

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

BETWEEN:

**ROYAL BANK OF CANADA**

**Applicant**

**and**

**BACK 40 PICTURES INC.**

**Respondent**

**MOTION RECORD**  
*(Motion returnable March 1, 2022)*

February 24, 2022

**DEVRY SMITH FRANK LLP**  
Lawyers & Mediators  
95 Barber Greene Road, Suite 100  
Toronto, Ontario M3C 3E9

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Lawyers for the Applicant

TO: **THE SERVICE LIST**

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

BETWEEN:

**ROYAL BANK OF CANADA**

**Applicant**

**and**

**BACK 40 PICTURES INC.**

**Respondent**

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TAB 1

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

BETWEEN:

**ROYAL BANK OF CANADA**

Applicant

- and -

**BACK 40 PICTURES INC.**

Respondent

**NOTICE OF MOTION**

Royal Bank of Canada (“RBC”) will make a motion to a Judge of the Commercial List on Tuesday March 1, 2022 at 12:30 p.m. or as soon after that time as the motion can be heard, by judicial videoconference due to the COVID-19 emergency, via Zoom.

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

**THE MOTION IS FOR** an Order, in the form attached to this Notice of Motion as Schedule “A”, including, amongst other things:

- (a) if necessary, abridging the time for service and filing of this notice of motion and the motion record or, in the alternative, dispensing with same;
- (b) expanding the powers of Deloitte Restructuring Inc. (“Deloitte”) in its capacity as Court appointed Receiver (“the Receiver”) to complete outstanding HST returns and to take possession of the proceeds of the film tax credits when paid by Canada Revenue Agency; and,

- (c) such further and other relief as counsel may advise and this Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) pursuant to the Order of the Honourable Mr. Justice McEwen made July 9, 2020 (the “**Receivership Order**”), Deloitte was appointed as the Receiver in connection with the Debtor;
- (b) based on the previous reports of the Receiver, the stakeholders have been awaiting a review by Canada Revenue Agency (“**CRA**”) of film tax credit claims filed by the Respondent;
- (c) RBC had initially moved for a limited appointment of the Receiver pending a more accurate determination of the amount that CRA would pay in respect of the Respondent’s film tax credit claims;
- (d) Canada Revenue Agency has now issued an assessment confirming that it is prepared to pay out a film tax credit in the sum of \$1,615,328.37 once the Respondent files outstanding HST returns;
- (e) under the terms of the current Receivership Order, the Receiver is not presently empowered to:
- (i) complete the outstanding HST returns of the Respondent;
  - (ii) direct Canada Revenue Agency to send any cheque for a tax credit or cheque to the Receiver; or,
  - (iii) take possession of the proceeds of the film tax credits pending a distribution order in these proceedings;
- (f) RBC is claiming a first priority security interest in the proceeds of the film tax credits and is seeking an expansion of the Receiver’s powers to ensure that the returns can be completed and the proceeds of the film tax credits preserved in the hands of the Receiver pending a distribution order;

- (g) The grant of the relief sought by RBC will ensure timely payment of the film tax credit claim and protect all stakeholders with respect to the distribution of proceeds to stakeholders;
- (h) section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
- (i) section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (j) rules 1.04, 2.03, 3.02, 30, 37 and 41.06 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (k) such further and other grounds as counsel may advise and this Court may permit.

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

- (l) the Affidavit of David Kennedy, sworn on February 22, 2022; and,
- (m) such further and other material as counsel may submit and this Court may permit.

Date: February 24, 2022

DEVRY SMITH FRANK LLP  
Lawyers & Mediators  
95 Barber Greene Road, Suite 100  
Toronto, Ontario M3C 3E9

James Satin – LSO #: 44025R

Tel : 416-449-1400

Email: james.satin@devrylaw.ca

Lawyers for the Applicant, Royal Bank of  
Canada

**TO: THE SERVICE LIST**



## RECEIVER'S POWERS

1. THIS COURT ORDERS that paragraph 3 of the July 9, 2020 Order of the Honourable Mr. Justice McEwen (“**Appointment Order**”) be and is hereby amended to add the following powers:

- (f) to complete and file outstanding HST returns on behalf of the Debtor for all periods prior to May 31, 2022;
- (g) to direct Canada Revenue Agency, on behalf of the Debtor, to deliver any and all tax credit refund cheques to the Receiver;
- (h) to deposit any tax credit or refund cheques in respect of the Debtor into the Post Receivership Accounts (as defined herein);

## RECEIVER TO HOLD FUNDS

2. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the recovery of tax refunds or tax credits, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court

3. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



4. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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**ROYAL BANK OF CANADA**

