

THE QUEEN'S BENCH
Winnipeg Centre

IN THE MATTER OF:

The Appointment of a Receiver pursuant to Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c.B-3, as amended and Section 55 of the *Court of Queen's Bench Act*, C.C.S.M. c. C280

BETWEEN:

ROYAL BANK OF CANADA,

Plaintiff,

-and-

FORCE RENTALS LTD. AND 5604070 MANITOBA LTD.,

Defendants.

NOTICE OF MOTION
HEARING DATE: WEDNESDAY, SEPTEMBER 18, 2019 AT 9:00 A.M.
BEFORE THE HONOURABLE MR. JUSTICE MARTIN

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File No. 0135165-00004

THE QUEEN'S BENCH
Winnipeg Centre

IN THE MATTER OF:

The Appointment of a Receiver pursuant to Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c.B-3, as amended and Section 55 of the *Court of Queen's Bench Act*, C.C.S.M. c. C280

BETWEEN:

ROYAL BANK OF CANADA,

Plaintiff,

-and-

FORCE RENTALS LTD. AND 5604070 MANITOBA LTD.,

Defendants.

NOTICE OF MOTION

Deloitte Restructuring Inc., the court-appointed receiver (the "**Receiver**") of all of the assets, undertakings and properties (the "**Property**") of Force Rentals Ltd. ("**Force**") and 5604070 Manitoba Ltd. ("**Titan**") (together the "**Companies**") will make a motion before the Honourable Mr. Justice Martin on Wednesday, the 18th day of September, 2019 at 9 o'clock in the forenoon, or as soon after that time as the motion can be heard, at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

THIS MOTION IS FOR:

1. An Order, substantially in the form of the draft Order (the "**Draft Order**") attached hereto as Schedule "A", *inter alia*:

- a. Abridging the time for service of the Notice of Motion and materials filed in support of this motion, such that this motion is properly returnable on September 18, 2019 at 9:00 AM, and dispensing with further service thereof;
- b. Approving the Receiver's Third Report dated September 12, 2019 (the "**Third Report**"), including the Receiver's Statement of Receipts and Disbursements contained in the Third Report and the activities of the Receiver as described in the Third Report;
- c. Approving the fees and disbursements of the Receiver from February 28, 2019 to September 2, 2019 and the fees and disbursements of its legal counsel from March 1, 2019 to July 31, 2019 as described in the Third Report;
- d. Approving the proposed distributions (the "**Proposed Distributions**") as described in the Third Report and authorizing the Receiver to make final distributions up to the amounts set out therein to the creditors of the Companies in accordance with the Proposed Distributions;
- e. Authorizing the Receiver to holdback the funds (the "**Residual Holdback**") as described in the Third Report and apply such funds to the fees and disbursements of the Receiver and its legal counsel and make such distributions from such funds as are described in the Third Report;

- f. Authorizing the Receiver to pay the balance of the funds held to Royal Bank of Canada ("**RBC**") until the Companies' indebtedness to RBC is repaid in full;
 - g. Providing that upon payment of the amounts described above that the Receiver shall be discharged as Receiver of the Property of the Companies, provided; however, that notwithstanding its discharge: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership here, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceeding in favour of the Receiver in its capacity as Receiver; and
 - h. That upon the filing of a Receiver's certificate (the "**Receiver's Certificate**"), certifying that it has completed the Receiver's Mandate (as defined in the Third Report) with this Court, the Receiver shall be released and discharged from any and all liability that the Receiver now has or may have hereafter by reason of, or in any way arising out of, the acts and omissions of the Receiver while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct of the Receiver's part.
2. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THIS MOTION ARE:

1. By means of the Order of the Honourable Mr. Justice Martin pronounced in these proceedings on December 21, 2018 and amended and restated January 9, 2019 (the “**Receivership Order**”), Deloitte Restructuring Inc. was appointed Receiver of the Property.

2. With the exception of the distributions described in the Third Report and the discharge of the Receiver the administration of these proceedings is largely complete.

Order Approving the Activities of the Receiver

3. An Order approving the Third Report and activities of the Receiver to date, inclusive of the Receiver's Statement of Receipts and Disbursements, is necessary, appropriate and in accordance with the standard practice of this Court in Court-supervised receivership proceedings.

Order in Respect of the Fees and Disbursements of the Receiver

4. Paragraph 19 of the Receivership Order provides that the Receiver and its legal counsel shall pass their accounts from time to time.

5. The Receiver's accounts and the accounts of its legal counsel are reasonable and in each case at the standard rates and charges.

Order in Respect of the Proposed Distributions

6. Paragraph 3(g) of the Receivership Order empowers the Receiver to settle any indebtedness owing by the Companies. The Receiver has duly investigated the validity of each creditor's claim as described in the Third Report and the Proposed Distributions set out in the Third Report are appropriate.

