

Court of King's Bench of Alberta

Citation: Connect First v Elite Storage North Edmonton LP, 2025 ABKB 718

Date: 20251205
Docket: 2503-06143
Registry: Edmonton

Between:

Connect First and Servus Credit Union Ltd.

Plaintiff

- and -

Elite Storage North Edmonton LP, Elite Storage North Edmonton GP Ltd, BCCQ Global Holdings Ltd., Bodnar Capital Corp., Cameron Colby Quilliam, Robert Cramers and Conrad Bodnar

Defendants

**Reasons for Decision
of the
Honourable Justice M.A. Marion**

I. Introduction

[1] On July 31, 2025, in this action (**Action**), the Court granted a consent receivership order (**Order**) appointing a receiver (**Receiver**) over the assets of a defined “Debtor”, which included Elite Storage North Edmonton LP (**Elite LP**), Elite Storage North Edmonton GP Ltd (**Elite GP**)¹ and BCCQ Global Holdings Ltd (**BCCQ**). The Order was granted at the request of Alberta Finance & Mortgage Corporation (**AFMC**) without specific notice to Elite or BCCQ of its application.

[2] The applicant, Robert Cramers (**Cramers**), applies (**Application**) to amend the Order to remove BCCQ as a “Debtor” as defined in the Order. He does not want BCCQ to be included in

¹ Elite LP and Elite GP are referenced together as “**Elite**” for the purposes of these Reasons.

the Order. Cramers raises several arguments. AFMC opposes the Application. Bodnar Capital Corp. (**Bodnar Capital**), Conrad Bodnar (**Bodnar**), and the Receiver, take no position.

[3] For the reasons set out below, the Application is granted on the terms set out below.

II. Background

[4] BCCQ is owned by two shareholders, each owning 50% of the voting shares. The first shareholder is Winsong Holdings Ltd (**Winsong**). Cramers is the 100% voting shareholder of Winsong. The second shareholder is Grandin Investment Corporation (**Grandin**). Cameron Colby Quilliam (**Quilliam**) is the 100% voting shareholder of Grandin.

[5] Quilliam is also a director of AFMC, along with his sister, Carol Quilliam, as well as Charles Quilliam and another person. Quilliam's corporation, Grandin, is a 25% shareholder of AFMC.

[6] Both Cramers and Quilliam are also directors of Elite GP.

[7] According to the Receiver, the nature and handling of BCCQ, Elite LP and Elite GP is intertwined.

[8] In 2022 and 2023, Elite LP by its general partner Elite GP (**Borrower**), entered into credit facilities and loan agreements (together, **Loan Agreements**) with Connect First and Servus Credit Union Ltd (**Servus**). To secure the indebtedness (**Indebtedness**) under the Loan Agreements, the Borrower entered into various security agreements with Servus (**Security**), including a general security agreement (**GSA**) granting a security interest in all present and after acquired personal property of Elite LP. Further, Elite GP, BCCQ, and other defendants in the Action executed guarantees and postponements. In particular, effective January 5, 2023, Elite GP executed an unlimited guarantee and postponement (**Elite GP Guarantee**); BCCQ and Bodnar Capital executed a joint and several guarantee and postponement (**Joint Corporate Guarantee**)² and Cramers, Quilliam and Bodnar executed a guarantee and postponement (**Joint Personal Guarantee**)³. Elite GP, BCCQ, Bodnar Capital, Cramers, Quilliam and Bodnar are collectively referred to as the "**Guarantors**" and the Elite GP Guarantee, the Joint Corporate Guarantee, and the Joint Personal Guarantee are collectively referred to as the "**Guarantees**".

[9] By at least late 2024, if not earlier, there was a dispute between Cramers and Quilliam related to the ongoing management and winding down of Elite, BCCQ and a number of other entities (in many of which Cramers and Quilliam both owned an interest). In 2024, Quilliam and Grandin commenced an originating application against Cramers, Winsong and others.⁴

[10] On January 14, 2025, Quilliam and Cramers entered into an agreement (**Arbitration Agreement**) by which they agreed to submit certain disputes to final and binding arbitration,

² According to the statement of claim in the Action, the Joint Corporate Guarantee was for the amount of \$1,875,000.

³ According to the statement of claim in the Action, the Joint Personal Guarantee was for the amount of \$1,875,000.

⁴ This originating application is not before me.

including disputes about the “management, operation, accounting, investigations, administration and winding down” of various corporations, including Elite GP and BCCQ.

[11] On March 26, 2025, Servus commenced the Action against Elite and the Guarantors. Servus claimed judgment against the Borrower for \$5,613,712, against Elite GP in the amount of \$5,613,712 (in respect of the Elite GP Guarantee), against BCCQ and Bodnar Capital in the amount of \$1,875,000 (in respect of the Joint Corporate Guarantee), and against Quilliam, Cramers and Bodnar in the amount of \$1,875,000 (in respect of the Joint Personal Guarantee). Servus also sought the appointment of a receiver and manager against the assets of Elite LP. The Action does not claim that Servus held any security over any of the assets of the Guarantors.

