



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00726047-00CL

DATE: November 28th, 2024,

NO. ON LIST: 2

TITLE OF PROCEEDING: SURACE v. REIS et al

BEFORE: JUSTICE PENNY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Paul Stern	Lawyer for the Respondents Reis, 1905247 Ontario Inc, Dupont Carpentry Limited	Pstern@sternlaw.ca
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ENDORSEMENT OF JUSTICE PENNY:

- [1] On October 22, 2024, I appointed Dodick Landau Inc. as interim receiver of VGA Carpentry Limited. The appointment was made to address the urgent need for accurate, up-to-date and reliable information about the business and affairs of VGA and, to the extent it had an impact on VGA, the business and affairs of Dupont Carpentry Limited, which took over the completion of various VGA projects. There are 15 relevant projects listed in Schedule A to the shareholders' agreement between Surace and Reis.
- [2] The Receiver has begun but not completed its work. The state of the business records is less than optimal. The Receiver has found it difficult to readily obtain much of the information it is seeking.

- [3] Both parties agree that the Receiver should remain in place to continue to address the issues of concern, which focus on the 15 projects in Schedule A and how the costs and revenues of those projects are recorded, allocated and accounted for.
- [4] There is a disagreement however about the need for expanded powers in the receivership order. Surace says expanded powers are necessary to address some of the delays and alleged lack of cooperation from Reis in facilitating the Receiver's work. The Receiver supports these expanded powers. Initially, Reis opposed all amendments to the current order arguing that no expanded powers were necessary. During argument, however, Reis conceded that at least some revisions to the existing order were warranted.
- [5] I have reviewed the details of the amendments proposed by Surace and considered the arguments of the parties for and against these amendments. In my view, the bulk of the amendments are consistent with the intent of my original endorsement and will clarify Reis's obligations and enhance the Receiver's work, to the benefit of both parties. Some of the requested provisions, however, are overreaching, unnecessary or impractical. I will address the main areas of contention below.
- [6] I am satisfied that the amendments proposed in para. 2 of the proposed order are warranted and they are approved, with one revision. I have revised paras. 2 (e) and (f) to reflect the idea that any proposed remedial action or settlements regarding accounts receivable collection will occur following advance notice to and consultation with the parties.
- [7] Paragraph 6(a) concerns the Receiver's access to "business records" in general and emails specifically. In my view, ordering that the Receiver be granted access to all of Dupont's business records and all of Dupont's emails is overreach at this time. Among other things, it risks compromising solicitor client privilege. What the Receiver needs at this stage is financial information about Dupont which relates to the completion of, and accounting for, the Schedule A work. That is covered in para. 2(b). For this reason, subject to further evidence demonstrating the needs for these powers, I have removed Dupont from the access required in para. 6(a). The obligations in the resulting para. 6(a) are to be performed by December 4, 2024, as agreed between the parties at the hearing.
- [8] The production of payroll records is dealt with in the proposed para. 6(c). Payroll records are an important input into the Schedule A accounting exercise. Reis has undertaken to use his best efforts to provide this information (to the extent not already captured by production of the email information dealt with in para. 6(a)) by December 20, 2024. I have revised para. 6(c) to reflect this.
- [9] I have deleted para. 7 of the proposed order. In my view, it is premature to be requiring specific payments from Dupont in relation to one aspect of the parties' dispute. The Receiver's role regarding funds collected and/or received by Dupont which are receivables of VGA shall be limited, for now at least, to the identification of and accounting for such amounts. The question of payment may be revisited at the next return date.

[10] Finally, the parties shall return for a further case conference and/or hearing on February 13, 2025 at 10:00 AM for two hours. The Receiver shall prepare a report of its work, findings and further recommendations. That report should be provided to the parties and to the court by February 10, 2025.

[11] Order to issue in the form signed by me this day.

A handwritten signature in blue ink, appearing to read "Penny J.", followed by a period.

Penny J.