Order in Respect of the Residual Holdback

7. The Residual Holdback is reasonable and appropriate and should be held and applied to the fees and disbursements of the Receiver and its legal counsel and distributed in respect of any additional WEPP Priority (as defined in the Third Report) payments and the bankruptcy administration fees guaranteed by Royal Bank of Canada ("**RBC**"), as may be required.

Order in Respect of the Residual Funds

8. RBC is the principal lender to the Companies and holds various first ranking security positions as against the Companies and their assets (the "**RBC Security**") as described in the Third Report.
9. A distribution of the balance of the funds held, to RBC on account of the priority of the RBC Security is just and appropriate.

Order Approving the Receiver's Discharge

10. As set out in the Third Report, subject to completion of the activities for which the Receiver is seeking authorization from this Court, the administration of the

receivership estate is largely complete, and it is therefore appropriate for the Receiver to apply for its discharge.

Generally

11. Court of Queen's Bench Rules, Reg. 553/88, as amended, Rules 2.03, 3.02, 16.04, 16.08 and 37.
12. Section 243(6) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c.B-3, as amended.
13. Section 55(2) of the *Court of Queen's Bench Act*, C.C.S.M. c. C280.
14. The inherent jurisdiction of this Court.
15. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. Affidavit of Gordon Fry sworn December 11, 2018 and filed December 13, 2018;
2. First Report of the Receiver dated January 7, 2019 and filed January 8, 2019;
3. Receivership Order pronounced on December 21, 2018 and amended and restated on January 9, 2019;
4. Second Report of the Receiver dated March 8, 2019 and filed March 12, 2019;
5. The First Confidential Report of the Receiver dated March 8, 2019 and filed March 8, 2019;

6. Sale Approval and Vesting Order pronounced March 12, 2019 and filed March 14, 2019;
7. Receiver's Certificate, filed March 19, 2019;
8. Receiver's Certificate filed May 16, 2019;
9. Third Report of the Receiver dated September 12, to be filed;
10. Such further and other evidence as counsel may advise and this Honourable Court may permit.

September 12, 2019

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TO: The Attached Service List

SCHEDULE "A"

File No. CI 18-01-18370

THE QUEEN'S BENCH
Winnipeg Centre

IN THE MATTER OF:

The Appointment of a Receiver pursuant to Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c.B-3, as amended and Section 55 of the *Court of Queen's Bench Act*, C.C.S.M. c. C280

BETWEEN:

ROYAL BANK OF CANADA,

Plaintiff,

-and-

FORCE RENTALS LTD. AND 5604070 MANITOBA LTD.,

Defendants.

DISCHARGE ORDER

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File No. 0135165-00004

Box No. 3

THE QUEEN'S BENCH
Winnipeg Centre

THE HONOURABLE
MR. JUSTICE MARTIN

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)

WEDNESDAY, THE 18TH DAY OF
SEPTEMBER, 2019

IN THE MATTER OF:

**The Appointment of a Receiver pursuant to
Section 243 of the *Bankruptcy and Insolvency*
Act, R.S.C. 1985 c.B-3, as amended and Section
55 of the *Court of Queen's Bench Act*, C.C.S.M.
c. C280**

BETWEEN:

ROYAL BANK OF CANADA,

Plaintiff,

-and-

FORCE RENTALS LTD. AND 5604070 MANITOBA LTD.,

Defendants.

ORDER

THIS MOTION, made by Deloitte Restructuring Inc., the court-appointed receiver (the "**Receiver**") of the assets, undertakings and properties (the "**Property**") of Force Rentals Ltd. ("**Force**") and 5604070 Manitoba Ltd. ("**Titan**") (together the "**Companies**"), for an Order providing for its discharge as Receiver, and for certain other ancillary relief as set out in the Receiver's Notice of Motion dated September 12, 2019, was heard this day, at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

ON READING the Affidavit of Gordon Fry sworn December 11, 2018, the First Report of the Receiver dated January 7, 2019, the Second Report of the Receiver dated March 8, 2019, the Confidential Supplement to the Second Report of the Receiver dated March 8, 2019, the Third Report (the "**Third Report**") of the Receiver dated September 12, 2019, and on hearing the submissions of counsel for the Receiver, counsel for the Plaintiff Royal Bank of Canada ("**RBC**"), and counsel for the Attorney General of Canada, and no one appearing for any other person, although properly served as appears from the Affidavit of Meghan Bennet sworn September *******, 2019.