[12] On April 22, 2025, Servus, Elite and the Guarantors entered into a Forbearance and Preservation of Rights Agreement (**Forbearance Agreement**). The Forbearance Agreement provides, among other things (paraphrased):

- (a) an acknowledgment of Indebtedness under the Loan Agreements and the Guarantees, acknowledgement of default under the Security, waiver of further notice for enforcement of the Security, and waiver of further demands, among other things;
- (b) Elite LP and the Guarantors shall pay a \$10,000 forbearance fee, shall make all scheduled payments under the Loan Agreements, and shall pay the Indebtedness under the Loan Agreements by July 15, 2025;
- (c) Elite LP and the Guarantors shall file a demand for notice in the Action;
- (d) Elite LP and the Guarantors shall execute certain irrevocable consent documents (**Consent Documents**), including a form of consent judgment, a form of consent receivership order (**Consent Receivership Order**), and a form of consent redemption order. Servus and/or its legal counsel were irrevocably authorized to complete any portion of the Consent Documents, that were not fully complete, without notice to Elite LP and the Guarantors; and
- (e) if, among other things, the Indebtedness was not paid by July 15, 2025, Servus is entitled to act upon, apply for and file the Consent Documents, seize and sell property subject of the Security, and proceed with whatever legal remedies available to Servus against Elite LP and the Guarantors either under the Security or otherwise in equity or law. However, in certain circumstances Servus is obligated to provide a notice of the event of default to Elite and the Guarantors.

[13] The Forbearance Agreement, and the Consent Receivership Order appended to it, were both signed by Cramers on behalf of Elite and BCCQ, and by Cramers and Quilliam personally. The Consent Receivership Order left the identity of the “Debtors” to which it would apply blank, as follows:

UPON the application of the Plaintiff in respect of _____ (the “Debtor”); AND UPON being referred to the Affidavit of _____, filed;

AND UPON being referred to the consent of _____ to act as receiver and manager (“Receiver”) of the property of the Debtor; ...

[...]

Pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (“BIA”), section 13(2) of the *Judicature Act*, RSA 2000, c J-2, and section 49 of the *Law of Property Act*, RSA 2000, c L-7, _____ is hereby appointed Receiver, without security, of all the Debtor’s current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the “Property”).

[14] On July 8, 2025, Servus and AFMC entered into an Assignment of Debt and Security Agreement (**Assignment Agreement**) whereby, in return for a payment in the amount of the debt owing under the Loan Agreements, Servus assigned its rights under the Action, the Loan Agreements, the Forbearance Agreement and the Security, to AFMC. It is agreed by all parties there was no security against any assets of BCCQ assigned under the Assignment Agreement.

[15] The Indebtedness under the Loan Agreements was not paid by July 15, 2025, as required under the Forbearance Agreement. Further, I understand Elite LP and the Guarantors failed to file a demand for notice in the Action as required by the Forbearance Agreement.

[16] On July 31, 2025, AFMC applied to have the Consent Receivership Order granted and entered. In its proposed form of order (prior to its presentation to the Court), AFMC had filled in the blank in the Consent Receivership Order, to include each of Elite LP, Elite GP and BCCQ as the “Debtor”. It did not include the names of any other Guarantors. The Order was granted and, as a result, the Receiver was appointed as receiver and manager over the assets of BCCQ in addition to the assets of Elite.

[17] On August 1, 2025, the filed Order was provided to Cramers’ then legal counsel.

[18] On October 24, 2025, Cramers’ counsel contacted the Court Coordinator seeking dates for an application. On November 13, 2025, he confirmed the hearing date. On November 17, 2025, Cramers filed the Application and, on November 25, 2025, I heard the Application.

[19] On November 26, 2025, I requested further submissions from the parties on the question of whether the Forbearance Agreement and Consent Receivership Order gave rise to a contractual discretion in favour of Servus (and AFMC as its assignee), as contemplated in *Wastech Services Ltd v Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7, and, if so, what (if any) is the application or import of that contractual discretion to the Application. The parties provided their written submissions on these matters on December 2, 2025.

III. Record

[20] The record on the Application is:

- (a) a July 21, 2025 Quilliam affidavit (filed July 22, 2025), which was filed in support of obtaining the Order;

- (b) a November 17, 2025 Cramers affidavit;
- (c) a November 18, 2025 affidavit of Harpreet Hayes (filed November 20, 2025);
- (d) a November 20, 2025 Quilliam affidavit;
- (e) a November 21, 2025 Cramers reply affidavit;
- (f) the first report of the Receiver (which had not yet been filed); and
- (g) an affidavit of service.

[21] There was no questioning on the affidavits under rule 6.7 of the *Alberta Rules of Court*, Alta Reg 124/2010. There were no objections to any of the evidence.

IV. Positions of the Parties

[22] Cramers argues that the Order should be varied to remove BCCQ as a “Debtor” under the Order because:

- (a) BCCQ was never intended to be a “Debtor” under the Consent Receivership Order and should not have been inserted as a “Debtor” when it was presented to the Court;
- (b) the statement of claim in the Action makes no claim of a security interest over BCCQ’s assets and does not seek the remedy of the appointment of a receiver over BCCQ’s assets;
- (c) the Forbearance Agreement provides no security interests or a right to apply for receivership against BCCQ’s assets;
- (d) the Assignment Agreement did not assign to AFMC any security interests of Servus against BCCQ’s assets;
- (e) AFMC failed to provide a notice of default as required under the Forbearance Agreement;
- (f) AFMC applied for the Order *ex parte*, without justification and in breach of the Forbearance Agreement;
- (g) AFMC breached its duty of full, frank and candid disclosure when it obtained the Order; and
- (h) BCCQ is not insolvent and the value of Security over the assets of Elite is more than sufficient to cover the Indebtedness under the Loan Agreements.

