



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL SLIP/ENDORSEMENT**

COURT FILE NO.: CV-24-00726047-00CL DATE: OCTOBER 22 2024

NO. ON LIST: 3

TITLE OF PROCEEDING: SURACE v. REIS et al

BEFORE: JUSTICE PENNY

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Craig A Mills	Nicola Surace	cmills@millerthomson.com

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
Paul Stern	Reis, 1905, Dupont	416 859 3422 Ext. 324 pstern@sternlaw.ca
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**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info

## **ENDORSEMENT OF JUSTICE PENNY:**

- [1] Surace and Reis are shareholders, officers and directors of VGA Carpentry. They are parties to a shareholders' agreement, the purpose of which was to transition Surace out of the business and for Reis to take it over. Existing work was identified in Sch A to the agreement. Sch A work was to be performed by VGA and the profits shared between Surace and Reis. New work was to be undertaken by a new entity, and be carried out and accounted for on Reis' account. Although simple enough in concept, it has turned out to be very complicated indeed.
- [2] Surace has serious concerns about the way the business is being operated. He alleges billings are not being sent out on a timely basis, accounts receivable are not being collected and that improper payments are being made to Reis out of revenues. Of great concern is the lack of transparency and lack of information being provided by Reis. Also of great concern is a CRA payable of over \$2 million on account of employee withholding, HST and taxes, the first two of which attract potential personal liability of directors. CRA has taken enforcement measures, seizing funds from VGA's bank account. Surace has brought an application under the oppression remedy and seeks, as the main relief today, the appointment of a full-blown receivership over all of the assets and undertaking of VGA.
- [3] At the outset of the hearing, Reis sought an adjournment on the basis of late-breaking information that the CRA had agreed to defer enforcement if VGA were able to develop a viable plan for repayment and provided satisfactory disclosure. This request was opposed. I took the request under reserve and heard full argument on the merits for the 2 hours booked for this hearing.
- [4] At the conclusion of the hearing, I indicated that I was not prepared to order a full-blown receivership but that, given the persistent problems of a lack of reliable, up to date information about the business and affairs of VGA and its successor or replacement, Dupont, I was going to appoint an interim receiver with powers to inspect and review all of the financial records of these companies and the power to require information from third parties in aid of this exercise.
- [5] I find that it is not just or convenient to order a full-blown receivership at this time. VGA is an operating business. There is no reliable evidence that it is insolvent. The appointment of a receiver is an extraordinary remedy. Unlike most receiverships on the Commercial List, there is no loan or other document providing for the appointment of a receiver. In this case, given the lack of accurate and reliable information, the appointment of a receiver is premature. Such an appointment would almost certainly destroy VGA as an operating entity. The record, replete with allegations and counter-allegations, does not permit a proper assessment of the causes of the problem or about the relative conduct of the parties. There is certainly a total lack of trust. It is not clear to me how long a receiver would have to be in place. There is no evidence about the cost of a receivership or its impact on the business. This is a relatively modest operation. It seems to me, at this stage, the appointment of a receiver is overkill. Further, I am not satisfied that a receiver is the only way to do what needs to be done.
- [6] It did become apparent during the submissions that there is indeed a total lack of accurate, up to date and reliable information about the business and affairs of the companies. Having that information is critical to even begin to address VGA's problems and the dispute between the two shareholders.
- [7] For this reason, I order that an interim receiver to appointed with powers limited to inspection and review of the business records of VGA and Dupont, including the power to obtain financial information about VGA and Dupont in the hands of third parties.
- [8] The receiver shall be entitled to a charge on VGA's assets to cover its costs. VGA will be liable for those costs. The allocation of the costs of the receivership as between Surace and Reis, however, will be dealt with later in these proceedings once the work of the receiver has been done and reported to the parties and to the court.

- [9] I direct counsel to negotiate the terms of the pared-down order contemplated above. If they are unable to agree, counsel shall provide me with a blackline version, highlighting the disputed provisions. I will decide what provisions shall apply.
- [10] This matter is adjourned without prejudice to either side's position to a further hearing before me on November 28, 2024 at 11:00 AM for two hours.

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

Penny J.