

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ROYAL BANK OF CANADA

Applicant

-and-

A.A.M LOGISTICS INC.

Respondent

FACTUM OF THE APPLICANT

(Application Returnable May 16, 2024)

May 6, 2024

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TO: Service List

Court File No. CV-24-00001690-0000

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PART I – THE APPLICATION

The Applicant, Royal Bank of Canada (the “**Bank**”) seeks the following Order, substantially in the form attached as Schedule “A” and in template form (the “**Appointment Order**”) to the Notice of Application:

- a) Appointing msi Spergel inc. as Receiver (“**Spergel**” or the “**Receiver**”), without security, of all of the assets, undertakings and properties of the Respondent, A.A.M Logistics Inc. (the “**Debtor**”), acquired for, or used in relation to the business carried on by the Debtor;
- b) That the time for service, filing and confirming of the Notice of Application and the Application Record be abridged and validated so that this application is properly returnable today and dispensing with further service thereof; and,
- c) Such further and other relief as to this Honourable Court may seem just.

The Position of the Bank

1. It is the Bank’s position that the present circumstances are an appropriate case for the appointment of the Receiver, including the following (all capitalized terms as defined herein):

- a) The Bank is a secured creditor of the Debtor pursuant to the GSA;
- b) The Debtor defaulted under the terms of the Letter Agreement, as a result of, *inter alia*, the following:
 - i. Default and overlimit excesses on certain facilities;
 - ii. Failure to make payments as same became due under certain facilities; and,
 - iii. Failure to provide certain reporting as required by the Letter Agreement.
- c) The Debtor has failed to cure the Defaults, and the Demands issued by the Bank have expired;
- d) In the face of the expired Demands, the Debtor is insolvent. No further terms of credit nor forbearance is available to the Debtor from the Bank;
- e) The Bank's Security provides the Bank with the right to appoint a Receiver over all property of the Debtor as a result of the Defaults; and,
- f) A Receiver will be required to preserve and maintain the property of the Debtor and complete the orderly sale of same and to ensure that the proceeds of any such sale are applied to the Debtor's obligations. In relation to any such sale, the Appointment of Receiver is also necessary to deal with any subsequent claims to the proceeds.

PART II – FACTS/OVERVIEW

2. The Debtor is a company incorporated pursuant to the laws of the Province of Ontario, with its registered office located in Brampton, Ontario.

Reference: Affidavit of Manoj Davé, sworn April 16, 2024, at para 2 and Exhibit "A" thereto (the "Davé Affidavit").

3. The Debtor operates a national logistics and trucking company.

Reference: Davé Affidavit at para 4.

4. Araslan Minhas (“**Minhas**” or the “**Guarantor**”) is the sole director and officer of the Debtor and is a guarantor of the obligations owing by the Debtor to the Bank.

Reference: Davé Affidavit at para 3.

5. The Debtor is insolvent, and is currently in Default (a “**Default**”, or the “**Defaults**”) of its obligations to the Bank as a result of the following:
- a) Default and overlimit excesses on certain facilities;
 - b) Failure to make payments as same became due under certain facilities; and,
 - c) Failure to provide certain reporting as required by the Letter Agreement.

Reference: Davé Affidavit at para 5.

The Obligations to the Bank and Security Held

6. As of April 11, 2024, the Debtor was indebted to the Bank in the amount of \$1,916,170.61, plus accruing interest and the Bank’s continuing costs of enforcement including legal and professional costs (the “**Obligations**”), in respect of certain financing advanced to the Debtor pursuant to the terms of a Royal Bank of Canada Credit Agreement dated August 1, 2023 (the “**Letter Agreement**”);

Reference: Davé Affidavit, at para 7 and Exhibit “B” thereto.

(paragraphs 8 and 9 collectively, the “**Financing**”).

Reference: Davé Affidavit, at para 9.

7. The Obligations are secured by, *inter alia*, the following:
- a) General Security Agreement from the Debtor dated August 2, 2023 (the “**GSA**”);

- b) Guarantee and Postponement of Claim from Minhas dated August 2, 2023, limited to the amount of \$950,000 (the “**Guarantee**”); and,
 - c) The Master Lease Agreement dated August 16, 2023 (the “**Lease**”).
- (collectively, the “**Security**”).

Reference: Davé Affidavit, at para 10 and Exhibits “C” to “E” thereto.

The Bank’s Security Interest in The Personal Property of the Debtor

- 8. The GSA secures all personal property of the Debtor. The Bank has registered a Financing Statement as against the Debtor pursuant to the provisions of the *Personal Property Security Act* (Ontario) to perfect its security interest in the personal property of the Debtor secured under the GSA.

