



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00693569-00CL

DATE: April 19, 2023

NO. ON LIST: 3

TITLE OF PROCEEDING: The Toronto-Dominion Bank v Kivuto Solutions Inc.

BEFORE: JUSTICE CONWAY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Tim Duncan	Counsel for the Toronto Dominion Bank	tduncan@foglers.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Graham Phoenix & Shahrzad Hamraz	Counsel for BDO Canada Limited	gphoenix@loonix.com shamraz@loonix.com
Matthew Marchand	Receiver BDO Canada Limited	mmarchand@bdo.ca

ENDORSEMENT OF JUSTICE CONWAY:

- [1] The Receiver brings this motion for various relief including approval of its Second Report, directing the Receiver to establish a reserve for the Outstanding Disbursements, directing the Receiver to pay the transaction fee to Original Merchant Partners, authorizing the Receiver to make distributions to the secured creditor TD, and discharging the Receiver.
- [2] The motion is unopposed.
- [3] I reviewed the terms of the Discharge Order with counsel and in particular, paragraphs 7 and 8 authorizing the Receiver to change the name of the Debtor and to assign it into bankruptcy. This is all explained by the Receiver in the Second Report at paragraphs 44 and 45 and recommended by the Receiver.
- [4] I accept the Receiver's recommendation with respect to paragraph 8, assignment of the Debtor into bankruptcy.
- [5] Initially, I was prepared to grant the order in paragraph 7 authorizing the name change, with expanded language permitting the Receiver to deal with government offices more efficiently. However, after the hearing concluded, I raised issues with the name change and this court's jurisdiction to dispense with the name change requirements under the OBCA. I further noted that s. 171(3) of the OBCA restricts a corporation from changing its name when it is insolvent, as is the case here.
- [6] In light of the concerns that I raised, the Receiver's counsel has elected to remove paragraph 7 altogether so that I can sign the order today. He has advised that the Receiver may still, at the request of the purchaser, approach the Ministry to inquire as to effecting a name change but in so doing, will not be relying on an "enhanced standing" from the Court.
- [7] I have now signed the order. Order to go as signed by me and attached to this Endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.
- [8] If the Receiver needs to reattend to address concerns regarding a potential change of the Debtor's legal name, counsel may arrange a scheduling appointment with me through the CL office.

Handwritten signature of Justice Conway in blue ink.