

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Bank of Nova Scotia v. Sidhu*,  
2025 BCSC 1344

Date: 20250715  
Docket: 253673  
Registry: Vancouver

Between:

**The Bank of Nova Scotia**

Petitioner

And

**Evergreen Future Investments (2016) Inc., Amcco Carrier Ltd., Never Delay  
Service Transport Inc., Gurpreet Singh Sidhu, Harinderpal Singh Sidhu,  
Athabasca Farms Ltd., Harjit Kaur Sidhu, and Kanwaljit Kaur Sidhu**

Respondents

Before: The Honourable Justice Loo

## Reasons for Judgment

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Place and Date of Hearing:

Vancouver, B.C.  
July 8, 2025

Place and Date of Judgment:

Vancouver, B.C.  
July 15, 2025

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**Introduction**

[1] This is an application advanced by the petitioner, Bank of Nova Scotia, for an order appointing Ernst & Young Inc. as receiver manager of certain property owned by the respondents.

[2] In 2023 and 2024, the bank and the respondents entered into a loan agreement, under which mortgages and general security agreements (GSAs) were made in favour of the bank.

[3] The respondents include Evergreen Future Investments (2016) Ltd. and Athabasca Farms Ltd., which own blueberry farms, and Amcco Carrier Ltd., which is a trucking company. The corporate respondents are borrowers under the loan agreement, and the individual respondents are guarantors.

[4] The petitioner is a secured creditor of each of the borrowers and guarantors, including under the mortgages and the GSAs. The properties subject to the bank's security include four farm properties described in the materials as "King Road," "264<sup>th</sup> St," "224<sup>th</sup> St," and "Bateman Road" (collectively, the "farm properties"), and two residential properties owned by the guarantors (collectively, the "residential properties").

[5] It is not contested that the respondents are in default under the loan agreement. Among other defaults, the respondents failed to pay the bank the amount owed under the loan agreement when that amount became due on October 31, 2024.

[6] As of June 20, 2025, the balance of principal and interest due and owing by the borrowers pursuant to the loan agreement and secured by the mortgages and the GSAs was \$19,325,271.65. Interest is accruing pursuant to the loan agreement at the rate of \$1,591.19 per day, subject to fluctuations in the petitioner's prime rate of interest and the interest compounding provisions of the loan agreement.

### Legal framework

[7] Section 39(1) of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 [*LEA*], authorizes the appointment of a receiver if it “appears to the court to be just or convenient that the order should be made.” The petition also seeks relief under s. 243(a) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, but the parties made no submissions regarding the respondents’ insolvency, and so I will consider this petition to be advanced only under the *LEA*.

[8] The factors to be considered when determining whether it is appropriate to appoint a receiver are well-established. In *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 [*Maple Trade*], this Court cited *Bennett on Receivership, 2d ed.* (Toronto: Carswell, 1999), at 130, for a list of such factors:

[25] ...

- a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
- b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
- c) the nature of the property;
- d) the apprehended or actual waste of the debtor's assets;
- e) the preservation and protection of the property pending judicial resolution;
- f) the balance of convenience to the parties;
- g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
- i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
- j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its' duties more efficiently;
- k) the effect of the order upon the parties;
- l) the conduct of the parties;
- m) the length of time that a receiver may be in place;
- n) the cost to the parties;

- o) the likelihood of maximizing return to the parties;
- p) the goal of facilitating the duties of the receiver.

[9] These factors are not a checklist but a collection of considerations to be viewed holistically in an assessment as to whether, in all of 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.

[10] When considering the appointment of a receiver over real property, it is also necessary to consider the law regarding foreclosure and the respondents' equity of redemption. On those issues, I find the decision of Justice Fitzpatrick in *Bank of Montreal v Haro-Thurlow Street Project Limited Partnership*, 2024 BCSC 47 [*"Haro"*] to be of assistance.

[11] In that case, the respondents to an application for the appointment of a receiver argued that by seeking the appointment of a receiver, the bank was attempting to do an "end run" around the usual foreclosure practice to defeat their equity of redemption. The respondents in this case advance similar arguments, submitting that the appointment of a receiver with an immediate power to market and sell the properties and companies would deprive them of what would typically be a six-month redemption period from the date of the first foreclosure application.

[12] In *Haro*, following a comprehensive review of the authorities, Justice Fitzpatrick stated:

[95] ... As many cases illustrate, even within a foreclosure, receivership appointments may be sought. A secured creditor is entitled to elect the means by which the security will be enforced, as provided in the Credit Agreement, subject of course to the Court granting any relief sought from it.

...