[23] AFMC argues that Cramers is not authorized to bring the Application because Quilliam (Grandin) and Cramers (Winsong) are at a deadlock in terms of what needs to be done with respect to BCCQ and are bound by the Arbitration Agreement. Quilliam asserts that Cramers is not

authorized to bring an application on BCCQ's behalf. AFMC also argues BCCQ should remain as a "Debtor" and its assets subject to the receivership in the Order because:

- (a) Cramers delayed in bringing the Application;
- (b) costs have been incurred by the Receiver in relation to BCCQ;
- (c) not all parties will be fully paid out from the Receiver's likely realization on Elite's assets;
- (d) AFMC is funding the receivership under the Order; and
- (e) BCCQ is insolvent in any event.

[24] As noted, the Receiver, Bodnar Capital and Bodnar do not take any position.

V. Issues

[25] Based on the foregoing, the issues on this Application are:

- (a) Does Cramers have standing to bring the Application?
- (b) Was AFMC entitled to insert BCCQ as a "Debtor" in the Consent Receivership Order?
- (c) Did AFMC breach the Forbearance Agreement by failing to provide a notice of default?
- (d) Did AFMC breach its obligations when it obtained the Order?
- (e) Should the Order be varied to remove BCCQ as a "Debtor"?
- (f) What is an appropriate order?

VI. Analysis

A. Does Cramers Have Standing to Bring the Application?

[26] AFMC asserts that Cramers does not have standing to bring the Application for the benefit of BCCQ. AFMC argues that Cramers and Quilliam are in a deadlock about the management of BCCQ and must follow the Arbitration Agreement. Cramers has not been authorized to bring the Application on BCCQ's behalf.

[27] Paragraph 35 of the Order provides:

Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

[28] AFMC conceded that “interested party” in this context has a wide scope.

[29] Cramers filed the Application on his own behalf, not on behalf of BCCQ.⁵ He was a Guarantor, party to the Forbearance Agreement, and signatory to the Consent Receivership Order. It is his position that a proper interpretation of the Forbearance Agreement precluded AFMC from inserting BCCQ as a “Debtor” before seeking to have the Consent Receivership Order granted and entered by the Court. It is his position that he should have been given notice of default and notice of the application to obtain the Order from the Court. He is also the owner and a director of the 50% shareholder of BCCQ, and a director of BCCQ. He is party to the Arbitration Agreement that relates to disputes over the management of BCCQ.

[30] In the circumstances, I find that Cramers is an interested party and has standing, in his personal capacity, to seek to vary the Order.

B. Was AFMC Entitled to Insert BCCQ as a “Debtor” in the Consent Receivership Order?

[31] Cramers’ position is that the parties to the Forbearance Agreement never intended that BCCQ could be inserted into the Consent Receivership Order. He points to the fact the Action does not claim, and there is no evidence of, any security granted by BCCQ to Servus, and the statement of claim does not seek receivership relief against BCCQ. In those circumstances, Cramers argues, only Elite LP or Elite GP (who had assets to which the Security applied) could be inserted in the Consent Receivership Order.

[32] AFMC argues that parties often agree to rights and obligations in forbearance agreements that are not part of the underlying action, for example forbearance fees. It argues that if the parties had intended the Consent Receivership Order to only apply to Elite, the Consent Receivership Order would not have included a blank for the name of the defined “Debtor” and would not have authorized Servus to fill in the blanks: they would have simply included the intended debtor name or names into the consent order. AFMC’s argument is that Servus (or its assign AFMC) was entitled to insert any or all of Elite and the corporate Guarantors as the “Debtor”.

[33] Fundamentally, this issue is a question of contractual interpretation.

[34] The goal of contractual interpretation is to determine the objective intent of the parties at the time the contract was made through the application of legal principles of interpretation: *IFP Technologies (Canada) Inc v EnCana Midstream and Marketing*, 2017 ABCA 157 at para 79, leave to appeal to SCC refused, 2018 CanLII 28111; *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 at para 49; *Remington Development Corporation v Canadian Pacific Railway Company*, 2025 ABCA 244 at para 43, leave to appeal to SCC requested, 42012 (29 September 2025).

[35] Provisions must be interpreted in light of the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of the formation of the contract: *Remington Development* at para 43; *Sattva*

⁵ No counsel purported to be acting on behalf of BCCQ with respect to the Application.

at paras 47, 49; *IFP* at para 79; *Tercon Contractors Ltd v British Columbia (Transportation and Highways)*, 2010 SCC 4 at para 64.

[36] Courts must consider the relevant surrounding circumstances, including the “objective evidence of the background facts at the time of the execution of the contract ... that is, knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting”: *IFP* at paras 82-83, citing *Sattva* at para 58; *Remington Development* at para 47.

[37] Relevant background facts can include the genesis, aim or purpose of the contract, the nature of the relationship created by the contract, the nature or custom in the industry in which the contract was executed, antecedent agreements leading up to the contract, and even negotiations if they shed light on the factual matrix: *IFP* at paras 83-85 and the cases cited therein; *Alberta Union of Provincial Employees v Alberta Health Services*, 2020 ABCA 4 at para 32.

