

CITATION: PricewaterhouseCoopers Inc. v. Northern Citadel, 2023 ONSC 30
COURT FILE NO.: CV-22-00685200-00CL
DATE: 2023-01-19

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: IN THE MATTER OF S. 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O., 1990 c. C.43, AS AMENDED AND IN THE MATTER OF
SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED

PRICEWATERHOUSECOOPERS INC. (solely in its capacity as court-
appointed receiver and manager of Bridging Finance Inc. and certain related
entities and investment funds)

Applicant

AND

NORTHERN CITADEL CAPITAL INC., ONE8ONE DAVENPORT INC.
and **181 DAVENPORT RETAIL INC.**

Respondents

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *Grant Moffatt and Adam Driedger*, for PricewaterhouseCoopers Inc.

Ewa Krajewska, David Postel and Angela Lee, for Northern Citadel Capital Inc.

John Macdonald and Adam Sherman, for Richter Inc.

Sean Pierce, for Non-Party, Khashayar Khavari

HEARD and
DETERMINED: October 31, 2022

REASONS: January 19, 2023

ENDORSEMENT

[1] PricewaterhouseCoopers Inc., in its capacity as court-appointed Receiver and Manager of Bridging Finance Inc. (“BFI”) and certain related entities and investment funds (the “Applicant” or the “Bridging Receiver”) brings this application for an order (the “Receivership Order”)

pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (“BIA”) and section 101 of the *Courts of Justice Act* (“CJA”).

[2] At the outset of the hearing, a non-party, Khashayar Khavari (“Khash”) brought a motion to intervene as an added party pursuant to Rule 13.01.

[3] Argument on this motion proceeded prior to the hearing of the application. At the conclusion of argument, the motion was dismissed with costs awarded to the Bridging Receiver in the agreed upon amount of \$750.00.

[4] The following are the reasons for the dismissal.

[5] The Bridging Receiver seeks to appoint a receiver over three companies: Northern Citadel Capital Inc. (“Northern Citadel”), One8One Davenport Inc. (“One8One”), and 181 Davenport Retail Inc. (“181 Retail”).

[6] Khash contends that he owns 100% of the shares of Northern Citadel, 50% of the shares of One8One, and has a 50% interest in 181 Retail. Khash’s interest in these corporations is the subject of ongoing litigation between Khash and Sam Mizrahi (“Mizrahi”) (“the “Khash Litigation”). Khash submits that he has brought this motion to intervene to protect his interest in these companies and the relief sought with respect to these companies in the Khash Litigation .

[7] Rule 13.01 provides:

13.01(1) A person who is not a party to a proceeding may move for leave to intervene as an added party if the person claims,

- (a) an interest in the subject matter of the proceeding;
- (b) that the person may be adversely affected by judgment in the proceeding;
or
- (c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding.

(2) On the motion, the court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and make such order as is just.

[8] Khash submits that he should be granted leave to intervene because he satisfies either of the first two branches of the test.

[9] Khash submits that he has an interest in the subject matter of the litigation. Given the relief he seeks in the Khash Litigation, which includes the return of property that the respondent

companies are alleged to have (or to have had), Khash submits he has an interest in the nature of the property at issue in the application.

[10] Khash also submits that he could be adversely affected by judgment in the proceeding, as granting the application would give the Receiver powers that could adversely affect Khash's interest in a much greater way than a member of the general public.

[11] If granted leave to intervene, Khash submits that he supports in principle the appointment of a receiver over the Respondents, but requests that the order appointing the receiver provide certain protection for his interests.

[12] The motion of Khash was opposed by the Bridging Receiver and by the Respondents.

[13] Counsel to the Bridging Receiver points out that Khash's contingent equity claim is contested by the Respondents and is the subject of ongoing litigation. The Bridging Receiver submits that none of this is relevant to the application.

