would render one or more of its terms ineffective;
- iii. read the contract in the context of the surrounding circumstances known to the parties at the time of the formation of the contract. The surrounding circumstances, or factual matrix, include facts that were known or reasonably capable of being known by the parties when they entered into the written agreement, such as facts concerning the genesis of the agreement, its purpose, and the commercial context in which the agreement was made. However, the factual matrix cannot include evidence about the subjective intention of the parties; and
- iv. read the text in a fashion that accords with sound commercial principles and good business sense, avoiding a commercially absurd result, objectively assessed.

[25] At para. 67 of *Weyerhaeuser*, Brown J.A. warned of the risks of an overreliance on the factual matrix of contract formation leading to a deviation from the actual text of a contract, writing:

67 But, there are limits to the use of evidence about the factual matrix. While such evidence assists in understanding the meaning of the words chosen by the parties, it is the written contract that expresses the parties' deal. As the Supreme Court continued in *Sattva*, at para. 57:

While the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement ... While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement...

Analysis

[26] Mitsubishi argues that the First Settlement Agreement grants it the right to appoint a receiver upon default. Ribs even signed a consent to such an appointment. Mitsubishi points to other agreements signed by Ribs, including a general security agreement, credit agreement and a factoring agreement, which give it the right to deal with collateral from Ribs in the event of default. It says that Ribs is clearly in default of all of the agreements it has signed with Mitsubishi. It says that Ribs was indebted to it for \$1,338,437.81, exclusive of interest and fees as of February 2024.

[27] Mitsubishi adds that it has completely lost confidence in the management of Ribs because of its failure to honour its various agreements or to offer clarity about its attempts to refinance its debt to Mitsubishi. It says that it finally ran out of patience with Ribs when it defaulted on the repayments of its total indebtedness on December 2, 2024, as required under the Amended Settlement Agreement.

[28] Ribs responds that the Second Settlement Agreement is binding and supersedes its previous agreements with Mitsubishi. It has not defaulted under that agreement. While it had difficulty arranging a conference that included RBC and Mitsubishi to speak to the progress of its application for credit, some of the fault for the inability falls at the feet of Mitsubishi, which has insisted on an in-person meeting with a bank representative, who may have no interest in such an in-person meeting with a creditor of a corporation applying for credit. The meeting did take place, by telephone, on April 28, 2025. Even from the varying accounts of the parties, I accept that RBC is still considering Ribs' application for credit.

[29] Mitsubishi replies that the Second Settlement Agreement was intended as a short-term one, even though its wording does not support that reading. Mitsubishi argues

that would make no commercial sense for it to accept those terms as anything but the terms of an adjournment. It would take years for Ribs to repay the full amount owing, including interest and fees, at the rate of \$7,000 per month.

[30] As set out above, the appointment of a receiver is a discretionary decision. I am required to take a holistic approach to the decision. Based on the evidence that I have been presented with, I do not find that the appointment of a receiver at this time is just or convenient. I say this for the reasons that follow.

[31] First, I find that the Second Settlement Agreement is binding on the parties. I do not find it to be limited in the manner suggested by Mitsubishi. The email offer from Mr. Ogunniyi made no reference to any time limit. Rather, he described his proposal as his client's "settlement offer". It called at para. 1 and 2 for an immediate payment of \$107,000 and further payments of \$7,000 per week. That settlement offer included item 4, which set out the following term:

As long as Ribs complies with items 1 and 2 above, Mitsubishi shall vacate its Receivership Application without prejudice to its right to reinstate the said Receivership Application upon sufficient Notice being provided to Ribs.

[32] Mitsubishi's counsel stated that she was instructed to accept the offer with only one "minor" caveat. Item 4 of the offer would be changed to say that if Ribs complies with items and 1 and 2, Mitsubishi will adjourn its receivership application *sine die*, rather than vacate it. Mitsubishi would still retain the right to seek an urgent date for the Receivership Application upon notice being provided to Ribs. That term was accepted by Ribs.

[33] I see no reason to find that the Second Settlement Agreement is anything but binding on the parties. Its wording is plain and straightforward. It was negotiated by the lawyers for two sophisticated parties, and particularly, Mitsubishi. That being the case, the previous agreements between the parties, with regard to the appointment of a receiver, are superseded by the Second Settlement Agreement.

[34] Second, I find that Ribs has substantially complied with the Second Settlement Agreement. It has made all of the payments set out at items 1 and 2 of that agreement.

Even though the telephone conference between a Mitsubishi representative and one from RBC came just over a month late, as set out above, the tardiness of that meeting was not entirely Ribs' fault.

[35] Third, and related to my second reason, Ribs has made payments totalling \$432,000 to Mitsubishi in the ten months prior to the argument of this application on April 29, 2025. Those payments demonstrate that Ribs remains a viable business, which remains capable of meeting the terms of the Second Settlement Agreement. If a receiver were appointed there is a reasonable risk that the business would no longer remain a viable business. Rather, its assets would be sold off, likely at a discount, and at great expense. Viewing the situation holistically, I do not see that result as being just or convenient.

Conclusion

[36] For all of the reasons set out above, I do not find that it would be just or convenient at this time to appoint a receiver for Ribs, as requested by Mitsubishi.

[37] Rather, in accord with the Second Settlement Agreement, I adjourn this application *sine die*, returnable before me upon 14 days notice upon breach of the Second Settlement Agreement. If I am not available, another justice of this court may hear the return of this application.

[38] In making that order, I am aware that at the beginning of the argument of this application, the question of an adjournment arose. Mitsubishi even filed a supplementary factum (without leave) dealing in large measure with the reasons it was opposing an adjournment. In response, counsel for Ribs indicated that he was not requesting an adjournment of the application that day. Rather, he was asking that the request for a receiver be dismissed, based on the terms of the Second Settlement Agreement. Thus, argument proceeded.

[39] As I understood it, the issue of an adjournment was whether Ribs would be requesting a further adjournment, similar to the one it requested before Chozik J., in order

to respond to last minute filings on behalf of Mitsubishi. It was not whether the terms of the Second Settlement Agreement should be enforced in order to adjourn this application *sine die*. However, in order to give effect to that binding agreement, I grant the remedy which it contemplated.

Costs

[40] Even though I have adjourned this application *sine die*, it is appropriate to determine the costs of the application to date, particularly regarding the argument of the application on April 29, 2025.

[41] The parties should attempt to resolve the issue of costs on their own. If they are unable to do so, they may submit their costs submissions of no more than two pages, double spaced, one-inch margins. As Ribs was the more successful party before me, it shall serve and file its costs submission, along with costs outline and any offers to settle within ten days of the release of these reasons. Mitsubishi may respond within a further ten days. If I do not hear from the parties within the time allotted above, I will assume that the parties have settled the issue between themselves and make no order.

Kurz J.

Date: May 22, 2025