

THE QUEEN'S BENCH
WINNIPEG CENTRE

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT
TO SECTION 243 OF THE *BANKRUPTCY AND*
INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED
AND SECTION 55 OF *THE COURT OF QUEEN'S*
BENCH ACT, CCSM c C280

BETWEEN:

THE TORONTO-DOMINION BANK,

Plaintiff,

- and -

KINGS CARGO EXPRESS LTD. AND CANADA CARGO LINES LTD.

Defendants.

NOTICE OF MOTION
DATE OF HEARING: WEDNESDAY, JANUARY 27, 2021 AT 9:00 A.M.
CHARTIER, J.

TAYLOR McCAFFREY LLP
Barristers and Solicitors
2200 – 201 Portage Avenue
Winnipeg, Manitoba, R3B 3L3

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Client File No. 32608-6

THE QUEEN'S BENCH
WINNIPEG CENTRE

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT
TO SECTION 243 OF THE *BANKRUPTCY AND*
INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED
AND SECTION 55 OF *THE COURT OF QUEEN'S*
BENCH ACT, CCSM c C280

BETWEEN:

THE TORONTO-DOMINION BANK,

Plaintiff,

- and -

KINGS CARGO EXPRESS LTD. AND CANADA CARGO LINES LTD.,

Defendants.

NOTICE OF MOTION

Deloitte Restructuring Inc. (the "Receiver") in its capacity as Receiver and Manager of the Defendants will make a motion before the Honourable Mr. Justice Chartier on Wednesday, the 27th day of January, 2021 at 9:00 o'clock in the forenoon or so soon after that time as the motion can be heard by way of teleconference at the Law Courts, 408 York Avenue at Kennedy Street, in the City of Winnipeg. Dial-In coordinates shall be circulated to the Service Ltd.

THE MOTION IS FOR:

1. An Approval and Vesting Order substantially in the form attached hereto as Schedule 1 including, *inter alia*:
 - a) Validating service of this Notice of Motion and materials related to it;

- b) Sealing the Confidential Report of the Receiver dated January 21, 2021 (the "Confidential Report");
 - c) Approving the sale transaction contemplated by the Asset Purchase Agreement between the Receiver and Lavish Transport Ltd. (the "Purchaser") dated January 13, 2021 and vesting all of the Defendants' right, title and interest in and to the purchased assets in the Purchaser;
 - d) Authorizing the Receiver to repay the Receiver's Borrowing Facility from the net sale proceeds realized from the sale transaction;
 - e) Approving the First Report of the Receiver dated January 21, 2021 (the "First Report") and the activities of the Receiver described therein; and
 - f) Approving the Receiver's fees and disbursements including the fees and disbursements of its legal counsel, Taylor McCaffrey LLP.
2. Such further and other relief as this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- 1. Queen's Bench Rules 3.02(1), 14.05(2), 16.04(1), 16.08, 37.08(2) and 41.
- 2. *The Queen's Bench Act* CCSM c.C280 ss. 37(1) and 77.
- 3. *Bankruptcy and Insolvency Act* RSC c.B3 as amended ("BIA") s. 243.
- 4. *The Corporations Act* CCSM c.C255 s. 95.
- 5. *The Personal Property Security Act* CCSM c.P35 ("PPSA") ss. 63(2) and 64(7).
- 6. By Order (Appointing Receiver) dated October 5, 2020 (the "Receivership Order"), this Court appointed Deloitte Restructuring Inc. as Receiver and Manager of all the assets and undertaking of the Defendants (the "Property") and, *inter alia*, authorized

the Receiver to fund its activities by way of a Receiver's Borrowing Charge as well as to sell the Property or any part or parts thereof with the approval of this Honourable Court.

7. Following its appointment the Receiver carried out its duties in accordance with the Receivership Order including, *inter alia*, endeavouring to take possession and control of all of the Property.

8. In order to carry out its duties under the Order, the Receiver obtained funding from the Plaintiff under the Receiver's Borrowing Facility in accordance with paragraph 23 of the Receivership Order for which the lender is entitled to a charge in the Property in priority to all security interests, trust liens, charges encumbrances, statutory or otherwise save and except the Receiver's Charge and the charges as set out 14.06(7), 81.4(4) and 81.6(2) of the BIA.

9. During the course of exercising its responsibilities the Receiver was contacted by the Purchaser with a view to acquiring certain specific equipment as well as the outstanding accounts receivable of the Defendants (the "Sale Assets").

10. Following various negotiations with the Purchaser and in consultation with the Plaintiff, the Receiver determined that selling the Sale Assets to the Purchaser would realize a higher net realization than would likely result from conducting a sales process.

11. It is the Receiver's position that the Asset Purchase Agreement negotiated with the Purchaser is the best price to be obtained with respect to the Sale Assets.