[38] “Surrounding circumstances” does not include the parties’ subjective intentions and cannot be used to add to, detract from, vary, or otherwise overwhelm the written words: *Sattva* at paras 59-60; *IFP* at paras 81-82; *Talwandi Video Lab Inc v 1441419 Alberta Ltd*, 2024 ABCA 140 at para 11; *Alberta Union* at para 26; *Remington Development* at para 47; *SA v Metro Vancouver Housing Corp*, 2019 SCC 4 at para 30; *Heritage Property Corporation v Triovest Inc*, 2025 ABCA 64 at para 14.

[39] If the terms of an agreement are ambiguous, the court may refer to the parties’ post-contractual conduct to resolve the ambiguity: *IFP* at paras 86-87; *Shewchuk v Blackmont Capital Inc*, 2016 ONCA 912 at paras 46, 56. Mere difficulty in interpreting a contract is not the same thing as ambiguity; a contract is ambiguous when the words are reasonably susceptible to more than one meaning: *IFP* at para 87. In the face of ambiguity, the interpretation promoting business efficacy is to be preferred so long as it is supported by the text: *IFP* at para 86.

[40] I disagree with Cramers’ interpretation that the Consent Receivership Order was only intended to apply to Elite because it was only Elite that had granted security to Servus and because it was only Elite against which receivership relief was claimed in the Action. In my view, this interpretation ignores the surrounding circumstances and the Forbearance Agreement as a whole.

[41] The surrounding circumstances and/or the terms of the Forbearance Agreement included that: (1) Servus had commenced the Action; (2) Elite was in default; (3) there was significant Indebtedness under the Loan Agreements in excess of \$5.6 million; (4) BCCQ and Bodnar Capital were indebted to Servus under the Joint Corporate Guarantee (regardless of whether they had granted security to Servus); and (5) Servus, Elite and the Guarantors “were desirous of resolving the Indebtedness”.

[42] Further, the “Security” as defined, included not only the security that had been granted by Elite LP as Borrower in the past, but included “all security granted or to be granted by the Borrower and the Guarantors to Servus to secure the Indebtedness”, including certain security listed in Schedule A. The list in Schedule A was not objectively intended to be exhaustive, and it was contemplated that the Guarantors, including BCCQ, had granted or may grant security to secure the Indebtedness under the Loan Agreements.

[43] Finally, clause 10(c) of the Forbearance Agreement provides:

On or before April 24, 2025:

[...]

- (c) the Borrower and the Guarantors shall duly execute and deliver to legal counsel for Servus originally executed versions of the Consent Documents⁶. The Borrower and Guarantors acknowledge and agree that:
- (i) Servus may apply for, enter and file the Consent Documents in its absolute discretion, without notice to the Borrower or the Guarantors, subject to the remaining terms of this Agreement;
 - (ii) the Consent Documents provided pursuant to this Agreement are irrevocable;
 - (iii) Servus and/or its legal counsel are irrevocably authorized to complete any portion of the Consent Documents that are not fully complete as at the date of the delivery of this document to Servus, all without notice to the Borrower and the Guarantors; ...

[44] Clause 12 of the Forbearance Agreement provided that Servus agreed, subject to the other terms of the Forbearance Agreement, to forbear until July 15, 2025, “from initiating or continuing any proceeding, remedy or execution for the recovery of the Indebtedness or the enforcement or realization of the Security” [emphasis added].

[45] From all of this, I find that, properly interpreted, the blank in the Consent Receivership Order did not lead to ambiguity. The parties intended to leave the “Debtor” in the Consent Receivership Order blank, and to irrevocably authorize Servus to insert the name or names of the “Debtor” in its discretion. This was part of the consideration for a period of forbearance from enforcing on the Security and from pursuing recovery of the Indebtedness under the Loan Agreements, including against the Guarantors for the amount of their guarantees.

[46] Although one might argue it was, perhaps, unusual for a guarantor owing only unsecured obligations under a guarantee to consent to the possible receivership against its assets in return for a forbearance of recovery against it, there is nothing improper or commercially absurd about that circumstance. Further, receiverships can be and are frequently granted against debtors even where there is no security, as contemplated by section 13(2) of the *Judicature Act*, RSA 2000 c J-2. It is not difficult to imagine commercial scenarios where a guarantor indebted on a guarantee would agree to a consent receivership over its assets in return for forbearance.

[47] In my view, had the parties intended to limit which entities could be the subject of the Consent Receivership Order, they would not have left the definition of “Debtor” blank and given Servus the discretion to fill in the name of the Debtor, they would have specifically included the intended “Debtor” names. The Forbearance Agreement, including with the Consent Receivership

⁶ The Consent Documents include the Consent Receivership Order.

Order, was negotiated between sophisticated commercial parties and with the assistance of legal counsel.

[48] However, there are obvious limits to Servus' exercise of discretion.

[49] First, Servus (and AFMC as its assignee) could only insert into the Consent Receivership Order the names of parties to the Forbearance Agreement, namely Elite or the Guarantors. The parties could not have objectively intended to extend Servus' discretion outside the scope of the parties which were indebted to Servus. Nobody suggested otherwise and the Order did not offend this restriction.

