

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

RE: Junhua Wang, Applicant
-and-
Hong Jing and Lihan Jing, Respondents

BEFORE: Jane Dietrich J.

COUNSEL: *Joseph Blinick, Dylan Gallant*, for the Applicant
William Main, Jasmine Landau, for the Respondents

HEARD: January 10, 2025

REASONS FOR DECISION

Introduction

- [1] The applicant, Junhua Wang seeks the appointment of Pollard & Associates Inc. as receiver and manager of the real property municipally known as 24 Cairns Drive, Markham, Ontario (the “**Real Property**”), rents and profits by virtue of any lease or agreement in respect of the Real property, and all chattels located upon the Real Property owned by the respondents and proceeds thereof pursuant to s.243(1) of the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B- 3 (the “**BIA**”), as amended and s.101 of the *Courts of Justice Act* R.S.O. 1990, c. C-43, as amended (the “**CJA**”).
- [2] The respondents object to the appointment, claiming, among other things, that the mortgage granted to Ms. Wang was part of a larger financing arrangement involving various third parties which is the subject matter of other litigation. The respondents’ position is that the enforcement of Ms. Wang’s mortgage should take place in connection with that other litigation.

Background

The Real Property

- [3] The respondents, Hong Jing and Lihan Jing are mother and son. Hong Jing resides abroad. Her son, Lihan Jing resides with his family in a residence located on the Real Property. Hong and Lihan Jing are the registered owners of the Real Property.
- [4] CIBC has a first mortgage on the Real Property. The amount owing to CIBC is approximately \$561,000.
- [5] The Jings purchased the property in 2015 for \$1.2 million. According to Lihan Jing, he has received preliminary appraisals that the Real Property may be worth \$1.8 to \$1.85 million. Lihan Jing's evidence is that the Real Property is appreciating in value.

The Mortgage

- [6] In connection with a loan commitment agreement between Ms. Wang and the Jings executed on April 13, 2023, Ms. Wang extended a non-revolving loan to the Jings in the principal amount of \$1,100,000 and the Jings provided Ms. Wang with a second charge/mortgage on the Real Property (the "**Mortgage**"). Zhen (aka Ryan) Kang, and certain others were guarantors / co-borrowers under the loan.
- [7] Lihan Jing gave evidence that he did not review the mortgage documents carefully. However, the documentation shows that the Jings obtained independent legal advice prior to entering into the loan and mortgage documents. The Jings also signed a solemn declaration acknowledging that they understood the nature and effect of those documents.
- [8] Ms. Wang's evidence is that no interest was received by her after August 14, 2023. Despite the issuance of a demand letter on October 30, 2023 (the "**Demand Letter**"), no further payments have been received by her.
- [9] A notice of sale was issued on January 16, 2024. On February 22, 2024, Ms. Wang commenced a claim for enforcement of the Mortgage in the Newmarket Court. The Jings challenged the Notice of Sale and filed a defense to the Newmarket action, sought to transfer of that action to Toronto and sought to consolidate it with certain other litigation. On August 1, 2024, the Newmarket action was discontinued by Ms. Wang. There remains a dispute about costs payable as a result of the discontinuation of that action.
- [10] The loan matured on May 14, 2024, and has not been repaid. Ms. Wang claims the amount owing is approximately \$1.33 million and interest at a rate of 18% per annum is continuing to accrue.
- [11] There is a dispute about the amount owed, because as explained below, Lihan Jang takes that position that certain payments were made by the guarantor Ryan Kang to a third party which were intended to cover a portion of the interest payments. Therefore, the Jings dispute the amount of the interest claimed by Ms. Wang. However, they do not dispute that the Mortgage has matured and the principal is unpaid.

[12] The Mortgage grants Ms. Wang a contractual right to appoint a receiver over the Real Property. In furtherance of this right, Ms. Wang has commenced these receivership proceedings.