Reference: Davé Affidavit, at paras 11-14, and Exhibits “F” and “G” thereto.

- 9. The Lease includes the following leasing schedule:
 - a) Schedule 201000075844 dated August 19, 2023, in relation to the following:
 - i. 1 2012 Utility Dryvan Triaxle – VIN: 1UYVS3535DG474125.

Reference: Davé Affidavit, at para 9, and Exhibit “E” thereto.

- 10. The Debtor provided an asset list to the Bank as at July 2023 which listed 36 vehicles. Counsel for the Bank has run VIN searches on the vehicles and 6 vehicles have been returned to indicate that no VIN number could be found.

Reference: Davé Affidavit, at para 14, and Exhibit “G” thereto.

Defaults and Demands

- 11. As a result of the Defaults, the Bank did deliver a demand for payment and a Notice of Intention to Enforce Security to the Debtor, pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”), both dated March 20, 2024. The Bank also delivered a demand to Minhas, also dated March 20, 2024 (collectively, the “**Demands**”).

Reference: Davé Affidavit, at para 15 and Exhibit “H” thereto.

12. From March 12, 2024 to April 3, 2024, the Bank was in contact with the Debtor and requested that the Debtor provide copies of certain financial reporting to the Bank. The Debtor provided some of the requested information but failed to provide all requested documentation.

Reference: Davé Affidavit, at paras 16 to 18 and 20 and Exhibits “I” to “K” and “N” thereto.

13. On April 1, 2024, counsel for the Bank emailed the Debtor to advise that the Demands had expired. On April 2, 2024, counsel for the Bank emailed the Debtor to inquire as to whether the Debtor had retained legal counsel. The Debtor failed to respond to counsel for the Bank.

Reference: Davé Affidavit, at para 19, and Exhibits “L” and “M” thereto.

14. All statutory notice periods in relation to the Demands have expired, and the Debtor and Guarantor have failed to repay the Obligations due, despite the Demands.

Reference: Davé Affidavit, at para 21.

The Appointment of a Receiver

15. The Obligations due pursuant to the Demands have not been paid. The ten (10) day period under section 244 of the BIA has expired. The Debtor in default of the Financing. The Bank is unwilling to provide any further forbearance or credit to the Debtor. The Bank is in a position to appoint a receiver over the assets and property of the Debtor as secured by the Bank’s Security, pursuant to section 243 of the BIA.

Reference: Davé Affidavit, at paras 22, 23, and 27 to 34.

16. The GSA and the Lease grant the Bank the right to appoint a Receiver over all personal property of the Debtor, as a result of the Defaults of the Debtor under the Financing.

Reference: Davé Affidavit, at paras 24 and 29.

17. Spergel has consented to act as Receiver, should this Honourable Court so appoint it.

Reference: Davé Affidavit, at para 36.

PART III – ISSUES, LAW AND ARGUMENT

Issues

18. The issues before this Court, and addressed below, are:

- a) Does this Court have jurisdiction to appoint the Receiver?
- b) Should this Court appoint the Receiver?
- c) If this Court decides to appoint the Receiver, then are the terms of the Receivership Order appropriate in the circumstances of this receivership?

(a) This Court has jurisdiction to appoint the Receiver

19. Subsection 243(5) of the BIA provides that an application under subsection 243(1) of the BIA is to be filed in a court having jurisdiction in the judicial district of the “locality of the debtor”, which is defined in section 2 of the BIA.

[BIA, s. 2, Schedule “B”](#); [BIA, s. 243\(5\), Schedule “B”](#).

20. The Debtor is an Ontario corporation with its registered office in Brampton, Ontario. The business carried on by the Debtor that is subject to the proposed receivership is located in Brampton, Ontario. The locality of the Debtor is, therefore, Ontario, and this application is properly brought before the Ontario Superior Court of Justice.

21. Subsection 243(4) of the BIA provides that only a trustee, as defined in section 2 of the BIA, may be appointed under subsection 234(1) of the BIA.

[BIA, s. 2, Schedule “B”](#); [BIA, s. 243\(4\), Schedule “B”](#).

22. Spergel is a trustee as defined in the BIA, and therefore, satisfies the requirements for appointment pursuant to the BIA.

(b) This Court should appoint the Receiver

23. Section 244(1) requires that a secured creditor provide an insolvent person with the requisite advance notice of its intention to enforce security.