- and -

**BACK 40 PICTURES INC.**

Applicant

Respondent

Court File No. CV-20-00642755-00CL

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

**Proceedings commenced at Toronto**

**ORDER**

**DEVRY SMITH FRANK LLP**

Lawyers & Mediators

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Tel : (416) 449-1400

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*Lawyers for the Applicant, Royal Bank of Canada.*

**ROYAL BANK OF CANADA**

- and -

**BACK 40 PICTURES INC.**

Applicant

Respondent

Court File No. CV-20-00642755-00CL

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

**Proceedings commenced at Toronto**

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**NOTICE OF MOTION**  
**(returnable March 1, 2022)**

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**DEVRY SMITH FRANK LLP**  
Lawyers & Mediators  
95 Barber Greene Road, Suite 100  
Toronto, Ontario M3C 3E9

**JAMES SATIN**  
LSO #: 44025R

Tel : (416) 449-1400  
Email: james.satin@devrylaw.ca

*Lawyers for the Applicant, Royal Bank of Canada.*

# TAB 2

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

BETWEEN:

**ROYAL BANK OF CANADA**

Applicant

- and -

**BACK 40 PICTURES INC.**

Respondent

**AFFIDAVIT OF DAVID KENNEDY**  
(sworn February 22, 2022)

I, David Kennedy, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

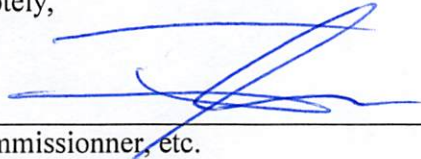
1. I am a senior manager in the Special Loans and Advisory Group of Royal Bank of Canada (“RBC”) having carriage of matters involving Back 40 Pictures Inc. (the “Debtor”) and , as such, I have knowledge of the matters to which I hereinafter depose.
2. Pursuant to the Order of the Honourable Mr. Justice McEwen made July 9, 2020 (the “Receivership Order”), Deloitte Restructuring Inc. (“Deloitte”) was appointed as the Receiver in connection with the Debtor. Attached hereto as **Exhibit “A”** to this affidavit is a copy of the Receivership Order.
3. Due to the inability of the Debtor to advance its film tax credit claims in a timely manner, RBC had initially moved for the appointment of the Receiver. Circumstances leading up to the appointment of the Receiver are set out in the affidavit of Ivan Bogdanovich sworn

on May 28, 2020 (“RBC Affidavit”). A copy of the RBC Affidavit without exhibits is attached hereto as Exhibit “B”.

4. Following its appointment, the Receiver worked with the Debtor and its advisors to obtain required certificates and submit the Debtor’s tax returns in support of the tax credit claims. The final submission was made in December, 2021. Since that time, the stakeholders of the Debtor have been awaiting a review by Canada Revenue Agency (“CRA”) of its film tax credit claims. RBC initially sought only a limited appointment of the Receiver pending a more accurate determination of the amount that CRA would pay in respect of the Respondent’s film tax credit claims.
5. Canada Revenue Agency has now issued an assessment confirming that it is prepared to pay out a film tax credit in the sum of \$1,615,328.37 once certain outstanding HST returns have been filed. Attached hereto as Exhibit “C” is a copy of the notice of assessment.
6. Under the terms of the current Receivership Order, the Receiver is not presently empowered to:
  - (i) submit the outstanding HST returns of the Respondent;
  - (ii) direct Canada Revenue Agency to send any cheque for a tax credit or cheque to the Receiver; or,
  - (iii) take possession of the proceeds of the film tax credits pending a distribution order in these proceedings.
- (f) RBC has a first place security interest in the proceeds of the film tax credits and is seeking an expansion of the Receiver’s powers to ensure that the HST returns can be completed and the proceeds of the film tax credits preserved in the hands of the Court officer pending a distribution order.
- (g) The grant of the relief sought by RBC will ensure timely payment of the film tax credit claim and protect all stakeholders with respect to the distribution of proceeds to stakeholders.

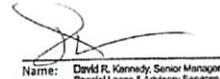
5. This Affidavit is made in support of a motion to expand the powers of the Receiver as set out in the notice of motion, and for no improper purpose.

SWORN by videoconference by David  
Kennedy, at the City of Toronto, in the  
Province of Ontario, before me on February  
22, 2022, in accordance with O. Reg 431/20,  
Administering Oath or Declaration  
Remotely,



A handwritten signature in blue ink, consisting of several overlapping loops and strokes, positioned above a horizontal line.

A commissioner, etc.



A printed signature in black ink, consisting of several overlapping loops and strokes, positioned above a horizontal line.

