

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ROYAL BANK OF CANADA

Applicant

-and-

1434399 ONTARIO INC.

Respondent

SUPPLEMENTARY AFFIDAVIT OF JASON GAGNON

(Sworn September 13, 2023)

I, **JASON GAGNON**, of the City of Toronto, in the Province of Ontario, **MAKE**

OATH AND SAY:

1. I am a Senior Manager, Special Loans, with the Applicant, Royal Bank of Canada (the "**Bank**"), and as such have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary these matters are within my own knowledge and are true. Where I have indicated that I have obtained facts from other sources, I have identified the source and I believe those facts to be true.
2. This affidavit follows my sworn affidavit in this matter on July 31, 2023 (the "**First Gagnon Affidavit**"). All capitalized terms not otherwise defined retain the same meaning as the First Gagnon Affidavit
3. The within application for the appointment of Spergel as Receiver, without security, over all of the assets, undertakings, and properties of the Debtor, was originally to be heard on August 17, 2023.
4. On August 4, 2023, counsel for the Bank received an email from Stephen Barbier, of McCague Borlack LLP, advising that he expected to be retained by the Debtor.

5. On August 11, 2023, counsel for the Bank and counsel for the Debtor had a telephone call to discuss an adjournment and potential forbearance. On August 14, 2023, counsel for the Bank emailed counsel for the Debtor confirming that the hearing of the within application would be adjourned one week and requesting proposed forbearance terms for the Bank's review. Attached hereto to this my affidavit and marked as **Exhibit "A"** is a copy of the email from counsel for the Bank dated August 14, 2023.
6. On August 15, 2023, counsel for the Debtor emailed counsel for the Bank advising that he was working on a proposal for the Bank with the Debtor, and expected to have something formal to propose the following day. Attached hereto to this my affidavit and marked as **Exhibit "B"** is a copy of the email from counsel for the Debtor dated August 15, 2023.
7. On August 16, 2023, counsel for the Debtor emailed counsel for the Bank with a without prejudice proposal by the Debtor.
8. On August 18, 2023, counsel for the Bank emailed counsel for the Debtor advising that the Debtor's proposal was not accepted and that the Bank's instructions were to have the within application for an order appointing the Receiver heard.
9. On August 21, 2023, counsel for the Debtor emailed counsel for the Bank with a without prejudice correspondence, which was followed by a telephone call between counsel.
10. On August 22, 2023, counsel for the Debtor emailed counsel for the Bank with a further without prejudice correspondence.
11. On August 29, 2023, counsel for the Bank emailed counsel for the Debtor and advised that it will be adjourning the within application an additional two weeks to review potential terms of forbearance. Attached hereto to this my affidavit and marked as **Exhibit "C"** is a copy of the email from counsel for the Bank dated August 29, 2023.
12. On August 30, 2023, counsel for the Bank emailed counsel for the Debtor and advised that the Bank required that Spergel be permitted to access the Real

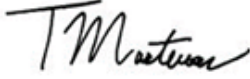
Property and books and records of the Borrower before the Bank enters into forbearance with the Debtor, to which counsel for the Debtor advised that his client was agreeable to, subject to counsel's approval in relation to records. Attached hereto to this my affidavit and marked as **Exhibit "D"** is a copy of the emails from counsel for the Bank and counsel for the Debtor dated August 30, 2023.

13. On August 31, 2023, counsel for the Bank emailed counsel for the Debtor and advised that the within application had been adjourned to September 14, 2023, and that Spergel estimated that its engagement would cost \$7,500. Attached hereto to this my affidavit and marked as **Exhibit "E"** is a copy of the email from counsel for the Bank dated August 31, 2023.
14. On September 5, 2023, counsel for the Bank emailed counsel for the Debtor a copy of the engagement letter in relation to Spergel's inspection (the "**Engagement Letter**"), to be signed by the Debtor. On September 8, 2023, counsel for the Debtor emailed counsel for the Bank advising that he had not had an opportunity to connect with his client, and that he would respond on Monday, September 11, 2023. Attached hereto to this my affidavit and marked as **Exhibit "F"** is a copy of the emails from counsel for the Bank and counsel for the Debtor dated September 5, 2023 and September 8, 2023.
15. On September 12, 2023, counsel for the Debtor emailed counsel for the Bank with a without prejudice correspondence. Counsel for the Bank responded to the without prejudice correspondence with specific inquiries and advised that as the Debtor did not return the Engagement Letter, he was instructed to seek the Order to appoint Spergel as Receiver.
16. This affidavit is made in support of the within application for the appointment of Spergel as Receiver, without security, over all of the assets, undertakings, and properties of the Debtor, and for no other improper purpose.

Sworn or Affirmed before me: in person OR by video conference

by Jason Gagnon of the City of Toronto in the Province of Ontario, before me at the City of London in the Province of Ontario, on September 13, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely

Commissioner for Taking Affidavits (*or as may be*)



Signature of Commissioner



JASON GAGNON

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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-and-

1434399 ONTARIO INC.

Respondent

ATTACHED HERETO ARE EXHIBITS "A" TO "F"
AS REFERRED TO IN THE AFFIDAVIT OF JASON GAGNON,
SWORN BEFORE ME BY VIDEOCONFERENCE SEPTEMBER 13, 2023.



A Commissioner, etc.

Exhibit “A”

Thomas Masterson

From: Tim Hogan
Sent: Monday, August 14, 2023 5:00 PM
To: Stephen Barbier
Cc: Isabelle Stacey; Gagnon, Jason
Subject: FW: CV-23-82432 (Royal Bank of Canada v. 1434399 Ontario Inc.) [IWOV-HPMain.FID680508]
Attachments: Affidavit (Backpage).pdf; Affidavit of Lisa Read. Aug 14. 2023.pdf

Stephen

Following Friday's call, we have now served our factum, and we have received the attached affidavit from the City of St. Catharines.

As discussed, we will adjourn this week's hearing for one week.

Can you please confirm in e-mail the borrower's request for forbearance and the terms offered, for the Bank's review.

The Bank continues to reserve all rights, and unless terms are reached to its satisfaction, will be seeking the Court order appointing a Receiver.

Tim Hogan | [HARRISON PENZA LLP](#) | [130 Dufferin Avenue, Suite 1101, London, ON N6A 5R2](#) | *tel*/ 519-661-6743
| *fax* 519-667-3362 | thogan@harrisonpensa.com Assistant | Aimee Newman | *tel*/ 519-850-5568 |
anewman@harrisonpensa.com

This e-mail may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately

From: Riley, Philip <priley@stcatharines.ca>
Sent: Monday, August 14, 2023 3:01 PM
To: Tim Hogan <thogan@harrisonpensa.com>; Rob Danter <rdanter@harrisonpensa.com>; 'Mukul Manchanda' <mmanchanda@spergel.ca>; 'rmoses@mindengross.com' <rmoses@mindengross.com>; 'johnny@fulton.ca' <johnny@fulton.ca>; 'rakhee.bhandari@justice.gc.ca' <rakhee.bhandari@justice.gc.ca>; 'Unit, Insolvency (MOF)' <insolvency.unit@ontario.ca>; 'sbarbier@mccagueborlack.com' <sbarbier@mccagueborlack.com>
Cc: Marchenko, Olga <omarchenko@stcatharines.ca>; Wardman, Lindsay <lwardman@stcatharines.ca>; Isabelle Stacey <istacey@harrisonpensa.com>
Subject: RE: CV-23-82432 (Royal Bank of Canada v. 1434399 Ontario Inc.) [IWOV-HPMain.FID680508]

[EXTERNAL EMAIL]

Good afternoon again,

Please excuse the back page on the previously filed affidavit.

Enclosed within is a back page for filing in Hamilton.

Philip Riley

Exhibit “B”

Thomas Masterson

From: Stephen Barbier <sbarbier@mccagueborlack.com>
Sent: Tuesday, August 15, 2023 6:50 PM
To: Tim Hogan
Cc: Isabelle Stacey; Gagnon, Jason
Subject: RE: CV-23-82432 (Royal Bank of Canada v. 1434399 Ontario Inc.) [IWOV-HPMain.FID680508]

[EXTERNAL EMAIL]

Hi Tim,

I'm working on the proposal with my client. I expect to have something formal for you tomorrow.

Regards,

Stephen Barbier | Partner
McCague Borlack LLP
130 King Street West | Suite 2700
Toronto | ON | M5X 1C7

Tel: 416 860-5243
Fax: 416 860-0003
sbarbier@mccagueborlack.com

McCague Borlack
Business & Tax Solutions LLP

From: Tim Hogan <thogan@harrisonpensa.com>
Sent: Monday, August 14, 2023 5:00 PM
To: Stephen Barbier <sbarbier@mccagueborlack.com>
Cc: Isabelle Stacey <istacey@harrisonpensa.com>; Gagnon, Jason <jason.gagnon@rbc.com>
Subject: FW: CV-23-82432 (Royal Bank of Canada v. 1434399 Ontario Inc.) [IWOV-HPMain.FID680508]

Stephen

Following Friday's call, we have now served our factum, and we have received the attached affidavit from the City of St. Catharines.

As discussed, we will adjourn this week's hearing for one week.

Can you please confirm in e-mail the borrower's request for forbearance and the terms offered, for the Bank's review.

The Bank continues to reserve all rights, and unless terms are reached to its satisfaction, will be seeking the Court order appointing a Receiver.

Tim Hogan | HARRISON PENZA LLP | 130 Dufferin Avenue, Suite 1101, London, ON N6A 5R2 | *tel* 519-661-6743
| *fax* 519-667-3362 | thogan@harrisonpensa.com Assistant | Aimee Newman | *tel* 519-850-5568 |
anewman@harrisonpensa.com

Exhibit “C”

Thomas Masterson

From: Tim Hogan
Sent: Tuesday, August 29, 2023 8:32 AM
To: Stephen Barbier
Cc: Isabelle Stacey; Anna Honore; Ben Tustain; Gagnon, Jason; Thomas Masterson
Subject: RE: CV-23-82432 (Royal Bank of Canada v. 1434399 Ontario Inc.) [IWOV-HPMain.FID680508]

Stephen

We will be adjourning this week's hearing to allow the Bank to review potential terms of forbearance.

Following initial credit adjudication, we will respond on potential conditions to and certain terms of forbearance should the Bank be agreeable to providing same.

In the meanwhile, we will advise the Court that the August 31 hearing is being adjourned for two weeks.

Tim Hogan | [HARRISON PENZA LLP](#) | [130 Dufferin Avenue, Suite 1101, London, ON N6A 5R2](#) | *tel* 519-661-6743 | *fax* 519-667-3362 | thogan@harrisonpensa.com Assistant | Aimee Newman | *tel* 519-850-5568 | anewman@harrisonpensa.com

This e-mail may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately

From: Stephen Barbier <sbarbier@mccagueborlack.com>
Sent: Monday, August 28, 2023 4:14 PM
To: Tim Hogan <thogan@harrisonpensa.com>
Cc: Isabelle Stacey <istacey@harrisonpensa.com>; Anna Honore <ahonore@mccagueborlack.com>; Ben Tustain <BTustain@mccagueborlack.com>
Subject: RE: CV-23-82432 (Royal Bank of Canada v. 1434399 Ontario Inc.) [IWOV-HPMain.FID680508]

[EXTERNAL EMAIL]

Hi Tim,

Further to below, let me know when we can connect on this. I don't want to waste my client's money preparing materials if not necessary.

Regards,

Steve

From: Stephen Barbier
Sent: Tuesday, August 22, 2023 5:48 PM
To: Tim Hogan <thogan@harrisonpensa.com>
Cc: Isabelle Stacey <istacey@harrisonpensa.com>; Gagnon, Jason <jason.gagnon@rbc.com>; Anna Honore <ahonore@mccagueborlack.com>; Ben Tustain <BTustain@mccagueborlack.com>
Subject: RE: CV-23-82432 (Royal Bank of Canada v. 1434399 Ontario Inc.) [IWOV-HPMain.FID680508]

Exhibit “D”

Thomas Masterson

From: Stephen Barbier <sbarbier@mccagueborlack.com>
Sent: Wednesday, August 30, 2023 9:10 PM
To: Tim Hogan
Cc: Isabelle Stacey; Anna Honore; Ben Tustain; Gagnon, Jason; Thomas Masterson; Manchanda Mukul - msi Spergel (mmanchanda@spergel.ca)
Subject: Re: CV-23-82432 (Royal Bank of Canada v. 1434399 Ontario Inc.) [IWOV-HPMain.FID680508]

[EXTERNAL EMAIL]

Hi Tim,

Thanks for your email. My client is agreeable to the proposed inspection, but any records requests would have to be subject to my approval (although I suspect that won't be an issue). Is there a budget for this inspection?

Please also confirm that your office will speak to the adjournment tomorrow and I do not need to attend.

Regards,

Steve

On Aug 30, 2023, at 5:17 PM, Tim Hogan <thogan@harrisonpensa.com> wrote:

Stephen

Please be advised that the Bank requires that msi Spergel inc. be permitted access to the site and property, and all book and records of the borrower to confirm to the state of the property, confirm and review the issues you raise in your below e-mail of August 22, 2023 and report to the Bank.

The costs of this engagement of msi Spergel inc. will be on the account of the borrower. The engagement is a condition precedent to any potential continued forbearance.

May we please hear from you tomorrow, noting that the Bank will be adjourning tomorrow's hearing for two weeks, while reserving all rights.

We look forward to hearing from you.

Tim Hogan | [HARRISON PENZA LLP](#) | [130 Dufferin Avenue, Suite 1101, London, ON N6A 5R2](#) | *tel* 519-661-6743 | *fax* 519-667-3362 | thogan@harrisonpensa.com Assistant | Aimee Newman | *tel* 519-850-5568 | anewman@harrisonpensa.com

This e-mail may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately

Exhibit “E”

Thomas Masterson

From: Tim Hogan
Sent: Thursday, August 31, 2023 11:15 AM
To: Stephen Barbier
Cc: Isabelle Stacey; Anna Honore; Ben Tustain; Gagnon, Jason; Thomas Masterson; Manchanda Mukul - msi Spergel (mmanchanda@spergel.ca)
Subject: RE: CV-23-82432 (Royal Bank of Canada v. 1434399 Ontario Inc.) [IWOV-HPMain.FID680508]

Stephen

The matter has been adjourned to September 14.

Spergel's estimates \$7,500 for its fees in relation to the engagement, which will also involve an review of the Borrower's accounts with CRA.

Pease confirm and we will send over an engagement letter.

Tim Hogan | [HARRISON PENZA LLP](#) | [130 Dufferin Avenue, Suite 1101, London, ON N6A 5R2](#) | *tel* 519-661-6743 | *fax* 519-667-3362 | thogan@harrisonpensa.com Assistant | Aimee Newman | *tel* 519-850-5568 | anewman@harrisonpensa.com

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From: Tim Hogan <thogan@harrisonpensa.com>
Sent: Thursday, August 31, 2023 7:01 AM
To: Stephen Barbier <sbarbier@mccagueborlack.com>
Cc: Isabelle Stacey <istacey@harrisonpensa.com>; Anna Honore <ahonore@mccagueborlack.com>; Ben Tustain <BTustain@mccagueborlack.com>; Gagnon, Jason <jason.gagnon@rbc.com>; Thomas Masterson <tmasterson@harrisonpensa.com>; Manchanda Mukul - msi Spergel (mmanchanda@spergel.ca) <mmanchanda@spergel.ca>
Subject: Re: CV-23-82432 (Royal Bank of Canada v. 1434399 Ontario Inc.) [IWOV-HPMain.FID680508]

I have enquired on a budget.

