

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

and

**SUHANNA FREIGHT SERVICES INC.,
2815872 ONTARIO INC., 2826466 ONTARIO INC., RANDEEP MANN
also known as RANDEEP SINGH MANN, VIBHU ANNASWAMY also
known as ANNASWAMY VIBHU PRAKASH also known as VIBHU
PRAKASH ANNASWAMY, ONKAR BAGGA also known as ONKAR S
BAGGA AND SURINDER GHUMMAN also known as SURINDER PAL
GHUMMAN also known as SURINDER P S GHUMMAN**

Respondents

**FACTUM OF THE APPLICANT,
ROYAL BANK OF CANADA
(Returnable October 22, 2024)**

October 21, 2024

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TO: **THE SERVICE LIST**

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PART I - INTRODUCTION

1. The Applicant, Royal Bank of Canada ("**RBC**"), is seeking an order appointing msi Spergel inc. ("**Spergel**" or the "**Receiver**") as receiver, without security, of the assets, undertakings and properties of the respondents, Suhanna Freight Services Inc. ("**Suhanna**"), 2815872 Ontario Inc. ("**281**") and 2826466 Ontario Inc. ("**282**") (collectively, the "**Debtors**"), pursuant to Section 243 of the *Bankruptcy and Insolvency Act* (the "**BIA**") and Section 101 of the *Courts of Justice Act* (the "**CJA**").

2. RBC is also seeking judgment against the respondents, Randeep Mann also known as Randeep Singh Mann ("**Randeep**"), Vibhu Annaswamy also known as Annaswamy Vibhu Prakash also known as Vibhu Prakash Annaswamy ("**Vibhu**"), Onkar Bagga also known as Onkar S Bagga ("**Onkar**") and Surinder Ghumman also

known as Surinder Pal Ghumman also known as Surinder P S Ghumman ("**Surinder**") (collectively, the "**Guarantors**"), for payment of all amounts owing to RBC in connection with their joint and several personal guarantees given for the debts, liabilities and obligations of Suhanna and 281.

3. RBC's position is that the appointment of a receiver is just and appropriate based on:

- RBC is a secured creditor of the Debtors pursuant to the General Security Agreements (the "**Security**");
- The Debtors are in default under the terms of the Credit Agreements and the Security;
- On February 27, 2024, RBC issued payment demands and Notices of Intention to Enforce Security pursuant to Section 244 of the BIA (the "**Section 244 Notices**"), which expired on March 8, 2024 (the "**Payment Demands**")¹;
- In the face of the expired Payment Demands, the Debtors are insolvent. No further terms of credit or forbearance is available to the Debtors from RBC. It is necessary for the protection of the Debtors' estate that a receiver be appointed;
- RBC's Security provides it with the right to appoint a receiver over all property of the Debtors, as a result of the defaults; and

¹ Affidavit of Sharon D'Costa sworn September 25, 2024, paras. 52 and 54 (the "**D'Costa Affidavit**").

- A receiver will also be required to preserve the property of the Debtors and complete the orderly sale of same, and to ensure that the proceeds of any such sale are applied to the Debtors' obligations. In relation to any such sale, the appointment of a receiver is also necessary to deal with any subsequent claims to the proceeds.

PART II - SUMMARY OF FACTS

The Parties

4. RBC is a chartered bank with offices in Toronto, Ontario.
5. Suhanna is a transportation and freight business. It is a federal corporation incorporated pursuant to the laws of Canada, with its registered head office address at 584 Mcgeachie Drive, Milton, Ontario.²
6. Randeep and Satinderjit Mann are the directors of Suhanna. Suhanna's business is primarily managed by Randeep.³
7. 281 is an Ontario corporation with its registered head office address at 125 Fitzgerald Crescent, Milton, Ontario.⁴
8. Randeep is the sole director of 281.⁵
9. 282 is an Ontario corporation with its registered head office address at 989 Derry Road East, Unit 401, Mississauga, Ontario.⁶

² D'Costa Affidavit, para. 8.

³ D'Costa Affidavit, para. 9.