Name: David R. Kennedy, Senior Manager  
Special Loans & Advisory Services

Title:   
DAVID R. KENNEDY

TAB “A”



Attached is Exhibit "A"

Referred to in the  
AFFIDAVIT OF David Kennedy

Sworn before me

This 22nd day of ~~February~~ 2022

  
\_\_\_\_\_  
**James Satin**

Commissioner for taking Affidavits, etc.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.  
JUSTICE MCEWEN

THURSDAY, THE 9<sup>TH</sup>  
DAY OF JULY, 2020

**ROYAL BANK OF CANADA**

Applicant

and

**BACK 40 PICTURES INC.**

Respondent

**ORDER**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Deloitte Restructuring Inc. ("Deloitte") as Receiver (in such capacity, the "Receiver") without security, of certain of the assets, undertakings and properties of Back 40 Pictures Inc. (the "Debtor") acquired for, or used in relation to businesses carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application and the Affidavit of Ivan Bogdanovich, sworn May 28, 2020 and the Exhibits thereto and, on reading the emails of the Directors of Back 40 consenting to the Application, and on reading Deloitte's consent to act as the Receiver,

## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application are hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Deloitte is hereby appointed Receiver, without security, of all of the books and records of the Debtor used in relation to businesses carried on by the Debtor (the "Records"), including but not limited to the film production known as Rabid (the "Production") and ascertaining all amounts owing to the Debtor by Canada Revenue Agency and other governmental authorities (collectively the "Property") and facilitating the filing of any necessary tax credit applications.

## **RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the purposes set out above and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Records;
- (b) to receive, preserve, and protect the Records, or any part or parts thereof, including, but not limited to, relocating of Records to safeguard it;
- (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (d) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the

Records and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (e) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of Records in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

5. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate

access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

6. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

7. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Records and proceeds thereof (collectively, "the Property") shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

8. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **EMPLOYEES**

9. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such

amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

10. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

11. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

12. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

13. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

14. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

15. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

16. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

17. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **SERVICE AND NOTICE**

18. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to

Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL [www.insolvencies.deloitte.ca](http://www.insolvencies.deloitte.ca)'.

19. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

20. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

21. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

22. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

23. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within



proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

24. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

25. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

A handwritten signature in black ink, appearing to read 'M. E. T.', is written above a horizontal line.

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**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Deloitte Restructuring Inc., the receiver (the "Receiver") of of all of the books and records of Back 40 Pictures Inc. (the "Debtor") used in relation to businesses carried on by the Debtor (the "Records"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

DELOITTE RESTRUCTURING INC., solely in  
its capacity  
as Receiver of the Records, and not in its  
personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

40216687.2

ROYAL BANK OF CANADA  
Applicant and

BACK 40 PICTURES INC.  
Respondent

Court File No. CV-20-00642755-00CL

9 July 20

The Order shall go on an unopposed basis as per the draft filed and signed, on an unopposed basis. The Order involves a limited purpose receivership and the provisions are fair and reasonable.

*McE T.*

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)

IN THE MATTER OF AN 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.C43,  
AS AMENDED

Proceeding commenced at  
TORONTO

**ORDER**

**DEVRY SMITH FRANK LLP**  
Lawyers & Mediators  
95 Barber Greene Road, Suite 100  
Toronto, Ontario M3C 3E9

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Lawyers for the Applicant

TAB “B”

Attached is Exhibit "B"  
Referred to in the  
AFFIDAVIT OF David Kennedy

Sworn before me

This 22nd day of February, 2022

  
\_\_\_\_\_  
**James Satin**

Commissioner for taking Affidavits, etc.

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

COMMERCIAL COURT

BETWEEN

ROYAL BANK OF CANADA

Applicant

and

BACK 40 PICTURES INC.

Respondent

APPLICATION UNDER SECTION 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.43, AS AMENDED

AFFIDAVIT OF IVAN BOGDANOVICH

I, IVAN BOGDANOVICH, of the City of Toronto in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a Senior Account Manager in Special Loans and Advisory Services for the Applicant, Royal Bank of Canada. I have carriage of the file involving Back 40 Pictures Inc. ("Back 40"), and as such have direct knowledge of the facts below. Where my knowledge is obtained from other, I have indicated the same. I swear this affidavit in support of the Applicant's Application for have Deloitte Restructuring Inc. ("Deloitte") appointed by the Court as Receiver over Back 40 for the limited purposes of (1) taking possession of Back 40's books and records and to complete a review of the realizable value of various Government tax credits owing to Back 40; (2) borrowing funds pursuant to a charge in order to retain and pay third party consultants / accountants; (3) engaging Back 40's accountant(s) or another consultant to finalize Back 40's tax credit applications

if not already completed; and (4) preparing or engaging an accounting firm to prepare an audited report. This is all to provide for the Applicant being repaid over \$2,000,000 owing by Back 40 to the Applicant.