[BIA, s. 244\(1\), Schedule “B”.](#)

24. The Applicant sent the Demands together with its Notice of Intention to Enforce Security pursuant to such section of the BIA, to the Debtor on March 20, 2024, and this application is being heard on a date that is after the date on which any applicable notice periods expired.

25. Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended (the “**CJA**”) provides for the appointment of a receiver by this Court where it is “just and convenient”. Section 243(1) of the BIA also provides that, on an application by a secured creditor, this Court may appoint a receiver if it considers it to be just and convenient to do so to: (a) take possession over the assets of an insolvent person; (b) exercise any control that the Court considers advisable over the property and business; or (c) take any other action that the Court considers advisable.

[CJA, s. 101, Schedule “B”; BIA, s. 243\(1\) and 243\(2\), Schedule “B”.](#)

26. Where the loan agreement and related transaction documents contemplate the appointment of a receiver, this Court may have regard to the principles summarized by Justice Newbould in *RMB Australia Holdings Limited v. Seafield Resources Ltd.*:

28 In determining whether it is “just or convenient” to appoint a receiver under either the BIA or CJA, Blair J., as he then was, in *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 40 C.B.R. (3d) 274 (Ont. Gen. Div. [Commercial List]) stated that in deciding whether the appointment of a receiver was just or convenient, the court must have regard to all of the circumstances but in particular the nature of the property and the rights and

interests of all parties in relation thereto, which includes the rights of the secured creditor under its security. He also referred to the relief being less extraordinary if a security instrument provided for the appointment of a receiver:

While I accept the general notion that the appointment of a receiver is an extraordinary remedy, it seems to me that where the security instrument permits the appointment of a private receiver — and even contemplates, as this one does, the secured creditor seeking a court appointed receiver — and where the circumstances of default justify the appointment of a private receiver, the “extraordinary” nature of the remedy sought is less essential to the inquiry. Rather, the “just or convenient” question becomes one of the Court determining, in the exercise of its discretion, whether it is more in the interests of all concerned to have the receiver appointed by the Court or not.

29 See also *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 (Ont. S.C.J. [Commercial List]), in which Morawetz J., as he then was, stated:

...while the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties. See *Textron Financial Canada Ltd. v. Chetwynd Motels Ltd.*, 2010 BCSC 477, [2010] B.C.J. No. 635 at paras. 50 and 75 (B.C. S.C. [In Chambers]); *Freure Village*, supra, at para. 12; *Canadian Tire Corp. v. Healy*, 2011 ONSC 4616, [2011] O.J. No. 3498 at para. 18 (S.C.J. [Commercial List]); *Bank of Montreal v. Carnival National Leasing Limited and Carnival Automobiles Limited*, 2011 ONSC 1007, [2011] O.J. No. 671 at para. 27 (S.C.J. [Commercial List]).

[**RMB Australia Holdings Limited v. Seafeld Resources Ltd., 2014 ONSC 5205 \(CanLII\), paras 28-29.**](#)

27. The existence of a contractual right to appoint a receiver in the loan agreement and related transaction documents is key. Where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: while the appointment of a receiver is generally an extraordinary equitable remedy, the courts do not so regard the nature of the remedy where the relevant security permits the appointment and as a result, the applicant is merely seeking to enforce a term of an agreement already made by both parties.

[**Elleway Acquisitions Limited v. The Cruise Professionals Limited, 2013 ONSC 6866 \(CanLII\) at para 27.**](#)

28. This relief that is granted more as a matter of course, is especially true in cases in which the circumstances further support such an appointment. That is the case here.

29. With this lower burden, the following additional “just or convenient” factors identified by Justice Farley in *Confederation Life Insurance Co. v. Double Y Holdings Inc.* may be considered:

- a) The lenders’ security is at risk of deteriorating;
- b) There is need to stabilize and preserve the Debtor’s business;
- c) Loss of confidence in the Debtor’s management; and,
- d) Positions and interests of other creditors.

***Confederation Life Insurance Co. v. Double Y Holdings Inc.*, 1991 CarswellOnt 1511 (Ont. S.C.J. (Commercial List)) [“Confederation Life”], paras. 19-24, Tab 1 of the Applicant’s Book of Authorities.**

30. It is not essential that the moving party/secured creditor establish that it will suffer irreparable harm if a receiver/manager is not appointed.