[50] Second, and notwithstanding AFMC's argument to the contrary, I find Servus (and AFMC as its assignee) owed a duty to exercise its contractual discretion under the Forbearance Agreement in good faith, namely in a manner consistent with the purposes for which it was granted in the contract, or to exercise its discretion reasonably: *Wastech* at paras 63-88. AFMC's argument that the insertion of names into the blanks is a "litigation strategy" that it was fully authorized to implement, in my view, only confirms that Servus (and AFMC as its assignee) held a contractually created discretion that had to be exercised in good faith.

[51] As summarized in *Wastech* at para 88:

In sum, then, the duty to exercise discretion in good faith will be breached where the exercise of discretion is unreasonable, in the sense that it is unconnected to the purposes for which the discretion was granted. This will notably be the case where the exercise of discretion is capricious or arbitrary in light of those purposes because that exercise has fallen outside the range of behaviour contemplated by the parties. The fact that the exercise substantially nullifies or eviscerates the fundamental contractual benefit may be relevant but is not a necessary pre-requisite to establishing a breach.

[52] Cramers argued that any contractual discretion exercised by Servus (and AFMC as its assignee) was limited to inserting those defendants against whom Servus held "Security", those defendants against whom Servus had issued a Notice of Intention to Enforce Security as required under section 244 of the *BIA*, and those defendants against whom Servus had sought receivership relief. For the reasons set out above, I disagree with Cramers' narrow interpretation.

[53] I find that the purpose of the contractual discretion in the Forbearance Agreement was to allow Servus (and AFMC as its assignee) to choose which of Elite and/or the Guarantors it put into receivership, *for the purposes of recovering the Indebtedness* under the Loan Agreements and the related guarantees.

[54] Unfortunately, I have little evidence from either side about the purpose for which AFMC exercised its discretion to include BCCQ (and not other Guarantors) into the Consent Receivership Order. I cannot make a finding on this record that AFMC did or did not breach its duty exercise its discretion in good faith. I also find that, ultimately, I do not need to make a finding about that to decide this Application.

C. Did AFMC Breach the Forbearance Agreement by Failing to Provide a Notice of Default?

[55] Cramers argues that AFMC breached clause 8 of the Forbearance Agreement, which provides for AFMC’s remedies if certain events occur (including the failure to repay the Indebtedness under the Loan Agreements by July 15, 2025). As noted above, the remedies included the right to “act upon, apply for and file the Consent Documents”, seize and sell any of the real and personal property subject to the Security, and to “proceed with whatever legal remedies are available to Servus against the Borrowers and the Guarantors, or either of them, either under the Security or otherwise in equity or in law”.

[56] Cramers relies on this paragraph in clause 8:

Notwithstanding the foregoing, unless in the opinion of Servus acting reasonably to do so would prejudice in a material adverse manner the legal position or security position of Servus, then prior to enforcing the Security, Servus shall give to the Borrower and the Guarantors in accordance with paragraph 15 hereof, a written notice specifying the event of default Servus intends to rely upon.

[57] Cramers argues that AFMC was required to provide a notice of default before it applied for the Order. AFMC argues that this clause does not apply to its application to obtain the Consent Receivership Order.

[58] On this point, I agree with Cramers.

[59] The obligation to provide notice is required only prior to enforcement of the “Security”. “Security” is defined as “all security granted or to be granted by the Borrower and the Guarantors to Servus to secure the Indebtedness, including without limitation documents set out in Schedule A”. “Indebtedness” is defined to include all monies due and owing to Servus from the Borrower from time to time pursuant to various loans and advances made to the Borrower by Servus, which was agreed to be \$5,640,675.71 (plus outstanding legal fees and disbursements) as of April 14, 2025. The documents in Schedule A include the GSA granted by Elite over its present and after acquired personal property. Servus had previously already provided a notice to enforce security to Elite under section 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (*BIA*), and this was acknowledged in the Forbearance Agreement.

[60] In these circumstances, on the record before me, I find that AFMC’s application to obtain the Consent Receivership Order against Elite *de facto* constituted (at least in part) AFMC enforcing its Security against Elite’s assets.⁷ AFMC was, therefore, required to provide written notice of default before applying to obtain the Consent Receivership Order against Elite “unless in the opinion of [AFMC] acting reasonably to do so would prejudice in a material adverse manner the legal position or security position of [AFMC]”.

[61] Cramers specifically raised this issue in his Application, but AFMC provided no evidence that, at the time it applied for the Consent Receivership Order, AFMC believed giving notice would

⁷ Neither party argued that the Forbearance Agreement, with the agreed form of Consent Receivership Order, itself constituted a form of “security granted by” BCCQ and the other Guarantors. I make no finding about that question.

prejudice AFMC in a material adverse manner. Therefore, there is no evidence before me that AFMC was of the opinion that giving a default notice would prejudice it as contemplated by the Forbearance Agreement, or that it reasonably reached any such opinion. Rather, AFMC appears to have proceeded on the basis that it simply was not required to provide notice at all.

[62] AFMC argued there was effective notice because the Guarantors were aware that the deadline to repay the Indebtedness was on July 15, 2025, and there was evidence Cramers had indicated a plan was in place. That argument is not persuasive. The fact there was a known deadline to pay is insufficient to prove material adverse effect of giving notice. No written notice (as required and contemplated under clauses 8 and 15 of the Forbearance Agreement) was ever provided.

[63] Without any evidence that giving notice of default to Elite and the Guarantors would have prejudiced AFMC in a material adverse manner (or that AFMC believed it would do so), I find on the balance of probabilities that AFMC breached the Forbearance Agreement by failing to provide a notice of default under clause 8.