2. Back 40 is film production corporation incorporated pursuant to the laws of the Province of Ontario. Attached hereto and marked as Exhibit "A" is a true copy of the Corporate Profile Report. Back 40 carries on business in, among other places, the City of Toronto
3. By way of a Confirmation of Credit Facilities Letter dated March 13, 2018 and amended August 10, 2018 (the "CCF"), the Applicant made credit available to Back 40. Attached hereto and marked as Exhibit "B" is a true copy of both the March 13, 2018 CCF and the August 10, 2018 CCF.
4. Back 40 was to repay its indebtedness to the Applicant by January 2020 from the proceeds of various Government tax credits related to film production. The Applicant has not been paid.
5. Back 40 executed a General Security Agreement ("GSA") in favour of the Applicant on July 6, 2018. A true copy of the GSA is attached to this affidavit and marked as Exhibit "C". Paragraph 11 of the GSA defines the events of default. One of the events of default under the GSA is non-payment of an amount under the loan. Paragraph 13 of the GSA sets out the remedies available to the Applicant. Those remedies include the right of the Applicant to appoint a receiver and manager.
6. On or about April 7, 2020, the Applicant issued a Notice under s. 244 of the *Bankruptcy and Insolvency Act* and also made demand on the Respondent for repayment of its indebtedness. Attached collectively to this affidavit and marked as Exhibit "D" is a true copy of the demand letter and of the s. 244 Notice.
7. Back 40 is also indebted to the Applicant for unpaid accrued interest and legal and other costs.



8. As of April 7, 2020, the amount owing was as follows:

<u>Description</u>	<u>Principal</u>	<u>Interest</u>
Demand Loan #1 (Bank prime plus 1.25% per annum)	\$1,900,000.00	\$35,740.82
Demand Loan #2 (Bank prime plus 1.25% per annum)	#104,000.00	\$1,952.65

9. Deloitte was previously (and is currently) appointed privately by the Applicant, with Back 40's consent, as a consultant pursuant to an engagement letter signed by Back 40. Attached hereto and marked as Exhibit "E" is a true copy of the appointment document.
10. I am advised by Richard Williams at Deloitte, and I believe, that he has been trying to obtain the financial records of Back 40, but has not been successful in doing so. Most if not all of the records are with a company operating as "Behind the Scenes". The shareholders of Back 40 are involved in a shareholders' dispute with respect to payment of amounts owing to Behind the Scenes. Back 40 has not paid Behind the Scenes for some of its work to date. Behind the Scenes has been hesitant to provide its cooperation with respect to producing the records.
11. In addition, Back 40's payroll was processed by a company operating as "Entertainment Partners".
12. To complicate matters, I am advised by John Vidette, a Director and the majority shareholder of Back 40, that a particular accounting software called "Vista" must be used to access the data and that only an accountant familiar with the software will be able to program Vista to produce the types of reports being sought. These reports are not readily available but must be generated by an accountant who understands and knows how to use the software and the data in order to "tell the system what to do".
13. The receivership being sought is for a limited purpose as noted above and it is not anticipated that it will impact Back 40's ongoing operations.

14. The Applicant requests that this Court appoint Deloitte as Receiver of Back 40 (in such capacities "Receiver") for the limited purposes of obtaining and reviewing the books and records and other financial documents of Back 40 for the limited purposes of (1) taking possession of Back 40's books and records and to complete a review of the realizable value of various Government tax credits owing to Back 40; (2) borrowing funds pursuant to a charge in order to retain and pay third party consultants / accountants; (3) engaging Back 40's accountant(s) or another consultant to finalize Back 40's tax credit applications if not already completed; and (4) preparing or engaging an accounting firm to prepare an audited report. The financial records are required to address any Government tax credit applications and secure repayment to the Applicant. Such receivership appointment will assist Deloitte in carrying out its duties. Deloitte has consented to being appointed by the Court as Receiver. Its consent in this regard is attached to this affidavit and marked as Exhibit "F".

SWORN before me at the City of  
Toronto, in the Province of Ontario,  
this 26 day of May, 2020

  
A Commissioner for taking affidavits.

  
IVAN BOGDANOVICH

ROYAL BANK OF CANADA

and

BACK 40 PICTURES INC.

Applicant

Respondent

Court File No: CV-20-00642755-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**Proceedings commenced at Toronto**

**AFFIDAVIT OF DAVID KENNEDY**

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TAB 3

## SERVICE LIST

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**AND TO:** **AIRD & BERLIS LLP**  
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**AND TO:** **DENTONS CANADA LLP**  
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Lawyers for Whites Location Equipment Supply Inc. and William F. White International Inc.

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**AND TO: CANADA REVENUE AGENCY**  
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**ROYAL BANK OF CANADA**

- and -

**BACK 40 PICTURES INC.**

Applicant

Respondent

Court File No. CV-20-00642755-00CL

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

**Proceedings commenced at Toronto**

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**MOTION RECORD**

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