

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

B E T W E E N:

**ROYAL BANK OF CANADA**

Applicant

- and -

**J&R TRANSPORT 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**

**FACTUM OF THE APPLICANT, ROYAL BANK OF CANADA  
(returnable December 3, 2024)**

November 25, 2024

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## PART I – NATURE OF THE APPLICATION

1. The Applicant, Royal Bank of Canada (“**RBC**”), makes an application for an Order (the “**Receivership Order**”), in substance, appointing msi Spergel inc. (“**Spergel**”) as receiver (in such capacity, the “**Receiver**”), without security, of all the assets, properties and undertakings of J&R Transport Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, and all proceeds thereof (collectively, the “**Property**”).
2. The Debtor is a trucking company, and owes RBC over \$7 million. RBC made formal demand on the Debtor on October 17, 2024, which demand has not been honoured.
3. RBC has not heard from the Debtor since October 11, 2024, shortly after its principal advised he was in the United States “*doing some meeting [sic] to secure work, due to recent loss of our big account for freight*” and that “*our operations was [sic] greatly disturbed and our fuel card stopped.*”
4. When RBC’s process server attended at the Debtor’s place of business on November 18, 2024 in an attempt to serve this receivership application, the building’s superintendent advised the Debtor had moved out of the building on the first of the month.
5. The Debtor was eventually served via personal service on its registered director at his home on November 20, 2024.
6. RBC is justified in having lost confidence in the Debtor and its management, and it is respectfully submitted that it is just and convenient for the Receiver to be appointed.

## PART II – SUMMARY OF FACTS

7. The Debtor is a privately-owned Ontario corporation, which operated in the trucking transportation and logistics industry. Archived copies of the Debtor’s website ([www.jrtrans.ca](http://www.jrtrans.ca)) reflect that the Debtor described itself as being a “*Canada, USA Trucking Company*” with a “*fleet of 42 Highway Tractors and 70 Trailers.*” The Debtor’s website has now “*Expired.*”

**Affidavit of Mark Lavecchia sworn November 8, 2024 [Lavecchia Affidavit] at paras. 3-4, Tab 4 of RBC’s Application Record dated November 14, 2024 [Application Record].**

8. The Debtor is indebted to RBC in connection with certain credit facilities (the “**Credit Facilities**”) made available to the Debtor by RBC (and by HSBC Bank Canada (“**HSBC Canada**”) prior to its acquisition by RBC) pursuant to and under the following agreements (the “**Credit Agreements**”):

- (a) the credit agreement between RBC and the Debtor dated May 2, 2024 (the “**Primary Credit Agreement**”);
- (b) the credit card agreements between RBC and the Debtor dated May 13, 2016 and June 2, 2024 (the “**Credit Card Agreements**”);
- (c) the master lease agreement between RBC and the Debtor dated July 17, 2023 (the “**Primary Master Lease Agreement**”) and the leasing schedules entered into thereunder (the “**Primary Leasing Schedules**”); and
- (d) the master equipment lease agreement between HSBC Canada and the Debtor dated June 12, 2023 (the “**HSBC Master Lease Agreement**”) and the leasing schedules entered into thereunder (the “**HSBC Leasing Schedules**”).

**Lavecchia Affidavit, *supra* at paras. 1 and 5.**

9. As security for its obligations to RBC, the Debtor granted a general security agreement in favour of RBC dated June 1, 2023 (the “**GSA**”), registration in respect of which was duly made pursuant to the *Personal Property Security Act* (Ontario) (the “**PPSA**”). PPSA registrations were also made in respect of the Primary Master Lease Agreement, the Primary Leasing Schedules, the HSBC Master Lease Agreement and the HSBC Leasing Schedules.

**Lavecchia Affidavit, *supra* at para. 6.**

10. RBC has a PPSA registration against the Debtor in respect of all collateral classifications other than consumer goods (the “**General RBC Registration**”). In addition to the General RBC Registration, the Debtor’s certified PPSA search results reflect over 92 registrations by multiple registrants. All these other registrations appear either to be limited to certain equipment/motor vehicles and/or registered after the General RBC Registration.

**Lavecchia Affidavit, *supra* at para. 9.**

11. All PPSA registrants against the Debtor have been served with this application.

**Lavecchia Affidavit, *supra* at para. 10.**

**Affidavit of Service of Calvin Horsten sworn November 20, 2024.**

12. Additionally, Jalwinder Brar (“**Mr. Brar**”), the sole registered director and officer of the Debtor, personally guaranteed the Debtor’s obligations to RBC in the principal amount of \$1,950,000, pursuant to the written guarantee and postponement of claim agreement dated November 24, 2022 (the “**Personal Guarantee**”).

