File No. CI 25-01-55032

THE KING'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 KING'S BENCH ACT*, C.C.S.M. c. C280

BETWEEN:

DAIMLER TRUCK FINANCIAL SERVICES CANADA CORPORATION,

Applicant,

- and -

GURU PEER TRANSPORT INC. and PLUTO TRANSPORT INC.,

Respondents.

BRIEF OF THE APPLICANTS
HEARING DATE: December 19, 2025 at 10:00 AM
BEFORE THE HONOURABLE Mr. Justice Chartier
(Application to Appoint Receiver)

DENTONS CANADA LLP 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1 **ELAINE GRAY / SARA-ANN WILSON** Telephone: 416-863-4775 / 416-863-4402 Facsimile: 416-863-4592 File No. 589588-58	**MLT AIKINS LLP** Barristers and Solicitors 30th Floor – 360 Main Street Winnipeg, MB R3G 4G1 **J.J. BURNELL / ANJALI SANDHU / BRANDON GRAY** Telephone: (204) 957-4663 / (204) 957-4760 / (204) 957-4484 Facsimile: (204) 957-0840 File No. 0004668.00693

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BRIEF OF THE APPLICANT

INDEX

PART I

LIST OF DOCUMENTS TO BE RELIED UPON

1. Notice of Application filed December 15, 2025.
2. Affidavit of Mohammad Abu-Quebe, sworn December 14, 2025 ("**Moe Affidavit**").
3. Affidavit of Jenn Kehler, sworn December 16, 2025, 2025 ("**Kehler Affidavit**").
4. Consent of Deloitte Restructuring Inc., filed December 15, 2025.
5. Affidavits of Service, to be filed.

PART II

STATUTORY PROVISIONS AND AUTHORITIES TO BE RELIED UPON

TAB

1. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"), 243(1).

2. *The Court of King's Bench Act*, C.C.S.M. c. c280, 55(1).

3. *Callidus Capital Corp. v CarCap Inc.*, 2012 ONSC 163.

4. *White Oak Commercial Finance, LLC v Nygård Holdings (USA) Limited et al.,* 2020 MBQB 58.

5. *In the Matter of a Plan of Compromise or Arrangement of 2039882 Ontario Limited o/a Shelter Cove,* 2024 ONSC 5153.

6. *Royal Bank of Canada v 1731861 Ontario Inc.,* 2023 ONSC 3292.

7. *Confederation Trust Co. v Dentbram Developments Ltd.,* 1992 CarswellOnt 474.

8. Compare of draft Receivership Order to the Manitoba Model Receivership Order.

PART III

STATEMENT OF FACTS

The Parties

6. Pluto Transport Ltd. ("**Pluto**") and Guru Peer Transport Ltd. ("**Guru**") (collectively the "**Debtors**") are corporations incorporated under the laws of the Province of Manitoba and carry on business as transportation and trucking companies in Manitoba.

Moe Affidavit, para 7-9, Exh A

7. The sole Director and Officer of the Debtors is Manpreet Singh Sran ("**Sran**").

Moe Affidavit, para 10

8. The Applicant, Daimler Truck Financial Services Canada Corporation ("**Daimler**") is a financing company that offers credit to businesses operating in the trucking and transportation industry in Canada.

Moe Affidavit, para 1

Conditional Sale Contracts

9. Daimler financed the Debtor's acquisition of fifty commercial trucks and trailers and twenty reefers (collectively the "**Vehicles**") pursuant to thirteen separate and near identical conditional sale contracts (the "**Contracts**"). The Contracts were entered into between the Debtors and several third parties between August 30, 2019 and March 10, 2023. The Contracts were duly assigned to Daimler on the same date the Contracts were executed and, pursuant to the terms of the Contracts, all payments by the Debtors were to be made to Daimler.

Moe Affidavit, para 3, 12-13, 15-16, Exh C

10. Under each of the Contracts, Pluto or Guru agreed to purchase certain of the Vehicles. The purchase price, sales taxes and other agreed upon charges, less the amount of any down payment, was financed by Daimler with interest. The Contracts required the Debtors to make monthly payments to Daimler.

Moe Affidavit, para 17, 18

11. Guru and Sran executed guarantees on behalf of Pluto, for Pluto's obligations to Daimer, pursuant to certain of the Contracts. Similarly, Pluto and Sran executed guarantees on behalf of Guru, for Guru's obligations to Daimler.

Moe Affidavit, para 19-20, Exh D-E

Security and Registrations

12. Under the Contracts, Daimler retained title to the Vehicles and obtained a security interest in the Vehicles and any proceeds thereto, to secure payment of all amounts owing under the Contracts, enforcement of Daimler's rights under the Contracts and all amounts that may become due (the "**Security**").

Moe Affidavit, para 21-23

13. Daimler registered the Security in the Manitoba Personal Property Registry ("**PPR**"). Daimler also registered certain of its Security in the Ontario Personal Property Registry, when it learned the Debtors had moved some of the Vehicles to Ontario without Daimler's knowledge or consent.

Moe Affidavit, para 24-28, Exh G-I

Initial Defaults and Demand

14. The Debtors were required to make monthly payments under the Contracts. However, in the fall of 2023, the Debtors defaulted on the monthly payments due under the Contracts, which led to significant arrears. In September, 2023, pre-authorized payments were returned due to "Account Frozen". On October 11, 2023, at the Debtors request, Daimler agreed to a payment plan for certain overdue Guru accounts.

Moe Affidavit, para 30

15. By December of 2023, the Debtors were consistently failing to make regular monthly payments to Daimler and arrears were outstanding. At the Debtors request, Daimler agreed to revise the payment plan schedule under the Contracts (the "**Modified Contracts**"). However, the Debtors continued to default on their new payment schedules under the Modified Contracts. In December 2024, payments made by both of the Debtors were returned due to "Account Frozen".

Moe Affidavit, para 31-33, Exh L

16. In December of 2024, Daimler wrote to the Debtors to demand payment on the arrears and stated that if payment was not received, they would engage in efforts to repossess the Vehicles. At the Debtor's request, Daimler agreed to another extension for the arrears. However, Daimler, again, did not receive payment on the arrears when due.

Moe Affidavit, para 33, Exh M

17. Daimler repeatedly notified the Debtors of their outstanding arrears and provided multiple opportunities to cure their defaults. Despite these accommodations, the payment defaults by both Debtors continued in early 2025 with cheques returned "NSF" and payments returned as "Account Frozen". On February 12, 2025, the Debtors finally paid all outstanding arrears and Daimler immediately ceased its repossession efforts. Unfortunately, starting only thirteen days later, the payments made by the Debtors were once again returned as "Account Frozen" or NSF. By June 2025 the Debtors ceased attempting to cure their arrears altogether.

Moe Affidavit, para 34-35, Exh N

18. Daimler sent formal demand letters to the Debtors for payment on all outstanding arrears in January and February of 2025, in accordance with section 244 of the Bankruptcy and Insolvency Act (the "**BIA**"). Further demands were sent in July of 2025. Final demands were sent in August of 2025, including to Sran (collectively the "**Demands**").

Moe Affidavit, para 36, 39, 41 Exh O-P, S-T

Indebtedness

19. Pursuant to the terms of the Contracts, if the Debtors failed to pay the amounts owing under the Contracts or otherwise defaulted, the total amounts owing under the Contracts would (at Daimler's option) become immediately payable. Upon issuance of the Demands, the total amount under the Contracts became immediately due and payable.

Moe Affidavit, para 40, 45

20. Daimler's records disclose that as of November 13, 2025, the indebtedness of the Debtors under the Contracts totalled $3,144,539.50.

Moe Affidavit, para 46

21. Since June of 2025, Daimler has received no payments from the Debtors, the Debtors remain in default and interest continues to accrue. Daimler has also incurred legal costs and expenses (the **"Total Indebtedness"**).

Moe Affidavit, para 47

Recovery Efforts

22. Following the expiration of the notice period under the BIA, Daimler retained a bailiff ("**Mid Canada**") in May, June and July of 2025 to arrange for the seizure of the Vehicles.

Moe Affidavit, para 48

Kehler Affidavit, para 3

23. Mid Canada has, to limited success, attended at the Debtors' several properties in Manitoba, Ontario and Alberta on multiple occasions in an attempt to locate the Vehicles. Mid Canada has also attended at many other locations across Canada and the US in an effort to locate the Vehicles.

Kehler Affidavit, para 4-5

24. Mid Canada has been able to seize nine Vehicles and sell three Vehicles at auction at the time of filing this application brief. Thirty seven of the Vehicles presently remain outstanding (the "**Outstanding Vehicles**").

Moe Affidavit, para 48-50

Kehler Affidavit, para 8, 10

25. On May 16, 2025 Mid Canada informed Daimler that certain of the Vehicles were located in a storage yard in Brampton, Ontario (the "**Bouvaird Yard**"). The Bouvaird Yard was owned by an Ontario company over whom a separate receiver ("**FLG**") had been appointed. There were approximately 100 vehicles stored at the Bouvaird Yard. The security gate at the Bouvaird Yard had been damaged such that the vehicles on the property were not properly secured.

Moe Affidavit, para 52-55, Exh U-V

Kehler Affidavit, para 15

26. FLG advised Mid Canada they could attend at the Bouvaird Yard to verify that certain of the Outstanding Vehicles were located on the property. Mid Canada returned to the Bouvaird Yard on August 27, 2025. Unfortunately, it became apparent at that time, that the Bouvaird Yard had been emptied and the vast majority of vehicles had been removed. None of the Outstanding Vehicles were located on the Bouvaird Yard.

Moe Affidavit, para 56

Kehler Affidavit, para 15

27. Mid Canada discovered that the Debtors had engaged in the practice of stripping the identifying information from the Vehicles in order to conceal their identity (i.e. decaled the vehicles or re-vinned the trailers). Vehicles have been located:

a. In Niagara Falls, New York with the decals completely removed;

b. In Jarupa Valley, California, abandoned on the side of the road with an expired registration, decaled, and registered to a different company, Indy Trucking Hub;

c. In Ohio, decaled and registered to Indy Trucking Hub, pulling a trailer from a company, Jagdeep Sangha Transport Inc. ("**JST**"). JST is a transportation company that operates in Manitoba and over which Daimler was granted a receivership order over in proceedings in Ontario;

d. In Montana (a trailer), with a Michigan license plate registered under the name of a third-party carrier, The Gills Logistics LLC;

e. In Poseyville, Indiana (a trailer), attached to a third party truck and registered to a carrier ITS Nagra Logistics Inc.;

f. In Fresno, California, in a yard with its front tires removed and dashboard dismantled;

g. Another Vehicle was located in the same yard in Fresno, California with a blown motor. Yard personnel would not allow access to the Vehicle;

h. Damaged in a storage facility in Indianapolis, Indiana, with missing airbags and a dent in the bumper; and

i. In Winnipeg, Calgary and Mississauga.

Moe Affidavit, para 57-65, Exh W-DD

Kehler Affidavit, para 6, 8-9, 12, 15

28. The current whereabouts and condition of the Outstanding Vehicles is generally unknown to Daimler.

Moe Affidavit, para 51, 66

Kehler Affidavit, para 15

Receivership

29. The amount outstanding and owing by the Debtors to Daimler under the Contracts remains unpaid and the Outstanding Vehicles have not been surrendered. Daimler has no knowledge of the whereabouts of the Outstanding Vehicles. Further, the Debtors have taken affirmative steps to obstruct Daimler from exercising its lawful rights and remedies over the Vehicles by:

a. Moving the Vehicles to Ontario without Daimler's knowledge or consent;

b. Refusing to provide access to the Vehicles for the purposes of inspection;

c. Engaging to efforts to actively conceal the identity of the Vehicles;

d. Moving the Vehicles to the US; and

e. Transferring several Vehicles to third-party carriers.

Moe Affidavit, para 67

Kehler Affidavit, para 12-13

30. In the circumstances, Daimler has determined that the only reasonable option remaining to enforce against the Outstanding Vehicles is to have a receiver appointed over the Outstanding Vehicles as: (i) the location and condition of the Outstanding Vehicles is generally unknown; (ii) it may be located on property not owned by the Debtors or in Canada; (iii) there may be difficulty selling the Outstanding Vehicles in the United States; and, (iv) there is a need to transport the Outstanding Vehicles back into to Canada.

Moe Affidavit, para 68-70

Kehler Affidavit, para 7, 14

31. Daimler has determined that it must make an application to this Court for the appointment of a receiver of the Outstanding Vehicles for the reasons stated below.

32. As a result of the foregoing, Daimler has brought the within Application for the appointment of a receiver over the Vehicles. Deloitte Restructuring Inc. ("**Deloitte**") has agreed to act and has consented to being appointed as receiver over the Outstanding Vehicles.

Moe Affidavit, para 71

Consent of Deloitte Restructuring Inc. filed December 15, 2025

PART IV

POINT TO BE ARGUED

Is the appointment of a receiver just and convenient?

33. Daimler respectfully submits that in these circumstances, the appointment of a receiver is just and convenient.

PART V

ARGUMENT

Appointment of a Receiver

34. Section 243(1) of the BIA vests in this Honourable Court the authority to appoint a receiver where it is just and convenient to do so:

> ***243 (1)*** *Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:*
>
> *(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;*
>
> *(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or*
>
> *(c) take any other action that the court considers advisable.*

BIA, s. 243(1) [Tab 1]

35. The factors a Court may consider when determining whether it is just and convenient to appoint an interim receiver were outlined by the Ontario Superior Court of Justice in *Callidus Capital Corp. v CarCap Inc*. ("**Callidus**"). The same factors are frequently considered with respect to applications to appoint an receiver pursuant to section 243(1) and include *inter alia*:

a. The effect on the parties appointing the receiver including the potential costs and the likelihood of maximizing the return on and preserving the subject property;

b. The balance of convenience to the parties;

c. The parties' conduct;

d. The nature of the property and the rights and interests of all parties in relation to it;

e. The risk to the creditor's security considering the size of the debtor's equity in the assets;

f. The need for protection or safeguarding of the assets;

g. Whether court appointment is necessary to enable the receiver to carry out its duties more efficiently;

h. The likelihood of maximizing return to the parties;

i. The principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;

j. The goal of facilitating the duties of the receiver; and

k. The length of time that the receiver may be in place.

***Callidus Capital Corp. v CarCap Inc., 2012 ONSC 163* at paras 41-54 [Tab 3]**
***White Oak Commercial Finance, LLC v Nygård Holdings (USA) Limited et al*., 2020 MBQB 58 at para 16 [Tab 4]**

36. In *In the Matter of a Plan of Compromise or Arrangement of 2039882 Ontario Limited o/a Shelter Cove*, 2024 ONSC 5153 ("**Shelter Cove**"), Justice Osborne of the Ontario Superior Court of Justice (Commercial List) found that when determining whether the appointment of a receiver is just or convenient, the various factors must be considered holistically and "*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. These include the rights of the*

secured creditor pursuant to its security…"

Shelter Cove at paras 23 & 25-26 [Tab 5]

37. Justice Osborne also stated that while the appointment of a receiver is generally considered an extraordinary remedy, where the terms of a creditor's security include the right to seek the appointment of a receiver, the burden on the creditor is lessened:

> 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: Elleway Acquisitions Ltd. v. Cruise Professionals Ltd., 2013 ONSC 6866 at para. 27. However, the presence or lack of such a contractual entitlement is not determinative of the issue.