Broader Financing Arrangements at Issue

- [13] The Respondents' position is that the Mortgage is part of a broader financing arrangement and should not be looked at independently. Specifically, Ryan Kang (a guarantor under the Mortgage) began a property development business known as Arkland Homes in 2020. Ryan Kang previously worked with an individual named Xiao Lui, who has been referred to in the parties' material as "Alex". Alex connected Ryan Kang with a man named Ming Wei Lui who has been referred to in the parties' material as "Edward". Alex indicated to Ryan Kang that Edward could provide financing for Arkland Homes.
- [14] Ryan Kang and Lihan Jing are close friends. The Jings agreed to use the Real Property for collateral to support Arkland Homes. According to Lihan Jing, Ryan Kang was to pay all interest and fees associated with the loan secured by the Real Property and Lihan Jing would obtain some benefit from the Arkland Home business once it was established. Those arrangements were not documented.
- [15] There were a series of mortgages put on the Real Property beginning in May of 2021. Immediately prior to the Mortgage, the Real Property was encumbered by a mortgage in favour of Edward that also encumbered certain other properties – all related to Arkland Homes.
- [16] In March of 2023, Alex (on behalf of Edward) advised Ryan Kang that the mortgage in favour of Edward need to be refinanced. When the new loan and security documentation was presented to the Jings and Ryan Kang, Ms. Wang was listed as the lender. Neither of the Jings nor Ryan Kang was previously aware of Ms. Wang and their evidence is that mortgage was intended to be part of the broader financing arrangements for Arkland Homes.
- [17] Although Ryan Kang is a guarantor and co-borrower under the loan, the documentation supporting the loan to Ms. Wang and the Mortgage, does not contain references to any of the additional financing agreements.
- [18] English is Lihan Jing's second language and he states he did not review the loan and mortgage documents carefully. Lihan Jing graduated in 2014 or 2015 with a Bachelor of Economics from York University. That degree was obtained in English. He is employed by Royal Bank of Canada as an investment advisor and holds CSC and IFC professional accreditations. His own evidence is that he is a sophisticated businessperson.
- [19] The evidence was that Ryan Kang paid approximately \$2.3 million to Edward in April and May of 2023. Ryan Kang advised Edward that a portion of that amount was to be used to pay interest on the Mortgage. Ms. Wang's evidence is that she did not receive any of those funds.

- [20] Ms. Wang's evidence is that she is an elderly individual who acted as a passive investor in mortgages. Her evidence is that she transferred the principal amount of \$1.1 million to her counsel Askrit Law on April 13, 2023. This accords with the trust ledger provided by Askrit Law. Counsel to the respondents takes issue with the fact that Ms. Jing did not produce any bank records to support her claim that the money was transferred from her accounts to Askrit Law. However, there is nothing to suggest otherwise, and Ms. Wang was consistent in cross-examination that although she could not locate the records, that it was her money.
- [21] From Askrit Law, funds in the amount of \$1,095,190.56 were transferred to Jacky Jian Zhang (counsel acting for the respondents). After payment of the existing mortgage on title, the excess proceeds of approximately \$60,000 were then transferred to Lihan Jing. Mr. Jing's evidence is he subsequently transferred those funds to Ryan Kang – but there is no dispute that the proceeds were received by Lihan Jing.
- [22] Ms. Wang's evidence is that she was not privy to any of the dealings between Ryan Kang, Alex and Edward or between Ryan Kang and the Jings, and none of those dealings were disclosed to her by the Jings.
- [23] Ms. Wang admits that she knew Alex. Alex referred the mortgage loan with the Jings to Ms. Wang. On cross-examination she advised she did not pay Alex any type of compensation for arranging the mortgage loan. She says she did not know Edward at the time of the mortgage loan.
- [24] Ms. Wang also admits that she worked with Alex after the mortgage loan with the Jing's went into default. She admits that certain interest payments were made by Ryan Kang as guarantor under the Mortgage. As well, she stated in cross-examination that Alex had a number of conversations with Ryan Kang, and then with her, about interest payments and replacement cheques in 2023. She says Alex was helping her deal with the matter at that time. When the demand letter of December of 2023 was drafted, Alex was still assisting her and provided an email of 'info.lbscapitals@gmail.com' for communications during that time. She also claims Alex referred counsel to her (who happened to also be Edward's counsel).

Status of other proceedings

- [25] On February 23, 2024, Arkland Homes Inc., Ryan Kang and certain numbered companies commenced an action in Toronto against among others, Edward, Alex, Ms. Wang and the Jings. There are also additional actions that have been commenced by Edward and others against Ryan Kang regarding payments of amounts owing. These actions are described by Justice Parghi in *Arkland Homes Inc. v Liu* 2024 ONSC 6423 [*Arkland Homes*] at paras 4 and 5.

- [26] In that decision of November 21, 2024, Justice Parghi ordered that certain litigation between the parties in that litigation be consolidated and case managed (see para 10 of *Arkland Homes*). This application by Ms. Wang to appoint a receiver was not referenced in Justice Parghi's decision of November 21, 2024.
- [27] Following Justice Parghi's decision, the Jings sought a case conference in this matter and requested an order adjourning this receivership application *sine die* as the litigation referenced in Parghi J.'s endorsement proceeded. In an endorsement of December 12, 2024, Justice Steele found that this receivership application was not captured by Justice Parghi's endorsement of November 21, 2024, was not to be consolidated with the other litigation referenced by Justice Parghi, and was to proceed on January 10, 2024, peremptory on the respondents.
- [28] On December 31, 2024, Justice Parghi wrote to the parties in the *Arkland Homes* litigation and advised that she agreed Ms. Wang's receivership application was not appropriately subject to the consolidation / coordination requirement and that it would not form part of the discussion at the upcoming case conference in that litigation.

Issues

- [29] The issues to be determined are whether it is just or convenient to appoint a receiver over the Real Property and if so, are the terms of the receivership order proposed by Ms. Wang appropriate.

Analysis

- [30] There is no dispute about the relevant law. The test for the appointment of a receiver under s.243 of the *BIA* or s.101 of the *CJA* is whether it is just or convenient.
- [31] As recently summarized by Justice Osborne in *Metropolitan Partners Group Administration, LLC v. International Credit Experts Inc.*, 2024 ONSC 4601:

21. In making a determination about whether it is, in the circumstances of a particular case, just or convenient to appoint a receiver, the Court must have regard to all of the circumstances, but in particular the nature of the property and the rights and interests of all parties in relation thereto. These include the rights of the secured creditor pursuant to its security: *Bank of Nova Scotia v. Freure Village on the Clair Creek*, 1996 O.J. No. 5088, 1996 CanLII 8258 ("*Freure Village*")

22. Where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: while the appointment of a receiver is generally an extraordinary equitable remedy, the courts do not so regard the nature of the remedy where the relevant security permits the appointment and as a result, the applicant is merely seeking to enforce a term of an agreement already made by both parties: *Elleway*

Acquisitions Ltd. v. Cruise Professionals Ltd., 2013 ONSC 6866 at para. 27. However, the presence or lack of such a contractual entitlement is not determinative of the issue.

23. As I observed in *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186, the Supreme Court of British Columbia, citing Bennett on Receivership, 2nd ed. (Toronto, Carswell, 1999) listed numerous factors which have been historically taken into account in the determination of whether it is appropriate to appoint a receiver and with which I agree: *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para. 25):

- a. whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment 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 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 a right to appointment under the loan documentation;
- h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
- i. the principle that the appointment of a receiver should be granted cautiously;
- j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties 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; and
- p. the goal of facilitating the duties of the receiver.

24. How are these factors to be applied? The British Columbia Supreme Court put it, I think, correctly: "these factors 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).

25. It is not essential that the moving party establish, prior to the appointment of a receiver, that it will suffer irreparable harm or that the situation is urgent. However, where the evidence respecting the conduct of the debtor suggests that a creditor's attempts to privately enforce its security will be delayed or otherwise fail, a court-appointed receiver may be warranted: *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007 at paras. 24, 28-29. See also *Freure Village* at para. 10.

26. Where the conduct of the debtor has led directly to a receivership application, the Court should place limited to no weight on objections from the debtor as to whether a receivership is the best remedy for the secured creditor: *GE Commercial Distribution Finance Canada v. Sandy Cove Marine Co.*, 2011 ONSC 3851 at para. 23.

[32] In applying these principles to the present case, is it just or convenient that a receiver be appointed? In my view it is.

[33] Although the presence of a contractual entitlement to appoint a receiver is not determinative factor, here, where the right to appoint a receiver is provided under the Mortgage, the remedy becomes less extraordinary see para 44 of *BCIMC Construction Fund Corporation et al. v The Clover on Young Inc.*, 2020 ONSC 1953.

[34] In the present case, the mortgage loan went into default in September of 2023. It matured in May of 2024 and remains unpaid. Although Lihan Jing provided evidence that he has started to explore refinancing options – those efforts did not even commence until December of 2024.

[35] Ms. Wang does not speak or understand English. She swore an affidavit on September 3, 2024, and a reply-affidavit on December 30, 2024. She was also cross-examined on January 6, 2025 (through a translator). Both affidavits she swore were in English. At the hearing, counsel for the respondents argued that I should disregard Ms. Wang's affidavit evidence it does not contain a jurat of translation as required by Rule 4.06(8) of the Rules which provides:

By a Person who does not Understand the Language

4.06(8) Where it appears to a person taking an affidavit that the deponent does not understand the language used in the affidavit, the person shall certify in the jurat that the affidavit was interpreted to the deponent in the person's presence by a named interpreter who took an oath or made an affirmation before him or her to interpret the affidavit correctly. R.R.O. 1990, Reg. 194, r. 4.06 (8).

- [36] As Rule 4.06(8) had not been raised by the respondents prior to the hearing, at the conclusion of the hearing, I made an endorsement, among other things, requiring that any evidence as to the translation of Ms. Wang's affidavits prior to her swearing of them was to be provided to me by no later than noon on January 14, 2025.
- [37] Pursuant to that endorsement, I was provided with an affidavit of Dr. Ran He former counsel to Ms. Wang sworn January 14, 2025. Dr. He was counsel to Ms. Wang at the time of the commencement of this application. His evidence was that he personally interpreted the final version of the two affidavits of Ms. Wang line by line to her and that he was satisfied that Ms. Wang fully understood both affidavits before she swore to the truth of their contents.
- [38] Taking into account the evidence provided regarding the interpretation of the contents of Ms. Wang's affidavits to her, I am not persuaded that in accordance with Rule 2.01(1) it is necessary or in the interest of justice to set aside or disregarding Ms. Wang's affidavits.
- [39] As noted above, there is some dispute about the payment of interest in 2023, at least \$1.1 million plus costs and interest going forward remains owed to Ms. Wang. Taking into account the first mortgage owing to CIBC of approximately \$561,000, the total debt owing as secured against the property is at least approximately \$1.6 million dollars. Given Lihan Jing's evidence that the Real Property may be worth \$1.8 to \$1.85 million, when one considers the costs of sale, costs of enforcement, the ongoing interest (and the disputed interest), any equity remaining in the Real Property is questionable. As interest is continuing to accrue at 18% under the Mortgage, if there is a delay in enforcement, even taking into account potential appreciation of value in the Real Property, Ms. Wang's security is at risk. Accordingly, I find the present circumstances distinguishable from those described by Justice Osborne in *2607087 Ontario Limited v. 2654993 Ontario Ltd. et al.*, 2024 ONSC 4595.
- [40] Despite the Jing's claim that Ms. Wang's entitlement to enforce on the Mortgage should be heard in connection with the litigation relating to Arkland Homes and the broader financing arrangements described above, both Justice Parghi and Justice Steele have already held otherwise. At paragraph 55 of the respondent's factum, the respondents outline a number of facts which they say link Ms. Wang and the Mortgage to the broader financing involving Arkland Homes. I have considered those items, many which are, as admitted by the respondent's counsel, circumstantial links that can be explained by the fact that Ryan Zang was a guarantor under the mortgage loan, that as admitted by Ms. Wang she was introduced to the mortgage loan through Alex (a central figure in the broader litigation) and that Ms. Wang used the same counsel as Edward and Alex.
- [41] However, there is no evidence that Ms. Wang was aware of the broader financing agreements at issue or agreed to be bound by them. I am not persuaded on the record before me, to ignore the terms of the mortgage loan documentation.

[42] The respondents also argue that the appointment of a receiver is unnecessary and expensive. It is unusual for the appointment of a receiver to be sought in these circumstances – when considering the amount of debt and nature of the property as a personal residence. However, given the history of this matter, I find that it is appropriate one be appointed in these circumstances. There is no dispute that Pollard & Associates is qualified to act.

Terms of Order

[43] In the respondent's factum, certain issues were raised with respect to the form of order presented by Ms. Wang's counsel given the nature of the Real Property. During the hearing, counsel for Ms. Wang stated that they were prepared to amend the draft order to address those concerns, along with certain concerns raised by me during the hearing. The concerns raised by me during the hearing related to (i) service on CIBC; and (ii) appointment of the receiver over the chattels located upon the Real Property given the lack of evidence that the Ms. Wang had registered under the *Personal Property Security Act* or what other creditors had registered under the *Personal Property Security Act*.

[44] In my endorsement of January 10, 2025, I provided that a revised form of order was to be provided to me by noon on January 14, 2025. The parties have attempted to come to an agreement on a revised form of order, but some disputes still remain. If counsel are not able to agree on a form order given the contents of these reasons, then counsel are to book a case conference before me through the commercial list office to settle the form of the order.

Disposition

[45] For these reasons described above, the application is granted.

Jane Dietrich J.

Date: January 20, 2025