**Lavecchia Affidavit, *supra* at para. 7.**

13. The Debtor's non-leasing Credit Facilities are repayable on demand (the "**Demand Credit Facilities**"). One or more Event of Default (as defined in the Credit Agreements) has also occurred, including, without limitation, the Debtor's failure to make the monthly scheduled payments to RBC under the leasing Credit Facilities (the "**Leasing Credit Facilities**").

**Lavecchia Affidavit, *supra* at para. 11.**

14. RBC contacted Mr. Brar on October 1, 2024, advising that the Debtor's account had been transferred to the Special Loans Group and asking that Mr. Brar call RBC on an urgent basis. RBC followed-up on October 4, 2024, and Mr. Brar replied that he was in the United States "*doing some meeting [sic] to secure work, due to recent loss of our big account for freight*" and that "*our operations was [sic] greatly disturbed and our fuel card stopped.*" After finally speaking with RBC on October 7, 2024, Mr. Brar provided RBC with an emailed list on October 11, 2024 of 55 different motor vehicles that he advised were at two U.S. locations. Mr. Brar has not since responded to any subsequent enquiries.

**Lavecchia Affidavit, *supra* at para. 12.**

15. There being no further response from Mr. Brar, or resumption of the monthly scheduled payments to RBC under the Leasing Credit Facilities, RBC proceeded on October 17, 2024 to make formal written demand on the Debtor and Mr. Brar for payment of the amounts owed to RBC under the Credit Agreements and the Personal Guarantee, as applicable (the "**Demand Letters**"). A notice of intention to enforce security (the "**BIA Notice**") pursuant to subsection 244(1) of the BIA accompanied the Demand Letter sent to the Debtor.

**Lavecchia Affidavit, *supra* at para. 13.**

***Bankruptcy and Insolvency Act (Canada) [BIA], [s. 244\(1\)](#).***

16. As particularized in more detail in the Demand Letter to the Debtor, CDN \$4,110,615.70 plus USD \$2,720,218.82 was owing by the Debtor for principal and interest in respect of the Demand Credit Facilities and the defaulted Leasing Credit Facilities as of October 16, 2024 (the “**Demanded Indebtedness**”). A further USD \$213,229.17 was also outstanding for the remaining Leasing Credit Facilities in respect of which a direct monetary default had not yet occurred at the time (but which has since occurred).

**Lavecchia Affidavit, *supra* at para. 14.**

17. Canada Post’s delivery confirmation shows that the Debtor received and signed for its Demand Letter and BIA Notice on October 18, 2024.

**Lavecchia Affidavit, *supra* at para. 15.**

18. No communication has been received from the Debtor or Mr. Brar since October 11, 2024, including following the issuance of the Demand Letters and the BIA Notice, and the Demanded Indebtedness has not been repaid in full or in part.

**Lavecchia Affidavit, *supra* at para. 16.**

19. When RBC’s process server attended at the Debtor’s registered place of business on November 18, 2024 to serve the receivership application, the process server located the Debtor’s name on the building directory, but observed the space was locked and occupied by a different business. The process server spoke with the building superintendent, who advised that: (i) the Debtor had moved out of the building on the first of the month; (ii) the Debtor’s lease had been valid until the end of the month; and (iii) the Debtor had moved out early.

**Affidavit of Service Bruno Carrion Luna sworn November 20, 2024 at para. 2  
[Process Server Affidavit].**

20. The Debtor was eventually served via personal service on its registered director at his home on November 20, 2024.

**Process Server Affidavit, *supra* at para. 4.**

21. At this stage, RBC believes that the only prudent and reasonable path forward is to take any and all steps necessary to protect the Property by having a receiver appointed. It is within RBC's rights under its security to do so.

**Lavecchia Affidavit, *supra* at para. 17.**

### **PART III – ISSUE**

22. The issue to be determined on this application is whether it is just and convenient for this Court to appoint Spergel as receiver over the Property.

### **PART IV – LAW AND ARGUMENT**

#### *The Test for Appointing a Receiver*

23. RBC seeks the appointment of a receiver pursuant to subsection 243(1) of the BIA and section 101 of the CJA. Both statutes enable the Court to appoint a receiver and manager where such appointment is “*just or convenient.*”

**BIA, *supra* [s. 243\(1\)](#).**

***Courts of Justice Act (Ontario) [CJA], [s. 101](#).***

24. In determining whether it is “*just or convenient*” to appoint a receiver under either the BIA or CJA, Ontario courts have applied the decision of The Honourable Mr. Justice Blair in *Freure Village*. In that case, His Honour confirmed that, in deciding whether the appointment of a receiver is 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.

*Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 40 C.B.R. (3d) 274, [1996] O.J. No. 5088 at para. 10 (Gen. Div. [Comm. List]) [*Freure Village*] (CanLII: <http://canlii.ca/t/1wbtz>).

25. When the rights of the secured creditor under its security includes a specific right to appointment of a receiver (as in the present case), the burden on the applicant seeking the relief is relaxed. Indeed, The Honourable Mr. Chief Justice Morawetz held in *Elleway Acquisitions* that:

... 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.

*Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 at para. 27 [*Elleway Acquisitions*] (CanLII: <http://canlii.ca/t/g22q3>).

26. More recently, The Honourable Mr. Chief Justice Morawetz’s holding in *Elleway Acquisitions* was further affirmed in *iSpan Systems* by The Honourable Mr. Justice Osborne:

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 [citations omitted].

*iSpan Systems LP*, 2023 ONSC 6912 at para. 31 [*iSpan Systems*] (CanLII: <https://canlii.ca/t/k0x62>).



*It is Just and Convenient to Appoint the Receiver*

27. RBC submits that the test for the appointment of a receiver is met. RBC is contractually entitled to have a receiver appointed over the Debtor upon default. Such default has occurred and the appointment of Spergel as receiver is not an extraordinary remedy; it is simply the result of enforcing a contractual term that was mutually assented to by the Debtor and RBC.

**GSA, *supra*, s. 13(a).**

28. RBC wishes to take any and all steps necessary to enforce its security and realize on same, and the appointment of Spergel as receiver is necessary for the protection of the Debtor's estate and the interests of RBC as a secured creditor. The Debtor has had ample time to address its defaults with RBC, but has instead gone silent, continues to default and appears to have even shuttered its business.

**Lavecchia Affidavit, *supra* at paras. 12-14 and 16-17.**

**Process Server Affidavit, *supra* at para. 2.**

29. Spergel is a licensed insolvency trustee and is familiar with the circumstances of the Debtor and its arrangements with RBC. Spergel has consented to act as the Receiver should the Court so appoint it.

**Lavecchia Affidavit, at para. 20.**

**PART V – RELIEF REQUESTED**

30. In light of the foregoing, it is respectfully submitted that this Court should grant the Receivership Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 25th day of November, 2024.



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**SCHEDULE “A”****AUTHORITIES CITED**Jurisprudence

1. [\*Bank of Nova Scotia v. Freure Village on Clair Creek\*](#) (1996), 40 C.B.R. (3d) 274, [1996] O.J. No. 5088 (Gen. Div. [Comm. List]).
2. [\*Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.\*](#), 2013 ONSC 6866.
3. [\*iSpan Systems LP\*](#), 2023 ONSC 6212.

**SCHEDULE “B”****TEXT OF STATUTES, REGULATIONS & BY-LAWS****Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended, s. 243****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

- (a) is appointed under subsection (1); or
- (b) 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.

**Courts of Justice Act, R.S.O. 1990, c. C-34, as amended, ss. 101 and 103**

**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.

**Certificate of pending litigation**

**103** (1) The commencement of a proceeding in which an interest in land is in question is not notice of the proceeding to a person who is not a party until a certificate of pending litigation is issued by the court and the certificate is registered in the proper land registry office under subsection (2). R.S.O. 1990, c. C.43, s. 103 (1).

...

**Order discharging certificate**

- (6) The court may make an order discharging a certificate,
- (a) where the party at whose instance it was issued,
    - (i) claims a sum of money in place of or as an alternative to the interest in the land claimed,
    - (ii) does not have a reasonable claim to the interest in the land claimed, or
    - (iii) does not prosecute the proceeding with reasonable diligence;
  - (b) where the interests of the party at whose instance it was issued can be adequately protected by another form of security; or
  - (c) on any other ground that is considered just,
- and the court may, in making the order, impose such terms as to the giving of security or otherwise as the court considers just. R.S.O. 1990, c. C.43, s. 103 (6).

**ROYAL BANK OF CANADA**

- and -

**J&R TRANSPORT INC.**

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Court File No. CV-24-00731252-00CL

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
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**Proceedings commenced at Toronto**

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**(returnable December 3, 2024)**

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