Shelter Cove at para 24 [Tab 5]

38. In the current matter, while the Contracts do not expressly authorize the appointment of a receiver, Daimler is not seeking that a receiver be appointed in respect of all of the Debtor's property. Rather, Daimler is seeking that a receiver be appointed over only the Outstanding Vehicles, to which Daimler has retained title pursuant to the Contracts.

39. The receivership order Daimler is seeking excludes a number of powers that are included in Manitoba's model receivership order, or has limited their scope such that they only apply to the Outstanding Vehicles.

Compare to Model Order [Tab 8]

40. Many of the powers that Daimler seeks to include in the receivership order are powers that the Debtors have already expressly agreed to pursuant to the Contracts, including:

a. Daimler may enter upon the premises of the Debtor, or other place where the Vehicle are located and take possession of the Vehicles; and

b. Daimler may sell the Vehicles to any other person upon taking possession.

Moe Affidavit, Exh C

41. In Shelter Cove, Justice Osborne also found that where a creditor's attempts to privately enforce its security will fail, a Court-appointed receiver may be warranted, and that where the conduct of the debtor has led to a receivership application, little to no weight should be placed on the debtor's objections to the receivership:

> 27 It is not essential that the moving party establish, prior to the appointment of a receiver, that it will suffer irreparable harm or that the situation is urgent. However, where the evidence respecting the conduct of the debtor suggests that a creditor's attempts to privately enforce its security will be delayed or otherwise fail, a court-appointed receiver may be warranted...
>
> 28 Where the conduct of the debtor has led directly to a receivership application, the Court should place limited to no weight on objections from the debtor as to whether a receivership is the best remedy for the secured creditor…

Shelter Cove at paras 27 – 28 [Tab 5]

42. In *Royal Bank of Canada v 1731861 Ontario Inc.*, in concluding that the appointment of a receiver was just and convenient, Justice Osborne took into consideration, *inter alia*, the fact that there was no evidence before the Court that there was any reasonable certainty of the ability of the debtor to repay the creditor in the near future, or at all.

***Royal Bank of Canada v 1731861 Ontario Inc.*, 2023 ONSC 3292 [Tab 6]**

43. Daimler respectfully submits that based on the circumstances of this case, it is just and convenient to appoint a receiver over the Equipment, for *inter alia* the following reasons:

a) The amount of the Total Indebtedness is significant;

b) The Debtors are insolvent;

c) Daimler does not have faith in the Debtor's ability or intention to repay the Total Indebtedness, and the Debtor's has not provided Daimler with any plan on how it intends to repay the Total Indebtedness;

d) The Debtor's are in default of its obligations to Daimler under the Contracts;

e) Daimler is only seeking the Receiver to be appointed in respect of the Outstanding Vehicles (which it retained sole ownership of and title to under the Contracts), rather than all of the Debtor's assets, undertakings and properties;

f) The receivership is intended to be temporary until the Outstanding Vehicles are located and sold;

g) The appointment of the Receiver is the only reasonable option available to Daimler;

h) Court appointment is necessary to enable the receiver to carry out its duties more efficiently, especially given, *inter alia*:

i. the Debtor's lack of cooperation;

ii. that the condition and exact whereabouts of the Outstanding Vehicles remains unknown and could be in the United States;

iii. the Outstanding Vehicles could be, and have already been, located on property not owned by the Debtors; and

iv. the Outstanding Vehicles may be in jeopardy.

i) In order to protect the Outstanding Vehicles and maximize recoveries therefrom and to protect the interests of Daimler, Daimler believes it must appoint a receiver over the Outstanding Vehicles; and

j) The appointment of a Receiver is necessary to prevent further delay and depreciation of the Outstanding Vehicles.

44. Daimler is acting in good faith and is of the view that the appointment of the Receiver by this Court over the Equipment will not negatively impact other stakeholders.

Moe Affidavit, para 69

45. Daimler respectfully submits that there are no other remedies short of the appointment of a receiver available to Daimler that will adequately protect its interests. When the foregoing factors are considered, the balancing of the interests of the parties favours Daimler and the appointment of a Receiver.

Appointing Deloitte as Receiver

46. In an application for a court-appointed receiver, the Court has the discretion to determine the appropriate person or firm to be appointed.

47. The proposition that significant consideration ought to be given to the applicant creditor's proposed receiver is supported by Confe*deration Trust Co. v Dentbram Developments Ltd.*, in which Justice Borins of the Ontario Court of Justice held:

> *The mortgagor has not provided any evidence why PriceWaterhouse, the receiver proposed by the plaintiff, should not be appointed. I am satisfied that Price Waterhouse is impartial, disinterested and able to deal with the rights of all interested parties in a fair manner. When receivers proposed by each party possess similar qualities, generally speaking, the receiver proposed by the creditor, who has carriage of the proceedings, should be appointed.*

***Confederation Trust Co. v Dentbram Developments Ltd.*, 1992 CarswellOnt 474 at para 2 [Tab 7]**

48. Notwithstanding that the discretion to select the receiver is that of this Honourable Court, Daimler respectfully submits that consideration ought to be given to the firm put forward by the primary secured creditor. In this case, Daimler is the primary secured creditor of the Outstanding Vehicles, and proposes that Deloitte be appointed as Receiver.

49. Deloitte is a well-recognized and respected insolvency firm and has provided its consent to act as receiver. It is impartial, disinterested and able to deal with the rights of all interested parties in a fair and even-handed manner.

Moe, para 71

Consent of Deloitte Restructuring Inc. filed December 15, 2025

50. Daimler respectfully submits that in the totality of the circumstances, it is just and convenient to appoint Deloitte as receiver of the Outstanding Vehicles.

PART VI

CONCLUSION

51. It is respectfully submitted that it is just and convenient for this Honourable Court to appoint Deloitte as receiver, without security, of the Outstanding Vehicles.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16 day of December, 2025.

MLT AIKINS LLP
Solicitors for the Plaintiff
30th Floor - 360 Main Street
Winnipeg, Manitoba R3C 4G1
J.J. Burnell / Anjali Sandhu / Brandon Gray

Tab 1

CANADA

CONSOLIDATION

CODIFICATION

Bankruptcy and Insolvency Act

Loi sur la faillite et l'insolvabilité

R.S.C., 1985, c. B-3

L.R.C. (1985), ch. B-3

Current to December 23, 2021

Last amended on November 1, 2019

À jour au 23 décembre 2021

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Audit of proceedings

241 The accounts of every clerk that relate to proceedings under this Part are subject to audit in the same manner as if the accounts were the accounts of a provincial officer.

R.S., c. B-3, s. 212.

Application of this Part

242 (1) The Governor in Council shall, at the request of the lieutenant governor in council of a province, declare, by order, that this Part applies or ceases to apply, as the case may be, in respect of the province.

Automatic application

(2) Subject to an order being made under subsection (1) declaring that this Part ceases to apply in respect of a province, if this Part is in force in the province immediately before that subsection comes into force, this Part applies in respect of the province.

R.S., 1985, c. B-3, s. 242; 2002, c. 7, s. 85; 2007, c. 36, s. 57.

PART XI

Secured Creditors and Receivers

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

Vérification des comptes

241 Les comptes de chaque greffier, relatifs aux procédures prévues par la présente partie, sont sujets à vérification de la même manière que s'ils étaient les comptes d'un fonctionnaire provincial.

S.R., ch. B-3, art. 212.

Application

242 (1) À la demande du lieutenant-gouverneur en conseil d'une province, le gouverneur en conseil déclare par décret que la présente partie commence à s'appliquer ou cesse de s'appliquer, selon le cas, dans la province en question.

Application automatique

(2) Sous réserve d'une éventuelle déclaration faite en vertu du paragraphe (1) indiquant qu'elle cesse de s'appliquer à la province en cause, la présente partie s'applique à toute province dans laquelle elle était en vigueur à l'entrée en vigueur de ce paragraphe.

L.R. (1985), ch. B-3, art. 242; 2002, ch. 7, art. 85; 2007, ch. 36, art. 57.

PARTIE XI

Créanciers garantis et séquestres

Nomination d'un séquestre

243 (1) Sous réserve du paragraphe (1.1), sur demande d'un créancier garanti, le tribunal peut, s'il est convaincu que cela est juste ou opportun, nommer un séquestre qu'il habilite :

a) à prendre possession de la totalité ou de la quasi-totalité des biens — notamment des stocks et comptes à recevoir — qu'une personne insolvable ou un failli a acquis ou utilisés dans le cadre de ses affaires;

b) à exercer sur ces biens ainsi que sur les affaires de la personne insolvable ou du failli le degré de prise en charge qu'il estime indiqué;

c) à prendre toute autre mesure qu'il estime indiquée.

Restriction relative à la nomination d'un séquestre

(1.1) Dans le cas d'une personne insolvable dont les biens sont visés par le préavis qui doit être donné par le créancier garanti aux termes du paragraphe 244(1), le tribunal ne peut faire la nomination avant l'expiration d'un délai de dix jours après l'envoi de ce préavis, à moins :

Tab 2

M A N I T O B A

THE COURT OF KING'S BENCH ACT

C.C.S.M. c. C280

LOI SUR LA COUR DU BANC DU ROI

c. C280 de la *C.P.L.M.*

As of 22 Apr. 2025, this is the most current version available. It is current for the period set out in the footer below.

Le texte figurant ci-dessous constitue la codification la plus récente en date du 22 avril 2025. Son contenu était à jour pendant la période indiquée en bas de page.

PART X

INTERLOCUTORY PROCEEDINGS

Injunctions and receivers
55(1) The court may grant a restrictive or mandatory interlocutory injunction or may appoint a receiver or receiver and manager by an interlocutory order where it appears to the judge to be just or convenient to do so.

Terms on injunction or appointment
55(2) An order under subsection (1) may include such terms as are considered just.

No injunction re personal services
56(1) The court shall not grant an injunction which requires a person to work or perform personal services for an employer.

No contempt re personal services
56(2) No person shall be held in contempt of court by reason only of a refusal, neglect or failure of the person to work or perform personal services for an employer.

No injunction re freedom of speech
57(1) Subject to subsection (3), the court shall not grant an injunction that restrains a person from exercising the right to freedom of speech.

"Exercise right to freedom of speech"
57(2) For the purposes of this section, the communication by a person on a public thoroughfare of information by true statements, either orally or through printed material or through any other means, is an exercise of the right to freedom of speech.

PARTIE X

PROCÉDURES INTERLOCUTOIRES

Injonctions et séquestres
55(1) Le tribunal peut accorder une injonction interlocutoire de faire ou de ne pas faire ou peut nommer un séquestre ou un administrateur-séquestre au moyen d'une ordonnance interlocutoire, dans tous les cas où le juge estime qu'il est juste ou approprié d'agir ainsi.

Conditions
55(2) L'ordonnance prévue au paragraphe (1) peut être assortie des conditions que le tribunal estime justes.

Injonction portant sur des services personnels
56(1) Le tribunal ne peut accorder une injonction qui enjoint à une personne de travailler pour un employeur ou de lui rendre des services personnels.

Outrage au tribunal
56(2) Une personne ne peut être condamnée pour outrage au tribunal pour la seule raison qu'elle a refusé, négligé ou omis de travailler pour un employeur ou de lui rendre des services personnels.

Liberté d'expression
57(1) Sous réserve du paragraphe (3), le tribunal ne peut accorder une injonction qui restreint l'exercice de la liberté d'expression d'une personne.

Définition de l'« exercice de la liberté d'expression »
57(2) Pour l'application du présent article, la communication de renseignements qu'une personne fournit sur une voie publique au moyen de déclarations véridiques, soit verbalement, soit par documents imprimés ou par tout autre moyen, constitue un exercice de la liberté d'expression de cette personne.

Tab 3

2012 ONSC 163
Ontario Superior Court of Justice [Commercial List]

Callidus Capital Corp. v. Carcap Inc.

2012 CarswellOnt 480, 2012 ONSC 163, [2012] O.J. No. 62, 211 A.C.W.S. (3d) 861, 84 C.B.R. (5th) 300

Callidus Capital Corporation (Applicant / Respondent by cross-application) and Carcap Inc. and Car Equity Loans Corp. (Respondents / Applicants by cross-application)

Application under Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 and Section 101 of the Courts of Justice Act, R.S.O. 1990 c. C.43

Kaptor Financial Inc. and Carcap Auto Financing (Applicants by cross-application) and Callidus Capital Corporation (Respondent by cross-application)

Mesbur J.

Heard: December 14, 2011
Judgment: January 5, 2012
Docket: CV-11-00009498-OOCL

Counsel: Harvey G. Chaiton, George Benchetrit for Applicant / Respondent by cross-application
Mel Solmon, Fred Tayar, Colby Linthwaite for Respondents and applicants by cross-application
Robb English for Toronto Dominion Bank
A. Kaufman for Proposed Receiver, BDO Canada Ltd.
Jennifer Imrie for Third Eye Capital

Subject: Corporate and Commercial; Insolvency; Civil Practice and Procedure

APPLICATION by secured lender for appointment of receiver; CROSS-APPLICATION by debtors for initial order under *Companies' Creditors Arrangement Act*.

***Mesbur J.*:**

Introduction:

1 I heard this application for the appointment of a receiver and the debtors' cross application for an initial order under the *Companies' Creditors Arrangement Act* [1] (CCAA) on December 14, 2011. At the end of the hearing I made the following endorsement:

> For reasons to follow, an order will go in the following terms:
>
> a) The debtors' cross application for an initial order under the CCAA is dismissed.
>
> b) The application to appoint a Receiver is granted, but will not take effect until 5:00 p.m. on December 20, 2011.
>
> c) If the debtor has obtained alternate financing & has paid the applicant in full by 5:00 p.m. December 20, 2011 then the Receivership Order will not take effect.
>
> d) If the terms of paragraph (3) [i.e. paragraph (c)] above have not occurred then the Receivership order will be with effect as of 5:01 pm December 20/11.

e) If the parties cannot agree on the terms of the Receivership order (following the terms of the Model Order) they may make an appointment to settle the terms of the order.

f) Even if the Receivership Order takes effect on December 20/11 at 5:00 pm nothing prohibits the Debtor from continuing its efforts to refinance.

2 Counsel tell me the debtor was unable to obtain financing to pay the applicant in full by December 20, 2011. Accordingly, the Receivership Order is now in effect, and it is necessary for me to deliver the reasons for my decision to appoint a receiver and decline to make an initial order under the *CCAA*.

3 These are those reasons.

The application and cross-application:

4 The applicant, Callidus, is the respondents' first secured lender. On this application, it sought the appointment of a Receiver under both the *Bankruptcy and Insolvency Act*[2] and section 101 of the *Courts of Justice Act*.[3] The TD Bank, who is the respondents' second secured lender, supported the receivership application. It pointed out none of the respondents' refinancing proposals included sufficient financing to retire the respondents' debt to the TD Bank. Accordingly, the TD Bank took the position that even if the respondents were able to find alternate financing sufficient to pay out Callidus, the TD Bank would bring its own application to appoint a receiver under the terms of its own security.

5 The respondents brought a cross-application for relief under the *CCAA*. Both Callidus and TD Bank opposed the cross-application.

Facts:

6 The respondent CarCap is in the business of sub-prime car lease financing. The respondent Cashland provides sub-prime equity car loans. Both companies are subsidiaries of CarCap Auto Finance Inc., which itself is a subsidiary of Kaptor Financial Inc. Kaptor Financial owns several other companies, either in whole or in part. The parties refer to these companies as the Kaptor Group. An individual named Eric Inspektor controls the entire Kaptor Group, either directly or indirectly.