12. To complete the proposed sale it is necessary for the Receiver to obtain approval of this Honourable Court and an Order vesting the Sale Assets in the name of the Purchaser free and clear of all encumbrances once all conditions of closing have been met.

13. There will not be sufficient proceeds from this sale to pay out all of the secured indebtedness owed to the Plaintiff, let alone have sufficient funds to provide a distribution to unsecured creditors.

14. The information contained in the Confidential Report prepared by the Receiver is sensitive commercial information and a Sealing Order is necessary as there is a real and substantial risk of harm to the interest of the stakeholders in this proceeding in the event that such information is disclosed.

15. The salutatory effects of a Sealing Order with respect to the Confidential Report outweigh any considerations relating to the public interest in open and accessible Court proceedings.

16. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT
THE HEARING OF THE MOTION:

1. The Order (Appointing Receiver) dated October 5, 2020.
2. The First Report of the Receiver dated January 21, 2021.
3. The Confidential Report of the Receiver dated January 21, 2021.
4. The Affidavit of Laura Leigh Buley sworn January 19, 2021.

5. Such further and other evidence as counsel may advise and this Honourable Court may permit.

January 21, 2021

TAYLOR McCaffrey LLP
Barristers & Solicitors
2200 – 201 Portage Avenue
Winnipeg, Manitoba
R3B 3L3

DAVID R.M. JACKSON
CHARLES ROY

TO: THE SERVICE LIST

THE QUEEN'S BENCH
WINNIPEG CENTRE

IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT
TO SECTION 243 OF THE *BANKRUPTCY AND*
INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED
AND SECTION 55 OF *THE COURT OF QUEEN'S*
BENCH ACT, CCSM c C280

BETWEEN:

THE TORONTO-DOMINION BANK,

Plaintiff,

- and -

KINGS CARGO EXPRESS LTD. AND CANADA CARGO LINES LTD.

Defendants.

SERVICE LIST
(AS AT JANUARY 19, 2021)

TAYLOR McCAFFREY LLP

Barristers and Solicitors
2200 – 201 Portage Avenue
Winnipeg, Manitoba, R3B 3L3

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Client File No. 32608-6

THE QUEEN'S BENCH
WINNIPEG CENTRE

IN THE MATTER OF:

THE APPOINTMENT OF A RECEIVER PURSUANT TO SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED AND SECTION 55 OF *THE COURT OF QUEEN'S BENCH ACT*, CCSM c C280

BETWEEN:

THE TORONTO-DOMINION BANK,

Plaintiff,

- and -

KINGS CARGO EXPRESS LTD. AND CANADA CARGO LINES LTD.

Defendants.

SERVICE LIST

PARTY	TELEPHONE #	FAX #	STATUS
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SAM GABOR E-mail: sam.gabor@dentons.com	403-268-3048		
PAVIN TAKHAR E-mail: pavin.takhar@dentons.com	403-268-3119		
DELOITTE RESTRUCTURING INC. 360 Main Street, Suite 2300 Winnipeg, MB R3C 3Z3		204-947-2689	Proposed Receiver
BRENT WARGA E-mail: bwarga@deloitte.ca	204-944-3611		
JOHN FRITZ E-mail: jofritz@deloitte.ca	204-944-3586		

PARTY	TELEPHONE #	FAX #	STATUS
<p>TAYLOR MCCAFFREY LLP 2200-201 Portage Avenue Winnipeg, MB R3B 3L3</p> <p>DAVID R.M. JACKSON E-mail: djackson@tmlawyers.com</p> <p>CHARLES ROY E-Mail: croy@tmlawyers.com</p>	<p>204-988-0375</p> <p>204-988-0472</p>	<p>204-953-7178</p>	<p>Counsel to the Proposed Receiver</p>
<p>HILL SOKALSKI WALSH Suite 2670, 360 Main St. Winnipeg, MB R3C 3Z3</p> <p>KELSEY McINTYRE E-Mail: kmcintyre@hillcounsel.com</p>	<p>204-954-0760</p>	<p>204-943-3934</p>	<p>Counsel to Sharanjit Singh (Guarantor), Kings Cargo Express Ltd. and Canada Cargo Lines Ltd.</p>
<p>PITBLADO LAW 2500-360 Main St Winnipeg, MB R3C 4H6</p> <p>KAREN POETKER E-mail: poetker@pitblado.com</p>	<p>204-956-0560</p>	<p>204-957-0227</p>	<p>Counsel to Manjinder Rehal (Guarantor)</p>
<p>BOUDREAU LAW 100 – 1619 Pembina Highway Winnipeg, MB R3T 3Y6</p> <p>J.R. NORMAN BOUDREAU E-mail: nboudreau@boudreaulaw.ca</p>	<p>204-318-2681</p>	<p>204-477-6057</p>	<p>Counsel to Lavish Transport Ltd.</p>
<p>DEPARTMENT OF JUSTICE CANADA 400 St. Mary Avenue Winnipeg, MB R3C 4K5</p> <p>DINH BO-MAGUIRE E-mail: dinh.bo-maguire@justice.gc.ca</p>	<p>204-984-7652</p>	<p>204-984-5910</p>	<p>Counsel to Canada Revenue Agency</p>

PARTY	TELEPHONE #	FAX #	STATUS
<p>MANITOBA JUSTICE – CIVIL LEGAL</p> <p>SEAN BOYD E-mail: sean.boyd@gov.mb.ca</p>	<p>204-792-8641</p>	<p>204-948-2826</p>	<p>Counsel to the Minister of Finance Manitoba</p>
<p>AD188 – ESSEX LEASE FINANCIAL CORPORATION 960 – 13401, 108 Avenue Surrey, BC V3T 5T3</p> <p>E-mail: customerservice@elsc.ca</p>	<p>778-395-3273</p>		<p>Secured Creditor</p>
<p>AD196 – ESSEX LEASE FINANCIAL CORPORATION 770 – 10655 Southport Road SW Calgary, AB T2W 4Y1</p> <p>E-mail: customerservice@elsc.ca</p>	<p>403-693-4060</p>		<p>Secured Creditor</p>
<p>ARUNDEL CAPITAL CORPORATION Suite 201 – 3007 14th Street SW Calgary, AB T2T 3V6</p> <p>STEPHANIE GATAIANT E-mail: Stephanie@arundelcapital.com</p>	<p>403-287-9597</p>	<p>403-287-9847</p>	<p>Secured Creditor</p>
<p>BODKIN CAPITAL CORPORATION Unit 304 – 700 Droval Drive Oakville, ON L6K 3V3</p> <p>E-mail: customerservice@bodkin.com</p>	<p>905-820-4550</p>	<p>1-866-827-1084</p>	<p>Secured Creditor</p>

PARTY	TELEPHONE #	FAX #	STATUS
CANADIAN DEALER LEASE SERVICES INC. 372 Bay Street, Suite 1800 Toronto, ON M5H 1H1 E-mail: administration@cdlsi.com	416-703-5765		Secured Creditor
CLE CAPITAL INC. 3390 South Service Road STE 301 Burlington, ON L7N 3J5 MARK PAGNIELLO E-mail: service@hitachicapital.ca	647-591-8020 EXT: 2158	1-866-241-9022	Secured Creditor
CWB NL Financial Inc. 1525 Buffalo Place Winnipeg, MB R3T 1L9 E-mail: debtenforcement@cwbnationalleasing.com	1(888) 599-1966		Secured Creditor
DTS TRUCKING LTD. 1525 BUFFALO PLACE WINNIPEG, MB R3T 1L9			Secured Creditor
ECN FINANCIAL INC. 900 – 4 Roberts Speck Parkway Mississauga, ON L4Z 1S1			Secured Creditor

PARTY	TELEPHONE #	FAX #	STATUS
<p>FORD CREDIT CANADA COMPANY FORD MOTOR COMPANY OF CANADA LIMITED PO Box 2000 Oakville, Ontario L6K0C8</p> <p>E-mail: custsupt@ford.com</p>	1-800-565-3673		Secured Creditor
<p>HONDA CANADA FINANCE INC. 180 Honda Blvd Markham, ON L6C 0H9</p> <p>E-mail: cs@honda.ca</p>	1-800-387-5399	1-866-920-5586	Secured Creditor
<p>L.A.K.E.S. LEASING CORPORATION 2158 Armstrong Street Sudbury, ON P3E 5G9</p> <p>E-mail: erin@lakes.financial</p>	1-800-461-8625	705-523-6707	Secured Creditor
<p>MERCADO CAPITAL CORPORATION, DIV. OF WESTMINSTER SAVINGS CREDIT UNION 403-960 Quayside Drive New Westminster, BC V3M 6G2</p> <p>E-mail: leasing@mercadocapital.com</p>	1-844-528-3802	1-855-525-7572	Secured Creditor
<p>RYDER TRUCK RENTAL CANADA LTD. 700 Creditstone Road Concord, ON L4K 5A5</p> <p>E-Mail: grace_santoli@ryder.com</p>	905-826-8777	905-826-0079	Secured Creditor

PARTY	TELEPHONE #	FAX #	STATUS
ROYNAT INC. Suite 1500, 4710 Kingsway Street Burnaby, British Columbia V5M 4M2 *Bought out by Meridian Credit Union* E-Mail: client.service@meridianonecap.ca	604-646-2200		
TPINE 6050 Dixie Road Mississauga, Ontario L5T 1A6 E-Mail: sonny@tpinecapital.com	416-913-9602	800-218-2516	
DANIEL RAVINDRAN E-Mail: daniel.ravindran@mail.utoronto.ca			
US BANK CANADA 120 Adelaide Street West Toronto, Ontario M5H 1T1 GEORGE L. KOJAREV E-Mail: cpsrecovery@usbank.com E-Mail: george.kojarev@usbank.com	913-725-6839		

SCHEDULE 1

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

THE HONOURABLE) WEEKDAY, THE #
)
JUSTICE) DAY OF MONTH, 20YR
)

B E T W E E N:

THE TORONTO-DOMINION BANK,

Plaintiff,

- and -

KINGS CARGO EXPRESS LTD. AND CANADA CARGO LINES LTD.,

Defendants.

APPROVAL AND VESTING ORDER

THIS MOTION, made by Deloitte Restructuring Inc. in its capacity as the Court-Appointed Receiver and Manager (the "**Receiver**") of the undertaking, property and assets (the "**Property**") of Kings Cargo Express Ltd. and Canada Cargo Lines Ltd. (the "**Debtors**") for an order approving the sale transaction (the "**Transaction**") contemplated by an asset purchase agreement (the "**Asset Purchase Agreement**") between the Receiver and Lavish Transport Ltd. (the "**Purchaser**") dated January 13, 2021 and appended to the Confidential Report of the Receiver dated January 21, 2021 (the "**Confidential Report**"), and vesting in the Purchaser the Debtors' right, title and interest in and to the assets described in the Asset Purchase Agreement (the "**Purchased Assets**"), was heard this day at Winnipeg, Manitoba.

ON READING the First Report of the Receiver dated January 21, 2021 (the "**First Report**"), the Confidential Report, the Affidavit of Laura Leigh Buley sworn January ____, 2021 and on hearing the submissions of counsel for the Receiver, the Plaintiff and the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed:

SERVICE

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

SEALING ORDER

2. THIS COURT ORDERS AND DECLARES that the Confidential Report be sealed, kept confidential and not form part of public record and shall remain stored electronically with this Court on an encrypted basis limiting access to only the Registrar of this Honourable Court and the presiding Judge and shall only be made accessible or form part of the public record upon further Order of this Court.

SALE APPROVAL AND VESTING

3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Asset Purchase Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtors' right, title and interest in and to the Purchased Assets described in the Asset Purchase Agreement shall vest absolutely in the 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 (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice G. L. Chartier dated October 5, 2020 (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 (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 the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

PRIORITIES

5. 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 (the "**Net Sale Proceeds**") shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the Net Sale Proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. 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 *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by 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 *Bankruptcy and Insolvency Act* (Canada) 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.

8. THIS COURT ORDERS AND DIRECTS the Receiver to repay the Receiver's Borrowing Facility from the Net Sales Proceeds.

APPROVAL OF ACTIVITIES AND DISBURSEMENTS OF THE RECEIVER

9. THIS COURT ORDERS that all activities, actions and proposed courses of action of the Receiver (the "**Actions of the Receiver**") to date in relation to the discharge of its duties as receiver of the Property, as such Actions of the Receiver are more particularly described in the First Report and the Confidential Report, as well as the statement of receipts and disbursements contained in the First Report, shall be and are hereby approved and confirmed.

10. THIS COURT ORDERS that the professional fees and disbursements of the Receiver, as set out in the First Report, are hereby approved without the necessity of a formal passing of accounts.

11. THIS COURT ORDERS that the professional fees and disbursements of the Receiver's legal counsel, Taylor McCaffrey LLP, as set out in the First Report, are hereby approved without the necessity of a formal assessment of its accounts.

MISCELLANEOUS MATTERS

12. 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.

Schedule A – Form of Receiver’s Certificate

Court File No. _____

THE QUEEN'S BENCH

WINNIPEG CENTRE

B E T W E E N:

THE TORONTO-DOMINION BANK

Plaintiff

- and -

KINGS CARGO EXPRESS LTD. and CANADA CARGO LINES LTD.

Defendants

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice G. L. Chartier of the Manitoba Court of Queen's Bench (the "**Court**") dated October 5, 2020, Deloitte Restructuring Inc. was appointed as the receiver and manager (the "**Receiver**") of the undertaking, property and assets of the Defendants (the "**Debtors**").

B. Pursuant to an Order of the Court dated January 27, 2021, the Court approved the asset purchase agreement made as of January 13, 2021 (the "**Asset Purchase Agreement**") between the Receiver and Lavish Transport Ltd. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtors’ right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Asset Purchase Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Asset Purchase Agreement;
2. The conditions to Closing the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**Deloitte Restructuring Inc. in its capacity as
Receiver and Manager of the undertaking,
property and assets of DEBTORS, and not in
its personal capacity**

Per: _____

Name:

Title: