

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

**IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C-43,  
as amended and Section 47(1) of the *Bankruptcy and Insolvency Act* (Canada)**

**HSBC BANK CANADA**

Applicant

– and –

**FREIGHTCAN GLOBAL INC.**

Respondent

**AMENDED NOTICE OF MOTION**  
**(returnable on February 11, 2016)**

Deloitte Restructuring Inc. (“**Deloitte**”) in its capacity as Court-appointed receiver of Freightcan Global Inc. (“**Freightcan**”) in this proceeding (the “**Receiver**”) will make a motion to a Judge of the Commercial List on a date and time to be determined at a scheduling hearing on Thursday, February 11, 2016 at 9:30am, or as soon after that time as the motion may be heard, at 330 University Avenue, Toronto, Ontario, M5G 1R7.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR AN ORDER**

1. declaring that Padmini Prasad is in breach of sections 3 and 4 of the order appointing Deloitte as Receiver of all of the assets, undertakings and properties of Freightcan (the “**Appointment Order**”);
2. declaring that 2335898 Ontario Inc. (the “**Landlord**”), and Transport Operators Corp. (“**Transport Operators**”) and ~~Liquid Capital Exchange Corp.~~ (“~~**Liquid Capital**~~”) are in breach of sections 3 and 10 of the Appointment Order;
3. declaring that the transfers of the Receivership Property (defined below) had the effect of providing an unfair advantage and preference over the other creditors of Freightcan to the Landlord, Transport Operators and Liquid Capital, and are therefore null and void;
4. requiring the Landlord to return the amount of CAD \$24,950.00 to the Receiver;
5. requiring Transport Operators to return the amount of USD \$34,730.00 to the Receiver;
6. requiring Liquid Capital to return the amount of USD \$23,700.00 to the Receiver;
7. further, or in the alternative, requiring Padmini Prasad to return the amounts of CAD \$24,950.00 and USD \$58,430.00 to the Receiver;
8. awarding costs of this motion to the Receiver; and
9. for such further and other relief as counsel may advise and this Honourable Court may permit.

## THE GROUNDS FOR THE MOTION ARE

### The Parties

1. Freightcan is a federally incorporated company pursuant to the *Canada Business Corporations Act* with its registered head office at 1515 Britannia Road East, Mississauga, Ontario. It is engaged in the global logistics and freight-forwarding industry.
2. Freightcan's office on Spectrum Way is leased from the Landlord, an entity related to Freightcan.
3. Padmini Prasad is the President and sole director of Freightcan. Devi Prasad Sitaram, who is married to Ms. Prasad, is a shareholder and authorized signing officer of Freightcan.
4. Ms. Prasad is also the President and director of the Landlord. Devi Prasad Sitaram is the Secretary and director of the Landlord.
5. Transport Operators is a trucking and storage company located in Brampton, Ontario. Balkaran Dhillon is a director of Transport Operators.
6. Liquid Capital is an organization that provides short term financing to small businesses. Balkaran Dhillon is a director and secretary of Liquid Capital Group Corp., a company associated with Liquid Capital. Liquid Capital operates as a franchise organization. Balkaran Dhillon is listed on the website as the local Liquid Capital principal for Brampton, Ontario.

### Background

7. Freightcan is indebted to HSBC Bank Canada (the "**Bank**") under certain credit facilities made available by the Bank pursuant to a credit facility letter dated September 7, 2011, as amended from time to time. The Bank was Freightcan's operating lender.

8. On or about July 14, 2014, the Bank entered into a forbearance agreement with Freightcan (the “**2014 Forbearance Agreement**”). Pursuant to paragraph 24 of the 2014 Forbearance Agreement, Freightcan agreed that all it would deposit all revenues, collections of accounts receivables and any other income generated by Freightcan into Freightcan’s accounts with the Bank only, with the exception of amounts deposited into Freightcan’s accounts with the HAB Bank which were to be wired to Freightcan’s accounts with the Bank on a daily basis. The 2014 Forbearance Agreement was extended from time to time.
9. On or about January 9, 2015, the Bank commenced proceedings to have a receiver appointed over the assets, undertakings and properties of Freightcan (the “**Receivership Application**”).
10. On or about February 17, 2015, the Bank adjourned the Receivership Application and entered into a further forbearance agreement with Freightcan, dated February 17, 2015 (the “**2015 Forbearance Agreement**”). The 2015 Forbearance Agreement specifically incorporated the terms of the 2014 Forbearance agreement, including paragraph 24 thereof.
11. As a term of the 2015 Forbearance Agreement, Freightcan executed an irrevocable consent to the appointment of the Receiver on terms substantially as provided in the draft order attached to the consent as Appendix “A” (the “**Draft Order**”).
12. Freightcan failed to satisfy the terms of the 2015 Forbearance Agreement by the forbearance deadline of April 30, 2015.
13. At Freightcan’s request, the Bank entered into subsequent extension agreements of the forbearance period by agreements dated May 12, 2015, June 11, 2015 and July 23, 2015 (together with the 2014 Forbearance Agreement and the 2015 Forbearance Agreement, the

“**Forbearance Agreements**”). In each instance, Freightcan failed to satisfy the terms of forbearance.

### **The Appointment Order**

14. As a result of Freightcan’s failure to meet the terms of forbearance, on August 4, 2015, Justice Penny granted the Appointment Order on terms substantially as provided in the Draft Order.
15. On August 6, 2015, Freightcan requested, and the Bank and Deloitte consented to, a stay of the Appointment Order in light of representations made by counsel for Freightcan that Freightcan was negotiating a refinancing with an alternate lender.
16. On August 6, 2015, Justice Penny granted a stay of the Appointment Order to permit discussions to continue and for a potential refinancing to be realized.
17. Freightcan failed to obtain a refinancing in the time permitted and discussions terminated.
18. On August 17, 2015, at 11:59 p.m., the Appointment Order became effective (the “**Effective Date**”).

### **The TD Bank Accounts**

19. On or about July 7, 2015 (after commencement of the within receivership proceedings), Ms. Prasad opened TD Account Number 5291479 and TD Account Number 7308449 (together the “**TD Accounts**”) for use by Freightcan.
20. On August 18, 2015, following the Effective Date of its appointment, the Receiver asked Ms. Prasad to provide details of all bank accounts used by Freightcan.
21. Ms. Prasad failed to advise the Receiver of the existence of the TD Accounts. This failure was a breach of the Forbearance Agreements, pursuant to which the receivership

application had been adjourned for approximately eight months, and a breach of Ms. Prasad's obligations under sections 3 and 4 of the Appointment Order.

22. The Receiver discovered the TD Accounts on August 21, 2015. That afternoon, it contacted TD and sent a receivership notification letter directing it to freeze all accounts, investments and other assets of Freightcan.
23. Unauthorized transfers of funds were made out of the TD Accounts between August 18<sup>th</sup>, 2015, and August 24, 2015.
24. Had Ms. Prasad disclosed the existence of and provided details for the TD Accounts to the Receiver on August 18, 2015, as required pursuant to the Appointment Order, the Receiver would have been in a position to contact TD on that date and direct it to freeze all accounts, investments and other assets of the Company effective immediately.

#### **The Unauthorized Transfers**

25. Notwithstanding the representations made in the Forbearance Agreements, which provided the basis upon which the receivership was adjourned for approximately eight months, and the Appointment Order, Ms. Prasad continued to maintain and utilize the undisclosed TD Accounts in the name of Freightcan, with knowledge that cheques had been issued from these accounts.
26. The Landlord, Transport Operators and Liquid Capital received funds in the aggregate amounts of CAD \$24,950.00 and USD \$58,430.00. The Receiver was neither made aware of, nor authorized, these transfers.
27. These unauthorized transfers represent funds that form part of the property of the Receivership (the "**Receivership Property**"). The Landlord, and Transport Operators ~~and~~

Liquid Capital transferred this Receivership Property after they had received notice of the receivership.

28. The transfer of Receivership Property constituted an exercise of a right or remedy on the part of the Landlord, Transport Operators and Liquid Capital against or affecting the Receivership Property, the Receiver, and/or Freightcan.
29. The transfer of Receivership Property had the effect of the Landlord, Transport Operators and Liquid Capital receiving an unfair advantage and preference over the other creditors of Freightcan.
30. Ms. Prasad intentionally withheld disclosing the TD Accounts to the Receiver, which allowed the Landlord, Transport Operators and Liquid Capital to preferentially receive Receivership Property contrary to the terms of the Appointment Order.

**General**

31. The Special Report of the Receiver, dated January 20, 2016 (the “**Special Report**”).
32. Paragraphs 2, 3, 4, 5, 10 and 27 of the Appointment Order.
33. Section 95 of the *Bankruptcy and Insolvency Act*.
34. Section 4 of the *Assignments and Preferences Act*.
35. Rules 1.04, 1.05, 2.01, 2.03, 3.02, and 37 of the *Rules of Civil Procedure*.
36. Such further and other grounds as counsel may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion

1. the Special Report; and

2. such further and other evidence as counsel may advise and this Honourable Court may permit.

February 2, 2016

**THORNTON GROUT FINNIGAN LLP**  
Suite 3200, TD West Tower  
100 Wellington Street West  
P.O. Box 329, Toronto-Dominion Centre  
Toronto, ON M5K 1K7

**D.J. Miller (LSUC #34393P)**  
Tel: (416) 304-0559  
Email: [djmiller@tgf.ca](mailto:djmiller@tgf.ca)

**Andrea McEwan (LSUC #53781P)**  
Tel: (416) 304-0596  
Email: [amcewan@tgf.ca](mailto:amcewan@tgf.ca)

**Rebecca Lewis (LSUC #61146S)**  
Tel: (416) 304-0603  
Fax: (416) 304-1313  
Email: [rlewis@tgf.ca](mailto:rlewis@tgf.ca)

Lawyers for the Receiver

**TO: THIS HONOURABLE COURT**

**AND TO: THE ATTACHED SERVICE LIST**

**EMAIL SERVICE LIST  
(AS AT MAY 10, 2016)**

<b>TO:</b>	<p><b>HSBC BANK CANADA</b> 70 York St., 6th Floor Toronto, ON M5J 1S9</p> <p><b>Stephen Wayland</b> Tel: (416) 868-8052 Fax: (416) 868-3812 Email: <a href="mailto:stephen_wayland@hsbc.ca">stephen_wayland@hsbc.ca</a></p>
<b>AND TO:</b>	<p><b>DELOITTE RESTRUCTURING INC.</b> Bay Adelaide Centre – East Tower 22 Adelaide Street West, Suite 200 Toronto, ON, M5H 0A9</p> <p><b>Paul Casey</b> Tel: (416) 775-7172 Email: <a href="mailto:paucasey@deloitte.ca">paucasey@deloitte.ca</a></p> <p><b>Stefano Damiani</b> Tel: (416) 874-4404 Fax: (416) 601-6690 Email: <a href="mailto:sdamiani@deloitte.ca">sdamiani@deloitte.ca</a></p> <p>Court-Appointed Receiver</p>
<b>AND TO:</b>	<p><b>THORNTON GROUT FINNIGAN LLP</b> Suite 3200, TD West Tower 100 Wellington Street West P.O. Box 329, Toronto-Dominion Centre Toronto, ON M5K 1K7</p> <p><b>D.J. Miller</b> Tel: (416) 304-0559 Email: <a href="mailto:djmiller@tgf.ca">djmiller@tgf.ca</a></p> <p><b>Andrea McEwan</b> Tel: (416) 304-0596 Email: <a href="mailto:amcewan@tgf.ca">amcewan@tgf.ca</a></p> <p><b>Rebecca Kennedy</b> Tel: (416) 304-0603/Fax: (416) 304-1313 Email: <a href="mailto:rkennedy@tgf.ca">rkennedy@tgf.ca</a></p> <p>Lawyers for the Receiver</p>

<b>AND TO:</b>	<p><b>DEPARTMENT OF JUSTICE</b> Ontario Regional Office The Exchange Tower, Box 36 130 King Street West Suite 3400 Toronto, ON M5X 1K6</p> <p><b>Diane Winters</b> Tel: (416) 973-3172 Fax: (416) 973-0810 Email: <a href="mailto:diane.winters@justice.gc.ca">diane.winters@justice.gc.ca</a></p> <p>Lawyers for the Canada Revenue Agency</p>
<b>AND TO:</b>	<p><b>HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE</b> Legal Services Branch 33 King Street West, 6<sup>th</sup> Floor Oshawa, ON L1H 8H5</p> <p><b>Kevin O'Hara</b> Tel: (905) 433-6934 Fax: (905) 436-4510 Email: <a href="mailto:kevin.ohara@ontario.ca">kevin.ohara@ontario.ca</a></p>
<b>AND TO:</b>	<p><b>BUSINESS DEVELOPMENT BANK OF CANADA</b> 1243 Islington Avenue Suite 1001 Toronto, ON M8X 1Y9</p> <p><b>Ruth Thomson</b> Email: <a href="mailto:ruth.thomson@bdc.ca">ruth.thomson@bdc.ca</a></p>
<b>AND TO:</b>	<p><b>FREIGHTCAN GLOBAL INC.</b> 1515 Britannia Road East, Suite 15 Mississauga, ON L4W 4K1</p> <p><b>Padmini Prasad</b> Email: <a href="mailto:miniprasy30@gmail.com">miniprasy30@gmail.com</a></p>

<b>AND TO:</b>	<b>2335898 ONTARIO INC.</b> 25 Kingsbridge Garden Circle Unit 2425 Mississauga, ON L5R 4B1  Email: <a href="mailto:2335898ontinc@gmail.com/miniprasy30@gmail.com">2335898ontinc@gmail.com/miniprasy30@gmail.com</a>
<b>AND TO:</b>	<b>SOLMON ROTHBART GOODMAN LLP</b> 375 University Ave, Suite 701 Toronto, ON M5G 2J5  <b>Nancy J. Tourgis</b> Tel: (416) 947-1093 ext. 342 Email: <a href="mailto:ntourgis@srglegal.com">ntourgis@srglegal.com</a>  Lawyers for Liquid Capital Exchange Corp.
<b>AND TO:</b>	<b>PADMINI PRASAD</b> 25 Kingsbridge Garden Circle Unit 2425 Mississauga, ON L5R 4B1  Email: <a href="mailto:miniprasy30@gmail.com">miniprasy30@gmail.com</a>
<b>AND TO:</b>	<b>TOOR LAW OFFICE</b> 56 Westmore Drive, Suite 202 Toronto, ON M9V 3Z7  <b>Yadvinder S. Toor</b> Tel: (416) 748-7775 Fax: (416) 748-5553 Email: <a href="mailto:info@toorlaw.com">info@toorlaw.com</a>  Lawyers for Transport Operators Corporation

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C-43, as amended and Section 47(1) of the  
*Bankruptcy and Insolvency Act (Canada)*

**HSBC BANK CANADA**

Applicant  
and

**FREIGHTCAN GLOBAL INC.**

Respondent

Court File No.: CV-15-10828-00CL

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

Proceedings commenced at **Toronto**

**AMENDED NOTICE OF MOTION**

**THORNTON GROUT FINNIGAN LLP**  
Suite 3200, TD West Tower  
100 Wellington Street West  
P.O. Box 329, Toronto-Dominion Centre  
Toronto, ON M5K 1K7

**D.J. Miller (LSUC #34393P)**  
Tel: (416) 304-0559  
Email: [djmiller@tgf.ca](mailto:djmiller@tgf.ca)

**Andrea McEwan (LSUC #53781P)**  
Tel: (416) 304-0596  
Email: [amcewan@tgf.ca](mailto:amcewan@tgf.ca)

**Rebecca Lewis (LSUC #61146S)**  
Tel: (416) 304-0603/Fax: (416) 304-1313  
Email: [rlewis@tgf.ca](mailto:rlewis@tgf.ca)

Lawyers for the Receiver