⁴ D'Costa Affidavit, para. 10.

⁵ D'Costa Affidavit, para. 11.

10. Vibhu, Onkar and Surinder are the directors of 282.⁷

Credit Facilities and Security

11. As at September 5, 2024, Suhanna is indebted to RBC, not including professional and/or other fees, as follows:⁸

Operating Facility	\$534,280.33 CAD
USD Visa Facility	\$15,576.33 USD
CAD Visa Facility	\$32,120.89 CAD

As at September 5, 2024, 281 is indebted to RBC, 281 is indebted to RBC, not including professional and/or other fees, as follows:⁹

Term Loan	\$468,823.89 CAD
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12. Suhanna is indebted to RBC, as principal debtor, in connection with a credit facilities agreement dated December 14, 2022, together with RBC's Standard Terms, accepted by Suhanna on January 9, 2023 (the "**Suhanna Credit Agreement**").¹⁰

13. The Suhanna Credit Agreement is secured by, among other things, the following:

- a) A General Security Agreement dated February 6, 2023 executed by Suhanna (the "**Suhanna GSA**").

14. 281 is indebted to RBC, as principal debtor, in connection with a credit facilities agreement dated December 9, 2022, together with Schedule "A" Borrowing Request

⁶ D'Costa Affidavit, para. 12.

⁷ D'Costa Affidavit, para. 13.

⁸ D'Costa Affidavit, para. 64.

⁹ D'Costa Affidavit, para. 64.

¹⁰ D'Costa Affidavit, para. 19.

Standard Form, and RBC's Standard Terms, accepted by 281 on January 9, 2023 (the "**281 Credit agreement**").¹¹

15. The 281 Credit Agreement is secured by, among other things, the following:¹²

a) A General Security Agreement dated February 6, 2023 executed by 281 (the "**281 GSA**").

16. The Suhanna Credit Agreement and the 281 Credit Agreement are collectively referred to as the "**Credit Agreements**".

17. The debts of Suhanna and 281 are cross-collateralized and cross-guaranteed. 282, Randeep, Vibhu, Onkar and Surinder each guaranteed the debts of Suhanna and 281 to RBC, pursuant to the applicable guarantees and postponements of claim.¹³

18. The Suhanna GSA and the 281 GSA (collectively, the "**GSA**") secures all personal property of the Debtors. RBC has registered financing statements against the Debtors pursuant to the provisions of the *Personal Property Security Act* (Ontario) to perfect its interest in the personal property of the Debtors secured under the GSA.

Defaults and Demands

19. The Debtors are insolvent and have defaulted under the Credit Agreements and Security, as set out above.

¹¹ D'Costa Affidavit, para. 28.

¹² D'Costa Affidavit, para. 32.

¹³ D'Costa Affidavit, paras. 15-16.

20. RBC issued a Notice of Default to Suhanna in December, 2023, for failing to provide financial reporting and documents due for the fiscal period ended December 31, 2022.¹⁴

21. RBC issued a Notice of Default to 281 in December, 2023, for failing to pay the monthly payment due under the Term Loan.¹⁵

22. The accounts of the Debtors were transferred to RBC's Special Loans & Advisory Services Group in January, 2024.¹⁶

23. On February 27, 2024, RBC issued the Payment Demands, together with Section 244 Notices, which have expired, and the indebtedness remains outstanding.¹⁷

24. The obligations due pursuant to the Payment Demands have not been paid. The statutory periods have expired. The Debtors are in default of their obligations under the Credit Agreements. RBC is in a position to appoint a receiver over the assets and property of the Debtors as secured by RBC's Security, pursuant to Section 243 of the BIA.

25. The GSA grants RBC the right to appoint a receiver over all personal property of the Debtors, as a result of the defaults of the Debtors under the Credit Agreements.

26. Spergel consents to act as receiver, should this Honourable Court so appoint it.

¹⁴ D'Costa Affidavit, para. 42.

¹⁵ D'Costa Affidavit, para. 43.

¹⁶ D'Costa Affidavit, paras. 45-46.