D. Did AFMC Breach its Obligations when it Obtained the Order?

[64] Cramers argues that AFMC improperly obtained the Order *ex parte* and, further, failed to give full, frank and candid disclosure to the Court.

[65] AFMC argues that the application to obtain the Order was not in fact *ex parte* because the Forbearance Agreement expressly allowed it to obtain the Order without notice. It also argues that no formal application was filed or required.

[66] I reject AFMC's argument that the application to obtain the Order was not an application made *ex parte*.

[67] First, just because the application was made "informally" or without a formal filed application, does not mean it was not an application to the Court. Further, clauses 8 and 10(c)(i) of the Forbearance Agreement clearly contemplated that AFMC would have to "apply for" the Consent Documents (including the Consent Receivership Order). Further, AFMC's counsel acknowledged to the Court on July 31, 2025, that AFMC was making an application.

[68] Second, the application was clearly *ex parte*. I accept the evidence that the Guarantors, or at least some of them and in particular Cramers, was not given notice of the application. The fact that the Forbearance Agreement stated, in clause 10(c)(i), that AFMC may apply for the Consent Documents without notice, and the fact that the Guarantors including BCCQ did not file a demand for notice under rule 3.30(c) as required by the Forbearance Agreement (which would have required them to be provided notice), does not mean there was *actual* notice of the application.

[69] Third, the reality is that only one party was present and heard when the Consent Receivership Order was obtained; other parties were not. That is the very definition of *ex parte*: *Hover v Metropolitan Life Insurance Company*, 1999 ABCA 123.

[70] Because the application was *ex parte*, AFMC owed a duty of full, frank and candid disclosure when it applied for the Order, which included facts which would militate against the

application: *Secure 2013 Group Inc v Tiger Calcium Services Inc*, 2017 ABCA 316 at para 44. This applies to *ex parte* receivership applications: *Paragon Capital Corporation Ltd v Merchants & Traders Assurance Co*, 2002 ABQB 430 at para 12.

[71] In this case, the application was to appoint a receiver against the assets of Elite and BCCQ. To assess whether there was a breach of full, frank and candid disclosure, the nature of the application must be put into context.

[72] I summarized the legal framework for a receivership application, including where there is a consent receivership order, in *Bank of Nova Scotia v Smiling Simba Learning Academy Inc*, 2025 ABKB 11 at paras 28-32:

[28] The test is whether it is just and convenient to grant a receivership order in the circumstances: *Judicature Act*, section 13(2); *Law Society of Alberta v Higgerty*, 2023 ABKB 499 at para 24.

[29] As noted in *Higgerty*, at para 25, which I adopt:

[25] A receivership order “should not be lightly granted”: *Kasten Energy Inc v Shamrock Oil & Gas Ltd*, 2013 ABQB 63 at para 20, citing *BG International Limited v Canadian Superior Energy Inc*, 2009 ABCA 127 at paras 16-17. The court must carefully balance the rights of both the applicant and the respondent as justice and convenience can only be established by considering and balancing the position of both parties: *BG International* at para 17. When considering the issue of whether a receiver and manager should be appointed, the court should: (i) explore whether there are other remedies that could serve to protect the interests of the applicant; (ii) balance the rights of both the Applicants and the other stakeholders (including the secured and unsecured creditors); and, (iii) consider the effect of granting the Draft Receiver Order: *Kasten Energy* at para 20, citing *BG International* at paras 16.

[30] Alberta courts have frequently cited and considered a non-exhaustive list of factors described in Frank Bennett, *Bennett on Receiverships*, 2nd ed (Toronto: Thompson Canada Ltd, 1995) at 130, when deciding whether it is just and convenient to appoint a receiver and manager: see, for example *Higgerty*, at para 26; *ATB Financial v Mayfield Investments Ltd*, 2024 ABKB 635 at para 65 [*Mayfield*]; *Worth Ventures Ltd v MegaSys Enterprises Ltd*, 2024 ABKB 385 at para 32; *2531005 Alberta Ltd v Katharine Enterprises Ltd*, 2023 ABKB 718 at para 19; *CWB Maxium Financial Inc v 2026998 Alberta Ltd*, 2021 ABQB 137 at para 33; *Schendel Management Ltd*, 2019 ABQB 545 at paras 44-45; *Murphy v Cahill*, 2013 ABQB 335 at para 71; *Kasten* at para 13; *Romspen Investment Corporation v Hargate Properties Inc*, 2011 ABQB 759 at para 20; [*Paragon Capital*] at para 27. Those factors include:

- (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; and

- (q) the secured creditor's good faith, commercial reasonableness of the proposed appointment and questions of equity.

[31] In circumstances where a debtor agrees to a consent receivership order as part of negotiating a forbearance of security enforcement, additional considerations are engaged, in part because of the importance of commercial certainty: *Mayfield* at para 40. The applicable principles were summarized by Justice Lema in *Servus Credit Union Ltd v Proform Management Inc*, 2020 ABQB 316 at paras 60-63 (footnotes omitted):

[60] On how to approach a consent order, the guiding principles are as follows:

- the Court is not obliged, from the mere fact of consent, to grant a consent order; and
- the Court must be satisfied (at minimum) that:
 - it has the jurisdiction to grant the order;
 - if it has the jurisdiction, any preconditions (statutory or common law) to the exercise of its jurisdiction are met;
 - consent has actually been provided;
 - the consent is not the product of fraud, duress, or undue influence or otherwise tainted;
 - where the consent was provided on a conditional basis (e.g. order not to be entered unless certain conditions are satisfied), the condition(s) are satisfied;
 - the proposed relief does not exceed that consented to; and
 - consent aside, the ordered relief is warranted in the circumstances.