***Swiss Bank Corporation (Canada) v. Odyssey Industries Incorporated* (1995), 30 C.B.R. (3d) 49 at para 28, Tab 2 of the Applicant’s Book of Authorities.**

31. When the above *Confederation Life* factors are applied to this case, the Applicant submits that the burden to appoint a receiver has been met and that such appointment is just and convenient in the circumstances:

- a) ***The Debtor contractually agreed to the appointment of a receiver.*** The loan agreements and the related transaction documents among the Applicant and the Debtor expressly entitle the Applicant to appoint a receiver under certain circumstances, including the present circumstances. The Applicant now exercises these entitlements, subject to this Court’s authority.

- b) ***The loan agreement is in default.*** As set out above, events of default have occurred and are continuing under the loan agreement and the related transaction documents. The Applicant has demanded on the Obligations. The Applicant provided the Debtor with statutory notice of their intention to enforce security, and the applicable notice periods have elapsed.
- c) ***The lenders' security is at risk of deteriorating.*** The Bank is concerned that the Debtor does not have the working capital needed to maintain its property. If the property of the Debtor deteriorates, the realizable value of the Security will diminish as a result. The assets of the Debtor are mainly comprised of vehicles and the Bank is concerned with their movability.
- d) ***The Debtor's business needs to be stabilized and preserved.*** The Debtor's liquidity crisis will continue to worsen in the absence of action. A receiver will be able to provide stability and transparency, and take the necessary steps to preserve the Security, including conducting an orderly sale process that will generate recoveries for creditors. If the Debtor's business experiences further disarray, or the Security is not preserved, there will be further negative consequences.
- e) ***The Applicant has lost confidence in the Debtor's management.*** The Debtor has not advised or provided evidence of alternatives to a receivership that stand any reasonable chance of success, despite significant time in which to do so. The Applicant has justifiably lost confidence in the management of the Debtor due to the events described in the Dave Affidavit, including failing to provide the Applicant various information, as requested.
- f) ***Position and interests of other Creditors.*** The Applicant is not the only creditor of the Debtor. As at the date of this Factum, no creditor has opposed the receivership

application. The Receiver will be able to properly and equitably deal with the interests of creditors other than the Applicant. A receivership provides parties with an effective forum in which to deal with any issues, including any competing claims, that may arise in respect of the Debtor and its property.

32. As at the date of this Factum, the Applicant is not aware of any restructuring efforts by the Debtor that stands any reasonable chance of success.

(c) The Terms of the Receivership Order are Appropriate

33. The terms of the proposed Receivership Order are substantially the same as the terms of the Commercial List's model receivership order, and the modifications to same are indicated in the blacklined copy provided.

Blackline of the draft Order against the Model Receivership Order; Application Record, Tab 1, Schedule "A-2".

PART IV – ORDER REQUESTED

34. For the reasons set forth herein and in the Application Record, it is respectfully submitted that the appointment of a receiver is just and convenient, and is necessary for the protection of the estate of the Debtor and the interests of the Bank and other stakeholders.

35. The Bank respectfully requests that this Honourable Court grant the Appointment Order substantially in the form attached as Schedule "A" to the Notice of Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of May, 2024



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SCHEDULE "A"**LIST OF AUTHORITIES**

1. *Confederation Life Insurance Co. v. Double Y Holdings Inc.*, 1991 CarswellOnt 1511 (Ont. S.C.J. (Commercial List))
2. *Elleway Acquisitions Limited v. The Cruise Professionals Limited*, 2013 ONSC 6866 (CanLII)
3. *RMB Australia Holdings Limited v. Seafield Resources Ltd.*, 2014 ONSC 5205 (CanLII)
4. *Swiss Bank Corporation (Canada) v. Odyssey Industries Incorporated* (1995), 30 C.B.R. (3d) 49

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Bankruptcy and Insolvency Act, RSC 1985, c B-3

Court may appoint receiver

243. (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

Definition of receiver

(2) Subject to subsections (3) and (4), in this Part, receiver means a person who

- (f) is appointed under subsection (1); or
- (g) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
 - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or
 - (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of receiver — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition *receiver* in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of disbursements

(7) In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

Advance notice

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or
- (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

No advance consent

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

Exception

(3) This section does not apply, or ceases to apply, in respect of a secured creditor

(a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or

(b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

Idem

(4) This section does not apply where there is a receiver in respect of the insolvent person.

locality of a debtor means the principal place

(a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,

(b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or

(c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated; (localité)

trustee or **licensed trustee** means a person who is licensed or appointed under this Act. (*syndic* ou *syndic autorisé*)

Courts of Justice Act, RSO 1990, c. C-43.

Injunctions and receivers

101. (1) In the Superior Court of Justice, an interlocutory or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

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FACTUM OF THE APPLICANT

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