7 The Kaptor Group, including the respondents, had deposit accounts with the TD Bank. Initially, they did not have any credit facilities with the TD. Both the respondents and the Kaptor Group had financing elsewhere. Before Callidus lent operating funds to the respondents, the Laurentian Bank provided an operating facility to them. In addition, the Kaptor Group used private investors to finance their businesses through separately incorporated special purpose investment vehicles. They refer to them as "silos". The silos provided funding either through secured term debentures or preference shares.

Callidus provides financing

8 On September 1, 2011 Callidus replaced the Laurentian Bank as the respondents' first secured lender. It did so pursuant to a credit facility agreement, under which it agreed to advance a demand loan of up to $15 million subject to certain margin conditions. The agreement provided that advances were to be used:

a) To pay off the existing indebtedness to the Laurentian Bank;

b) To repay certain silo investors;

c) To provide working capital; and

d) To finance existing and future vehicle lease and vehicle loan transactions.

9 Another term of the agreement required the respondents to establish "blocked" accounts at a bank. The respondents had to deposit all funds they received from all sources into these blocked accounts. The respondents established the blocked accounts at the TD Bank.

10 The Callidus credit facility had other provisions that are relevant to this application. The respondents' representations required them to disclose "all commitments of any lender (other than the Lender) for all debt for borrowed money, and all debt for borrowed money outstanding of the Borrowers or Corporate Guarantors." [4] The respondents did not disclose they owed any money to TD Bank, although at the time they did. In fact, in the schedule where the respondents were required to list their "current debt defaults", they entered "none". This was not true. I will discuss this more fully in the section "Changes to the respondents' arrangements with TD Bank", below.

11 The respondents also represented that all the information they had given Callidus was "true and correct and does not omit any fact necessary in order to make such information not misleading." [5]

12 Callidus made its advances to a disbursement account that the respondents maintained. The disbursement account was also at the TD Bank.

13 The credit facility's terms provided that it was due on demand, and was repayable in full on the earlier of September 1, 2012 or an event of default. Remedies on default include Callidus' right to appoint a receiver and to apply to the court to appoint a receiver.

14 The credit facility is fully secured by general security agreements as well as a first ranking secured interest over the properties, assets and undertakings of the respondents.

Changes to the respondents' arrangements with TD Bank.

15 The respondents and other Kaptor Group companies initially had only deposit accounts with the TD Bank. Their banking arrangements did not include any overdraft or credit facilities. In July and August of 2011 the TD noticed what it characterized as a high rate of unusual activity in the respondents' accounts as well as in those of other Kaptor Group companies.

16 What was unusual is that more than $60 million in cheques passed through various Kaptor Group accounts. On August 18, 2011 about $18 million flowed through in a single day. TD Bank viewed this as unusual since the businesses generally had annual revenue of about $24 million. That day, the TD Bank froze the Kaptor Group accounts. When they froze the accounts, they were in an overdraft position of about $7 million, contrary to their banking arrangements with the TD.

17 TD Bank then entered into an accommodation agreement with the Kaptor Group, including the respondents. The accommodation agreement, which was dated August 23, 2011, provided a secured loan of $5 million to cover the overdraft, and to provide some working capital. The loan was to be repaid in full by August 29, 2011. It was not.

Callidus advances

18 Callidus knew nothing about the Kaptor Group/respondents' overdraft with the TD Bank, the accommodation agreement or their failure to repay the TD loan. On September 1, 2011 Callidus made its first advance into the respondents' disbursement accounts. The advance totalled just over $8.4 million and was used to pay out the Laurentian Bank debt, make payments to silo investors and provide working capital of just under $1 million. Clearly, given the respondents' situation with TD Bank at the time of the advance, the respondents were in breach of their representations to Callidus in the credit facility agreement.

The TD Bank's accommodation agreement is amended, then terminated

19 Since the TD Bank had not been repaid, it entered into an agreement to amend the original accommodation agreement. The amending agreement was dated September 7, 2011, a week after Callidus had advanced. The amending accommodation agreement provided for the Kaptor Group to acknowledge it was in overdraft at that date to the extent of $2.6 million. TD Bank

agreed to advance up to $2 million (instead of the original $5 million) to cover the overdraft. TD Bank was to be repaid in full by September 12, 2011. Again, it was not.

20 On September 16, TD Bank entered into an agreement to terminate the accommodation agreement. In the termination agreement TD Bank agreed to extend the financing subject to certain paydowns, and with the requirement that the financing be paid in full by September 30. Once again, Kaptor Group failed to pay off the debt. It remains outstanding. Currently, the respondents owe the TD Bank about $1 million.

21 By this point the respondents had set up the required blocked account and disbursement accounts at TD Bank, and Callidus had advanced. By this point as well, TD Bank was no longer prepared to do business with the respondents. As part of its termination agreement with the respondents, TD Bank required them to transfer the blocked accounts and disbursement accounts within 90 days of September 16, 2011.

22 Before TD Bank made its various accommodation agreements with the respondents and Kaptor Group, there was a three week period in September where the TD Bank returned as NSF many cheques the respondents had written for payroll, investor payments and dealer and supplier payments. The NSF cheques to silo investors also put the respondents in breach of their obligations to Callidus.

Callidus learns of the debt with TD Bank

23 Callidus did not learn of any of the respondents' agreements with TD Bank, or the security they had given the Bank until three weeks after Callidus had made its first advance. It was only around that time that Eric Inspektor, who essentially controls the Kaptor Group, including the respondents, told Callidus that the respondents and other Kaptor Group companies maintained accounts with the TD Bank. He said that their arrangements with the TD Bank permitted the TD Bank to offset overdrafts in one corporate account against deposits in another, including the disbursement accounts into which Callidus deposited its advances to the respondents.

24 Mr. Inspektor explained that because of the overdraft position the Kaptor Group found itself in, the TD Bank had returned as NSF some of the cheques the respondents had written to some silo investors under Callidus' initial advance. It was one of the conditions of the advance that these investors were to be paid from the advance. Until this time, Callidus knew nothing of any debt the respondents owed to TD Bank. Callidus also did not know that one of the conditions of its initial advance had not been fulfilled - that is, paying off some specific silo investors.

25 Matters deteriorated. TD Bank dishonoured various Cashland cheques for things like payroll, dealership payments and business expenses. Dealers were complaining to the Ontario Motor Vehicle Industry Council.

The field audit

26 Under the terms of its security, Callidus was permitted to conduct a field audit of the respondents. When it did, it discovered that some government remittances were made late. It also learned that Mr. Inspector had directed funds in various Kaptor Group accounts to cover overdrafts in other accounts. This might have included diversion of funds from the respondents to cover overdrafts of other Kaptor Group companies. Over $300,000 in September lease and loan payments had been deposited into the disbursement accounts instead of into the blocked accounts. Mr. Inspektor and his wife deposited nearly $700,000 into the disbursement accounts instead of the blocked accounts. Again, this constituted a breach of the terms of the credit facility agreement.

The Callidus demand

27 Needless to say, all of this created significant concern for Callidus. Callidus took the position that the respondents had made misrepresentations and material non-disclosure to it. It viewed the respondents' actions as constituting material breaches of the credit facility agreement. It was not prepared to continue to lend. On October 18, 2011 it demanded payment in full, pursuant to the terms of the credit facility agreement. It also served notice under section 244 of the *BIA* of its intention to enforce its security.

The Callidus forbearance agreement and events following

28 On October 25, 2011 Callidus entered into a forbearance agreement with the respondents. Callidus agreed to forbear from enforcing its rights, but only on a day-to-day basis. The agreement permitted Callidus to terminate it at any time, in its sole and absolute discretion.

29 In the Callidus forbearance agreement the respondents have acknowledged Callidus' *BIA* Notices are valid. They agree not to contest the validity of the demands for payment. They waive the 10-day notice period, and consent to the immediate enforcement of Callidus' security.

30 The forbearance agreement also required the respondents to hire a new interim executive officer to replace Mr. Inspektor, who ceased to have any managerial role, or any cheque signing authority. The respondents also agreed to hire MNP corporate Finance Inc. to find them alternate financing so they could pay out Callidus by April 30, 2012. They were not able to secure alternate financing in this way.

31 The agreement also required the respondents to submit a complete restructuring plan to Callidus by November 30, 2011. First, the plan had to be acceptable to Callidus, and second had to be completed by December 31, 2011. The respondents have been unable to comply with either of these conditions.

32 Although the parties concede the term is not enforceable, the Callidus forbearance agreement also contains a promise from the respondents not to commence any restructuring or reorganization proceedings under either the *BIA* or *CCAA*.

33 Since the forbearance agreement, Callidus says the respondents' financial position has deteriorated more. The loan balance has increased by more than $770,000 while the lease rental stream has dropped by about $225,000. By the end of November, the respondents were in an over advance position of more than $1.2 million.

34 Callidus was not prepared to continue without changes to the arrangement. On November 16, Callidus told the respondents it would continue to fund under the credit facility if and only if there was a minimum cash injection at least $500,000 into the businesses by subordinated debt or equity within two days, and the respondents would also have to fund their 30% of the cost of buying new vehicles for lease. The respondents failed to fulfil either of these conditions.

35 On November 24, Callidus terminated the forbearance agreement, and told the respondents it would apply to court to have a receiver appointed.

36 Even though it has terminated the forbearance agreement, Callidus continues to provide some funding to the respondents. It does so at its discretion, in order to protect its security.

37 The respondents have been looking for alternate financing. They have not been able to secure any.

Discussion:

38 Callidus takes the position that the respondent made material misrepresentations even before the first advance. It says had it known of the respondents' situation with TD Bank it would never have agreed to advance in the first place. Now it sees the respondents' financial position deteriorating. Its demand for payment has not been satisfied. The respondents' revenue stream is declining, meaning it cannot acquire new vehicles to lease. Callidus says this results in a reduction of its security, while the debt increases. As a result, Callidus says it is just and convenient to appoint a receiver in order to protect its security and the interests of other stakeholders.

39 For their part, the respondents accuse Callidus of taking an aggressive and unreasonable position (even though every position Callidus has taken has been supported by the specific terms of either the credit facility or the forbearance agreement.) The respondents point out that they are not actually behind in their payments. They view the interim financial officer who is

now in place as being akin to a "soft receivership", and suggested that if they were able to have a *CCAA* stay in place for thirteen weeks, they would be able to restructure. They did not, however, present any restructuring plan, even in very draft form.

Receiver?

40 Callidus brought its receivership application under both section 101 of the *Courts of Justice Act*, and s.47 of the *BIA*. The test to appoint a receiver under the *CJA* requires the court to conclude it would be just and convenient to do so. The court may appoint an interim receiver under s. 47 of the *BIA* if and only if the court is persuaded a receiver is necessary to protect the debtor's estate or the interests of the creditor who sent a notice under s. 244(1) of the *BIA*.

41 The question is whether it is more in the interests of all concerned to have the receiver appointed or not. [6] In order to answer the question the court must consider all the circumstances of the case, particularly:

> a) The effect on the parties of appointing the receiver. This includes potential costs and the likelihood of maximizing return on and preserving the subject property;
>
> b) The parties' conduct; and
>
> c) The nature of the property and the rights and interests of all parties in relation to it. [7]

42 Receivers are considered an "extraordinary" remedy, much in the same way as granting an injunction is considered an extraordinary remedy. The law is clear, however, that an applicant who wishes the court to appoint a receiver need not show irreparable harm if a receiver is not appointed. [8]

43 Many security instruments will specifically contemplate appointing a receiver. The fact that the creditor has a right to appoint a receiver under its security is therefore an important consideration. Generally, a court will appoint a receiver when it is necessary to enforce rights between the parties or to preserve of assets pending judgment. Receivers will also be appointed where there is a serious apprehension about the safety of the assets.

44 Here, of course, the credit facility agreement itself specifically contemplated appointing a receiver. Following the reasoning in *Fruere Village*, the "extraordinary" nature of the remedy is therefore less important here than it might otherwise be.

45 This leads me to consider the interests of all concerned, in order to determine whether the test under either the *Courts of Justice Act* or *Bankruptcy and Insolvency Act*, or both, has been met.

46 What is the likely effect on the parties of appointing a receiver? From Callidus' point of view, it will allow it to protect its security, and dispose of it in an organized and court-supervised fashion. It proposes to sell the businesses as a going concern, in order to maximize value for all stakeholders. The respondents concede that a possible restructuring plan might be to liquidate, in which case the hope would also be a going concern sale. In this regard, I see no difference in outcome if a receiver is appointed.

47 Callidus has legitimate concerns about the businesses continuing as a going concern while the respondents attempt to restructure. The respondents have stopped purchasing vehicles for lease. They have no money to do so. As a result, the value of Callidus' security is declining.

48 The activities in the TD accounts that led to the Bank's freezing them suggest companies that were out of financial control, operating outside of the normal course of business.

49 The respondents' difficulties with the TD Bank overdraft arose in August of last year. They have been given every opportunity since then to cure their defaults, and have failed to do so.

50 Similarly, the respondents have been in default with Callidus since it demanded payment in mid October of last year, and delivered its notice of intention to enforce its security. Even though Callidus had agreed to forbear, the respondents have failed to honour the terms of the forbearance agreement.

51 Neither Callidus nor TD Bank has faith in the respondents' management. This is a factor that supports appointing a receiver.[9] While the interim executive officer Mr. Willis has brought some stability to the businesses, they cannot operate without further borrowing, and none is available. Without further borrowing, the respondents cannot purchase new inventory for lease, and thus its inventory is declining. What this means is that its lease and loan revenues are also declining, while its debt load to Callidus is increasing. All this suggests to me that appointing a receiver is necessary in order to protect Callidus' security from further erosion.

52 The respondents' past conduct also gives cause for concern if there is no receiver who can manage the businesses and arrange for an orderly sale under the court's supervision.

53 As to the nature of the property, I note that Callidus' security is declining in value. Both secured creditors' rights in it are being eroded. The court must put an end to the continued haemorrhaging of money. Given the respondents' failure to come up with even a rudimentary restructuring plan, it is time for a receiver to take control, and manage the businesses to the extent necessary to result in an orderly liquidation to protect the interests of all stakeholders.

54 At the hearing of the application and cross-application, the respondents urged me to consider only the current situation with the businesses, and look to the future, rather than to problems in the past. Even doing only this, there is no comfort to Callidus. The respondents have repeatedly sought new financing and failed - even after I made the receivership order, but held it in abeyance so they could refinance. Most importantly, nothing prevents the respondents from continuing their efforts to restructure, even though I have appointed a receiver.

CCAA?

55 The respondents took the position that granting an initial order under the CCAA is the proper way to proceed. They point to the fact that Mr. Willis (the interim executive officer) says the businesses are not out of control, are not a disaster, and are good businesses that will not deteriorate if a stay is granted and the companies are allowed to restructure. I disagree.

56 The respondents have no operating capital. They are borrowers in default, with two unwilling lenders who are unprepared to lend more. Under the *CCAA* these lenders have no obligation to advance more funds.[10] Without further advances, the respondents cannot continue to operate without further deterioration in inventory of vehicles and the resulting deterioration in revenue.

57 The respondents ask, what is the harm in letting them reorganize? While that is an interesting question, it is not the test. It seems to me this is nothing more than a last ditch effort on the respondents' part to stave off the inevitable. In *Marine Drive Properties Ltd., Re*[11] the court put a similar situation this way: "to put in bluntly, the Petitioners have sought *CCAA* protection to buy time to continue their attempts to raise new funding ... they need time to 'try to pull something out of the hat.'" Or, as Farley J. put it in *Inducon Development Corp., Re*,[12] "... *CCAA* is designed to be remedial; it is not however designed to be preventative. *CCAA* should not be the last gasp of a dying company; it should be implemented if it is to be implemented, at a stage prior to the death throe."

