

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

THE HONOURABLE) TUESDAY, THE 2ND
)
JUSTICE MCEWEN) DAY OF FEBRUARY, 2021
)
)

IN THE MATTER OF THE *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 **JTI-MACDONALD CORP.**

**ORDER
(Lift of Stay of Proceedings)**

THIS MOTION, made by JTI-Macdonald Corp. (the “**Applicant**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) was heard in writing this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion and the affidavit of William E. Aziz sworn January 26, 2021 and the exhibits thereto (the “**Aziz Affidavit**”),

DEFINITIONS

1. **THIS COURT ORDERS** that all capitalized terms not defined herein shall have the meanings set out in the Aziz Affidavit.

STAY OF PROCEEDINGS

2. **THIS COURT ORDERS** that the Order in this proceeding dated May 14, 2019 be and is hereby amended by replacing paragraph 3 as follows:

3. **THIS COURT ORDERS** that the stay of proceedings provided for in the Amended and Restated Initial Order dated March 8, 2019 (the “**Stay of Proceedings**”) be and is hereby lifted to permit the action in Court File No. CV-16-559813 (the “**Swann Action**”) to continue in the ordinary course and directs that any recovery in respect of the Swann Action as against the Applicant only be and is hereby limited to the recovery of proceeds from available and collectible insurance.

4. **THIS COURT ORDERS** that the Stay of Proceedings be and is hereby lifted to permit the commencement of the Allianz Action by Allianz in the name of the Applicant, in the form attached to this Order as Schedule “A”, and the continuation of such action in the ordinary course.

GENERAL

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding,

or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to read "McE T.", positioned above a horizontal line.

SCHEDULE "A"

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

JTI-MACDONALD CORP.

Plaintiff

-and-

GROUPE ROBERT INC.

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: _____

Issued by _____
Local registrar

Address of court
office:

330 University Avenue,
Toronto, Ontario
M5G 1R7

TO: GROUPE ROBERT INC.
20, boulevard Marie-Victorin,
Boucherville, QC
J4B 1V5

Defendant

THIS ACTION IS BROUGHT AGAINST YOU UNDER THE SIMPLIFIED PROCEDURE PROVIDED IN RULE 76 OF THE RULES OF CIVIL PROCEDURE.

CLAIM

1. The plaintiff, JTI-Macdonald Corp. (“**JTI**”) claims against the defendant, Groupe

Robert Inc. (“**Groupe Robert**”) for:

- (a) damages in the amount of \$131,375.43, or such other amount as may be proven at trial;
- (b) pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C43, as amended;
- (c) post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C43, as amended;
- (d) costs of this action; and
- (e) such further and other relief as this Court may permit.

2. JTI is a corporation incorporated pursuant to the laws of Canada. JTI carries on business as a manufacturer of tobacco products.

3. At all material times, JTI was the owner of the Cargo, as described below.

4. Groupe Robert is a corporation incorporated pursuant to the laws of the Province of Quebec. Groupe Robert carries on business as a trucking company.

5. In or around December 2018, JTI engaged Groupe Robert to haul a load, which consisted of 50 cases of fine blended strips of tobacco leaf product, from the Port of Montreal in Quebec, to a location in Saint-Hyacinthe, Quebec (the “**Cargo**”).

6. Groupe Robert picked up the Cargo in good order and condition from the Port of Montreal.

7. On or about December 17, 2018, prior to the Cargo being delivered as mandated, and while in the possession, care and/or control of Groupe Robert, the Cargo was reported stolen from Groupe Robert’s yard in Boucherville, Quebec. The stolen Cargo has not been recovered.

8. Groupe Robert had an obligation to JTI to deliver the Cargo to Saint-Hyacinthe, Quebec in the same good order and condition in which it was received. As a result of Groupe Robert’s failure to deliver the Cargo, JTI has suffered a total loss of the Cargo and associated costs including shipping and customs duties.

9. JTI pleads that Groupe Robert is liable for breach of its contractual obligations as a common carrier for failure to deliver the Cargo.

10. Further, and in any event, JTI pleads that Groupe Robert was a common carrier and a bailee for hire with respect to the Cargo, and that it owed JTI a duty of care to carry the Cargo with due care, and take such care of the Cargo as would a reasonable and prudent owner. JTI pleads that Groupe Robert failed to do so and is thus liable for breach of its duties as a common carrier and/or a bailee of the Cargo.

11. JTI pleads that its losses and damages are a result of the negligence and gross negligence of Groupe Robert and its employees, servants and agents, the particulars of which include but are not limited to:

- a) they failed to keep the Cargo secure;
- b) they failed to have adequate security measures in place;
- c) they failed to follow the security measures that were in place;
- d) they failed to hire adequate and competent security personnel;
- e) they failed to properly screen the employees who were working as security guards;
- f) they failed to hire adequate and competent employees, servants and agents;
- g) they failed to adequately supervise their employees, servants and agents;
- h) they failed to have checks and balances in place to prevent theft;
- i) they failed to have adequate security cameras in place;
- j) they left the Cargo unattended;
- k) they failed to exercise due care and diligence in the handling and care of the Cargo;
- l) they failed to ensure that the Cargo was secure; and,
- m) such further and other grounds as counsel may advise and this Court may permit.

12. In the alternative, JTI pleads that Groupe Robert was, at the time the Cargo was stolen, a warehouseman or storer of the Cargo. As a storer of the Cargo, Groupe Robert was obligated to safely and securely keep and store the Cargo and it is liable for the loss resulting therefrom. JTI pleads and relies upon the *Warehouse Receipts Act*, R.S.O. 1990, c. W.3, as amended.

13. As a result of Groupe Robert's breach of contract, breach of duty as bailee and/or as common carrier and/or negligence, the Cargo was lost and has not been recovered. Accordingly, JTI claims the value of the Cargo and associated costs including shipping and customs duties from Groupe Robert, along with such other amounts as may be proven at trial.

14. JTI pleads and relies upon the following:

- a) The *Negligence Act*, R.S.O. 1990, c.N.1, as amended;
- b) The *Courts of Justice Act*, R.S.O. 1990, c.43, as amended; and,
- c) The *Warehouse Receipts Act*, R.S.O. 1990, c. W.3, as amended.

15. JTI proposes that this action be tried in Toronto, Ontario.

January 20, 2021

Fernandes Hearn LLP
Barristers & Solicitors
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Lawyers for the plaintiff

JTI-MACDONALD CORP.
Plaintiff

- and -

GROUPE ROBERT INC.
Defendant

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

STATEMENT OF CLAIM

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Lawyers for the Plaintiff

Our File No.: 9100-040

IN THE MATTER OF THE *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 **JTI-MACDONALD CORP.**

Court File No.: CV-19-615862-00CL

2 Feb 21

This motion was read today.

The order shall go, on an unopposed basis, as per the draft filed and signed.

The relief sought is fair and reasonable.



ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced at Toronto

ORDER
(Lift of Stay of Proceedings)

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