

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

EA LOGISTICS INC.

Respondent

FACTUM OF THE APPLICANT

Date: July 4th, 2024

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Receiver

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PART I - INTRODUCTION

1. The Debtor EA Logistics Inc. was indebted to the Royal Bank of Canada in the amounts of approximately \$1,800,000 CDN and \$16,000 US, as of January 2, 2024. The indebtedness remains unpaid and continues to accrue. The debtor incurred the indebtedness pursuant to credit facilities made available by RBC, under a credit agreement.
2. Monetary and non-monetary defaults occurred under the credit agreement, including an unauthorized sale of the debtor. On January 3, 2024, RBC issued demands for repayment, together with notices pursuant to section 244 of the *Bankruptcy and Insolvency Act*.
3. The demands have expired and the debtor has failed to repay the credit facilities, despite opportunities to do so. RBC now seeks an order appointing Msi Spergel inc.: as receiver, without security, over all of the assets, undertakings and properties of the debtor (a possessory receiver); or in the alternative, as an investigative receiver as a preliminary step. Msi Spergel inc. has consented to acting as receiver.
4. The present case meets the factors for the appointment of a receiver. As of the date of this factum, no responding record or evidence has been received from the debtor, though duly served. The debtor has consented to the appointment of a receiver under the terms of its agreements, which are fully executed. The debtor's unauthorized sale of its business and curious financial information put RBC's security at risk. There is also no reasonable certainty of the debtor's ability to repay.

PART II - SUMMARY OF FACTS

A. Parties

5. The Applicant the Royal Bank of Canada (“**RBC**”) is a multinational financial services company headquartered in Toronto, Ontario. As part of its services, RBC provides a variety of financial products to its customers, including but not limited to loans and credit facilities to individuals and corporations.¹

6. The Debtor EA Logistics Inc. (the “**Debtor**”) is a federally incorporated company. Its principal place of business is in Maple, Ontario. The Debtor also has a registered office address in Halifax, Nova Scotia.²

B. Credit Facilities and Security

7. RBC granted certain credit facilities to the Debtor under a Credit Agreement dated December 28, 2022, as amended and restated (the “**Credit Agreement**”). The Credit Agreement was for:³
 - (a) a revolving demand facility in the amount of \$1,650,000, plus interest at RBC’s prime rate + 2%; and
 - (b) a business credit card facility in the maximum amount of \$200,000, plus interest at RBC’s prime rate + 2%.

¹ Application Record of RBC (“**AR**”), Tab 2, p. 15, Affidavit of Jerry Tsao sworn May 17, 2024 (the “**Tsao Affidavit**”), at para 4.

² AR, Tab 2, p. 15, Tsao Affidavit, at para. 5; and AR, Tab 2, pp. 23-25, Exhibit "A" - Federal Profile Report for EA Logistics Inc.

³ AR, Tab 2, pp. 15-16, Tsao Affidavit, at para. 6; and AR, Tab 2, pp. 34-48, Exhibit "B" - Credit Agreement dated June 7, 2023.

8. The Debtor also provided RBC with the following security as part of the Debtor's obligations under the Credit Agreement:⁴
- (a) personal guarantees and postponement of claims by Muhammad Usman and Khurram Shahzad (the "**Guarantors**") dated December 28, 2022, on a joint and several basis (the "**Dec 2022 Guarantee**"). Mr. Usman and Mr. Shahzad were co-Presidents of the Debtor;
 - (b) personal guarantees and postponement of claims by the Guarantors, dated June 6, 2023, in the amount of \$1,850,000, on a joint and several basis (the "**June 2023 Guarantee**," collectively with the Dec 2022 Guarantee, the "**Guarantees**");
 - (c) security over all of the Debtor's present, future and after-acquired property, assets and undertakings in the form of a general security agreement dated January 7, 2022 (the "**GSA**"); and
 - (d) postponements and assignments of claims from each of Mr. Usman and Mr. Shahzad dated January 7, 2022 (the "**Postponements and Assignments**," along with the Guarantees and GSA, the "**Security**").

C. Unapproved Sale of the Debtor

9. In or around July 17, 2023, Mr. Usman and Mr. Shahzad sold their interest in the Debtor to an Ibrar Khan, pursuant to a share purchase agreement (the "**SPA**"). The purchase price was \$490,000 under the SPA.⁵

⁴ AR, Tab 2, pp. 16-17, Tsao Affidavit, at para. 7; and AR, Tab 2, pp. 77-100, Exhibit "C" - Guarantee and Postponement of Claim dated December 28, 2022; Exhibit "D" - Guarantee and Postponement of Claim dated June 9, 2023; Exhibit "E" - General Security Agreement dated January 7, 2022; and Exhibit "F" - Postponement and Assignment of Claim dated January 7, 2022.