58 Here, the respondents only brought their application after Callidus had brought its application for a receiver. The respondents knew in November that Callidus intended to seek a receiver. They waited until they had been served with the receivership application before launching their own effort to restructure. As a result, the cross-application for *CCAA* relief seems more a defensive tactic than a *bona fide* attempt to restructure. The respondents have no restructuring plan. They have no outline of a plan. They do not have even a "germ of a plan". Again, as the court said in *Inducon*:

> [W]hile it is desirable to have a formalized plan when applying, it must be recognized as a practical matter that there may be many instances where only an outline is possible. I think it inappropriate, absent most unusual and rare circumstances, not to have a plan outline at a minimum, in which case then I would think that there would be requisite for the germ of a plan.

59 The respondents have been attempting to refinance for some time. They have failed to meet every deadline for payment they agreed to with Callidus as well as with the TD Bank. Even when I delayed the date for the receivership order to take effect in order to give the respondents time to complete a refinancing, they were unable to do so.

60 The absence of even a "germ of a plan" militates against granting relief under the *CCAA*.

61 Finally, in considering the question of whether to grant relief under the *CCAA*, I must also look at the position of the two major secured creditors. Neither will support a plan of arrangement. They represent a considerable part of the respondents' creditors. I have no evidence any other creditors would support a plan, either. I see no merit in making an initial order and imposing a stay in circumstances where a plan of arrangement is most likely going to be defeated.

62 Having considered all these factors, I decline to grant relief under the *CCAA*.

Conclusion:

63 It is for these reasons I made the order I did on December 14, 2011.

Application granted on certain terms; cross-application dismissed.

Footnotes

1 R.S.C. 1985 c. C-36

2 R.S.C. 1985 c. B-3 as amended

3 R.S.O. 1990, c. C-43, as amended

4 Credit facility agreement paragraph 17(k)

5 *Ibid*. paragraph 17(q)

6 *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 1996 CarswellOnt 2328, 40 C.B.R. (3d) 274 (Ont. Gen. Div. [Commercial List])

7 *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007 (Ont. S.C.J.) (CanLII)

8 *Swiss Bank Corp. (Canada) v. Odyssey Industries Inc.* (1995), [1995] O.J. No. 144 (Ont. Gen. Div. [Commercial List])

9 *GE Commercial Distribution Finance Canada v. Sandy Cove Marine Co.*, [2011] O.J. No. 2954 (Ont. S.C.J.)

10 Section 11.01(b) of the *CCAA*

11 (B.C. S.C.)

12 (1991) (Ont. Gen. Div.)

Tab 4

2020 MBQB 58
Manitoba Court of Queen's Bench

White Oak Commercial Finance, LLC v. Nygård Holdings (USA) Limited et al.

2020 CarswellMan 174, 2020 MBQB 58, 317 A.C.W.S. (3d) 238, 79 C.B.R. (6th) 44

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. C. B-3, AS AMENDED, AND SECTION 55 OF THE COURT OF QUEEN'S BENCH ACT, C.C.S.M., C. C280, AS AMENDED

WHITE OAK COMMERCIAL FINANCE, LLC (Applicant) and NYGÅRD HOLDINGS (USA) LIMITED, NYGÅRD INC., FASHION VENTURES, INC., NYGÅRD NY RETAIL, LLC, 4093879 CANADA LTD., 4093887 CANADA LTD., NYGÅRD INTERNATIONAL PARTNERSHIP, NYGÅRD PROPERTIES LTD., AND NYGÅRD ENTERPRISES LTD. (Respondents)

Edmond J.

Judgment: March 26, 2020
Docket: Winnipeg Centre CI 20-01-26627

Counsel: Marc Wasserman, Jeremy Dacks, Catherine Howden, Eric Blouw, for Applicant
Wayne Onchulenko, for Respondents
Bruce Taylor, Ross McFadyen, Melanie LaBossiere (articling student), for Richter Advisory Group Inc.
David Jackson, Shayne Kukulowicz, Hylton Levy, for proposal trustee, A. Farber & Partners Inc.

Subject: Civil Practice and Procedure; Insolvency

APPLICATION by WC LLC for R LLP to be appointed as receiver.

***Edmond J.*:**

Introduction

1 The applicant, White Oak Commercial Finance, LLC applies pursuant to s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended ("*BIA*") and s. 55(1) of *The Court of Queen's Bench Act*, C.C.S.M. c. C280, as amended ("*QB Act*") for the appointment of Richter Advisory Group LLP ("Richter") as receiver without security, of all assets, undertakings and properties of the respondents. On March 18, 2020, the court granted a receivership order and advised the parties that brief reasons for decision would be delivered following the hearing. These are those reasons.

2 By way of background, this matter proceeded in court on Tuesday, March 10, 2020 and was adjourned to Thursday, March 12, 2020, to permit the respondents to file responding affidavit material. Interim orders were made to preserve the status quo pending the hearing on the merits.

3 The respondents are identified in the affidavit material as the corporate entities operating retail, wholesale and business operations of the Nygård clothing and fashion business in Canada and the USA ("Nygård Group"). As at March 12, 2020, the Nygård Group operated 169 retail stores in Canada and the USA, operated a wholesale business and employed approximately 1450 employees.

4 The respondents filed an affidavit of Greg Fenske, affirmed March 11, 2020 and a supplemental brief for the hearing that proceeded on March 12, 2020. After hearing submissions from all parties, the court reserved its decision on whether Richter should be appointed as a receiver and ordered the Nygård Group to continue to fully comply with the terms of the

Credit Agreement entered into with Lenders, Second Avenue Capital Partners LLC and White Oak Commercial Finance, LLC ("Lenders") dated December 30, 2019 ("Credit Agreement") and that no Collateral (as defined in the Credit Agreement) would be disposed of outside of the ordinary course of business without the prior written consent of the applicant and the proposal trustee, A. Farber & Partners Inc.

5 During the course of the hearing on March 12, 2020, the court was advised that the Lenders advanced funds to the Nygård Group to fund their payroll due on March 12, 2020. The payroll funding was advanced by the Lenders because the Nygård Group had not confirmed that sufficient funds were deposited in the Nygård corporate account, by way of cash injection, to fund the payroll which was to be paid out by electronic fund transfer to employees. The Nygård Group had confirmed before the March 12, 2020 hearing that the payroll would be funded by way of a cash injection. Paragraph 10(a) of the proposal trustee's first report states:

> the Proposal Trustee attended on a call with representatives of the Nygard Group where the Proposal Trustee was advised that (i) funds sufficient to satisfy the payroll obligation had been deposited with the Nygard Group and evidence of such funding had been provided to Osler as required by the Winnipeg Court; (ii) the short term primary focus of the Nygard Group was to obtain funds to repay the Lenders in full so as to permit the Nygard Group to focus on a restructuring and rationalization of its business.

6 Contrary to the representations made to the proposal trustee, the Nygård Group did not deposit the necessary payroll funds. The Lenders therefore funded the payroll to ensure that the employee payroll was not interrupted during this crucial time frame. During the course of the hearing on March 12, 2020, counsel for the Nygård Group advised that an advance of payroll funding had been received and the Lenders' advance of payroll would be reimbursed from those funds.

7 The court was further advised later in the afternoon during the same hearing held March 12, 2020 that the payroll advance had been transferred from the Nygård Group bank account to a bank account of Edson's Investments Inc. The supplementary affidavit of Robert L. Dean affirmed March 17, 2020, states that Edson's Investment Inc. is an entity controlled by Mr. Nygård which is not part of the Nygård Group named as respondents in this proceeding and is not a party to the Credit Agreement.

8 The primary submission advanced by the respondents at the March 12, 2020 hearing was that the Canadian entities had filed Notices of Intention to make a Proposal in Bankruptcy ("NOIs") pursuant to s. 50.4 of the *BIA*, the stay of proceedings pursuant to s. 69(1) of the *BIA* applied and accordingly, the court should permit the proposal process to continue and stay the applicant's proceeding. Further, Nygård Group submitted that they had more than sufficient equity to pay out the Lenders in full and intended to have a proposal to do so by March 20, 2020.

9 On March 13, 2020, the court provided oral reasons for decision regarding the application and the motion made by the applicant to lift or terminate any stay of proceedings granted regarding the proposal process. To summarize, the court ordered:

> a) The proper jurisdiction to hear the application and the NOI proceedings is Manitoba;
>
> b) The NOI proceedings are not invalid or a nullity and the proposal proceedings should proceed in this court;
>
> c) The draft cash flow statements prepared by the Nygård Group and provided to the proposal trustee must be provided to counsel for the applicant;
>
> d) The application by the Lenders for the appointment of Richter as the receiver was adjourned until Friday, March 20, 2020;
>
> e) The respondents were directed to continue to fully and promptly comply with all terms and provisions of the Credit Agreement and all documents ancillary thereto, and, without limitation, comply with s. 6.10 of the Credit Agreement;
>
> f) Until further of the court, no steps would be taken by the respondents to dispense with or dispose of Collateral, as that term is defined in the Credit Agreement, other than:

i. by way of the sale of Collateral at the respondents' retail outlets in the ordinary course of business of such retail outlets; or

ii. with the advance written consent of the applicant and the proposal trustee;

g) All additional responding affidavit material must be filed in court by no later than 2:00 p.m. on Thursday, March 19, 2020;

h) In accordance with the undertaking given by counsel for the Nygård Group, the court directed the Nygård Group to return the payroll funds that were earmarked for payroll, which funds were transferred or removed from the Nygård Group corporate bank account on March 12, 2020;

i) The application was adjourned and the motion by the applicant to terminate or lift the stay of proceedings in effect pursuant to s. 69(1) of the *BIA* was denied at that time, although the court stated that the imminent necessity for appointing a receiver may change if reasonable steps were not taken by the Nygård Group to pay the outstanding indebtedness to the applicant and/or further evidence established that the Nygård Group failed to comply with the Credit Agreement during the period of the stay;

j) The respondents were given one week to cooperate with the proposal trustee in the proposal process in accordance with the *BIA* and act in good faith and with due diligence, including take reasonable steps as noted above.

New Evidence Received since March 13, 2020

10 A further affidavit affirmed by Robert L. Dean on March 17, 2020, confirmed, among other things:

a) The funds that the Nygård Group was supposed to have deposited in the Nygård Group bank account sufficient to satisfy the payroll obligation was not deposited. Funds were deposited, but then were removed or transferred out as noted above.

b) The proposal trustee forwarded a cash flow forecast to applicant's counsel during the March 12, 2020 hearing and the cash flow forecast contemplated continued funding by the Lenders despite the termination of the funding commitment.

c) A funding request from the Nygård Group included approximately $1.032 million Canadian for payroll, source deductions and rent. The Nygård Group provided no indication of how they intended to fund the payroll for the week of March 15, 2020.

d) On March 15, 2020, the Lenders responded to the Nygård Group's funding request advising they were prepared to provide funding on the following terms:

(a) The Lenders will fund the advance request (subject to review by Richter);

(b) The Nygard Group will engage a third-party liquidator to negotiate with Perry Ellis and liquidate US wholesale (and other assets immediately available for sale);

(c) The Nygard Group will confirm that the Lenders are authorized to speak to wholesale customers and Perry Ellis;

(d) The proceeds of any wholesale sale shall be immediately repaid to the Lenders;

(e) White Oak will receive a release from the Loan Parties and Peter Nygard on the same terms as White Oak previously communicated in the pay-off letter it previously provided, which shall be effective immediately;

(f) The Nygard Group will agree to remove the $20 million cap on the real estate Collateral;

(g) The Nygard Group will sign up a stalking horse (sic) bidder (with an approximately 10% deposit) with respect to the sale of the Toronto real estate, with any deal to close in 30 days (subject to a higher and better bid at auction);

(h) The Nygard Group will pay a $500,000 accommodation fee if the amounts owed to the Lenders are not repaid in full on or before March 20, 2020;

(i) The Nygard Group will agree to consent to the appointment of a receiver if the amounts owed to the Lenders are not repaid in full by March 20, 2020.

The Nygård Group did not respond to the Lenders' proposal.

e) On March 16, 2020, counsel for the applicant wrote to the proposal trustee regarding the payroll advance. On the same day, Richter wrote to the proposal trustee making inquiries about the continuing erosion of the Collateral requesting numerous updates, including:

(a) The status of discussions with Perry Ellis with respect to the U.S. wholesale inventory;

(b) The status of discussions with Great American on the potential refinancing of the Lenders' secured debt;

(c) The status of discussions with the party interested in the Toronto real property located at 1 Niagara St.;

(d) The Nygard Group's funding requirements for the current week and its plans on meeting its obligations on a go-forward basis.

(e) The return of the Late Transfer Funds that Mr. Nygard transferred out of the Nygard Group's bank account;

(f) The timing on receipt of a realistic cash flow forecast given the Nygard Group's current circumstances;

(g) The Nygard Group's plans to continue normal course operations given the closure of its Winnipeg and Toronto offices, including the potential layoff of corporate staff; and

(h) The Nygard Group's plans to curtail expenditures in the coming weeks in response to the significant decrease in retail sales.

f) The Nygård Group closed all of its distribution centres effective the evening of March 13, 2020, after courier and transportation companies refused to provide go forward service without guarantee of payment.

g) On March 17, 2020, the applicant received a copy of an e-mail from the Nygård Group indicating that the Nygård Group would be immediately shutting down its retail stores and website due to the recent COVID-19 outbreak. The e-mail made numerous additional representations about the Lenders' actions, which the Lenders submit are false and materially impact the Lenders' ability to realize on their Collateral.

h) The Nygård Group did not consult with the applicant, Richter or the proposal trustee regarding the potential closure of the retail stores and their business operations.

i) The Lenders have no faith that proper procedures to protect their Collateral will be undertaken by the Nygård Group.

11 On March 17, 2020, the proposal trustee issued its second report. The report confirms the following:

a) The proposal trustee requested that Nygård Group and management provide the proposal trustee with information respecting:

(a) the status of the reimbursement of the Payroll Funding;

(b) the status of funding for ongoing operations during for the week ending March 20, 2020;

(c) the cash flows and the underlying assumptions., drafts of which were prepared by each of the members of the Nygard Group and provided to the Proposal Trustee on the evening of Wednesday, March 11, 2020 and the four wall forecasts provided on Sunday March 16, 2020;

(d) the status of operations of the Nygard Group including measures being taken in response to the Covid-19 crisis (i.e. whether or not the stores and/ or distribution centres are to remain open);

(e) financial information relating to the Nygard Group's operations;

(f) electronic contact information for all employees of the Nygard Group (or access to internal email system) to provide the statutory required notices of the NOI proceedings; and

(g) the status of refinancing efforts of the Nygard Group.

b) Despite repeated requests for information, limited information was provided to the proposal trustee as established in the e-mails sent by the proposal trustee attached as Exhibits B and C to the second report.

c) The proposal trustee received information from the Nygård Group regarding efforts to sell real property located at 1 Niagara Street in Toronto, Ontario (the "Toronto Property"). The potential purchaser indicated that the offer to purchase is confidential. The proposal trustee advised the Nygård Group that it is not in a position to advise the court or stakeholders that the offer is fair or reasonable.

d) The proposal trustee received a copy of a notice entitled "Nygård closing 180 retail stores". The proposal trustee was not consulted in advance of the notice.

e) The second report concludes:

20. Based on the foregoing, the Proposal Trustee is not in a position to advise that the Nygard Group is acting with good faith or due diligence at this time.

