

SUPERIOR COURT OF JUSTICE – ONTARIO

7755 Hurontario Street, Brampton ON L6W 4T6

RE: ROYAL BANK OF CANADA, **applicant**

AND:

CHILL X TRANS INC., **respondent**

BEFORE: Justice Tzimas

COUNSEL: Matilda Lici, for the applicant, Royal Bank of Canada
Email: mlici@airdberlis.com

Matthew Tubie, for the respondent, Chill X Trans Inc.
Email: matthewtubielaw@gmail.com

HEARD: April 23, 2024, by video conference

HEARING- APPLICATION ON NOTICE ENDORSEMENT

- [1] The Applicant, Royal Bank of Canada, being a secured creditor of the Respondent, Chill X Trans Inc., seeks the appointment of msi Spergel Inc. as receiver, without security, of all the assets, properties and undertakings of the Respondent.
- [2] The basis for the relief sought is the Respondent Debtor's alleged default on its Credit Agreements, described more particularly in RBC's Application materials. As of January 23, 2024 the Respondent Debtor is alleged to have a total debt of \$2,422,345.07, exclusive of legal fees, disbursements and accruing interest. is alleged to be owed.
- [3] The application was scheduled to be heard on the merits today, as a short motion. Until this morning, there were no responding materials before the court. This morning, counsel attended on behalf of the Respondent Debtor and

sought an adjournment of the hearing to permit the Respondent Debtor to serve and file responding materials in response to RBC's application.

- [4] Significant time was spent on what the terms of an adjournment would look like. RBC would agree to an adjournment on the condition of the appointment of a Receiver. The Respondent Debtor opposed the appointment of a Monitor and preferred to reach an agreement on the voluntary disclosure of documents and records as requested by RBC.
- [5] Having heard the submissions and concerns by both parties, it is essential that the Respondent Creditor understands that the alleged defaults are severe. Its non-responsiveness to date makes it very difficult for the court to exercise its discretion over the terms of an adjournment. The initial suggestion of an adjournment of the Application for a month or so, underscored the degree to which the Respondent Debtor may not be appreciating its jeopardy, and that is a real problem.
- [6] That said, the only way this Application could have been argued in under an hour would have been if it were uncontested. A contested application of this nature will usually require 1.5 to 2 hours to hear, assuming that the Credit Agreements are straight forward and that the general narrative is easy to follow.
- [7] Having regard for the competing pressures on both parties but also for the need to have before the court comprehensive positions by both sides, I am prepared to give the Debtor Creditor one last chance to voluntarily satisfy the requirements of RBC and possibly to avoid the appointment of a monitor. If the Respondent Debtor fails to comply, the appointment of a Monitor is the only recourse.
- [8] To underscore the severity of what is involved, and to put this arrangement into workable terms, I order as follows:

- a. A monitor is to be appointed in accordance with the terms outlined in the draft order proposed by RBC and attached to this endorsement for ease of reference.
- b. The appointment of the monitor, as contemplated in the draft order, shall be held in abeyance until either May 3 or May 10, 2024 as more particularly discussed in the paragraphs that follow, and on the basis of the following terms and conditions:
 1. The Respondent Debtor shall deliver to the Bank by no later than 5:00 p.m. on Friday, May 3, 2024, each of the following:
 - a. bank statements for all accounts operated by the company at all financial institutions for the last six months;
 - b. a listing of accounts receivable as at April 18, 2024 along with supporting documentation;
 - c. a list of trucks and trailers owned/leased by the company, which sets out the make, model, VIN and the name of the leasing company, if any;
 - d. a listing of accounts payable as at April 18, 2024 identifying, among other things, amounts outstanding to incorporated drivers and owner operators;
 - e. a copy of all insurance policies;
 - f. if the company is required to report monthly, monthly HST filing reports for the current calendar year;
 - g. a printout from the MY CRA account indicating the balance owing/refund with respect to HST;
 - h. monthly source deduction filings and proof of payment of same;
 - i. a printout from the MY CRA account indicating the balance owing with respect to source deductions;
 - j. the number of employees on payroll;
 - k. amounts outstanding to employees broken into the following:

- i. wages;
 - ii. vacation pay;
 - iii. bonuses;
 - iv. commissions;
 - v. termination pay; and
 - vi. severance pay; and
- I. updated financial statements and any interim financial statements.
2. If the Respondent Debtor delivers on the noted productions by May 3, 2024 at 5 pm, RBC shall have until May 8, 2024 to review them and advise the Respondent Debtor of any questions it has, identify any deficiencies, seek clarifications, or confirm that it is satisfied with the form of the productions. "Satisfaction with form" is to be differentiated from satisfaction with what the records reveal. The Respondent Debtor shall have until May 10 at 5 pm to supplement its productions in response to any specific concerns by RBC. If the Respondent Debtor fails or unreasonably refuses to satisfy RBC's inquiries, the Order for the appointment of the monitor will come into effect immediately after 5 pm on May 10, 2024. The Order shall be effective and enforceable without any need for entry, filing, or further attendance before the court.
3. If the Respondent fails or unreasonably refuses to deliver any of the above-listed information and documentation in a form satisfactory to the Bank by 5:00 p.m. on May 3, the Monitor shall be authorized to commence its mandate vis-à-vis the Respondent immediately after 5:00 pm on May 3, 2024. The Order shall be effective and enforceable without any need for entry, filing, or further attendance before the court.

4. If there is either disagreement or some exceptional difficulty over the production of a specific item required by RBC, the parties may write to the trial office to request an urgent 9 a.m. appointment before me. This avenue is only intended for an exceptionally difficulty and under no circumstances may it be used for a more generic request for an extension of the timetable, or to challenge RBC's requirements. Prima facie, the itemized list is reasonable and in accordance with what is contemplated by the Credit Agreements.
5. Nothing stands in the way of the Respondent Debtor and RBC to engage in specific exchanges on the form of the productions and anticipated contents, or for the Respondent Debtor to seek clarification of its obligations in advance of May 3, 2024. The timelines contemplated in this order are fixed and may only be varied by the consent of both parties or further order of the court.

[9] As for the timetabling of the Receivership Application, the parties have agreed to the following schedule:

- a. Responding Materials by the Respondent Debtor are to be served by May 17, 2024.
- b. Reply materials by RBC, if any to be served by May 24, 2024.
- c. Cross-examinations on affidavits to be completed by May 31, 2024.
- d. Parties to attend at Triage Court on June 4, 2024 to obtain a long motion date. They will be required to file a Triage Form and may attach this endorsement to that form.
- e. RBC shall serve its factum by June 7, 2024
- f. The Responding factum shall be served by June 14, 2024.
- g. The filing dates for the factums may have to be adjusted if a court date for the hearing is available in advance of the factum filing dates.

h. The parties must ensure that they comply with all filing requirements of their respective records contemplated by the most recent Practice Direction of Central West.

[10] Costs of today's attendance are reserved to the hearing of the Receivership Application.

[11] It is my sincere hope that they respondent Debtor appreciates the court's indulgence and takes its obligations seriously. Apar from my potential involvement as discussed above, in relation to the Respondent Debtor's production obligations, I am not seized of the file. The receivership Application may be heard by any judge scheduled to hear the application on the chosen date.



E.R. Tzimas J.

Date: April 24, 2024

COURT FILE NO.: CV-24-1450-0000
DATE: 20240424

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

CHILL X TRANS INC

Respondent

HEARING- APPLICATION ON NOTICE
ENDORSEMENT

Tzimas J.

Released: April 24, 2024

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE

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TUESDAY, THE 23RD
DAY OF APRIL, 2024

ROYAL BANK OF CANADA

Applicant

- and -

CHILL X TRANS INC.

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**ORDER
(appointing Monitor)**

THIS APPLICATION, made by Royal Bank of Canada (“**RBC**”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), appointing msi Spergel Inc. (“**Spergel**”) as Monitor (in such capacity, the “**Monitor**”), without security, of all of the assets, properties and undertakings (collectively, the “**Property**”) of Chill X Trans Inc. (the “**Debtor**”) acquired for, or used in relation to, a business carried on by the Debtor, and all proceeds thereof, was heard this day by judicial videoconference via Zoom.