¹⁷ D'Costa Affidavit, paras. 52-54.

27. The terms of the Guarantees entitle RBC to judgment against Randeep, Vibhu, Onkar and Surinder.

28. On October 21, 2024, Mr. Michael Cohen, counsel to Vibhu, Onkar and Surinder advised counsel to RBC and counsel to Spergel that his clients "are not opposing the order or judgment being sought tomorrow". His clients only wanted the receiver to consent to the continuance of their action against Mr. Mann and Suhanna Freight Services Inc., as contemplated by the order being sought.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

29. 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?
- d) Should this Court grant judgment against the Guarantors in accordance with the terms of the Guarantees?

(a) This Court has jurisdiction to appoint the Receiver

30. 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.

31. The Debtors are Ontario corporations. The businesses carried on by the Debtors that are subject to the proposed receivership includes premises located in Ontario. The locality of the Debtors is, therefore, Ontario, and this application is properly brought before the Ontario Superior Court of Justice.

32. 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.

33. msi Spergel inc. 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

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

35. RBC issued Payment Demands together with its Notice of Intention to Enforce Security pursuant to section 244 of the BIA (the "**BIA Notices**"). Payment Demands and the BIA Notices have all expired.

36. 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.

37. Where the credit agreement and related security 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]).¹⁸

38. The existence of a contractual right to appoint a receiver in the credit agreement and related security 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.¹⁹

(c) The Terms of the Receivership Order are Appropriate

39. 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.

(d) Judgment against the Guarantors

40. The Debtors are obligated to repay all indebtedness to RBC under the Credit Agreements.

41. The Guarantors have not responded to this Application. RBC's standard form Guarantee provides as follows:

¹⁸ [RMB Australia Holdings Limited v. Seafield Resources Ltd., 2014 ONSC 5205 \(CanLII\), paras. 28-29.](#)

¹⁹ [Elleway Acquisitions Limited v. The Cruise Professionals Limited, 2013 ONSC 6866 \(CanLII\), para. 27.](#)

(2) This guarantee shall be a continuing guarantee and shall cover all the Liabilities, and it shall apply to and secure any ultimate balance due or remaining unpaid to the Bank.

(3) The Bank shall not be bound to exhaust its recourse against the Customer or others or any securities it may at any time hold before being entitled to payment from the undersigned of the Liabilities. The undersigned renounce(s) to all benefits of discussion and division.

...

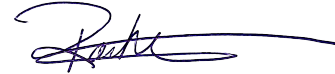
(12) No suit based on this guarantee shall be instituted until demand for payment has been made, and demand for payment shall be deemed to have been effectually made upon any guarantor if and when an envelope containing such demand, addressed to such guarantor at the address of such guarantor last known to the Bank, is posted, postage prepaid, in the post office, and in the event of death of any guarantor demand for payment addressed to any of such guarantor's heirs, executors, administrators or legal representatives at the address of the addressee last known to the Bank and posted as aforesaid shall be deemed to have been effectually made upon all of them. Moreover, when demand for payment has been made, the undersigned shall also be liable to the Bank for all legal costs (on a solicitor and own client basis) incurred by or on behalf of the Bank resulting from any action instituted on the basis of this guarantee. All payments hereunder shall be made to the Bank at a branch or agency of the Bank.

PART IV - ORDER REQUESTED

42. 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 estates of the Debtors and the interests of RBC and other stakeholders.

43. RBC seeks an Order appointing msi Spergel inc. and Receiver and Judgment on the Guarantees.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of October, 2024.



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SCHEDULE "A"

LIST OF AUTHORITIES

1. [*RMB Australia Holdings Limited v. Seafield Resources Ltd.*, 2014 ONSC 5205 \(CanLII\)](#)

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

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

1. [Section 243\(4\) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3](#)

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).

2. [Section 243\(5\) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3](#)

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.

3. [Section 244\(1\) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3](#)

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.

4. [Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43](#)

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).

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Respondents

Court File No. CV-24-00003737-0000

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PROCEEDING COMMENCED AT
MILTON

FACTUM

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