21. The Proposal Trustee also notes that each of the members of the Nygard Group are required under the BIA to file cash flows by no later than Thursday, March 19, 2020 and such cash flows must be submitted to the OSB with a report from the Proposal Trustee on the reasonableness of the assumptions contained therein. The Proposal Trustee has not been provided with sufficient information to assess the draft cash flows provided and is of the view that it will not be in a position to file the required report on the reasonableness of the assumptions as required by the BIA.

12 Two affidavits affirmed by Greg Fenske, on March 18, 2020, were received by the court. The second affidavit is a confidential affidavit regarding the potential sale of the Toronto Property and the sale of certain inventory.

13 The first affidavit responds to the affidavit of Mr. Dean affirmed March 17, 2020 and can be summarized as follows:

a) An explanation is provided as to why the Nygård Group was unable to fund payroll. The Nygård Group requisitioned $1 million U.S. from an account at Stifel and the funds never made it into Nygård's Canadian bank accounts.

b) Nygård Group obtained a loan from Edson's Investments Inc. in the amount of $500,000 U.S. to fund payroll. These funds were returned or transferred back to Edson's Investments Inc. when the applicant provided the funds for payroll on March 12, 2020. While Mr. Fenske states the Nygård Group will receive funds from Stifel, as at March 18, 2020, no funds were received.

c) Nygård Group did advise the Lenders of the funds that were required to pay bills in accordance with the Credit Agreement.

d) The estimated payroll for the week of March 15, 2020, is $900,000 Canadian and "that will be funded by the Nygård Group resources". (it is unclear what that term refers to and if it is an entity, it is not a named respondent)

e) The Nygård Group received a verbal offer from Perry Ellis to purchase one-half of the inventory in the U.S. The amount is disclosed in the confidential affidavit.

f) While a proposal to pay out the Lenders was to be received from Great American Capital, no proposal was received and the Nygård Group has moved on to having discussions with other Lenders to pay out the secured debt. No concrete proposal was presented.

g) The offer to purchase the Toronto Property dated March 16, 2020 from New York Brand Studio Inc., in Trust, was attached as Exhibit B to Mr. Fenske's affidavit and the purchase price is redacted. The confidential affidavit discloses the purchase price and the amount is substantially different from the purchase price that was included in the earlier affidavit affirmed by Mr. Fenske on March 12, 2020.

h) Nygård Group states that cash will be coming in from the sale of assets until the stores are reopened.

i) Nygård Group unilaterally laid off 1370 employees and provides reasons for closing the offices and stores for the safety of the employees and customers as a result of the COVID-19 virus. Nygård Group confirms that the Lenders and the proposal trustee were not consulted prior to making the decisions.

j) The Nygård Group plans to sell real property and generate $25.4 million and pay $20 million to the applicant pursuant to the Lenders' security.

k) Mr. Nygård will divest ownership and all Nygård Group of companies will continue under different ownership allowing the purchasers to move forward with the current employees of the Nygård Group.

l) The affidavit provides information regarding the steps taken by Nygård Group to market the sale of assets. Mr. Fenske states that the consideration to be paid under the purchase and sale agreement of the Toronto Property "... is reasonable and fair and is substantially higher than a liquidation value of the Nygård Group of companies assets in a Bankruptcy or Receivership." (See para. 29 of the affidavit of Greg Fenske affirmed March 18, 2020)

m) The proceeds from the sale of the Toronto Property and sale of inventory is to be paid to the applicant with the remainder of the monies, if any, to go to the proposal trustee to make a proposal to pay the remaining creditors.

n) The respondents seek an administrative charge to pay the proposal trustee and counsel for the proposal trustee.

o) Although no motion was filed, the respondents seek an extension of time of 30 days for the Nygård Group to make a proposal in bankruptcy.

p) Mr. Fenske states "... the Nygård Group of companies has acted, and is acting, in good faith and with due diligence in the proposal proceedings to date." (See para. 38 of the affidavit of Greg Fenske affirmed March 18, 2020)

Analysis and Decision

14 The starting point for analysis is to determine whether the applicant has met the test for appointing a receiver pursuant to s. 243 of the *BIA*. Section 243(1) of the *BIA* and s. 55(1) of the *QB Act* provide that a receiver may be appointed on application by a secured creditor, where it is "just or convenient" to do so. Such an order may authorize the receiver to:

243(1)

. . . . .

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

15 On February 26, 2020, the applicant sent a notice of intention to enforce security as required pursuant to s. 244(1) of the *BIA*.

16 I am satisfied on the basis of my review of all of the evidence, that it is just and convenient to appoint a receiver in the circumstances. I considered the factors outlined in the various authorities including:

a) Whether irreparable harm may be caused if no order is made, although such a requirement is not essential where, as in this case, the appointment of a receiver is authorized by the security documentation including the Credit Agreement. In this case, I am satisfied that irreparable harm may be caused if no order is made due to the various steps that have been taken by the Nygård Group as I will outline below;

b) The risk to the Lenders taking into consideration the Nygård Group equity in the assets and the need for protection or safeguarding of the assets;

c) The nature of the property, including real property and inventory and the potential that the value of the inventory is being materially impacted by steps taken by the Nygård Group.

d) The balance of convenience to the parties which, in my view, favours the appointment of the receiver to ensure the assets are protected, marketed in an appropriate manner to secure the highest market value and to take reasonable steps to ensure that employees of the Nygård Group are protected.

e) The fact that the applicant has the right to appoint a receiver under the Credit Agreement.

f) The principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly. The evidence satisfies me that the appointment of a receiver is necessary, just and convenient in the circumstances.

g) I also considered the effect of the order on the parties, the conduct of the parties, the length of time that the receiver may be in place, the cost to the parties and the likelihood of maximizing return to the parties. All of these factors favour appointing a receiver in the circumstances. (See *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CanLII 8258, [1996] O.J. No. 5088 (Ont. Gen. Div. [Commercial List]); *Callidus Capital Corp. v. Carcap Inc.*, 2012 ONSC 163, [2012] O.J. No. 62 (Ont. S.C.J. [Commercial List]); *Romspen Investment Corp. v. 6711162 Canada Inc.*, 2014 ONSC 2781, [2014] O.J. No. 2146 (Ont. S.C.J. [Commercial List]); *Textron Financial Canada Ltd. v. Chetwynd Motels Ltd.*, 2010 BCSC 477, [2010] B.C.J. No. 635 (B.C. S.C. [In Chambers]); and *7451190 Manitoba Ltd v. CWB Maxium Financial Inc et al*, 2019 MBCA 95, [2019] M.J. No. 246 (Man. C.A.) (QL))

17 I previously found, as outlined in my reasons for decision given March 13, 2020, that the evidence filed presented a "... strong basis and rationale for the applicant to be concerned about the stability of the Nygård Group and in my view justifies the applicant taking steps to enforce its security and seek immediate repayment of the outstanding indebtedness. The Dean affidavit outlines in considerable detail the breaches of the Credit Agreement. (Exhibit D to Mr. Dean's affidavit) and the reason why the applicant has lost all confidence and faith in the Nygård Group complying with the governing Credit Agreement."

18 Had the Canadian Nygård entities not filed the NOIs, I would have had no hesitation in granting the receivership order last week. As explained in my reasons for decision delivered March 13, 2020:

The proposal provisions of the *BIA* permit insolvent persons to avoid or postpone bankruptcy by complying with the provisions by appointing a proposal trustee and making a proposal to all creditors, including secured creditors. The proposal trustee must review Nygård Group cashflow statements and the proposal for their reasonableness and file reports in court.

The proposal trustee monitors the debtors and must report regarding any material adverse change to creditors without delay after receiving information regarding any changes, which adds transparency to the proposal process.

The proposal trustee is an officer of the court and must impartially represent the interests of creditors. If the proposal trustee knows of dispositions, transfers of property or steps taken by the debtor that are material, the proposal trustee must disclose that information to creditors so that they may take such action as they deem appropriate.

It is necessary for the court to weigh the interests of all creditors in the proposal process and the interests of the primary secured party, the applicant. I am satisfied that it is in the best interests of all of the creditors to permit the respondents to restructure and make a viable proposal to the creditors pursuant to the proposal process.

That said, I am not satisfied that Nygård Group has been dealing with its lenders in good faith and the appropriate action to take is to impose deadlines on the Nygård Group to satisfy the statements made in the Fenske affidavit and made orally by the respondents' counsel in court yesterday.

In my view, it is premature to terminate or lift the 30 day stay period, particularly in light of the representations that the Nygård Group has made to this court. I am not satisfied that there is no viable proposal that can be made by the respondents as submitted by the applicant.

The evidence filed by the respondents suggests that a viable proposal may be made to creditors and to the applicant. While there is evidence that the respondents have not acted in good faith and with due diligence in their dealings with the applicant, I direct that the respondents must continue to comply with the terms and conditions of the credit agreement and ancillary documents pending receipt of the outcome of the negotiations that are presently being undertaken to pay out the indebtedness of the applicant by March 20, 2020.

I am not satisfied that the applicant will be materially prejudiced by the continuing operation of the stay of proceedings, so long as the respondents are making good faith efforts to continue to operate the Nygård Group business in the best interests of all stakeholders, including making arrangements to continue to meet the payroll and pay its employees and taking immediate steps to finalize financing to pay the outstanding indebtedness of the applicant by March 20, 2020.

In the meantime, over the course of the next week, the respondents are ordered and directed to provide RAG ongoing access to financial information by virtue of the inspection rights under the credit agreement. The Nygård Group must not dispose of any assets or transfer shares or transfer funds deposited in the corporate bank accounts to other bank accounts other than in the ordinary course of business without consent of the proposal trustee, the applicant and RAG.

If necessary, the court will make a determination if there is a dispute about a step proposed to be taken by the Nygård Group. In other words, all business of the Nygård Group, including transactions, shall continue in the ordinary course of business and in accordance with the strict terms of the credit agreement.

19 The further evidence that has been filed since March 13, 2020, satisfies me that the Nygård Group has not been acting in good faith and with due diligence. I am also satisfied that the Nygård Group cannot be left as a debtor in possession and the proposal process cannot continue. The second report from the proposal trustee states that the proposal trustee is not in a position to advise that the Nygård Group is acting with good faith or due diligence at this time. Further, the proposal trustee was not provided with sufficient information to assess the draft cash flows provided and is not in a position to file the required report on the reasonableness of the assumptions as required by the *BIA*.

20 As a result of the Nygård Group failing to provide accurate and timely information to the proposal trustee and the Lenders, the proposal proceedings are untenable. Further, the Nygård Group has no plan to continue to fund its operations and no other lender has stepped up to provide the necessary financing to pay out the Lenders.

21 The closure of the retail stores, distribution centres and website without consulting the Lenders and the proposal trustee is a serious concern that directly affects the ability of the Nygård Group to continue to operate and for the applicant to realize on the Collateral.

22 I agree with the applicant that the Nygård Group has provided no information to the Lenders about:

a) What has happened to the employees and specifically how they have been dealt with;

b) How the retail stores are being secured and locked down;

c) How the inventory located in the stores is being dealt with, if at all;

d) What is happening with the Nygård Group wholesale customers; or

e) How the Nygård Group is planning to sell its inventory other than the reference to the Perry Ellis potential offer.

23 It is fundamental for the proposal process to continue that the Nygård Group cooperate with the proposal trustee and that the proposal trustee be in a position to state specifically that the parties subject to the proposal proceeding have been acting in good faith and with due diligence. As noted above, that has not occurred.

24 In addition to the foregoing, the Nygård Group has failed to comply with orders made by this court and undertakings given by their counsel. Specifically, and contrary to their counsel's representations in court on March 12, 2020, the Nygård Group has failed to return the payroll funds to the Nygård Group's bank account and repay the applicant the payroll advance. The explanation provided in the affidavit of Mr. Fenske affirmed March 18, 2020 is inconsistent with what the court was advised on March 12, 2020.

25 The Nygård Group was directed pursuant to orders made by the court on March 12 and 13, 2020, to continue to comply with the Credit Agreement. The unilateral closing of its retail stores, distribution centres and website without consulting with the Lenders or the proposal trustee is in breach of the Credit Agreement and the court order. I also find that it is a material adverse change to the creditors which placed the proposal trustee in the position of not being able to comply with its duties under the *BIA*.

26 I agree with the applicant that in light of the events that have occurred since March 12, 2020, the appointment of Richter was urgently required and Richter was appointed as receiver effective March 18, 2020.

27 Richter is in the best position to assess the reasonableness of the offers to purchase the real estate and make a motion to court with evidence seeking approval. The evidence filed by the Nygård Group is insufficient to assess the reasonableness of the sale of the Toronto Property and the real estate located in Winnipeg. The proposal trustee stated at para. 15 of the second report that it is not in a position to advise the court or stakeholders that the offer respecting the Toronto Property is fair and reasonable.

28 The events that occurred since orders were made on March 12 and 13, 2020, are material developments that have caused or had the potential to cause a material prejudice to the Lenders and to the Nygård Group's business, creditors and stakeholders.

29 The adjournment of the receivership application on March 13, 2020 and allowing the proposal proceedings to continue with the oversight of the proposal trustee was not granting the Nygård Group a licence to operate with impunity. The court's decision on March 13, 2020, was to allow the respondents a limited period of time to make good faith efforts to repay the debt owing to the Lenders and to fully cooperate with the proposal trustee.

30 I am satisfied that the appropriate course of action is to lift the stay of proceedings that was granted pursuant to s. 69(1) of the *BIA*. The court has jurisdiction pursuant to s. 69.4 of the *BIA* to lift the stay in circumstances in which the court is satisfied:

69.4

. . . . .

(a) that the creditor or person is likely to be materially prejudiced by the continued operation of those sections; or

(b) that it is equitable on other grounds to make such a declaration.

31 In my view, both of these requirements have been satisfied in this case. I agree that the Lenders will suffer a material prejudice if the receivership is not granted. While I accept that the shutdown of the retail operations may have been appropriate and necessitated by the COVID-19 virus, the closure of the business, distribution centres and website, without any consultation with the Lenders and the proposal trustee is prejudicial. The proposal trustee and the Lenders require the ability to oversee the preservation of the Collateral including the inventory and to maintain continuity with employees. The notice sent out by the Nygård Group was inappropriate, referring to unrelated matters and alleging misrepresentations regarding the actions of the Lenders. Regrettably, the notice sent to employees and customers did not achieve certainty regarding the Nygård Group business operations at this difficult time during the COVID-19 pandemic. Instead, it blamed others for the financial difficulties and caused greater uncertainty and instability in the Nygård Group business operations.

32 Acting in good faith and with due diligence is required for a debtor to remain in possession and to seek the protection of the *BIA* under the proposal process. The lack of good faith by the Nygård Group together with its failure to comply with the previous court orders, satisfies me that the stay must be lifted and the receiver must be appointed to take control of the respondents' business and provide experienced and effective oversight. This is not only in the interests of the Lenders, but it is in the interests of all stakeholders.

33 While the court has the authority pursuant to s. 50.4(11) of the *BIA* to terminate the 30-day period on the basis that the criteria set forth in that sub-section has been met, I agree that terminating the 30-day period is not what is required at this time.

34 Once Richter takes control of the assets and the business, Richter will be able to assess the respondents' business and make a recommendation to the court and the other stakeholders. The applicant requested that the court order the proposal proceedings commenced by the NOIs be stayed until further order of the court. That order was granted on March 18, 2020.