We are speaking to the matter this morning.

Thanks

Tim Hogan | [HARRISON PENZA LLP](#) | 130 Dufferin Avenue, Suite 1101, London, Ontario | *tel* 519-661-6743 | *fax* 519-667-3362 | thogan@harrisonpensa.com

Assistant | Cathy Coleiro | *tel* 519-850-5568 | ccoleiro@harrisonpensa.com

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From: Stephen Barbier <sbarbier@mccagueborlack.com>
Sent: Wednesday, August 30, 2023 9:10:21 PM

Exhibit “F”

Thomas Masterson

From: Stephen Barbier <sbarbier@mccagueborlack.com>
Sent: Friday, September 8, 2023 3:21 PM
To: Tim Hogan
Subject: RE: CV-23-82432 (Royal Bank of Canada v. 1434399 Ontario Inc.) [IWOV-HPMain.FID680508]

[EXTERNAL EMAIL]

Hi Tim,

Sorry, not ignoring you on this. I've been tied up all week and haven't had a chance to connect with my client. Will get back to you on Monday.

Regards,

Steve

From: Tim Hogan <thogan@harrisonpensa.com>
Sent: Tuesday, September 5, 2023 2:13 PM
To: Stephen Barbier <sbarbier@mccagueborlack.com>
Cc: Manchanda Mukul - msi Spergel (mmanchanda@spergel.ca) <mmanchanda@spergel.ca>; Gagnon, Jason <jason.gagnon@rbc.com>; Thomas Masterson <tmasterson@harrisonpensa.com>
Subject: FW: CV-23-82432 (Royal Bank of Canada v. 1434399 Ontario Inc.) [IWOV-HPMain.FID680508]
Importance: High

Stephen

Engagement attached.

Can you please arrange for the letter to be signed and returned to us so Spergel can start this mandate.

Tim Hogan | [HARRISON PENZA LLP](#) | [130 Dufferin Avenue, Suite 1101, London, ON N6A 5R2](#) | *tel* 519-661-6743
| *fax* 519-667-3362 | thogan@harrisonpensa.com Assistant | Aimee Newman | *tel* 519-850-5568 |
anewman@harrisonpensa.com

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To: Stephen Barbier <sbarbier@mccagueborlack.com>
Cc: Isabelle Stacey <istacey@harrisonpensa.com>; Anna Honore <ahonore@mccagueborlack.com>; Ben Tustain <BTustain@mccagueborlack.com>; Gagnon, Jason <jason.gagnon@rbc.com>; Thomas Masterson <tmasterson@harrisonpensa.com>; Manchanda Mukul - msi Spergel (mmanchanda@spergel.ca) <mmanchanda@spergel.ca>
Subject: RE: CV-23-82432 (Royal Bank of Canada v. 1434399 Ontario Inc.) [IWOV-HPMain.FID680508]

ROYAL BANK OF CANADA

v.

1434399 ONTARIO INC.

Applicant

Respondent

Court File No. CV-23-00082432-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
HAMILTON, ONTARIO

SUPPLEMENTARY AFFIDAVIT

HARRISON PENZA ^{LLP}

Barristers & Solicitors
130 Dufferin Avenue, Suite 1101
London, Ontario N6A 5R2

**Timothy C. Hogan (LSO #36553S)
Robert Danter (LSO #69806O)**

Tel : (519) 679-9660

Fax: (519) 667-3362

Email: thogan@harrisonpensa.com
rdanter@harrisonpensa.com

Lawyers for the Applicant,
Royal Bank of Canada