[61] The level of scrutiny required depends on the circumstances. The onus to raise a concern rests with the consenting (or ostensibly consenting) party. If that party is present at the application for the order and raises no concerns, or if it is content to allow the other party (or parties) to appear at the application and relay the “we have

consented” message, the Court can usually proceed on the basis that all of these elements are satisfied.

[62] At minimum, the Court may have to consider whether it has the jurisdiction to grant the order i.e. to guard against parties (inadvertently or otherwise) pulling the Court outside its jurisdiction.

[63] A safeguard here is the Court’s power to set aside or vary its orders, including (in limited circumstances) consent orders. If it turns out that, despite apparent regularity, a consent order is fatally deficient on one or more of the bases above, the Court may decide to set it aside.

[32] In assessing the effect of a debtor’s consent to a receivership order, Justice Lema went on to point out in *Servus*, at para 66 (emphasis in original): “by giving that consent, the debtors conceded that, if and when the forbearance (and implicitly the stay) period ended, the consent order could be entered if they remained in default and without any substantive-argument objection by them”. In my view, in the case of a consent receivership order the debtor has also conceded that receivership is an appropriate remedy (especially in the absence of any material change in circumstances since the provision of consent).

[73] A specific agreement consenting to the appointment of a receiver does not dictate the outcome and does not necessarily mean a receiver will be appointed, or a receiver will be appointed *ex parte*: *JBT Transport Inc (Re)*, 2025 ONSC 1436 at para 52. This is notwithstanding the recognized importance of holding parties to their bargains, as described in *ATB Financial v Mayfield Investments Ltd*, 2024 ABKB 635 at para 40. The Court maintains discretion.

[74] In this context, Cramers asserts several failures by AFMC to provide full, frank and candid disclosure in his Application. Given my interpretation of the Forbearance Agreement, by which BCCQ consented to the Consent Receivership Order potentially being against it (in the discretion of Servus/AFMC), AFMC did not breach its duty of disclosure by not specifically drawing the Court’s attention to the fact that AFMC did not hold security over the assets of BCCQ (or specifically, did not hold security that permitted it to seek appointment of a receiver), or that the statement of claim did not seek receivership relief against BCCQ.

[75] However, I find that AFMC did fail to properly advise the Court that it had not provided notice of default prior to proceeding to seek to enforce the Security through the appointment of the Receiver. It also failed to advise the Court as to whether AFMC was of the opinion that giving notice of the application for the Order would prejudice AFMC’s legal position or security in a material adverse manner. Finally, AFMC failed to explain or provide evidence as to the fact that AFMC had exercised its discretion to insert only the names of Elite LP, Elite GP and BCCQ as the “Debtor” in the Consent Receivership Order, and not other Guarantors, and why it exercised its discretion in that manner.

[76] In totality, without this additional information, I find that on July 31, 2025, counsel's confirmation (in response to the Court's specific question), that the Order would not be a surprise to anybody, was incomplete. Further, in that context, I find that counsel's confirmation that "the defendants all signed off on it" (referencing the Order), was misleading because it implied the defendants had signed off on the specific form of Order presented to the Court, which was not blank and included AFMC's choice to include only Elite and BCCQ as "Debtor". The reality was that the parties only agreed to a blank form of Consent Receivership Order with the agreement that Servus could, in its discretion, fill in the "Debtor" later and choose when to seek the granting of the order. The sequence of events, including how the blank Consent Receivership Order became the Order with some, but not all, of the possible debtors included in the Order, was a peculiar nuance that should have been disclosed and explained to the Court.

[77] Had the lack of the notice of default and the unique circumstances of the Consent Receivership Order been fully explained, I find it would have materially affected the Court's decision on July 31, 2025. It may very well have caused the Court to direct AFMC to provide notice of the application to all parties to the Forbearance Agreement.

[78] The remedy for failing in its duty of disclosure is within the discretion of the Court; it can include setting aside or varying the order, or not: *Secure 2013 Group* at paras 47, 53, citing *Duke Energy Corporation v Duke/Louis Dreyfus Canada Corp*, 1998 ABCA 196 at para 4; rule 9.15(1)(a).

[79] In this case, Cramers does not seek to set aside the Order. He only seeks to vary it to remove BCCQ as a "Debtor". I address that next.

E. Should the Order be Varied to Remove BCCQ as a "Debtor"?

[80] The general rule is that an application to set aside or vary an *ex parte* order is presumptively heard *de novo*, although there may be circumstances where it would be unfair to allow the original applicant to bootstrap with additional evidence: *Secure 2013 Group* at paras 173-174; *Guillevin International Co v Barry*, 2022 ABCA 144 at para 18; *Paragon Capital* at para 26. Cramers did not object to the additional evidence filed by AFMC in response to the Application.

[81] In all the circumstances, considering the matter afresh based on the legal framework and factors noted above, the Court gives significant weight to the parties' commercial bargain, which included that Servus (or its assignee AFMC) had the discretion to include BCCQ (or other Guarantors) as a "Debtor". However, it is not determinative and it must nonetheless be appropriate and reasonable, and just and convenient, to include a specific Debtor in the Order.