ON READING the affidavit of Mark Arnold sworn March 27, 2024 and the exhibits thereto, and on hearing the submissions of counsel for RBC and the Respondent and such other counsel as were present, no one appearing for any other stakeholder although duly served as appears from the affidavit of service of Daisy Jin, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the notice of application and the application record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT AND ADJOURNMENT

2. **THIS COURT ORDERS** that the within application to appoint Spergel as receiver, without security, of the Property of the Debtor is adjourned to _____.

3. **THIS COURT ORDERS** that pursuant to section 101 of the CJA, Spergel is hereby appointed Monitor of the Debtor on the terms set out herein.

MONITOR'S POWERS

4. **THIS COURT ORDERS** that the Monitor is hereby expressly empowered and authorized to do any of the following where the Monitor considers it necessary or desirable:

- a) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Monitor's powers and duties, including without limitation those conferred by this Order;
- b) to investigate and report on the ability of the Debtor to make monthly payments to the Applicant pending the return of the Applicant's receivership application;
- c) to investigate and report on the status of the Debtor in respect of any sale or refinancing efforts to repay the Applicant;

- d) to investigate and report on the financial affairs of the Debtor generally pending the return of the Applicant's receivership application;
- e) to report to, meet with and discuss with such affected Persons (as defined below) as the Monitor deems appropriate on all matters relating to the Property and this proceeding, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable; and,
- f) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Monitor takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR

5. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf (the "**Debtor Parties**"), and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Monitor of the existence of any Property in such Person's possession or control.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Monitor of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Monitor or permit the Monitor to make, retain and take away copies thereof and grant to the Monitor unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Monitor due to the privilege

attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure. Without limiting the generality of the foregoing, the Debtor and the Debtor Parties (a) shall authorize and direct Canada Revenue Agency to provide to the Monitor any and all information it requests regarding the Debtor, and (b) shall provide the Monitor with any and all information it requests with respect to the Debtor's bank accounts wheresoever located.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Monitor for the purpose of allowing the Monitor to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Monitor in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Monitor. Further, for the purposes of this paragraph, all Persons shall provide the Monitor with all such assistance in gaining immediate access to the information in the Records as the Monitor may in its discretion require including providing the Monitor with instructions on the use of any computer or other system and providing the Monitor with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE MONITOR

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Monitor except with leave of this Court.

EMPLOYEES

9. **THIS COURT ORDERS** that all employees of the Debtor, if any, shall remain the employees of the Debtor. The Monitor shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Monitor may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

10. **THIS COURT ORDERS** that any and all interested stakeholders in this proceeding and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in this proceeding, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to such other interested stakeholders in this proceeding and their counsel and advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

LIMITATION ON ENVIRONMENTAL LIABILITIES

11. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act* or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE MONITOR’S LIABILITY

12. **THIS COURT ORDERS** that the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by section 14.06 of the BIA or by any other applicable legislation.

MONITOR'S ACCOUNTS

13. **THIS COURT ORDERS** that the Monitor and counsel to the Monitor shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Monitor and counsel to the Monitor shall be entitled to and are hereby granted a charge (the “**Monitor’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Monitor’s Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

14. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

15. **THIS COURT ORDERS** that prior to the passing of its accounts, the Monitor shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Monitor or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

SERVICE AND NOTICE

16. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the “**Rules**”) this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol and shall be accessible by selecting the Debtor’s name from the engagement list at the following URL: <https://www.spergelcorporate.ca/engagements/>.

17. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Monitor is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

18. **THIS COURT ORDERS** that the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

19. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as a Monitor or trustee in bankruptcy of the Debtor.

20. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

21. **THIS COURT ORDERS** that the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

22. **THIS COURT ORDERS** that RBC shall have its costs of this application against the Debtor, up to and including entry and service of this Order, provided for by the terms of RBC's security or, if not so provided by RBC's security, then on a substantial indemnity basis to be paid by the Monitor from the Debtor's estate with such priority and at such time as this Court may determine.

23. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

24. **THIS COURT ORDERS** that this Order and all of its provisions are effective as today's date and is enforceable without the need for entry or filing.

ROYAL BANK OF CANADA

Applicant

- and -

CHILL X TRANS INC.

Respondent

Court File No. CV-24-00001450-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at Brampton

**ORDER
(appointing Monitor)**

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