35 A similar approach was taken by the Ontario Superior court in *Dondeb Inc., Re*, 2012 ONSC 6087, [2012] O.J. No. 5853 (Ont. S.C.J. [Commercial List]) and, in my view, that approach is equally applicable in this case.

Conclusion

36 The court grants a stay of the proposal proceedings commenced by the NOIs until further order of the court. The court also grants a receivership order appointing Richter as the receiver in accordance with a draft order that was reviewed in court on March 18, 2020.

37 Richter will be funded by the Lenders in accordance with the term sheet attached as Schedule B to the receivership order and will be subject to the oversight and jurisdiction of this court.

Application granted.

End of Document

Tab 5

2024 ONSC 5153
Ontario Superior Court of Justice [Commercial List]

In the Matter of a Plan of Compromise or Arrangement of 2039882 Ontario Limited o/a Shelter Cove

2024 CarswellOnt 14145, 2024 ONSC 5153

IN THE MATTER OF COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 2039882 ONTARIO LIMITED o/a SHELTER COVE

2039882 Ontario Limited (Applicant)

Peter J. Osborne J.

Heard: July 19, 2024
Judgment: July 19, 2024
Docket: CV-24-00713069-00CL

Counsel: Jessica Wuthmann, Sharon Kour, for Applicant
Domenico Magisano, S. Jones, for KHL Investments USA Inc.
R. Graham Phoenix, for Northpoint Commercial Finance Canada Inc.
Patrick Corney, for Envirosearch
Haddon Murray, for Basic Holdings Limited
Kristi M. Ross, Adrienne Ho, for Proposed Receivere
Michael Shakra, for Monitor, PwC
David Filice — Proposed Receiver

Subject: Insolvency

MOTION to appoint receiver.

***Peter J. Osborne J.*:**

ENDORSEMENT

1 KHL Investments USA, Inc. ("KHL") seeks an order appointing The Fuller Landau Group Inc. as Receiver without security over the Property of the Company and real property at 38 Cheapside Rd., Selkirk, ON. KHL is both the senior secured lender, and the DIP Lender.

2 The Company operates as Shelter Cove and owns and operates a land lease community in Selkirk consisting of 389 lots, of which approximately 160 have been serviced and leased to the Residents who have purchased modular homes installed on the lots. Many of those Residents are present in Court today and I recognize the importance of these matters to them and their community.

3 KHL relies upon the affidavit of Martin Brodigan sworn July 17, 2024, together with exhibits thereto, as well as the Pre-Filing Report of the Proposed Receiver dated July 18, 2024.

4 The Company relies on the affidavit of Mario Bevacqua sworn July 18, 2024 together with exhibits thereto. As confirmed at the hearing of this motion by counsel to the Company, the Company takes no position on the relief sought by KHL and

counsel advise that they are not instructed to consent or oppose in the circumstances. Mr. Bevacqua is the sole director and officer of the Company.

5 However, both Mr. Bevacqua and Mr. Barry Racippo were present in Court and advised that they, and each of them, in their respective personal capacities, were requesting an adjournment of the motion in order that they could have additional time to consider their positions. They filed an affidavit from Derek McNamara sworn July 17, 2024. Mr. McNamara, a retired barrister and solicitor (permission to resign granted by the Law Society) is a financial consultant. Messrs. Bevacqua and Ricippo are guarantors of the indebtedness owed by the Company to KHL. KHL opposes the request for an adjournment, as does the Monitor.

6 In addition, Northpoint Commercial Finance Canada Inc. ("Northpoint") brings a motion for an order lifting the stay of proceedings for the purpose of permitting Northpoint to access and repossess four prefabricated modular home units in the possession of the Company and on-site but currently unused, unserviced and unoccupied. No party opposes the relief sought by Northpoint.

7 The Court-appointed Monitor has also filed the Fifth Report dated July 18, 2024. In the circumstances, the Monitor supports the relief sought by KHL.

8 Defined terms in this Endorsement have the meaning given to them in the motion materials and/or the Fifth Report of the Monitor, and/or the Pre-Filing Report of the Proposed Receiver.

9 Having heard from all affected parties, I declined the request for an adjournment and granted the relief sought by KHL and Northpoint. In my view, and in the particular if somewhat unique circumstances of this case, there was little practical alternative.

10 The Company sought and was granted protection under the *CCAA* on January 18, 2024. The Court subsequently approved a SISP. Unfortunately, the SISP did not yield any Qualified Bid, and while the Company continued to market the Property for sale, it has not received any bid that, according to the Monitor, is capable of closing.

11 The Company and therefore the Shelter Cove community, does not receive municipal services with the result that it owns a sewage treatment plant and a water treatment plant operated by Envirosearch. The evidence is to the effect that both plants are in a state of disrepair. In fact, presently the Company is trucking in potable water for residents and trucking out raw sewage.

12 The simple yet fundamental reality is that the current stay of proceedings expires today. I observe that there is no motion before me for an extension of that stay. The Company submits candidly that in the circumstances, it is not in a position to seek an extension of the stay or indeed a continuation of the CCAA proceedings.

13 Moreover, the DIP Facility expires in one week and the DIP Lender has confirmed that it is not prepared to extend the DIP Facility. I pause to observe that the DIP Facility is largely drawn down in any event. All of this yields the practical result that there is no funding available to continue operations of the Company or a restructuring proceeding. There is no Plan of Arrangement, nor is there even any germ of a plan.

14 In my view, an adjournment of this matter would not be in the interests of the residents of the community generally. There is no funding to continue operations, even for a short period of time. Adjourning the motion for the appointment of a receiver, in circumstances where the current stay of proceedings under the *CCAA* expires and there is no available DIP financing, would lead to chaos, the possibility of multiple proceedings, and complete disruption to the lives and homes of the residents.

15 Moreover, KHL confirms that no relief is being sought today, and indeed, none is granted, as against the guarantors in their respective capacities as such.

16 Accordingly, and weighing all of the factors, I denied the adjournment request.

17 For many of the same reasons as described above, I granted the receivership.

18 The parties appeared on July 3, 2024 at a case conference on which date I scheduled the return of this motion for today, which KHL indicated it would be bringing.

19 As noted above, the SISP did not yield a Qualified Bid, with the result that KHL was authorized to complete the transaction contemplated by its own credit bid. The indebtedness of the Company to KHL has been in default since July, 2023. Subsequent negotiations about a forbearance agreement were not successful.

20 One of the reasons for allowing that period of approximately two weeks for the hearing of this motion was that on July 3, 2024, the Company was in negotiations with MILP, and the Company was optimistic that it might be able to complete negotiations, such that MILP could provide a viable offer. That did not occur, and on July 15, 2024, counsel for the Company advised that MILP had withdrawn its offer.

21 Accordingly, KHL seeks the appointment of the Receiver today.

22 The test for the appointment of a receiver pursuant to section 243 of the *BIA* or section 101 of the *CJA* is not in dispute. Is it just or convenient to do so?

23 In making a determination about whether it is, in the circumstances of a particular case, just or convenient to appoint a receiver, 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. These include the rights of the secured creditor pursuant to its security: *Bank of Nova Scotia v. Freure Village on the Clair Creek,*1996 O.J. No. 5088, 1996 CanLII 8258 ("*Freure Village*").

24 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: *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 at para. 27. However, the presence or lack of such a contractual entitlement is not determinative of the issue.

25 As set out in *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited* 2022 ONSC 6186, the Supreme Court of British Columbia, citing Bennett on Receivership, 2nd ed. (Toronto, Carswell, 1999) listed numerous factors which have been historically taken into account in the determination of whether it is appropriate to appoint a receiver and with which I agree: *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para. 25):

> a. whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;
>
> b. the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;
>
> c. the nature of the property;
>
> d. the apprehended or actual waste of the debtor's assets;
>
> e. the preservation and protection of the property pending judicial resolution;
>
> f. the balance of convenience to the parties;
>
> g. the fact that the creditor has a right to appointment under the loan documentation;
>
> h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;

i. the principle that the appointment of a receiver should be granted cautiously;

j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;

k. the effect of the order upon the parties;

l. the conduct of the parties;

m. the length of time that a receiver may be in place;

n. the cost to the parties;

o. the likelihood of maximizing return to the parties; and

p. the goal of facilitating the duties of the receiver.

26 How are these factors to be applied? The British Columbia Supreme Court put it, I think, correctly: "these factors are not a checklist but a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient: *Pandion Mine Finance Fund LP v. Otso Gold Corp.*, 2022 BCSC 136 at para. 54).

27 It is not essential that the moving party establish, prior to the appointment of a receiver, that it will suffer irreparable harm or that the situation is urgent. However, where the evidence respecting the conduct of the debtor suggests that a creditor's attempts to privately enforce its security will be delayed or otherwise fail, a court-appointed receiver may be warranted: *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007 at paras. 24, 28-29. See also *Freure Village* at para. 10.

28 Where the conduct of the debtor has led directly to a receivership application, the Court should place limited to no weight on objections from the debtor as to whether a receivership is the best remedy for the secured creditor: *GE Commercial Distribution Finance Canada v. Sandy Cove Marine Co.,*2011 ONSC 3851 at para. 23.

29 Accordingly, is it just or convenient to appoint a receiver in the particular circumstances of this case?

30 In my view, it is.

31 The security granted by the Company to KHL in this case expressly provides that upon default, KHL is entitled to appoint a receiver.

32 The Monitor has confirmed that it will be seeking a termination of the CCAA Proceeding and a discharge of the Monitor, in the very near future following a brief period to facilitate a transition to a receivership, which, as noted above, the Monitor does not oppose.

33 Courts have terminated CCAA proceedings and appointed receivers where the CCAA proceeding will not result in a restructuring that in turn will yield a beneficial outcome to both the debtor and creditors, and where the creditors have lost faith in the ability of the debtor to run its business, as is the case here: *Canadian Imperial Bank of Commerce v. Community Pork Ventures Inc.,*2005 SKQB 294 and *General Electric Capital Canada Inc. v. Euro United Corp.*1999 CanLII 14848ONSC.

34 The overall intent of KHL is to complete a credit bid with the Receiver as soon as practicable, having lost faith in the current management of the Debtor.

35 Of paramount importance is the continuation of services to the residents, which involve on an interim basis the trucking in of water and the trucking out of sewage, and the repairs to the treatment plants which are ongoing, with the support of Envirosearch (indeed, repairs will be made this weekend, with funding from KHL and work by Envirosearch).

36 Regrettably, the *CCAA* has not yielded a long-term solution to the water and sewage treatment issues, and nor has a suitable buyer capable and funded to close the transaction been identified. I am satisfied for these reasons, together with the immediate imperative of the expiry of the stay of proceedings and the lack of DIP financing, that it is not only just *or* convenient, but just *and* convenient that a Receiver be appointed.

37 The Fuller Landau Group is qualified to act as a Receiver, has no disqualifying conflict of interest and has confirmed its consent to act in such a capacity.

38 The appointment will stabilize the community and address the issues noted above, while providing funding as necessary for receiver certificates with a view to completing the KHL agreement of purchase and sale.

39 The draft receivership order is consistent with the Model Order of the Commercial List. While not determinative of the issue, that is of assistance to me in concluding, having reviewed all of the evidence in the record, that the terms and scope of the proposed receivership are appropriate.

40 I have also advised the Receiver that the Court expects it to maintain excellent communications and dialogue with the residents to keep them apprised of what is occurring with respect to their community.

41 The relief sought by Northpoint is unopposed. While the repossession of the four modular home units represents in practical terms, execution, there is no opposition, the units are unserviced and unoccupied, and are simply physically sitting on the site unused. Northpoint recognizes its obligation to report back to the Receiver with respect to the units and any proceeds thereof, and will fulfil that obligation.

42 For all of these reasons, I have signed the receivership order and the Northpoint order, both of which are effective immediately and without the necessity of issuing and entering.

Motion granted.

End of Document

Tab 6

2023 ONSC 3292
Ontario Superior Court of Justice [Commercial List]

Royal Bank of Canada v. 1731861 Ontario Inc.

2023 CarswellOnt 8104, 2023 ONSC 3292, 17 P.P.S.A.C. (4th) 25, 2023 A.C.W.S. 2152

ROYAL BANK OF CANADA (Plaintiff) and 1731861 ONTARIO INC. operating as Plasticap (Defendant)

Osborne J.

Heard: May 23, 2023
Judgment: May 23, 2023
Docket: CV-22-00691955-00CL

Counsel: Rachel Moses, for Plaintiff
Peter J. Gossmann, Thomas Frank Lato, for Defendant

Subject: Civil Practice and Procedure; Corporate and Commercial; Insolvency

MOTION by plaintiff bank seeking appointment of receiver in respect of defendant company.

***Osborne J.*:**

1 RBC seeks the appointment of msi Spergel inc. as Receiver over the assets and undertakings and property of 1731861 Ontario Inc., operating as Plasticap, (the "Company") and all other property, assets and undertakings related thereto, all pursuant to section 243 of the BIA and section 101 of the CJA.

2 Defined terms in this endorsement have the meaning given to them in the motion materials, including the motion record dated December 21, 2022 and the supplementary motion record dated March 22, 2023.

3 The underlying facts are not contested by the Defendants, although they submit that it is not just or convenient to appoint a receiver, at least today.

4 RBC relies upon the Affidavit of Jan Oros sworn December 21, 2022 together with exhibits thereto, as well as the Supplementary Affidavit of Jan Oros sworn March 22, 2023 and exhibits thereto.

5 The Defendants have filed no affidavit evidence, although their counsel has submitted in connection with this motion an aide memoire outlining their position.

6 The Company is indebted to RBC pursuant to an Operating Facility and a Visa Facility, in turn made available pursuant to a credit facilities letter agreement dated December 31, 2020, and amended February 9, 2022. The Facilities are repayable on demand. The Company has failed to comply with its reporting obligations pursuant to the terms of the Facilities.

7 RBC issued written notice of default on October 3, 2022 and required the Company to remedy the default by October 15 which was not done. A second default letter was issued on November 8, 2022. It stated that, among other things, the Company had failed to provide the monthly borrowing limit certificate, monthly reporting of accounts receivable, accounts payable and inventory, and required defaults by November 15, 2022. The defaults were not remedied by that date.

8 The evidence reflects that RBC had been requesting since at least August, 2022 that the Company comply with its reporting requirements which, as noted above, it has failed to do.

9 RBC arrange to meet with the principals of the Company on November 17, 2022 at which meeting numerous documents were requested and agreed to be produced (see paragraphs 35 and 36 of the first Oros Affidavit).

10 RBC therefore made formal written repayment demand and issued section 244 BIA notices on November 28, 2022.

11 RBC is owed in excess of $1.3 million.

12 The Company consented to the appointment of a receiver in the event of default as set out in section 13 of the General Security Agreement.

13 RBC is the only secured creditor according to its PPSA search.

14 RBC commenced this action, and the motion for a receiver was first returnable on January 19, 2023. On the consent of the parties, the Endorsement of Justice Wilton-Siegel made that day adjourned the motion to today's date on the terms and conditions set out in Schedule A to the Endorsement.

15 Those terms and conditions include payments to be made on an agreed schedule to reduce the indebtedness on sequential dates, with all indebtedness, together with legal fees and costs, to be repaid in full by May 19, 2023. By the same date, the Debtor agreed to provide RBC with evidence to the effect that all obligations to the CRA for HST and source deductions were current as of the date of pay out, being May 19, 2023.

16 The company and its principals, being the individual Defendants, formally consented to the receivership order which was to be held in escrow and enforce by RBC only in the event that the Company defaulted in its obligations.

17 The individual Defendants also consented to judgment on their personal guarantees, similarly to be held in escrow and only enforced upon default.