⁵ AR, Tab 2, p. Tsao Affidavit, at para. 8; and AR, Tab 2, p. 45, Exhibit "B" - Credit Agreement dated June 7, 2023, "General Covenants", section (m).

10. RBC did not consent to the sale or the SPA. Further, Mr. Khan's credit history was poor and so he was not an appropriate guarantor. So, the Guarantees remained in place. RBC is pursuing the Guarantors in separate litigation.

D. Breach of Credit Agreement and Demands

11. The Debtor breached the terms of the Credit Agreement, because RBC did not consent to the sale or the SPA. Such consent was required under the Credit Agreement's "General Covenants," section (m).⁶
12. The Debtor also failed to provide fulsome financial disclosure and updates to RBC. Such disclosure was required under the Credit Agreement's reporting requirements.⁷
13. RBC advised Mr. Khan that RBC was no longer willing to continue the banking relationship. The Debtor's account was also overdrawn and thus frozen. By letter dated November 1, 2023, RBC advised that the Debtor's account was being transferred to Special Loans & Advisory Services.⁸
14. By letter dated January 3, 2024, RBC's counsel wrote to the Debtor and issued a demand for immediate repayment of the indebtedness, which continues to accrue (the "**Indebtedness**"). The total Indebtedness was in the amounts of \$1,779,552.29 CDN and \$16,697.46 US, as of January 2, 2024. RBC's counsel also issued notices of intention to enforce security against the Debtor, pursuant to

⁶ AR, Tab 2, p. 18, Tsao Affidavit, at para. 10.

⁷ AR, Tab 2, p. 18, Tsao Affidavit, at para. 11.

⁸ AR, Tab 2, p. 18, Tsao Affidavit, at para 12; and AR, Tab 2, p. 110, Exhibit "H" - Letter dated November 1, 2023.

the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**"), in the January 3rd letter.⁹

15. By letter dated January 3, 2024, RBC's counsel wrote to the Guarantors, and issued a demand for immediate repayment of the Indebtedness.¹⁰
16. Searches under the Personal Property Security Registration Database (the "**PPSA Search**") show a number of alleged secured creditors, aside from RBC.¹¹
17. RBC is concerned about its collateral under the GSA. Certain entities which claim to have advanced equipment financing, claim to have purchase money security interests ("**PMSIs**"). The PMSIs are alleged to cover collateral including transport trucks/trailers, which are the very subject of RBC's GSA. The Debtor seems to be in default of its equipment financing obligations with Meridian OneCap Credit Corp., and Bennington Financial Corp, and there is a sale/threatened sale of this collateral, which means that RBC's collateral under the GSA is at risk.¹²

E. Financials

18. Financial statements for the Debtor dated August 3, 2023, for the year-ended May 31, 2023, showed the Debtor's net income to be \$1,008,958 in 2023. In 2022, however, the net income was only \$426,883. While expenses also increased,

⁹ AR, Tab 2, p. 18, Tsao Affidavit, at para. 13; and A.R., Tab 2, pp. 112-115, Exhibit "I" - Demand letter dated January 3, 2024 to Debtor.

¹⁰ AR, Tab 2, pp. 18-19, Tsao Affidavit, at para. 14; and AR, Tab 2, pp. 117-120, Exhibit "J" - Demand letter dated January 3, 2024 to Guarantors.

¹¹ AR, Tab 2, p. 19, Tsao Affidavit, at para. 15; and AR, Tab 2, pp. 122-202, Exhibit "K" - PPSA Search dated December 21, 2023.

¹² AR, Tab 2, p. 19, Tsao Affidavit, at para. 16; and AR, Tab 2, pp. 206-211, Exhibit "L" - Notice of Intention from Meridian OneCap Credit Corp. dated January 31, 2024

revenue in 2023 was \$14,295,489, whereas revenue in 2022 was \$6,882,502. These financial statements were prepared close to the time of the SPA.¹³

19. RBC also previously had issues locating the principal of the Debtor, Mr. Khan.¹⁴

F. Debtor Has Consented to Appointment of Receiver

20. The Debtor has consented to the appointment of a receiver in the event of default, including under the GSA. Events of default include non-payment of any portion of the Indebtedness when due, failure to comply with any term of the parties' agreements, where any encumbrance against collateral becomes enforceable, if the Debtor ceases to or threatens to cease carrying on business, and if distress is levied on the assets of the Debtor. Such defaults have occurred here.¹⁵

PART III - ISSUE

21. **ISSUE:** The only issue on this application is whether a receiver – possessory or in the alternative investigatory, should be appointed over the Debtor, given: the unauthorized sale of the Debtor; the Indebtedness; and the risks to RBC's security.

¹³ AR, Tab 2, p. 20, Tsao Affidavit, at para. 18; and AR, Tab 2, pp. Exhibit "M" - EA Logistics Inc. Financial Statements for Year Ended May 31, 2023.

¹⁴ AR, Tab 2, p. 20, Tsao Affidavit, at para. 19.

¹⁵ AR, Tab 2, p. 20, Tsao Affidavit, at para. 22; and AR, Tab 2, pp. 88-89, Exhibit "E" - General Security Agreement dated January 7, 2022, ss. 11 and 13.

PART IV - STATEMENT OF LAW AND AUTHORITIES

A. Appointment of Receiver – General Considerations

22. The *BIA*, section 243(1), authorizes a court to appoint a receiver – either possessory or investigatory, where such appointment is “just and convenient”:¹⁶

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

(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.

[emphasis added]

23. The *Courts of Justice Act*, RSO 1990, c C43 (“**CJA**”) similarly enables the court to appoint a receiver where it deems that it is “just or convenient” to do so.¹⁷

24. In determining whether it is just and convenient to appoint a receiver, a court must have regard to all of the circumstances of the case, particularly the nature of the property, and the rights and interests of all parties in relation to the property.¹⁸

25. Importantly, a key factors in determining whether the court should appoint a receiver is whether the applicant has the right to do so under its security. In such

¹⁶ *Bankruptcy and Insolvency Act*, [RSC 1985, c B-3](#) (the “**BIA**”), [s. 243\(1\)](#).

¹⁷ *Courts of Justice Act*, [RSO 1990, c C43](#), (the “**CJA**”), [s. 101](#).

¹⁸ *Bank of Nova Scotia v Freure Village on Clair Creek*, [1996 CanLII 8258](#) (ON SC), [1996] OJ No 5088 (Gen Div), at [paras. 10-12](#) [**Freure Village**].

circumstances, it is not necessary for a secured creditor to demonstrate that it will suffer irreparable harm if a receiver is not appointed.¹⁹

B. Just and Convenient to Appoint Possessory Receiver

26. The court has held that it is just and convenient pursuant to *BIA*, section 243(1) to grant the appointment of a possessory receiver when the respondents:²⁰
- (a) fail to serve affidavit evidence with respect to the receivership appointment;
 - (b) have breached the terms of the agreement between themselves and the applicant, and any agreement to repay the Indebtedness;
 - (c) have consented to the appointment of a receiver; and
 - (d) have not provided any evidence that there is “reasonable certainty” of the ability to repay the Indebtedness in the near future, or at all.
27. This case fits squarely within the circumstances for the appointment of a possessory receiver. First, the respondents have delivered no responding evidence. Second, they have breached the terms of the Credit Agreement by failing to obtain RBC’s consent to the SPA, and by failing to repay the Indebtedness. Third, pursuant to the GSA, the Debtor has consented to the appointment of a receiver. Fourth, there is no evidence that the Debtor will pay at all, let alone in the near future.²¹
28. RBC’s collateral is also at risk, given the alleged claimed PMSIs.²²

¹⁹ *Callidus Capital Corp v CarCap Inc*, [2012 ONSC 163](#), at [para. 42](#) [**Callidus**]

²⁰ *BIA*, [s. 243\(1\)](#); and *Royal Bank of Canada v 1731861 Ontario Inc.*, [2023 ONSC 3292](#), at [para. 33](#) [**RBC**].

²¹ *RBC*, at [para. 33](#).

²² *Freure Village*, at [paras. 10-12](#).

29. Further, where, as here, the Debtor has provided an express covenant agreeing to the appointment of a receiver in the event of default, such relief is no longer considered extraordinary.²³
30. A court should also not lightly interfere to relieve parties from contractual terms they no longer wish to honour. As held by the British Columbia Supreme Court in *United Savings Credit Union v F&R Brokers Inc*, where the debtors have expressly agreed to the appointment of a receiver in the event of default, the court should not ordinarily intervene in a contract between the parties. This is particularly so where the debtor has continued to benefit from the secured asset, which is available because of a property charged by a mortgage ranking in priority ahead of the interest of those benefiting from the property. Here, the Debtor has continued to benefit from RBC's collateral, by using it for the Debtor's business.²⁴

C. Alternative: Appointment of Investigative Receiver is Appropriate

31. Where RBC has met the test for the appointment of a possessory receivership, which is a more stringent one, it has also met the test for the alternative relief sought – an investigative receiver under the *BIA*, section 243(1)(b)-(c). In an investigative receivership, the receiver has a more restricted role which allows it to investigate the affairs of the debtor and review transactions and financials, and the

²³ *Textron Financial Canada Limited v Chetwynd Motels Ltd.*, [2010 BCSC 477](#) (In Chambers), at [para. 75](#). This reflected the court's view in *Freure Village*, cited above at footnote 18.

²⁴ *United Savings Credit Union v F&R Brokers Inc.*, [2003 BCSC 640](#) (In Chambers), at [para. 16](#); see also *Freure Village*, at [para. 12](#).

receiver generally does not operate the debtor's business. So, as alternative relief and a preliminary step, RBC seeks the appointment of an investigative receiver.²⁵

32. In *PricewaterhouseCoopers Inc v Northern Citadel*, a 2023 decision of the Ontario Superior Court of Justice, the court outlined the following themes when considering a request to appoint an investigative receiver:²⁶

- (a) appointment is necessary to alleviate the risk posed to the plaintiff's right of recovery;
- (b) primary objective of investigative receivers is to determine the true state of affairs of the debtor and related entities;
- (c) generally, the receiver does not control or operate the debtor's business; and
- (d) the investigative receivership must be carefully tailored to assist the creditors' recovery while protecting the debtor's interest and go no further than necessary.

33. Applied to the present case, RBC clearly has a right to recover the Indebtedness and the appointment of an investigative receiver alleviates the risk to RBC, especially considering: non-payment of the Indebtedness; the curious and limited financial disclosure by the Debtor; and the alleged PMSIs. The primary objective of the investigative receiver would be to determine the true state of affairs of the Debtor, given the curious and limited financial disclosure, and failure to pay the Indebtedness. The investigative receivership can also be tailored to assist the

²⁵ BIA, [ss. 243\(1\)\(b\)-\(c\)](#); *PricewaterhouseCoopers Inc v Northern Citadel*, [2023 ONSC 37](#), at [paras. 95-96](#) ["PwC"], citing *Akagi v Synergy Group (2000) Inc.*, [2015 ONCA 368](#), at [para. 90](#).

²⁶ PwC, at [para. 90](#).

creditors' recovery – RBC's main concern is recovery and has no other interest in the Debtor's business.²⁷

PART V - ORDER REQUESTED

34. RBC seeks the following relief:

- (a) an order appointing msi Spergel inc. ("**Spergel**") as receiver, without security, of all the assets, undertakings and properties of the Debtor (possessory receiver);
- (b) in the alternative, an order appointing Spergel as an investigative receiver;
- (c) costs in accordance with the terms of the Credit Agreement and Security; or in the alternative, in accordance with the *CJA*, as amended; and
- (d) such further and other relief as this Honourable Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of July, 2024.



Emily Y. Fan
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Lawyers for the Applicant

²⁷ *PwC*, at [para. 90](#).

SCHEDULE “A” - LIST OF AUTHORITIES

1. *Bank of Nova Scotia v Freure Village on Clair Creek*, [1996 CanLII 8258](#) (ON SC), [1996] OJ No 5088 (Gen Div)
2. *Callidus Capital Corp v CarCap Inc*, [2012 ONSC 163](#)
3. *Royal Bank of Canada v 1731861 Ontario Inc.*, [2023 ONSC 3292](#)
4. *Textron Financial Canada Limited v Chetwynd Motels Ltd.*, [2010 BCSC 477](#) (In Chambers)
5. *United Savings Credit Union v F&R Brokers Inc.*, [2003 BCSC 640](#) (In Chambers)
6. *PricewaterhouseCoopers Inc v Northern Citadel*, [2023 ONSC 37](#)
7. *Akagi v Synergy Group (2000) Inc.*, [2015 ONCA 368](#)

SCHEDULE "B" - TEXT OF STATUTES, REGULATIONS & BY - LAWS

Bankruptcy and Insolvency Act, [RSC 1985, c B-3](#)

Court may appoint receiver

[s. 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.

...

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.

1992, c. 27, s. 89
1994, c. 26, s. 9(E)

Courts of Justice Act, [RSO 1990, c C43](#)

Injunctions and receivers

[101 \(1\)](#) In the Superior Court of Justice, an interlocutory injunction 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. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

ROYAL BANK OF CANADA

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Court File No. CV-24-00085778-0000

Plaintiff

Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at HAMILTON

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