



SUPERIOR COURT OF JUSTICE

**COUNSEL SLIP/ENDORSEMENT**

COURT FILE NO.: CV-23-00700602-00CL DATE: 23 October 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: Royal Bank of Canada v. Express GT Parts Serve Inc., et al.

BEFORE JUSTICE: Conway

**PARTICIPANT INFORMATION**

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**ENDORSEMENT OF JUSTICE CONWAY:**

[1] **All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of Royal Bank of Canada dated August 14, 2023.**

[2] RBC applies for a receivership order over the assets, undertakings and properties of Express GTPS. This application started before me on August 23, 2023. In its responding factum delivered shortly before the

hearing, counsel for Express GTPS raised an issue challenging this court's jurisdiction to hear the application. I adjourned the hearing to today to give RBC an opportunity to amend its notice of application. RBC did so and I granted an order approving the amendment. Express GTPS is no longer challenging this court's jurisdiction. However, it opposes the application. BMO supports RBC's application. No other stakeholder opposes the appointment of a receiver.

- [3] After hearing submissions from counsel, I said that I was granting the receivership order, with reasons to follow. These are those reasons.
- [4] RBC is a secured lender to the Original GTPS Borrowers. RBC is owed close to \$1 million in principal and interest, with costs and interest continuing to accrue. The sole principal of those companies was Mr. Randhawa, the former husband of Ms. Kaur. RBC's debt is guaranteed by 284 (of which Ms. Kaur is the President) and Mr. Randhawa. RBC holds GSAs and a charge over the Caledon location to secure its debt. The GSAs include the right to appoint a receiver. GTPS also has secured debt of \$765,000 owing to BMO.
- [5] The Original GTPS Borrowers operated an auto parts and after market business. They described themselves on their website as "Brampton, Caledon and Georgetown's leading new auto parts and aftermarket parts supplier". It is readily apparent that Express GTPS operates the same business. It uses the identical language on its website to describe its business. It uses the same logo. It uses the same supplier, Uni-Select Canada Inc. It operates out of the same locations. Interestingly, although the Original GTPS Borrowers required secured debt to operate their business, Express GTPS has no secured debt.
- [6] Mr. Randhawa and Ms. Kaur signed a separation agreement on May 28, 2021. Ms. Kaur incorporated Express GTPS six days later. She is the sole director and officer of that company. Under the separation agreement, Mr. Randhawa was entitled to the assets of the Brampton and Georgetown locations (valued in the agreement at \$500,000 and \$250,000, respectively) and Ms. Kaur was entitled to the assets of the Caledon location (valued at \$250,000). Nonetheless, Express GTPS operates from all three locations in Brampton, Georgetown and Caledon. Ms. Kaur's evidence is that her experience in the business was for a few months in 2021 and that her husband did not permit her to access any banking or money matters.
- [7] Although Express GTPS appears to be operating the same business out of the same locations, very little money was paid to the Original GTPS Borrowers for the business. Express GTPS paid the landlords rental arrears for an assignment of the lease in Georgetown. It signed a new lease with the same landlord for the Brampton location. All that was paid to the Original GTPS Borrowers for the business assets was \$87,450 for some inventory. That amount was paid by 30 cheques that were deposited by the Original GTPS Borrowers in accounts at various banks (four at RBC). The invoices for the inventory were for round amounts and did not list the name or address of the vendor. Ms. Kaur's original evidence is that the inventory was left behind at the Georgetown location (although they were dated months before Express GTPS took over that location). She later revised this to the Brampton location (that Mr. Randhawa was supposed to retain under the terms of the separation agreement).
- [8] The business operated by the Original GTPS Borrowers appears to have significant value. As noted above, in their separation agreement, the parties valued the Brampton location at \$500,000 and the Georgetown location at \$250,000. On the financial statements for GT Parts Serve Ltd for the year ended December 31, 2021, retained earnings were \$643,233 and for 2696009 Ontario Inc. were \$245,852.
- [9] On February 23, 2023, the Original GTPS Borrowers were dissolved. Despite the apparent transfer of the businesses to Express GTPS, none of the RBC secured debt was repaid. RBC was not notified about any of the dealings between the Original GTPS Borrowers and Express GTPS or the transfer of assets to

Express GTPS. Once it discovered the dissolution in March 2023, RBC arranged a meeting with Mr. Randhawa and the representative of Ms. Kaur. According to Mr. Gordon, RBC's affiant who was at the meeting, they discussed the specific assets that were transferred from GT Parts to Express GTPS "being the inventory, receivables, all the assets that would have been secured by the bank under the general security agreement with GT parts...". Ms. Kaur's cousin Harry Pannu attended the meeting as her representative. According to Mr. Gordon, Mr. Pannu sought terms for Express GTPS to repay RBC's loan over time.

- [10] RBC's position is that its General Security Agreements broadly cover all assets of the Original GTPS Borrowers' auto parts business. Once RBC discovered the transfer of the business to Ms. Kaur, RBC added Express GTPS to its PPSA registrations so that its security interest extends to the collateral transferred to that company under s. 48(2) of the PPSA. RBC seeks a receiver to take steps to protect its collateral and the proceeds thereof, and to obtain the necessary information to safeguard its own interests and those of other creditors.
- [11] Express GTPS opposes the application. Its position is that Ms. Kaur's business is independent of her former husband's business, that she is carrying on the only business she knows, and that the court should place no weight on the values given to the businesses in the separation agreement. It submits that RBC did not monitor the bank accounts of the Original GTPS Borrowers after they went into default in April 2022 and did not take action quickly enough. It submits that the only assets it received from the two original debtors is the inventory and that RBC implicitly authorized the transfer of that collateral for purposes of s. 25(1) of the PPSA. Alternatively, the inventory was sold to Express GTPS in the ordinary course of business and is free of RBC's security interest under s. 28(1) of the PPSA. Express GTPS submits that the appointment of a receiver would disturb the *status quo* of its business.
- [12] I reject these submissions. It is apparent that Express GTPS is carrying on the same business as the Original GTPS Borrowers. The broad security afforded by RBC's general security agreements and perfected under the PPSA covers any of the assets transferred to that business. Express GTPS has been using the collateral to carry on its business, without RBC's debt having been repaid. On the evidence before me, the purchase of inventory for \$87,425 represents only a portion of the business assets and indeed the manner in which the 30 cheques themselves were prepared and deposited raises numerous questions. RBC was not made aware of any of these arrangements and acted quickly when it found out about the transfer and dissolutions in February and March 2023. I note that there even though there may have been a financial reporting default in 2022, there were no substantive defaults by the Original GTPS Borrowers that might have alerted RBC to the situation until December 2022/January 2023. By that time, the assets had already been transferred to Express GTPS.
- [13] I see no reason to disregard the business values ascribed by Mr. Randhawa and Ms. Kaur to these businesses in their separation agreement. Ms. Kaur herself referred to them on cross-examination. I have already noted the significant retained earnings set out in the financial statements of the Original GTPS Borrowers.
- [14] In my view, it is just and convenient to appoint a receiver over the assets, undertaking and properties of Express GTPS. That will enable RBC to protect its collateral and the proceeds thereof. The order provides that if there is a shortfall owing to RBC from the use of its collateral, a reference shall proceed to determine the amount of the shortfall, in such manner as is determined by the court.
- [15] Receivership order to go as signed by me and attached to this Endorsement. This order is effective from October 23, 2023 and is enforceable without the need for entry and filing.



**Conway J.**

**Released: October 24, 2023**