18 The judgement and receivership order were attached to and part of Schedule A to the Endorsement of Justice Wilton-Siegel.

19 The periodic payments in partial reduction of the indebtedness were made, albeit late.

20 The final payment, again payment of the full balance owing by May 19, has not been made at all, with the result that today, over $1.7 million remains owing to RBC. The failure to make that payment is acknowledged by the Defendants.

21 Accordingly, RBC requests the appointment of the Receiver.

22 As noted above, the Defendants have filed no affidavit or other evidence but rather have submitted an aide memoire "for the purpose of seeking an extension to make payment to the Plaintiffs" (see para 1).

23 The Defendants request the extension on the basis that they have entered into a Term Sheet with an investor, attached to the aide memoire, and they submit that RBC will be paid in full on closing of the investment contemplated in that term sheet, and that RBC is further protected by the personal guarantees of the principals (the individual Defendants) which they acknowledge and to which judgement was consented in the event of default as reflected in the Endorsement of Justice Wilton-Siegel referred to above. As a result, the Defendants submit that they are "on the verge of securing additional financing".

24 I have reviewed the term sheet, notwithstanding, as noted, that it is not filed pursuant to any sworn affidavit. It is dated March 14, 2022 and, on its face, contemplates that the investor "should be in a position to close this transaction with you." (i.e., closing by April, 2022).

25 There is no evidence before me as to why, in the 14 months since the term sheet was entered into, it has not closed by April, 2022 as was anticipated, or at all.

26 Moreover, Schedule A to the term sheet sets out the conditions of closing which are extensive and material. They include completion of satisfactory due diligence of the Company and its legal affairs, the execution of definitive documents, including disclosure schedules, representations and warranties in a form and substance satisfactory to the investor, employment or consulting agreements, the absence of any material change in the business of the Company, the execution of a shareholder agreement and other terms.

27 There is no evidence before me from the Defendants as to the status of any of these conditions, or indeed at all.

28 Finally, the aide memoire also includes a letter from a solicitor dated May 19, 2023 confirming that a newly incorporated numbered company has been incorporated for the purpose of purchasing 10% of the Company for an agreed amount, and that $100,000 from the proceeds will be available to pay RBC on or before June 9, 2023. There are no other particulars, and that amount of $100,000 is a very small proportion of the total indebtedness.

29 The test for the appointment of a receiver pursuant to section 243 of the BIA or section 101 of the CJA is not in dispute. Is it just or convenient to do so?

30 In making a determination about whether it is, in the circumstances of a particular case, just or convenient to appoint a receiver, 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. These include the rights of the secured creditor pursuant to its security: *Bank of Nova Scotia v. Freure Village on the Clair Creek* 1996 O.J. No. 5088, 1996 CanLII 8258.

31 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: *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.,*2013 ONSC 6866 at para. 27. However, the presence or lack of such a contractual entitlement is not determinative of the issue.

32 Accordingly, is it just or convenient to appoint a receiver in the particular circumstances of this case?

33 In my view, it is, in the circumstances before me and given, in particular:

a. the complete lack of any sworn affidavit evidence from any of the Defendants;

b. the consent to the appointment of a receiver in the event of default pursuant to the original GSA;

c. the consent to the appointment of a receiver and the consent to judgment expressly agreed to by the Defendants as terms of the adjournment and included in the Endorsement of Justice Wilton-Siegel in January, 2023;

d. the breach of those terms and in particular the failure to repay; and

e. the absence of any evidence demonstrating to me that there is any reasonable certainty of the ability to repay in the near future or at all.

34 msi Spergel inc. consents to act as Receiver and is appropriate.

35 Order and judgment to go in the form signed by me today, given the consent of the parties as reflected in the Endorsement of Justice Wilton-Siegel and the reasons set out above.

Motion granted.

End of Document

Tab 7

1992 CarswellOnt 474
Ontario Court of Justice (General Division), Commercial List

Confederation Trust Co. v. Dentbram Developments Ltd.

1992 CarswellOnt 474, [1992] O.J. No. 3870, 9 C.P.C. (3d) 399

CONFEDERATION TRUST COMPANY v. DENTBRAM DEVELOPMENTS LTD., AMNON ALTSCHULER GORDON COBB, OAKBRUM INVESTMENTS LIMITED and THE TORONTO-DOMINION BANK

Borins J.

Judgment: April 24, 1992
Docket: Doc. 92-CQ-8560CM

Counsel: *Michael McGowan* and *Kevin J. Zych*, for plaintiff.
Harvey M. Mandel, for defendants Dentbram Developments Ltd. and Amnon Altschuler.
Theodore Nemetz, for defendant Gordon Cobb.

Subject: Civil Practice and Procedure; Corporate and Commercial

Motion for appointment of receiver.

***Borins J.*:**

1 I appreciate that the appointment of a receiver is a discretionary remedy and that the court ought not lightly to exercise it discretion to appoint a receiver. However, on the evidence before me, I am satisfied that it is just and equitable that a receiver be appointed. The plaintiff has demonstrated that its right under the mortgage to take steps to preserve the property and to obtain the benefits of the property in the realization of its debt have proved to be ineffective. As well, in consideration what is fair and equitable, I have taken into consideration that the mortgage contract contains an express covenant in which the mortgagee agrees to the appointment of a receiver in the event of default, and default has, of course, occurred. I my view, the appointment of a receiver is required, inter alia, for the reasons contained in para. 20 of the plaintiff's original factum.

2 The mortgagor has not provided any evidence why Price Waterhouse, the receiver proposed by the by the plaintiff, should not be appointed. I am satisfied that Price Waterhouse is impartial, disinterested and able to deal with the rights of all interested parties in a fair manner. When receivers proposed by each party possess similar qualities, generally speaking he receiver proposed by the creditor, who has carriage of the proceedings, should be appointed.

3 In he result, a order is to issue pursuant to the order as amended contained in Sched. "A" to the notice of motion which I have placed my fiat.

Motion granted.

Tab 8

SCHEDULE "B"

File No. [~~_____~~]CI 25-01

THE ~~QUEEN'S~~KING'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~~

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 KING'S BENCH ACT*, C.C.S.M. c. C280

BETWEEN:

~~[APPLICANT'S NAME]~~

DAIMLER TRUCK FINANCIAL SERVICES CANADA CORPORATION,

Applicant,

-and-

~~[RESPONDENT'S NAME]~~

~~Respondent.~~

GURU PEER TRANSPORT INC. and PLUTO TRANSPORT INC.,

Respondents.

ORDER
(Appointing Receiver)

~~[FIRM NAME, ADDRESS, LAWYER'S NAME, TELEPHONE #]~~

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~~THE QUEEN'S BENCH~~
~~Winnipeg Centre~~

DENTONS CANADA LLP 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1 **ELAINE GRAY / SARA-ANN WILSON** Telephone: 416-863-4775 / 416-863-4402 ~~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~~**MLT AIKINS LLP** Barristers and Solicitors 30th Floor – 360 Main Street Winnipeg, MB R3G 4G1 **J.J. BURNELL / ANJALI SANDHU / BRANDON GRAY** Telephone: (204) 957-4663 / (204) 957-4760 / (204) 957-4484 Facsimile: (204) 957-0840 File No. 0004668.00693

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THE KING'S BENCH
Winnipeg Centre

IN THE MATTER OF: ~~THE HONOURABLE JUSTICE~~	)))	~~WEEKDAY, THE #~~ ~~DAY OF MONTH, 20YR~~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 KING'S BENCH ACT*, C.C.S.M. c. C280
THE HONOURABLE MR. JUSTICE CHARTIER	)))	FRIDAY, THE 19th DAY OF DECEMBER, 2025

BETWEEN:

~~[APPLICANT'S NAME]~~

DAIMLER TRUCK FINANCIAL SERVICES CANADA CORPORATION,

Applicant,

- and ~~-~~

~~[RESPONDENT'S NAME]~~

~~Respondent.~~

[1]**GURU PEER TRANSPORT INC. and PLUTO TRANSPORT INC.,**

Respondents.

ORDER
(~~appointing~~Appointing Receiver)

THIS APPLICATION made by the Applicant[2] 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 55(1) of *The Court of King's Bench Act*, C.C.S.M. c. C280 (the **"KB Act"**) appointing ~~[RECEIVER'S NAME]~~Deloitte Restructuring Inc. as receiver ~~[and manager]~~ (in such ~~capacities~~capacity, the "~~"~~**Receiver**~~")~~") without security, of ~~all of the assets, undertakings~~certain property of the respective property of Guru Peer Transport Inc. (**"Guru Peer"**) and ~~properties of~~

~~[1] A receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an application.~~
~~[2] Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".~~

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~~[DEBTOR'S NAME] (the "Debtor") acquired for, or used in relation to a business carried on by~~Pluto Transport Inc. (**"Pluto"** and together with Guru Peer, the ~~Debtor,~~**"Debtors"**), was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

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ON READING the affidavit of ~~[NAME]~~Mohammad Abu-Qube sworn ~~[DATE]~~December 14, 2025 (the **"Abu-Qube Affidavit"**), the affidavit of Jenn Kehler sworn December ____, 2025 and on hearing the submissions of counsel for ~~[NAMES],~~the Applicant, no one appearing for ~~[NAME][3]~~any other person, although duly served as appears from the affidavit of service of ~~[NAME]~~Brittany Chapdelaine sworn ~~[DATE]~~December ____, 2025 and on reading the consent of ~~[RECEIVER'S NAME]~~Deloitte Restructuring Inc. (**"Deloitte"**) to act as the Receiver,

SERVICE

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1. **THIS COURT ORDERS** that the time for service of the Notice of Application is hereby abridged and validated[4] so that this Application is properly returnable today and hereby dispenses with further service thereof.[5]

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APPOINTMENT

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2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA, ~~[RECEIVER'S NAME]~~ and section 55(1) of the KB Act, Deloitte is hereby appointed Receiver, without security, ~~of all~~over the respective property of the ~~assets, undertakings and properties~~Debtors subject to the security interest of the ~~Debtor acquired for, or used~~Applicant under the Conditional Sale Contracts (as defined in ~~relation to a business carried on by the Debtor, including~~ the Abu-Qube Affidavit) and all proceeds thereof ~~(the "~~, including but not limited to the equipment (the "**Equipment**") listed in Schedule "A" hereto (collectively, the "**Property**~~").~~[6]").

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~~[3] Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, BIA Section 243(6).~~

~~[4] If service is effected in a manner other than as authorized by the Manitoba *Court of Queen's Bench Rules*, an order validating irregular service is required pursuant to Rule 16.08 of the *Court of Queen's bench Rules* and may be granted in appropriate circumstances.~~

~~[5] Where a party is located outside of Manitoba consider service issues, including whether service pursuant to the Hague Service Convention is required.~~

~~[6] Court-appointed receivers may be appointed pursuant to any number of statutes. If this Order is made pursuant to additional statutes and an appeal is brought pursuant to this Order, counsel should consider the applicable appeal period.~~

RECEIVER'S POWERS

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3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property 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:[7]

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(a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

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(b) to enter upon lands owned and/or controlled by Debtors, or either one of them, or any lessor of the Debtors, or either one of them, where the Property is located (the **"Lands"**);

(c) to occupy the Lands and permit others to also enter upon the Lands for the purposes of: (i) taking possession of the Property; (ii) securing the Property; (iii) inspecting and/or appraising the Property; and/or (iv) removing the Property;

~~(b)~~(d) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of the Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

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~~(c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;~~

~~(d)~~(e) 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

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~~[7] Counsel should consider whether all of the powers sought in Paragraph 3 are appropriate on an initial basis, particularly if the application is brought without notice. Counsel should also consider whether there is sufficient evidence for granting such powers on an initial basis. If not proceeding under the BIA counsel should consider whether all of the powers granted under Paragraph 3 may be ordered.~~

~~Receiver's~~Receiver's powers and duties, including without limitation those conferred by this Order;

~~(e)~~(f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to ~~continue the business of the Debtor or any part or parts thereof~~assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

~~(f)~~(g) to receive and collect all monies and accounts now owed or hereafter owing to the ~~Debtor~~Debtors, or either one of them, in respect of the Property and to exercise all remedies of the ~~Debtor~~Debtors, or either one of them, in collecting such monies, including, without limitation, to enforce any security held by the ~~Debtor~~Debtors, or either one of them;

~~(g)~~(h) to settle, extend or compromise any indebtedness owing to the ~~Debtor~~Debtors, or either one of them, in respect of the Property;

~~(h)~~(i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the ~~Receiver's~~Receiver's name or in the name and on behalf of the ~~Debtor~~Debtors, or either one of them, for any purpose pursuant to this Order;

~~(i) to undertake environmental or workplace safety and health assessments of the Property and operations of the Debtor;~~

(j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the ~~Debtor, the~~ Property or the Receiver, and to settle or compromise any such proceedings.[8] The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

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~~[8] This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

(k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(l) subject to paragraph 3(m) below, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding ~~$_____,~~$500,000, provided that the aggregate consideration for all such transactions does not exceed ~~$_____;~~$1,000,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 59(10) of *The ~~Personal Property~~ Security Act* (Manitoba~~), [~~) or ~~section 134(1) of *The Real Property Act* (Manitoba), as the case may be,~~][9]similar provincial legislation shall not be required.~~;~~

(m) notwithstanding paragraph 3(l) above, to sell any of the Property (such Property hereinafter referred to as the **"Purchased Assets"**), without further approval of this Court, pursuant to one or more transactions (each a "**Sale Transaction**") by way of public auction or auctions (the **"Auction"**) to a purchaser or purchasers (the **"Purchaser"**) on the terms and conditions set out below in paragraph 4;

~~(m)~~(n) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

~~(n)~~(o) 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 Property and the

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~~[9] If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Manitoba Court has the jurisdiction to grant such an exemption.~~

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

~~(o)~~(p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

~~(p)~~(q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, whether in the name of the ~~Debtor~~Receiver, or in the name and on behalf of the Debtors, or either one of them;

~~(q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;~~

(r) to exercise any shareholder, partnership, joint venture or other rights in respect of the Property which the ~~Debtor~~Debtors, or either one of them, may have; and

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

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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~~Debtors, or either one of them, and without interference from any other Person.

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SALE OF PROPERTY AT AUCTION

4. **THIS COURT ORDERS** that the Receiver is authorized to enter into agreements with Ritchie Bros. Auctioneers (Canada) Ltd., or such other auctioneer as may be approved by the Applicant, for the sale of one or more of the Purchased Assets at Auction, and take such steps and execute such additional documents as may be necessary or desirable for the sale of the Purchased Assets at Auction and the conveyance of the Purchased Assets to respective purchasers.

5. **THIS COURT ORDERS AND DECLARES** that upon the completion of the sale of one or more of the Purchased Assets at Auction, upon receipt by the auctioneer of the purchase price and delivery of a bill of sale or similar evidence of purchase and sale (the "**Bill of Sale**"), and upon the filing of a certificate with this Court substantially in the form annexed as **Schedule "C"** (the **"Receiver's Auction Certificate"**) hereto, all of the Debtors' and Receiver's right, title and interest in and to the Purchased Assets described therein shall vest absolutely in the respective Purchaser, free and clear of any and all security interests (whether contractual, statutory or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens, executions, levies, charges or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, (the **"Claims"**) including, without limiting the generality of the foregoing: (i) all Charges created by this Order; and (ii) all charges, security interests or claims evidenced by registrations pursuant to *The Personal Property Security Act* (Manitoba) ("**PPSA**") or any other personal property registry system; and (iii) *The Garage Keepers Act* (Manitoba) (**"GKA"**), or any other personal property registry system or similar provincial legislation (all of which are collectively referred to as the "**Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to such Purchased Assets sold at auction are hereby expunged and discharged as against such Purchased Assets upon the filing of the Receiver's Certificate.