[82] I find it is not appropriate BCCQ be included as a "Debtor" subject to the Order, for at least the following reasons.

[83] There is no evidence of irreparable harm to AFMC, or a material adverse effect on AFMC's legal or security position, if BCCQ's assets are not subject to receivership. Cramers has adduced evidence that a significant Elite asset, a commercial self-storage building in Edmonton (**Elite Property**) has been listed for sale by the Receiver for \$9,500,000. Based on the evidence before me, there are no other registrations against this property other than AFMC's security. In the Forbearance Agreement, the Indebtedness under the Loan Agreements was agreed to be

\$5,640,675.71 as of April 14, 2025, and appears to be \$5,741,209.06 as of July 8, 2025, with interest and other charges continuing to accrue.

[84] While the list price for the Elite Property is not necessarily representative of its market value (and there is no appraisal evidence before me), the listing in evidence includes some data (including current annual gross income, current annual expenses, potential annual gross income, and potential stabilized net income, and property taxes), which has been provided in support of the sale price. Further, the Receiver as an officer of the Court is under an obligation to pursue recovery in good faith and in a commercially reasonable manner. The listing is at least some evidence of reasonable value, even if the weight of that evidence should not be overstated. It appears likely the sale of the Elite Property will discharge the Indebtedness under the Loan Agreements, and will therefore achieve the commercial purpose of the Forbearance Agreement, namely the recovery of the Indebtedness.

[85] Quilliam's bald and conclusory statement that, in his opinion, not all "interested parties" (a term he does not explain or define) would be paid out even if the Elite Property sold for \$9,500,000 is not a persuasive answer. Neither the parties nor the Receiver provided the Court sufficient information about what, if any, other interested parties would not likely be paid out, or the nature of their interest.

[86] In all of the circumstances, I cannot conclude that the inclusion of BCCQ in the Consent Receivership Order as a "Debtor" subject to receivership is consistent with or necessary to achieve recovery of the Indebtedness under the Loan Agreements. AFMC has provided insufficient evidence as to its purpose for why including BCCQ as a "Debtor" is appropriate or reasonable. Based on the record before me, it appears to be an unnecessary, superfluous and unreasonable overreach, all within the context of a dispute (of which little has been disclosed to me) between Quilliam and Cramers about the management and future of BCCQ.

[87] It is not just and convenient that the Order be maintained over BCCQ's assets.

[88] While Cramers' delay in bringing the Application was lengthy, some but not all of it is explained by retaining new counsel and the Court's commercial list schedule. Some of the delay is unexplained and of concern, however, on balance, I do not find it is sufficient to maintain BCCQ as a "Debtor" in the Order.

[89] I have considered AFMC's argument that it would be pointless to remove BCCQ from the Order because a receivership order could be granted in any event, based on BCCQ being insolvent. I find that is not a persuasive reason to keep BCCQ subject to the Order in this Action, for at least two reasons. First, the question of whether BCCQ is insolvent is disputed, and I do not have sufficient information to decide that issue. Outdated 2024 financial statements (as provided by Cramers) and bald conclusory statements of opinion (as provided by Quilliam) are insufficient to fairly decide the question of insolvency. Second, the fact that BCCQ's own commercial property (**BCCQ Property**) is subject to a separate mortgage held by AFMC does not assist AFMC in this application in the way AFMC asserts. The state of that mortgage appears to also be in dispute and, in any event, AFMC relies on the Forbearance Agreement and the Consent Receivership Order, not the enforcement of that mortgage.

[90] In my view, whether AFMC is entitled to enforce its security over the BCCQ Property under a mortgage, or whether AFMC (or any other interested party) should be entitled to a new receivership order against BCCQ (separate and apart from the Consent Receivership Order and Forbearance Agreement), is something that, if pursued, should be the subject of a separate process made on notice to BCCQ and any other interested party.

F. What is an Appropriate Order?

[91] For the reasons set out above, the Application is granted and BCCQ is removed from the definition of “Debtor” in the Order. The Order is otherwise confirmed. My order shall specifically state it is without prejudice to any future separate action for the enforcement of any other security against, or to seek the appointment of a receiver or receiver-manager over, the assets or undertakings of BCCQ.

[92] AFMC asserts that Cramers should be responsible for the Receiver’s costs to-date for its work done with respect to BCCQ’s assets, given Cramers’ delay in bringing the Application. In light of my findings herein, and the fact that the Receiver’s time spent with respect to the BCCQ aspect of the receivership is only 7 hours since July 31, 2025, I do not find that to be appropriate.

[93] If the parties cannot agree on the question of costs of this Application with 30 days of these Reasons, they may write to me and I will set a process for determination of costs.

VII. Conclusion

[94] I grant the Application on the terms above.

Heard on the 25th day of November 2025.

Dated at the City of Calgary, Alberta, this 5th day of December 2025.

M.A. Marion
J.C.K.B.A.

Appearances:

Dean A. Hutchison
for Robert Cramers

Kevin P. Chapotelle
for Alberta Finance & Mortgage Corporation and Cameron Colby Quilliam

Shaun D. Wetmore
for Bodnar Capital Corp. and Conrad Bodnar

Bren R. Cargill
for the Receiver