



SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-24-00712328-00CL

DATE: APRIL 4, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: ROYAL BANK OF CANADA v. TRANS EMERGE TRANSPORT INC.  
BEFORE: JUSTICE BLACK

**PARTICIPANT INFORMATION**

**For Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
Timothy Hogan	Counsel for the Receiver, msi Spergel Inc. – Mukul Manchanda	thogan@harrisonpensa.com

**For Responding Party:**

Name of Person Appearing	Name of Party	Contact Info
Mark Klaiman	Counsel for 2352628 Ontario Inc. o/a Hub Truck Centre	mklaiman@szklaw.ca

**For Other:**

Name of Person Appearing	Name of Party	Contact Info
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**ENDORSEMENT OF JUSTICE BLACK:**

- [1] This was a motion by the court-appointed receiver msi Spergel Inc. (“Spergel” or the “Receiver”), seeking an order confirming that it is entitled to immediate possession of certain truck trailers (the “Trailers”), in the possession of the defendant 2352628 Ontario Inc. (“Hub”).
- [2] The respondent, Trans Emerge Transport (the “Debtor”), carries on business as a transporter of goods, specializing in heavy haul and refrigerated services across North America.
- [3] The Applicant Royal Bank of Canada (“RBC”), leased the Trailers to the Debtor.
- [4] The sole shareholder of the Debtor, Haminder Binapal, and 10000711945 Ontario Inc. (“100 Ontario”), entered into a letter of intent for the purchase of shares of the Debtor.
- [5] Hub is an affiliate of 100 Ontario.
- [6] The Debtor alleges that 100 Ontario began operating the Debtor’s business and, in so doing, relocated the Debtor’s trucks and trailers, including the Trailers, to 100 Ontario’s business premises.
- [7] The share purchase of the Debtor’s shares was not completed.
- [8] Hub registered an interest against the Trailers under the *Personal Property Security Act* (Ontario) (the “PPSA”) in January of 2024.
- [9] The Receiver was appointed by order of this court dated January 22, 2024, of the property and undertaking of the Debtor (the “Receivership Order”).
- [10] In that capacity, the Receiver learned in early February of 2024, that certain equipment leased by the Debtor was in the possession of Hub, which was an affiliate of 100 Ontario, and that Hub was claiming repair and storage liens over that equipment under the *Repair and Storage Liens Act* (“RSLA”). The equipment included the Trailers.
- [11] Counsel for the Receiver wrote to counsel for 100 Ontario, who had told the Receiver’s counsel of Hub’s lien claims, demanding that Hub deliver the Trailers to the Receiver pursuant to the Receivership Order and advising that any valid lien claims by Hub would not be disqualified by virtue of Hub returning the Trailers.
- [12] Counsel for 100 Ontario responded that it did not represent Hub, and provided the Receiver’s counsel with the name of Hub’s lawyer.
- [13] Receiver’s counsel wrote to that lawyer, reiterating what it had said to 100 Ontario’s lawyer.
- [14] Hub’s lawyer took the position that the storage charges claimed by Hub in relation to the Trailers would have to be paid before Hub would release the Trailers. In response, the Receiver’s counsel again confirmed that valid RSLA lien claims would be honoured, but that the Receiver was not obliged, and not prepared to

pay the storage charges as a condition of the release of the Trailers. I note that the Receiver had, and has, concerns about the validity of Hub's lien claims, but was (and is) prepared to consider those lien claims in good faith and make a determination about their validity in due course.

- [15] In late February, there was a further exchange of correspondence between counsel for Hub and counsel for the Receiver in which the parties reiterated their positions. In the result, counsel for the Receiver advised that the Receiver would be proceeding with a hearing before the court to recover the Trailers. In response, Hub engaged litigation counsel.
- [16] The issue before me is whether or not to require Hub to deliver to the Receiver possession of the Trailers (and any other property of the Debtor in the possession of Hub).
- [17] The Receiver relies on the (standard) language of the Receivership Order, which confers authority on the Receiver to take possession and control of the Debtor's property and property used in the Debtor's business (as well as control of the business itself).
- [18] It points to the decision of the Supreme Court of Canada in *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41, in which the Court confirmed that "receivers represent neither a security holder nor the debtor; they are officers of the court whose 'sole authority is derived from ... Court appointment and from the directions given [to them] by the Court'", and confirming the wide-ranging powers bestowed on a receiver under s. 243 of the BIA.
- [19] The Receivership Order, consistent with that notion, requires that various persons (as defined) "shall forthwith advise the Receiver of the existence of any [of the Debtor]'s Property in such person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request".
- [20] Finally, and in particular, the Receiver relies on the decision of Rady J. in *Royal Bank v. Delta Logistics*, 2017 ONSC 368.
- [21] In that case, the court-appointed receiver moved for an order requiring a party asserting a possessory lien pursuant to the RSLs over the debtor's property to deliver to the receiver possession of such property.
- [22] The receiver in *Delta Logistics* sought the return of seven trucks in the repairer's possession which the receiver believed had equity and that the receiver wished to sell. As here, the Receiver in *Delta Logistics* had concerns about the validity of the repairer's lien claim, but advised that the adjudication of that issue would wait for another day.
- [23] As here, the receiver in *Delta Logistics* relied on the scope of its authorization under the order appointing it, including the authorization to take possession of the Debtor's property and sell it for the benefit of the creditors.
- [24] Justice Rady, relying in part on *Bank of Nova Scotia v. MacCulloch & Co.* (1983) 49 C.B.R. (N.S.), and quoting from the receiver's factum, said:

“...a court-appointed receiver...is authorized and empowered to liquidate all of the assets of the debtor under the supervision of the court, to the exclusion of all others including secured creditors, whereas the stay in a bankruptcy specifically preserves the rights of secured creditors to exercise their remedies. The whole point of a court-appointed receiver is that one person...is appointed to deal with all of the assets of an insolvent debtor, realize upon them, and then distribute the proceeds of that realization to the creditors’ claims...As is clear from the broad wording of the Appointment Order, all creditors, secured and unsecured, are stayed from exercising their remedies against the insolvent person’s assets in favour of a single, court-supervised liquidation process by the receiver. Whether a secured creditor’s rights arise under the Mortgages Act, the Personal Property Security Act, the Construction Lien Act, the Repair and Storage Liens Act, at common law, or otherwise, that creditor is bound by the provisions of the Appointment Order.”

[25] Her Honour concluded:

“The Court Order prevails. Given its breadth, the receiver is and must be entitled to take possession of the liened articles, without prejudice to the claimant’s possessory lien claim to be determined at another time. Such an interpretation is consistent with the necessity for the receiver to maintain control over the debtor’s assets to ensure their advantageous and orderly disposition for the benefit of all creditors and to avoid duplicative costs that would otherwise arise from multiple sales. The receiver’s rights and obligations derive from the court order and not from the debtor as 233 asserts.”

[26] In his able argument on behalf of Hub, asserting Hub’s entitlement to keep possession of the Trailers and to lead the effort to sell them, Mr. Klaiman makes two main points.


[27] First, he argues that pursuant to the evident scheme and language of the RSLA, Hub’s possessory lien under the RSLA has priority over the interest of all other persons in the equipment. The argument notes that “interest” under s. 6 of the RSLA must include not only right to payment but also possession.

[28] I find that the clear language of the Receivership Order, itself the product of a clear statutory scheme, trumps the interpretation of the RSLA urged by Mr. Klaiman. As Rady J. put it in *Delta Logistics*, “the Court Order prevails”. In my view, this is consistent with, and indeed the foundation of the orderly and centrally controlled (in the hands of a receiver) process for realizing on assets and distributing proceeds to creditors. To allow Hub’s claim here would be a step down the road to a fragmented and chaotic process in which creditors are fending for themselves. This is anathema to the controlled process engendered by Parliament.

[29] In the setting of his first argument, Mr. Klaiman relies on the decision of Gans J. in *General Electric Capital Canada Inc. v. Interlink Freight Systems Inc.*, 42 O.R. (3d) 348. In that case, however, Gans J. was dealing with the priority of a non-possessory lien under the RSLA relative to the interest of other secured creditors following an intervening bankruptcy. I do not find that the case assists Hub’s position here.

[30] Hub’s second argument rests on commercial reasonableness, and the notion that Hub’s principal has connections throughout the transportation industry, and is likely able to realize the best return for the Trailers without involving third parties and incurring fees.

- [31] In my view, while it would be open to the Receiver to take advantage of Hub's principal's expertise, if it was of a mind to do so, and/or to market and sell the Trailers from Hub's premises, it need not do so.
- [32] Where, as here, there are concerns about the legitimacy of the lien claims, and where the Receiver perceives an advantage in taking possession and control of the Trailers itself, it is empowered to do so, and the court should not generally be second-guessing the decisions of the expert that the court itself has appointed and empowered.
- [33] For these reasons I grant the relief sought by the Receiver, and order that the Receiver is entitled to immediate possession of the Trailers and any other property of the Debtor in the possession of Hub.



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**W.D. BLACK J.**

**DATE: April 9, 2024**