6. **THIS COURT ORDERS** that, upon the completion of the sale of one or more Purchased Assets at Auction, the Receiver is authorized to execute discharges or other documentation necessary or desirable to discharge all PPSA, GKA or other registrations against the Purchased Assets and to execute all documentation necessary to transfer ownership of the Purchased Assets and this Court hereby authorizes the Ministry of Transportation and Infrastructure, Manitoba and The Manitoba Public Insurance Corporation and any analogous governmental authority to endorse, certify and/or issue such documents and take such further actions as are necessary to give effect to this paragraph.

7. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets sold at Auction shall stand in the place and stead of the Purchased Assets sold at Auction, and that from and after the filing of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets sold at auction and described in such Bill of Sale with the same priority as they had with respect to such Purchased Assets immediately prior to their sale at Auction, as

if such Purchased Assets had not been sold at Auction and remained in the possession or control of the person having that possession or control immediately prior to their sale at Auction.

8. **THIS COURT ORDERS** that notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of the Debtors, or either one of them, and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Debtors, or either one of them,;

the vesting of each of the Purchased Assets in its respective purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors, or either one of them, and shall not be void or voidable by the respective creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

~~4.~~9. **THIS COURT ORDERS** that (i) the ~~Debtor~~Debtors, (ii) all of ~~its~~their respective 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 any Property in such ~~Person's~~Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the ~~Receiver's request.~~ Receiver's request, notwithstanding any possessory lien; and without limiting the foregoing Manpreet Singh Sran shall forthwith after the pronouncement of this Order provide the Receiver with:

(a) the location of the Property including the Equipment; and

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(b) information as to the insurance on the Property, including policy details, the names of the insurer(s) and copies of all certificates of insurance.

~~5.~~10. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the ~~business or affairs of the Debtor~~Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the ~~"~~"**Records**~~")~~") in that ~~Person's~~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~~10 or in paragraph ~~6~~11 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.

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~~6.~~11. **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.

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12. ~~THIS~~ **THIS COURT ORDERS** that, upon receiving a request by the Receiver, Ministry of Transportation and Infrastructure, Manitoba, and The Manitoba Public Insurance Corporation and/or any other government department, ministry or agency responsible for vehicle registration in any other Province or Territory of Canada, are hereby authorized to provide the Receiver with details relating to any transfer of ownership of any of the Property, including, without limitation,

the identities of the parties to the transfer, the consideration paid and any other details reasonably incidental thereto.

NOTICE TO LANDLORDS

~~7.~~13. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

~~9.~~14. **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~~DEBTORS OR THE PROPERTY

~~10.~~15. **THIS COURT ORDERS** that no Proceeding against or in respect of ~~the Debtor or~~ 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 provided; however, that nothing in this Order shall (a) stay the within Application or any guarantee action commenced by the Applicant in respect of the indebtedness owing by the Debtors, or either one of them, to the Applicant, or (b) affect a Regulatory ~~Body's~~Body's investigation in respect of the ~~Debtor~~Debtors, or either one of them, or an action, suit or proceeding that is taken in respect of the ~~Debtor~~Debtors, or either one of them, by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body of the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province.

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NO EXERCISE OF RIGHTS OR REMEDIES

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~~11.~~16. **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~~Debtors, or either one of them, to carry on any business which the ~~Debtor~~Debtors, or either one of them, is not lawfully entitled to carry on, (ii) exempt the Receiver or the ~~Debtor~~Debtors, or either one of them, 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.

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NO INTERFERENCE WITH THE RECEIVER

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~~12.~~17. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the ~~Debtor~~Debtors, or either one of them, in respect of the Property, without written consent of the Receiver or leave of this Court.

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CONTINUATION OF SERVICES

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~~13.~~18. **THIS COURT ORDERS** that all Persons having oral or written agreements with the ~~Debtor~~Debtors, or either one of them, in respect of the Property or statutory or regulatory mandates for the supply of goods and/or services in respect of the Property, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the ~~Debtor~~Debtors, or either one of them, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, ~~and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names,~~ provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with the respective normal payment practices of the ~~Debtor~~Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

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RECEIVER TO HOLD FUNDS

~~14.~~19. **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 sale of all or any of the Property and the collection of any accounts receivable in whole or in part, 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.

EMPLOYEES

~~15.~~20. ~~THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The~~**THIS COURT ORDERS** 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 or under the *Wage Earner Protection Program Act*.

~~**PIPEDA**~~

~~16. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all~~

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~~other personal information to the Receiver, or ensure that all other personal information is destroyed.~~

LIMITATION ON ENVIRONMENTAL LIABILITIES

~~17.~~21. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, ~~"~~"**Possession**~~")~~") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, *The Environment Act* (Manitoba), *The Water Resources Conservation Act* (Manitoba), *The Contaminated Sites Remediation Act* (Manitoba), *The Dangerous Goods Handling and Transportation Act* (Manitoba), *The Public Health Act* (Manitoba) or *The Workplace Safety and Health Act* (Manitoba), and regulations thereunder (the ~~"~~"**Environmental Legislation**~~"),~~"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the ~~Receiver's~~Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

~~18.~~22. **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~~RECEIVER'S ACCOUNTS

~~19.~~23. **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**~~"**Receiver's**

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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~~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.[~~10~~]

~~20.~~24. **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 this Court, but nothing herein shall fetter this Court's discretion to refer such matters to a Master of this Honourable Court.

~~21.~~25. **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

~~22.~~26. **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 ~~$~~$500,000 (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~~"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.

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~~[10] Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

~~23.~~27. **THIS COURT ORDERS** that neither the ~~Receiver's~~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.

~~24.~~28. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule ~~"A"~~"B"** hereto (the ~~"~~**Receiver's Borrowing Certificates**~~")~~") for any amount borrowed by it pursuant to this Order.

~~25.~~29. **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 Borrowing 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~~Receiver's Borrowing Certificates.

SERVICE AND NOTICE

~~27.~~30. **THIS COURT ORDERS** that the Applicant and the Receiver be at liberty to serve 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, facsimile or electronic transmission to the ~~Debtor's~~ Debtors' respective creditors or other interested parties at their respective addresses as last shown on the respective records of the ~~Debtor~~Debtors and that any such service or notice by courier, personal delivery or~~–~~ electronic 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.

~~28.~~31. **THIS COURT ORDERS** that counsel for the Receiver shall prepare and keep current a service list ~~("~~("**Service List**~~")~~") containing the name and contact information (which may include the address, telephone number and facsimile number or email address) for service to: the Applicant; the Receiver; and each creditor or other interested Person who has sent a request, in writing, to counsel for the Receiver to be added to the Service List. The Service List shall indicate whether each Person on the Service List has elected to be served by email or facsimile, and failing such election the Service List shall indicate service by email. The Service List shall be posted on the website of the Receiver at the address indicated in paragraph ~~[27]~~32 herein. **For greater certainty, creditors and other interested Persons who have received notice of this Order and who do not send a request, in writing, to counsel for the Receiver to be added to the Service List, shall not be required to be further served in these proceedings.**

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~~29.~~32. **THIS COURT ORDERS** that the Applicant, the Receiver, and any party on the Service List may serve any court materials in these proceedings by facsimile or by e-mailing a PDF or other electronic copy of such materials to ~~counsels'~~counsels' email addresses as recorded on the Service List from time to time, and the Receiver may post a copy of any or all such materials on its website at www.[ ] Service shall be deemed valid and sufficient if sent in this manner.

GENERAL

~~30.~~33. **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.

~~31.~~34. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a receiver in respect of other assets of the Debtors, or either one of them, and/or as a trustee in bankruptcy of the ~~Debtor.~~Debtors, or either one of them,.

~~32.~~35. **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.

~~33.~~36. **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.

~~34.~~37. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the ~~Applicant's~~Applicant's security, then on a solicitor-client basis[~~11~~] to be

~~[11] Counsel should note that costs remain in the discretion of the Court~~

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paid by the Receiver from the ~~Debtor's estate~~Property with such priority and at such time as this Court may determine.

~~35.~~38. **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'~~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.

~~[DATE]~~

December 19, 2025

, J.

I, ~~[NAME]~~ANJALI SANDHU OF THE FIRM OF ~~[NAME]~~MLT AIKINS LLP HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF THE FOLLOWING PARTIES: [INSERT] AS DIRECTED BY THE HONOURABLE ~~[INSERT]~~MR. JUSTICE CHARTIER.

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~~Schedule "~~SCHEDULE "A"~~"~~
~~RECEIVER~~

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THE EQUIPMENT				
Debtor	VIN	Make	Model	Model Year
GURU PEER	3AKJHHDR4NSNE2267	Freightliner	PT126SLP	2022
GURU PEER	3AKJHHDR8NSNE2272	Freightliner	PT126SLP	2022
GURU PEER	3AKJHHDR6NSNE2268	Freightliner	PT126SLP	2022
GURU PEER	3AKJHHDR6NSNE2271	Freightliner	PT126SLP	2022
GURU PEER	3AKJHHDR5NSNE2262	Freightliner	PT126SLP	2022
GURU PEER	3AKJHHDR9NSNE2264	Freightliner	PT126SLP	2022
GURU PEER	3AKJHHDRXNSNE2273	Freightliner	PT126SLP	2022
GURU PEER	3AKJHHDR7NSNE2263	Freightliner	PT126SLP	2022
GURU PEER	3AKJHHDR2NSNE2266	Freightliner	PT126SLP	2022
GURU PEER	3AKJHHDR0NSNE2265	Freightliner	PT126SLP	2022
GURU PEER	1FUJHHDR9PLUF5477	Freightliner	PT126SLP	2023
GURU PEER	1FUJHHDR7PLUF5476	Freightliner	PT126SLP	2023
GURU PEER	1FUJHHDR5PLUF5475	Freightliner	PT126SLP	2023
GURU PEER	3AKJHHDR3PSUL8716	Freightliner	PT126SLP	2023
GURU PEER	3AKJHHDR1PSUL8715	Freightliner	PT126SLP	2023
PLUTO TRANSPORT	3AKJHHDR1KSKA2425	Freightliner	PT126SLP	2019
PLUTO TRANSPORT	3AKJHHDRXLSLJ7689	Freightliner	PT126SLP	2020
PLUTO TRANSPORT	2SHSR5329RS003530	Vanguard	Trailer	2024
PLUTO TRANSPORT	2SHSR5324RS003533	Vanguard	Trailer	2024
PLUTO TRANSPORT	2SHSR5325RS003539	Vanguard	Trailer	2024
PLUTO TRANSPORT	2SHSR5328RS003535	Vanguard	Trailer	2024
PLUTO TRANSPORT	2SHSR5325RS003556	Vanguard	Trailer	2024
PLUTO TRANSPORT	2SHSR5322RS003532	Vanguard	Trailer	2024
PLUTO TRANSPORT	2SHSR5324RS003547	Vanguard	Trailer	2024
PLUTO TRANSPORT	2SHSR5326RS003534	Vanguard	Trailer	2024
PLUTO TRANSPORT	2SHSR5328RS003552	Vanguard	Trailer	2024
PLUTO TRANSPORT	2SHSR5322RS003546	Vanguard	Trailer	2024
PLUTO TRANSPORT	2SHSR532XRS003553	Vanguard	Trailer	2024
PLUTO TRANSPORT	2SHSR5322RS003529	Vanguard	Trailer	2024
PLUTO TRANSPORT	2SHSR5320RS003531	Vanguard	Trailer	2024
PLUTO TRANSPORT	2SHSR5326RS003551	Vanguard	Trailer	2024
PLUTO TRANSPORT	2SHSR5323RS003541	Vanguard	Trailer	2024
PLUTO TRANSPORT	2SHSR5322RS003563	Vanguard	Trailer	2024

PLUTO TRANSPORT	2SHSR5324RS003550	Vanguard	Trailer	2024
PLUTO TRANSPORT	2SHSR5321RS003554	Vanguard	Trailer	2024
PLUTO TRANSPORT	2SHSR5327RS003557	Vanguard	Trailer	2024
PLUTO TRANSPORT	2SHSR5329RS003558	Vanguard	Trailer	2024

SCHEDULE "B"

RECEIVER'S BORROWING CERTIFICATE

CERTIFICATE NO. _____

AMOUNT $_____

1. THIS IS TO CERTIFY that ~~[~~RECEIVER'S NAME~~],~~Deloitte Restructuring Inc., the receiver (the ~~"~~"**Receiver**~~")~~ ~~of the assets, undertakings and properties [~~DEBTOR'S NAME~~] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**~~"~~) appointed by Order of The ~~Queen's~~King's Bench, Winnipeg Centre (the ~~"~~"**Court**~~")~~") dated the ___ day of _____, 20__ (the ~~"~~"**Order**~~")~~") made in an ~~action~~application having Court file number _____, of all of the Property (as defined in the Order) 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 ~~***, ***~~._____, _____.

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.

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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__.

~~[RECEIVER'S NAME],~~DELOITTE RESTRUCTURING INC., solely in its capacity as Receiver of ~~the Property,~~certain property of Pluto Transport Inc. and Guru Peer Transport Inc., and not in its personal or corporate capacity

Per: _____
Name:
Title:

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SCHEDULE "C"
FORM OF RECEIVER'S AUCTION CERTIFICATE

File No. CI 25-01-

THE KING'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 KING'S BENCH ACT*, C.C.S.M. c. C280

BETWEEN:

DAIMLER TRUCK FINANCIAL SERVICES CANADA CORPORATION,

Applicant,

- and –

GURU PEER TRANSPORT INC. and PLUTO TRANSPORT INC.,

Respondents.

RECEIVER'S AUCTION CERTIFICATE

RECITALS

1. Pursuant to an Order (the **"Receivership Order"**) of the Honourable Mr. Justice Chartier of the Manitoba Court of King's Bench (the **"Court"**) pronounced December 19, 2025, Deloitte Restructuring Inc. was appointed the receiver (the **"Receiver"**) of certain property of Guru Peer Transport Inc. (**"Guru Peer"**) and Pluto Transport Inc. (**"Pluto"** and together with Guru Peer, the **"Debtors"**).

2. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Receivership Order.

3. Pursuant to the Receivership Order, the Court authorized the Receiver to sell any of the Purchased Assets by way of Auction to a Purchaser and ordered that upon the filing a certificate with this Honourable Court, all of the Debtors' right, title and interest in and to the Purchased Assets described therein shall vest absolutely in the respective Purchaser, free and clear of and from any and all security interests (whether contractual, statutory or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens, executions, levies, charges or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, (the **"Claims"**) including, without limiting the generality of the foregoing: (i) all Charges created by the Receivership Order; and (ii) all charges, security interests or claims evidenced by registrations pursuant to *The Personal Property Security Act* (Manitoba) or any other personal property registry system.

THE RECEIVER CERTIFIES the following:

1. The Sale Transaction with respect to the Purchased Assets listed below was completed by Auction on [DATE]:

   [LIST PURCHASED ASSETS]

2. The Purchaser has paid and the Receiver has received the purchase price for the Purchased Assets.

DATED the day of , 2025.

DELOITTE RESTRUCTURING INC.,
solely in its capacity as Receiver of certain property of
Pluto Transport Inc. and Guru Peer Transport Inc., and not
in its personal or corporate capacity

Per: _____
Name:
Title: