

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

**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

**SUPPLEMENTAL REPORT OF DELOITTE RESTRUCTURING INC.
In its capacity as Court-appointed receiver of Freightcan Global Inc.**

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EXHIBITS

EXHIBIT	DESCRIPTION
A	Letter from Deloitte to the Landlord, dated March 3, 2016
B	Email from Sitaram to Deloitte (with attachment), dated March 16, 2016
C	Email from TGF to Sitaram, dated March 18, 2016
D	Responding Materials of the Landlord, served March 24, 2016
E	PPSA Search against Freightcan
F	Section 18(1) Request dated January 6, 2015
G	Parcel Report of 5155 Spectrum Way, Unit 15, Mississauga, dated August 25, 2015
H	Email from Sukhvinder Kaur to Prasad (undated)
I	Parcel Report dated March 29, 2016
J	Charge/Mortgage of Land for 5155 Spectrum Way, Unit 15, Mississauga, dated March 29, 2015
K	Letter from Pandher to Dhillon, dated July 26, 2015
L	Email from Prasad to Dhillon re Freightcan TD Accounts, dated July 26, 2015
M	Email Chain between Prasad and Dhillon, dated July 27, 2015
N	Email from Dhillon to Prasad (undated)

A. INTRODUCTION

1. The purpose of this supplemental report of the Receiver (the “**Supplemental Report**”) is to provide the Court with information with respect to events which have transpired following the service of its Special Report to the Court dated January 20, 2016, and to address certain matters set out in: (i) the affidavit of Sol Roter, sworn on March 21, 2016 on behalf of Liquid Capital (the “**Roter Affidavit**”); and (ii) the affidavit of Balkaran Dhillon, sworn on March 16, 2016 on behalf of Transport Operators (the “**Dhillon Affidavit**”). Unless otherwise defined in this Supplemental Report, capitalized terms will have the meaning ascribed in the Special Report.
2. In the Roter Affidavit, Liquid Capital has raised matters that purport to relate to the conduct of HSBC Bank Canada (the “**Bank**”), in or about January 2015. At that time, the Receiver had not yet been appointed by the Court as Receiver in this proceeding; however, the application materials in respect of the receivership had been prepared (in respect of which Deloitte had executed a Consent to act as Receiver), and Deloitte had been retained as a consultant by the Bank since February 2014, with the consent of Freightcan. Accordingly, the Receiver has direct knowledge of all matters contained in this Supplemental Report, including those relating to the period prior to its appointment as Receiver by the Court.
3. On this motion, the Receiver is seeking the return of funds transferred from the Freightcan TD Accounts to (i) the Landlord; (ii) Transport Operators; and (iii) Liquid Capital, without the knowledge or consent of the Receiver, after the date of the Appointment Order. The Receiver has set out the information and evidence it has gathered in response to the Roter Affidavit and the Dhillon Affidavit that is relevant to each of these transfers below.
4. Reference is made to paragraph 40 of the Special Report which sets out that CAD \$27,601.47 and USD \$58,430.00 had been transferred without the knowledge or consent of the Receiver, from Freightcan’s bank accounts held at TD subsequent to the effective time of the Appointment Order. All of these transfers or cheques were initiated or signed by Prasad or Sitaram. These amounts were more particularly described as follows:
 - (a) Paragraph 40(a) of the Special Report sets out five unauthorized transfers totaling CAD \$27,601.47, of which CAD \$24,950.00 was wire transferred to the Landlord.
 - (b) Paragraph 40(b) of the Special Report sets out three unauthorized transfers totaling USD \$58,430.00, of which USD \$34,730.00 and USD \$23,700.00 was transferred to Transport Operators and Liquid Capital, respectively.

B. TRANSFER FROM FREIGHTCAN TO THE LANDLORD

1. Return of the CIBC Funds

5. By way of update to the Court, on March 2, 2016, CIBC voluntarily returned CAD \$11,771.19 to the Receiver (the “**CIBC Funds**”), which it indirectly received from the Landlord by way of a transfer of funds from Freightcan’s TD Account to the Landlord on August 18, 2015. As a result, the amount that the Receiver is seeking to be returned from the Landlord is reduced to CAD \$13,178.81 (i.e. \$24,950.00 less \$11,771.19).

2. Communication with the Landlord

6. On March 3, 2016, the Receiver wrote to the Landlord to advise it of the return of the CIBC Funds (the “**March 3rd Letter**”). A copy of the March 3rd Letter is attached at Exhibit “**A**”.
7. On March 16, 2016, Sitaram, on behalf of the Landlord, replied to the March 3rd Letter. In his email, Sitaram simply referred to and attached his prior letter and covering email to the Receiver, dated October 8, 2015, and a statement of accounts purporting to show amounts owing by Freightcan to the Landlord. The October 8, 2015 letter was previously appended as Exhibit “**Z**” to the Special Report. A copy of the March 16, 2016, email and attachments are appended as Exhibit “**B**”.
8. On March 18, 2016, counsel to the Receiver replied to Sitaram’s email and advised that they had not yet received responding materials from either Prasad or the Landlord with respect to the within motion. A copy of the March 18, 2016, email is attached as Exhibit “**C**”.
9. On March 24, 2016, after the date required, the Landlord served their responding materials. The Receiver does not believe that these materials have been filed with the Court. To assist the Court, the Receiver has attached them as Exhibit “**D**”.

C. FUNDS TRANSFERRED FROM FREIGHTCAN TO LIQUID CAPITAL

1. *Personal Property Security Act (Ontario)* (“PPSA**”) Registration**

10. In his Affidavit, Mr. Roter suggests, among other things, that Liquid Capital would not have discharged its PPSA registration or continued to enter into any further finance program transactions with Freightcan had it known that Freightcan was in default of its indebtedness to the Bank.
11. The Receiver understands that in early January 2015, Thornton Grout Finnigan LLP (“**TGF**”), the Bank’s counsel, ordered a PPSA search for Freightcan. The results of that search indicated that Liquid Capital Finance Inc. had very recently registered a security interest against Freightcan on November 27, 2014, against all classes of collateral. A copy of the PPSA search is attached as Exhibit “**E**”, and the registration in question appears on page 2.

12. On January 6, 2015, TGF sent a letter to Liquid Capital Finance, pursuant to section 18(1) of the PPSA (the “**Section 18(1) Request**”) in respect of this recent PPSA registration. The Section 18(1) Request asked that Liquid Capital Finance provide to the Bank, as a secured creditor of Freightcan: (i) a statement in writing of the amount of Freightcan’s indebtedness to Liquid Capital Finance and the payment terms thereof; and (ii) a true copy of any and all security documents relating to the PPSA registrations. A copy of the Section 18(1) Request is attached as Exhibit “**F**”.
13. In response to the Section 18(1) Request, Danny Nunes, a lawyer with TGF, had a telephone conversation with Sol Roter on January 7, 2015 regarding the PPSA registration and the relationship between Freightcan and the Liquid Capital businesses, the contents of which were relayed to the Receiver and the Bank. Mr. Roter advised, among other things, that Liquid Capital:
 - (a) was not factoring Freightcan’s receivables;
 - (b) had only done one transaction with Freightcan; and
 - (c) does not rely on the PPSA registrations as much as they do on credit insurance.
14. Mr. Roter subsequently sent an email, dated January 7, 2015, in response to the Section 18(1) Request and to confirm his conversation with Mr. Nunes. The January 7, 2015 email was previously attached as Exhibit “E” to the Special Report and is contained as Exhibit “B” to the Roter Affidavit.
15. The Bank and its counsel have confirmed to the Receiver that:
 - (a) at no time has a similar Section 18(1) Request ever been received by the Bank from Liquid Capital;
 - (b) at no time have they requested that Liquid Capital discharge its PPSA registration, notwithstanding that the granting of a security interest by Freightcan to any other party caused Freightcan to breach its contractual obligations to the Bank;
 - (c) there would have been no reason for the Bank to require the discharge of Liquid Capital’s PPSA registration, as the Bank’s PPSA registration was at all times in priority to the subsequent registration by Liquid Capital over all classes of collateral;
 - (d) neither the Bank nor its counsel have any information as to any discussions that may have taken place between representatives of Freightcan and representatives of Liquid Capital in relation to the latter’s PPSA registration or its subsequent discharge; and
 - (e) by reason of Bank policy and applicable privacy laws, neither the Bank nor its counsel could have, or would have, volunteered or disclosed any information about Freightcan’s finances to Liquid Capital or any other person, including any acts of default or the existence of a forbearance agreement.
16. While the existence or discharge of a PPSA registration by Liquid Capital appears to have no relevance to the within motion brought by the Receiver, the Receiver has provided the above information for the benefit of the Court.

2. Liquid Capital Group Charge on the Mississauga Office

17. Based on the Receiver's review of an Ontario Land Registry parcel report for Freightcan's Mississauga office located at 5155 Spectrum Way, Unit 15, Mississauga, Ontario (the "**Mississauga Office**"), dated August 25, 2015 (the "**2015 Parcel Report**"), Liquid Capital Group registered a charge on the property in the amount of \$300,000 on August 13, 2015, shortly before the effective date of the receivership pursuant to the August 17, 2015 endorsement of Justice Matheson.
18. In respect of Liquid Capital Group's charge, Freightcan's records included an undated email from Sukhvinder Kaur of Liquid Capital Group to Prasad, copying Dhillon and Dave Pander, that attached a commitment letter in connection with a second mortgage for the Mississauga Office, which states, "*Funds advanced \$300,000.00 as loan to Freight Can Global Inc which is owned by Padmini Prasad and Sita Ram Devi Prasad.*" and "*17. Mortgage proceeds already received by the borrower as loan from Liquid Capital Group Corp.*" From this, it appears that Liquid Capital Group arranged for a charge to be registered on the Mississauga Office, which is owned by the Landlord, in respect of Freightcan debt. Copies of the 2015 Parcel Report and email are attached as Exhibits "**G**" and "**H**" respectively.
19. In the Landlord's responding materials, dated March 24, 2016, the Landlord advised the Receiver that the Mississauga Office has since been sold. On March 29, 2016, the Receiver asked the Landlord for the amount of the sale proceeds, an accounting of the disposition of those sale proceeds, and the closing date for the sale transaction. The Landlord has not yet responded to the Receiver's request, however, an Ontario Land Registry parcel report for the Mississauga Office, dated March 29, 2016 (the "**2016 Parcel Report**"), indicates that the property was transferred for \$1,150,000 on February 3, 2016. A copy of the 2016 Parcel Report is attached as Exhibit "**I**".
20. The 2016 Parcel Report also indicates that the charge registered by Liquid Capital Group was discharged on February 3, 2016. A copy of the mortgage instrument is attached as Exhibit "**J**".

D. TRANSFER FROM FREIGHTCAN TO TRANSPORT OPERATORS AND LIQUID CAPITAL

1. Relationship between Dhillon and Prasad (Freightcan)

21. As set out in the Special Report, Dhillon is a director and secretary of Transport Operators. He is also a director and secretary of Liquid Capital Group, a franchisee of Liquid Capital. The Liquid Capital website identifies Dhillon as the "Local Liquid Capital Principal" for Brampton, Ontario. Dhillon executed the Supply Agreement between Liquid Capital Finance and Freightcan, on behalf of Liquid Capital Finance (Exhibit "A" to the Roter Affidavit and Exhibit "H" to the Special Report). It also appears from the Dhillon Affidavit, the Roter Affidavit, and the email correspondence set out below, that dealings between Liquid Capital and Freightcan were primarily, if not exclusively, through Dhillon.

22. Based on the following information described in the Special Report and in this Supplemental Report, it would appear that Prasad, President and sole director of Freightcan, and Dhillon were closely connected:
- (a) the arrangement of a second mortgage on Prasad/Sitaram's private residence in connection with loans to Freightcan which contemplated Dhillon having full access to a TD bank account and a requirement for Dhillon's prior written permission to allow Freightcan to issue payments from this account to parties other than Liquid Capital, as described below;
 - (b) Dhillon's correspondence with Prasad and Freightcan's legal counsel in the period immediately prior to the August 17, 2015 endorsement of Justice Matheson, including Dhillon's drafted (but unsent) letter dated August 12, 2015 to HSBC with respect to the imminent receivership, which were appended as Exhibit "R" to the Special Report;
 - (c) Dhillon's arrangement for a \$300,000 charge which was registered on the Mississauga Office owned by the Landlord but in respect of Freightcan debt, on August 13, 2015, as described above; and
 - (d) Dhillon's detailed knowledge of Freightcan's financial circumstances and extensive access to books and records since at least the period immediately prior to the execution of the Supply Agreement with Liquid Capital Finance on January 7, 2015.
23. The Receiver has continued to review available books and records of Freightcan and has identified additional correspondence between Dhillon and Prasad that are relevant to the issues raised in the Roter Affidavit and the Dhillon Affidavit, specifically the statements that Transport Operators and Liquid Capital were not aware that Freightcan was experiencing financial difficulties in the summer of 2015 and that it was subsequently put into receivership.
24. On or about July 26, 2015, Dave Pandher, President of Five Star Insurance, wrote to Dhillon indicating that he was willing to help Prasad because of her long term business relationship with Dhillon. Dhillon subsequently forwarded this email to Prasad with a Mortgage Commitment Letter attached. A copy of this email chain and attachment is attached as Exhibit "K".
25. The Mortgage Commitment Letter with respect to a second mortgage on the private residence of Prasad and Sitaram (this property has since been sold) describes Compound Profit Corp. of Suite # 200, 270 Orenda Road, Brampton, Ontario as the lender. Dhillon has represented himself as the Managing Director of Compound Profit Corp. in correspondence reviewed by the Receiver. Paragraphs 21 and 22 of the Mortgage Commitment Letter refer to Freightcan debt and the use of a TD bank account for Liquid Capital purposes, as follows:

"21 Mortgage proceed will be paid to Liquid Capital Group Corp. to pay out portion of the loan which is given to Freightcan Global Inc.

22 Freightcan Global Inc will provide full access to their bank account to monitor any activities. All cheques from TD bank account (US) account will be issued to Liquid Capital or Liquid Capital instructions unless prior written permission from the Liquid Capital and/or their representatives.”

26. On or about July 26, 2015, Prasad provided details of the Freightcan TD Accounts to Dhillon. The July 26, 2015 email is attached as Exhibit “L”.
27. On or about July 27, 2015, Prasad sent security information for the Freightcan USD TD Account to Dhillon at Dhillon’s request, including the username and password for online account access, and her answers to the security questions. From this it appears that Dhillon had direct online access to at least the USD TD Account from which the Receivership Trust Funds were transferred without the knowledge or consent of the Receiver. A copy of the July 27, 2015 email chain between Prasad and Dhillon is attached as Exhibit “M”.
28. As noted above, the Mortgage Commitment Letter contemplated Dhillon having full access to a TD bank account and provided that any payments to parties other than Liquid Capital required Dhillon’s prior written permission. In the July 27, 2015 email exchange Prasad listed six payments to non-Liquid Capital entities which the Receiver has reconciled to the USD TD Account activity report that was included in Exhibit “P” of the Special Report.
29. In an undated email from Dhillon to Prasad, copying Dave Pander, Dhillon indicates that he has sent “all the documents to the Dave” and that Dave will send the information to the CEO of Liquid Capital in Montreal and the North American head in Texas so that they may discuss the Freightcan matter internally at Liquid Capital. A copy of this email is attached as Exhibit “N”.
30. The Receiver is not clear as to whether Dave Pandher and Dave Pander are the same person. However, from the above email correspondence the Receiver notes that Five Star Insurance is located at Unit # 200, 270 Orenda Road, Brampton, Ontario, the same address for Liquid Capital Group and Compound Profit Corp., and also used in Dhillon’s email signature as a partner at his accounting firm (Turner Moore LLP). The Receiver also notes that Dave Pander (as “Dave Pander (LC)” <dpander@liquidcapitalcorp.com>) was copied on an email dated January 7, 2015 from Mr. Roter to TGF as set out on page 27 of 46 of the Roter Affidavit.

RELIEF SOUGHT

31. For the reasons set out above and in the Special Report, the Receiver continues to recommend that the Court make an Order:
- (a) declaring that Prasad is in breach of section 4 of the Appointment Order;
 - (b) declaring that the Landlord, Transport Operators and Liquid Capital are in breach of section 10 of the Appointment Order;
 - (c) declaring that Prasad, the Landlord, Transport Operators and Liquid Capital are in breach of section 4 of the *Assignments and Preferences Act*;
 - (d) requiring the Landlord to return the amount of CAD \$13,178.81 to the Receiver;
 - (e) requiring Transport Operators to return the amount of USD \$34,730.00 to the Receiver;
 - (f) requiring Liquid Capital to return the amount of USD \$23,700.00 to the Receiver;
 - (g) further, or in the alternative, requiring Prasad to return the amounts of CAD \$13,178.81 and USD \$58,430.00 of to the Receiver; and
 - (h) costs of the motion payable to the Receiver.

All of which is respectfully submitted at Toronto, Ontario this 29th day of March, 2016.

Deloitte Restructuring Inc.,
solely in its capacity as the
Court-appointed receiver of
Freightcan Global Inc., and
without personal or corporate liability



Per:
Paul M. Casey, CPA, CA, CIRP
Senior Vice-President