[101] In my view, the above case authorities support the proposition that the Court should consider the debtor's equity of redemption in terms of whether a receiver will be appointed and, if so, whether that receiver will be granted the power of sale and when. Such a consideration is clearly relevant to the question as to whether any such appointment and power is "just or convenient", again having regard to the nature of the relief sought. In addition, a consideration of any equity of redemption also comes within the *Maple Trade* factors - factor (k) - in relation to the "effect of the order upon the parties".

[102] I respectfully agree with the comments of Justice Gomery in *Kruger v. Wild Goose Vintners Inc.*, 2021 BCSC 1406 emphasizing that procedures in receivership, perhaps more so than in foreclosures, are flexible. This is consistent with the needs and often complexity of insolvency scenarios which require consideration of many factors. ...

[103] Seen in that light, and recognizing that an equity of redemption exists, even in a receivership, the true issue in that event is what amount of time should be afforded to the Borrowers and/or Forseed to redeem BMO's mortgage, in the context of whether BMO has established sufficient factors to justify whatever period of time is sought. Again, that will be a decision of the Court taking all of the circumstances into account.

[Emphasis added.]

### **Application of legal principles**

#### **Issues**

[13] There are two broad issues to be dealt with on this petition.

[14] The first question is whether it is just or convenient to appoint a receiver.

[15] If that first question is answered in the affirmative, the Court must determine what powers should be granted to the receiver and when should any sale powers be effective.

#### **Appointment of a receiver**

[16] It is not contested that the respondents are in default of their debt obligations to the petitioner and that the amount owing is substantial – in the order of \$20,000,000.

[17] The petitioner argues that it has provided opportunities to the respondents to resolve the defaults, but they have been unable to do so. They also argue that the general security agreements and the mortgages provide for the appointment of a receiver over the charged property upon an event of default and that the appointment of a receiver will “ensure that the value of the charged property is maximized to the benefit of all stakeholders.”

[18] On applications for the appointment of a receiver, one of the Court’s tasks is to assess the applicant’s financial risk. In this proceeding, as is often the case, the

evidence regarding the value of the properties and the amounts that might be realized by way of refinancing or sale are not entirely clear.

[19] The respondents cite evidence of appraisals conducted in 2022, 2023, and 2024 which value the four commercial properties at \$37,800,000 collectively.

[20] By contrast, the bank cites appraisals conducted on August 29, 2024, valuing the four commercial properties and the two residential properties together at \$26,720,000. In addition, it appears that in March 2025, the respondents proposed an auction of the commercial properties for which the suggested list prices for those properties would have totalled \$19,450,000 and the minimum auction bids would have totalled approximately \$15,500,000.

[21] The respondents note that although the bank's appraisal values the King Road property at \$3,750,000, a sale agreement has been signed for that property in the amount of \$4,850,000, with a vendor take back mortgage in the amount of \$1,150,000 to be assigned to the bank, resulting in a potential realization of \$3,700,000. That sale is scheduled to close on July 22, 2025. The respondents submit that the discrepancy between the bank's appraisal and the actual sales figure is some evidence that the bank's appraisals are low.

[22] The respondents also depose that a sale agreement has been made for the sale of the 264th Street property in the amount of \$5,500,000. Further, they proffer a signed refinancing term sheet from Glengarry Farm Finance Corporation offering to loan \$7,800,000 to the respondent, Gurpreet Singh Sidhu, and term sheets showing that certain parties are prepared to loan funds totalling \$3,953,400 in return for mortgages on the residential properties.

[23] The proceeds from the two potential sales and the three potential loan transactions described above total \$20,953,400. Mr. Sidhu describes these potential sales and loan transactions in his affidavit and deposes that "with the impending blueberry crop, I anticipate that there will be sufficient resources to pay the Petitioner in full in a matter of months."

[24] On the other hand, the bank submits that aside from the sale of the King Road property, which is set to close on July 22, 2025, the potential transactions described above are far from certain to occur.

[25] In particular, the respondents depose that the sale of the 264<sup>th</sup> St property is to close on September 28, 2025, but the purchase and sale agreement suggests that this date is contingent upon a fill permit being granted and may be otherwise subject to change. There are builders' liens registered against that property and no evidence about how they are to be dealt with.

[26] The bank observes that the refinancing term sheet from Glengarry Farm Finance Corporation appears to require the granting of a mortgage in favour of Glengarry over the 264<sup>th</sup> St Property. No such mortgage can be granted if that property is to be sold.

[27] Considering the foregoing, it is far from clear in my view that the transactions described will occur as anticipated by Mr. Sidhu, or that the proceeds realizable by the respondents from those transactions will be sufficient to repay the bank.

[28] It does appear that the respondents' assets, if liquidated, would be presently more than sufficient to pay out the bank; nonetheless, the fact that the value of the commercial properties appears to have declined significantly in value between 2022 and August 2024 is of concern.

[29] In my view, the bank is at some financial risk. I do not view that risk as imminent, but I am unable to find on the evidence that the bank will continue to be amply secured for the foreseeable future.

[30] Ultimately, I must consider that the bank's debt has remained unpaid for many months. The parties agree that they have been in negotiations to resolve the debt since 2024, although it is unclear on the evidence as to why those negotiations have not succeeded. Although it is preferable for debtors to be able to extricate themselves from their financial difficulties and to repay the bank without orders of

this Court, the uncertainty regarding the respondents' plan to refinance and sell their assets weighs in favour of the appointment of a receiver.

[31] The respondents argue that many of the *Maple Trade* factors are not made out in this case. There is no evidence of apprehended or actual waste of the debtor's assets, or any need for the preservation or protection of the property pending judicial resolution. I agree that there is no evidence of mismanagement or dysfunction; Mr. Sidhu deposes that the decline in the financial condition of the farms resulted from floods and other natural calamities.

[32] However, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation: *Maple Trade* at para. 25. The lack of evidence regarding waste or any need for preservation or protection of property can be considered in determining the scope of a receivership order.

[33] The bank's right to appoint a receiver under its security weighs in favour of the appointment, although it is but one of the factors to be considered, and it is not an overwhelming factor necessarily: *Inca One Gold Corp. (Re)*, 2024 BCSC 1970 at para. 49 [*Inca One*]. Although no presumption of entitlement to an appointment of a receiver arises from the fact that the security documentation allows for such an appointment (see *Haro* at 116), the decision in *Maple Trade* provides that the right of an applicant to make application for a receiver under its security documentation is a "strong factor in support of the imposition of a receiver": para. 26.

[34] It should be noted that the respondents include a trucking company and two companies that own and operate farms. The fact that the bank is entitled to and is seeking to realize on those companies weighs in favour of a receivership order. The bank is entitled to realize on the businesses, and this cannot be readily done by way of foreclosure.

[35] Given the foregoing, although the appointment of a receiver is extraordinary relief and should be granted cautiously and sparingly, it is my view that if the bank is

not paid, it is entitled to get on with the disposition of the respondents' assets in whatever form can be arranged reasonably: *Inca One* at para. 50. Subject to the discussion below regarding the order's scope and timing, I conclude that it is just or convenient to order the appointment of a receiver in the circumstances of this case.

[36] Regarding the respondents' argument that this application for the appointment of a receiver is an end run around the foreclosure process, I note that in *Haro*, Justice Fitzpatrick granted a receivership order and mitigated the impact on the respondents' equity of redemption by adjustments to the content and timing of the receivership order. That is what I intend to do in this case, and those issues will be addressed below.

#### **Timing and content of the order**

[37] Although I have concluded that it is just or convenient for a receiver to be appointed, I agree with the respondents that the appointment ought to be delayed so that an unwarranted shortening of their equity of redemption is avoided.

[38] Further, the Court's purpose in appointing a receiver in this proceeding is so that the bank can realize efficiently upon its security, which consists mostly of real property. Many of the other powers that are often granted to receivers are not warranted on the evidence.

[39] I will address these issues in turn.

#### **Timing of the order**

[40] In my view, the passages from paras. 101-103 in *Haro* quoted above stand for the proposition that the Court should consider the debtor's equity of redemption in considering whether a receiver will be appointed, and, if so, whether that receiver will be granted the power of sale and when. Recognizing that an equity of redemption exists, even in a receivership, the true issue is what amount of time should be afforded to the debtors.

[41] The bank submits that the defaults under the loan agreement began as early as October 2023. There were negotiations to try to resolve the respondents' debt in 2024, and then, in a letter dated August 6, 2024, the bank demanded that the outstanding debt be paid by October 31, 2024. The debt was not paid at that time. The bank made formal demand for repayment and delivered notices of its intention to enforce its security on March 4, 2025.

[42] It advanced this petition on May 14, 2025, but the petition was not heard until June 8, 2025. The bank proposes that the operation of this order would appropriately be delayed until July 28, 2025, which is six days after the proposed sale of the King Road property described above, but it resists any further delay.

[43] The respondents, on the other hand, seek a delay in the operation of any receivership order, which would equate to a three-month redemption period starting from the date of the hearing in this proceeding. They say that this delay would provide them with a redemption period of approximately five months since formal demand was made by the bank on March 4, 2025.

[44] I agree with the respondents that in the circumstances of this case, the respondents' redemption period ought to be assessed considering the time that has passed since the date of formal demand, as well as the time starting from the commencement of the court proceedings.

[45] The bank cites *Haro* for the proposition that the entire delay between default and the commencement of court proceedings ought to be counted when determining the length of a redemption period (see paras, 153-157) and argues, therefore, that the Court should consider that the redemption period in this case commenced in October 2024.

[46] However, I note that six-month redemption periods are routinely given in foreclosure proceedings starting on the date that the *order nisi* is granted, even if there has been a significant delay between default and the commencement of those proceedings. Accordingly, even assuming that the time between default and

application may be considered in determining the redemption period, it is not appropriate to simply subtract the pre-application delay from the typical six-month period given to debtors in a foreclosure proceeding.

[47] The bank also submits that the receivership order ought to come into effect automatically if or when one of the refinancing or sales anticipated by Mr. Sidhu does not close as anticipated. However, no decision has been shown to me in which such an order has been made, in foreclosure proceedings or otherwise. I find it would not be just or convenient to automatically cut short the redemption period if one refinancing plan falls through, as there may well be alternatives available to the respondents.

[48] In my view, considering the foregoing, the three-month redemption period sought by the respondents starting at the hearing date of this petition is appropriate. It is less than the six-month redemption period typically given in foreclosure proceedings, but it accords with the time that Mr. Sidhu says will be required to complete the sales and refinancing transactions described above and to raise further funds through the blueberry season.

[49] Accordingly, the receivership order, whose scope will be discussed below, shall be suspended until the end of Wednesday, October 8, 2025.

***Content of the order***

[50] I have concluded that the appointment of a receiver is just or convenient because the appointment is provided for under the security documentation, and because the appointment will assist the petitioner in being able to realize efficiently on its security, given the nature of the assets, the length of time for which the debt has remained outstanding and unresolved, and the uncertainty of the respondent's refinancing and sales plans.

[51] However, as stated, there is no evidence establishing that the companies need to be managed, that assets are wasting or that a receiver is necessary to preserve or protect the properties. Accordingly, I am not persuaded that an order

authorizing the receiver to manage the companies or to take over the properties would be just or convenient.

[52] Further, I must be mindful of the costs of a receiver which ultimately will be paid by the respondents. Those costs would undoubtedly be increased substantially if the receiver were to operate, or even to oversee the operation of, the farms and the trucking company. I note that the bank seeks a borrowing power and charge of up to \$750,000.

[53] Finally, the scope of the order that I am prepared to grant is limited by the fact that the real property assets appear, at least presently, sufficient to satisfy the respondents' debt to the bank.

[54] For these reasons, it is my view that the receiver ought to have a significantly attenuated role, and I am not prepared to grant an order with the scope sought by the applicants. As stated in *Maple Trade*, orders appointing receivers should be granted cautiously and sparingly.

[55] The powers of the receiver shall be limited to those terms set out in paragraphs 2(d), (h), (k), (l), (m), (n), (o), (q) and (s) of the draft order. The bank's application regarding the other powers set out in paragraph 2 is adjourned generally. Further, the receiver shall not be permitted to sell individual assets owned by the respondent companies without further order of the Court.

[56] In broad terms, my intention is to provide the receiver, at least for now, only with the authority to market and sell the mortgaged properties and the respondent companies, if the respondents are not able to repay or refinance the debt by the deadline set out in these reasons.

[57] Given the limited role of the receiver, its charge and borrowing power shall be limited to \$150,000, not \$750,000 as sought.

[58] Although there were no submissions on this issue, it appears that paragraphs 3-6 and paragraph 13 of the draft order will also have to be revised to accord with the Court's intention described above.

[59] The bank or the receiver have liberty to apply to expand the receiver's powers and to increase its borrowing power and charge if the circumstances warrant, or if the powers that I have granted to the receiver are insufficient to carry out the Court's intention as described.

[60] If these reasons give rise to any material ambiguity, or if the parties are unable to agree on a form of order consistent with the Court's intention as set out in these reasons, any party is at liberty to seek a short hearing before me for directions or clarification.

[61] Nothing in the receivership order should be taken as restricting the ability of the respondents to pursue refinancing of the debt.

[62] Further, the respondents are entitled to redeem at any time prior to a sale being approved by the Court on application by the receiver: *Haro* at para. 93.

**Conclusion**

[63] An order for the appointment of a receiver is granted in the terms of the draft order provided to the Court at the hearing, subject to the changes described above.

[64] Operation of the order is suspended until the end of October 8, 2025, subject to further order of this Court.

[65] The bank shall have its costs of this application on the terms set out in the draft order.

“The Honourable Justice Loo”