[14] The Bridging Receiver also points out that the Applicant has brought this application on behalf of Bridging, the senior secured creditor of the respondents. Bridging is owed approximately \$55 million from the respondents and is facing a significant shortfall. Bridging's debt and security are not contested by Khash and Khash supports, in principle, the appointment of the Receiver.

[15] The Bridging Receiver submits that Khash is a stranger to the debtor-creditor relationship as between Bridging and the Respondents. Khash is not an obligor under the loan nor is he a party or a signatory to any of the applicable agreements. Further, no relief is sought in respect of Khash. The Bridging Receiver submits that Khash appears to have no economic interest in these proceedings and will not be materially prejudiced by the appointment of a receiver.

[16] The Bridging Receiver also submits that relief under Rule 13.01 is discretionary and the court must consider whether the intervention will unduly delay or prejudice determination of the rights of the parties to the proceeding. The Bridging Receiver submits that Khash has not discharged his burden of satisfying the test.

[17] The Bridging Receiver submits that notably absent from Khash's factum is any case law to support the proposition that a contingent equity claimant who is a stranger to the debtor-creditor relationship can be added as a party to a receivership application brought by a secured creditor in respect of an insolvent debtor. To the contrary, the Bridging Receiver submits that in *Central One Credit Union v. UM Financial*, 2011 ONSC 5612 at paras. 22 and 23, which is the only reported decision in which this issue has been considered, Brown J. (as he then was) recognized that there is no precedent for a stranger to the debtor-creditor relationship being granted status as a party to a receivership application. The moving party requesting such status in *Central One Credit Union* was denied on the basis that it was a stranger to the adjudication of private contractual rights as between the applicant secured creditor and the debtor respondent.

[18] The Bridging Receiver submits that this is a private application brought on behalf of a senior secured creditor in respect of three insolvent debtors and the nature of the relationship

between Bridging and the respondents is derived from the applicable loan and security documents to which Khash is a stranger. Khash is not a signatory to any these agreements and no relief is being sought by the applicant in respect of Khash. Finally, the value of equity in any of the Respondents is questionable at best.

[19] The Bridging Receiver further submits that allowing the relief would introduce unnecessary complexity and costs and there is no legal or equitable basis for Khash to be added as a party to this application. I agree.

[20] Finally, to the extent that Khash wishes to participate in this proceeding as an interested party (whether on account of his contingent equity interest or otherwise), similar to all other stakeholders of the respondents, he is entitled to do so.

[21] I agree with the position put forth by the Bridging Receiver that Khash is a stranger to the debtor-creditor relationship. There is no case law to support the proposition that a contingent equity claimant who is a stranger to the debtor-creditor relationship may be added as a party to a Receivership application brought by a secured creditor in respect of an insolvent debtor.

[22] Further, I have not been persuaded that the application will adversely affect Khash's interest. If the Application is granted, the actions and activities of the Receiver will be supervised by the court.

[23] In addition, Khash is on the Service List and may participate in the process as an interested person. This reduces or eliminates any prejudice that Khash may suffer as a result of not being granted party status.

[24] I also accept the Receiver's submission that there are no questions of law or fact between the parties to the application and Khash that would justify Khash's intervention as a party. The issue on this application is whether a Receiver should be appointed over the Respondents. As recognized by Brown J. in *Central One Credit Union*, the issues on a receivership application typically include: (i) the existence of a debt and default; (ii) the quality of the security; and (iii) the need for a receiver in view of any alternative remedies available to the applicant. Khash does not dispute the existence of the debt owing to Bridging and the various defaults and Khash does not dispute the quality of the security held by Bridging. Simply put, Khash does not dispute any of the questions of fact or law arising on this application – he simply takes issue with the scope of the proposed form of order.

[25] Khash's motion is therefore dismissed with costs payable to Bridging Receiver in the agreed upon amount of \$750.00. In view of this determination, I need not consider the arguments put forth by the Respondents.



Chief Justice G.B. Morawetz

Date: January 19, 2023