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the supporting materials herein is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

ACTIVITIES OF THE RECEIVER

2. THIS COURT ORDERS that the Third Report, including the Receiver's Statement of Receipts and Disbursements contained therein and the activities of the Receiver as described in the Third Report are hereby approved provided; however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

FEES AND DISBURSEMENTS

3. THIS COURT ORDERS AND DECLARES that the fees and disbursements of the Receiver from February 28, 2019 to September 2, 2019, and the fees and disbursements of its legal counsel from March 1, 2019 to July 31, 2019, are hereby approved, without the necessity of passing its accounts.

PROPOSED DISTRIBUTION

4. THIS COURT ORDERS AND DECLARES that the proposed distributions (the "**Proposed Distributions**") as described in paragraph 35 of the Third Report are hereby approved and that the Receiver is hereby authorized to make final distributions to those creditors of the Companies in accordance with the Third Report in the amounts set out therein in full satisfaction of such claims.

RESIDUAL HOLDBACK

5. THIS COURT ORDERS AND DECLARES that after completing the distribution contemplated in paragraph 4 herein, the Receiver is hereby authorized to:
 - a. Holdback the funds described in paragraphs 36 of the Third Report (the "**Residual Holdback**");
 - b. apply, from time to time, the Residual Holdback against the fees and disbursements of the Receiver and its legal counsel (including fees and disbursements incurred, and yet to be incurred) in connection with the administration of these proceedings, its discharge, and other incidental matters that may be necessary to finalize the receivership thereafter,

without further Order of this Court, or the necessity of passing its accounts;
and

- c. distribute from the balance of the Residual Holdback in respect of any additional WEPP Priority (as defined in the Third Report) payments and the bankruptcy administration fees guaranteed by RBC, as may be required.

RESIDUAL FUNDS

6. THIS COURT ORDERS that after completing the distributions contemplated in paragraphs 4 and 5 herein, the Receiver shall distribute any residual funds collected in respect of the Companies to RBC in accordance with RBC's security until the Companies' indebtedness in respect of such security is repaid in full.

RECEIVER'S DISCHARGE

7. THIS COURT ORDERS AND DECLARES that upon payment of the amounts described in paragraphs 4, 5 and 6 above, the Receiver shall be discharged as Receiver of the Property of the Companies provided that notwithstanding its discharge herein:
 - a. the Receiver shall remain the Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and
 - b. the Receiver shall continue to have the benefit of the provisions of all Orders made in these proceedings including all approvals, protections and stays of proceeding in favour of the Receiver in its capacity as Receiver.

8. THIS COURT ORDERS AND DECLARES that upon the completion of such incidental duties as may be required to complete the administration of these proceedings, the Receiver shall file with this Court a Receiver's Certificate substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**") certifying that the Receiver's Mandate (as defined in the Third Report) is complete.

9. THIS COURT ORDERS AND DECLARES that upon the filing the Receiver's Certificate with this Court, the Receiver shall be released and discharged from any and all liability that the Receiver now has or may have hereafter by reason of, or in anyway arising out of the acts and omissions of the Receiver while acting in its capacity as Receiver herein, save and except for any gross negligence or willful misconduct on the part of the Receiver. Without limiting the generality of the foregoing, upon the filing of the Receiver's Certificate, the Receiver shall be forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the part of the Receiver.

September __, 2019

MARTIN, J

Schedule "A" – Form of Receiver's Certificate

File No. CI 18-01-18370

THE QUEEN'S BENCH
Winnipeg Centre

IN THE MATTER OF:

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BETWEEN:

ROYAL BANK OF CANADA,

Plaintiff,

-and-

FORCE RENTALS LTD. AND 5604070 MANITOBA LTD.,

Defendants.

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Martin of the Manitoba Court of Queen's Bench (the "**Court**") pronounced in these proceedings on December 21, 2018 and amended and restated on January 9, 2019, Deloitte Restructuring Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets (the "**Property**") of Force Rentals Ltd. and 5604070 Manitoba Ltd. (together the "**Companies**").

B. Pursuant to an Order of the Court dated September 18, 2019 (the "**Discharge Order**"), the Court ordered and declared that the Receiver shall be discharged as Receiver of the Property of the Companies upon payment of the amounts described in paragraphs 4, 5 and 6 of the Discharge Order and released and discharged from any and all liability that the Receiver now has or may have hereafter by reason of, or in any way

arising out of, the acts and omissions of the Receiver while acting in its capacity as Receiver herein, save and except for any gross negligence or willful misconduct on the part of the Receiver upon the filing by the Receiver of the Receiver's Certificate certifying that it has completed the Receiver's Mandate.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Discharge Order and the Third Report.

THE RECEIVER CERTIFIES the following:

1. The Receiver has completed the Receiver's Mandate.

Deloitte Restructuring Inc., in its capacity as Receiver of the undertaking, property and assets of Force Rentals Ltd. and 5604070 Manitoba Ltd., and not in its personal capacity

Per: _____
Name: Brent Warga, CPA, CA, CIRP, LIT
Title: Senior Vice-President