

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

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

EXPRESS GT PARTS SERVE INC.

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

FACTUM OF ROYAL BANK OF CANADA

August 14, 2023

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PART I – NATURE OF THE APPLICATION

1. Royal Bank of Canada (“**RBC**”) makes an application for an Order, in substance, appointing msi Spergel inc. (“**Spergel**”) as receiver of all the assets, undertakings and properties of Express GT Parts Serve Inc. (“**Express GTPS**”) acquired for, or used in relation to a business carried on by Express GTPS, and all proceeds thereof.

PART II – FACTS

2. Express GTPS is a privately-owned Ontario corporation, incorporated on June 3, 2021. It describes itself as “*Brampton, Caledon and Georgetown’s leading new auto parts and aftermarket parts supplier.*” Its sole registered director and officer is Gopinder Kaur (“**Ms. Kaur**”).

Affidavit of Peter Gordon sworn June 6, 2023 [Gordon Affidavit] at paras. 3-4, Application Record of RBC dated June 7, 2023 [Application Record], Tab 4.

Affidavit of Gopinder Kaur sworn June 29, 2023 [Kaur Affidavit] at paras. 3-6, Responding Application Record of Express GTPS dated June 29, 2023 [Responding Application Record], Tab 1.

3. Prior to Express GTPS’ incorporation, Ms. Kaur worked at GT Parts Serve Ltd. (“**GTPS**”) and/or 2696009 Ontario Inc. o/a GT Parts Serve (together with GTPS, the “**Original GTPS Borrowers**”). RBC provided secured credit facilities to the Original GTPS Borrowers. Like Express GTPS, the Original GTPS Borrowers described themselves as “*Brampton, Caledon and Georgetown’s leading new auto parts and aftermarket parts supplier*” operating from the same specific addresses as Express GTPS and with an almost identical logo and marketing materials.

Kaur Affidavit, *supra*, at para. 5.

Transcript of the Cross Examination of Ms. Kaur [Kaur Transcript] at questions 50-63, 73-75, 387-397 and 414-415, Transcript Brief of RBC dated August 1, 2023 [Transcript Brief], Tab 3.

Gordon Affidavit, *supra*, at para. 5-8.

4. The Original GTPS Borrowers' sole registered principal was Ms. Kaur's husband, Gurbir Singh Randhawa ("**Mr. Randhawa**"). Ms. Kaur originally testified that she and her husband operated the Original GTPS Borrowers together. But on cross-examination, she admitted that she only worked there for a few months in 2021, that she required approval from someone other than her husband to exercise basic tasks like purchasing inventory and that her husband "*will never let me access the banking and what is going on with the money, I never knew that.*"

Kaur Affidavit, *supra*, at para. 5.

Kaur Transcript, *supra*, at questions 50-63, 83 and 107-108.

5. Ms. Kaur legally separated from Mr. Randhawa on January 12, 2021, they entered into a separation agreement on May 28, 2021 and Express GTPS was incorporated six days later on June 3, 2021, none of which was disclosed to RBC. The Original GTPS Borrowers' collateral was then transferred (in stages) to Express GTPS without RBC's knowledge or consent in or about 2022. The Original GTPS Borrowers were then purportedly dissolved, voluntarily and again without notice to RBC, on February 23, 2023.

Kaur Affidavit, *supra*, at para. 4.

Gordon Affidavit, *supra*, at paras. 1, 9 and 10.

Transcript of the Cross Examination of Peter Gordon [Gordon Transcript] at questions 52-61, Transcript Brief, Tab 1.

Kaur Transcript, *supra*, at questions 212 and 420-431.

6. The foregoing occurred notwithstanding the Original GTPS Borrowers' continued outstanding indebtedness to RBC. As of March 9, 2023:

- (a) GTPS owes \$757,296.07 of principal and interest to RBC, which amount is guaranteed by 269; and

- (b) 269 also owes a further amount of \$200,722.49 of principal and interest to RBC (collectively, plus costs, legal expenses and accruing interest, the “**RBC Indebtedness**”).

Gordon Affidavit, *supra*, at paras. 5-7 and 16.

7. The RBC Indebtedness is pursuant to:

- (a) in the case of GTPS, a revolving demand facility made available by RBC to GTPS pursuant to and under the terms of a credit agreement dated August 25, 2021, as amended by an amending agreement dated February 15, 2023 (being approximately one week prior to GTPS’ purported voluntary dissolution) (collectively, the “**GTPS Credit Agreement**”); and
- (b) in the case of 269:
- (i) a business operating line, credit card facilities and a Canada Emergency Business Account (“**CEBA**”) loan, all made available by RBC to 269 pursuant to and under the terms of a business banking loan agreement dated March 11, 2021, a business credit card agreement dated March 11, 2021 and the CEBA enrollment terms and conditions (collectively and together with the GTPS Credit Agreement, the “**Credit Agreements**”); and
- (ii) 269’s guarantee of GTPS’ obligations to RBC, pursuant to a guarantee and postponement of claim agreement in the limited principal amount of \$770,000 dated October 22, 2021 (the “**269-GTPS Guarantee**”).

Gordon Affidavit, *supra*, at paras. 5-7 and 16.

8. GTPS' obligations to RBC are also guaranteed by:
- (a) 2843923 Ontario Inc. ("**284**"), a corporation of which Ms. Kaur is the President, pursuant to a guarantee and postponement of claim agreement in the limited principal amount of \$770,000 dated October 22, 2021 (the "**284-GTPS Guarantee**"); and
 - (b) Mr. Randhawa personally, pursuant to a guarantee and postponement of claim agreement in the limited principal amount of \$770,000 dated November 17, 2021 (together with the 269-GTPS Guarantee and the 284-GTPS Guarantee, the "**Guarantees**").

Gordon Affidavit, *supra*, at para. 6 and exhibit G.

9. As security for their respective obligations to RBC, the Original GTPS Borrowers and 284 provided security in favour of RBC (the "**Security**"), including, without limitation:

- (a) in the case of the Original GTPS Borrowers and 284, general security agreements dated March 11, 2021 and October 22, 2021, as applicable (collectively, the "**GSAs**"), registrations in respect of which were duly made pursuant to the *Personal Property Security Act* (Ontario) (the "**PPSA**"); and
- (b) in the case of 284, a charge/mortgage in favour of RBC on title to the real property known as 15958 Airport Road, Caledon, Ontario (the "**Caledon Location**") in the principal amount of \$1,837,500.00 (the "**Charge**"). The Charge exceeds the quantum of the Guarantee from 284 because the Charge also secures 284's direct borrowings from RBC, which are not the subject of the within application.

Gordon Affidavit, *supra*, at para. 8.

10. The credit facilities advanced by RBC to GTPS were supposed to have been used to pay-out Bank of Montreal (“**BMO**”), which was GTPS’ previous general secured creditor. However, BMO was not paid-out either and is also owed approximately \$765,000 by GTPS as of March 27, 2023.

Gordon Affidavit, *supra*, at para. 13.

Affidavit of Tina Swanson [Swanson Affidavit] at para. 13.

11. In contrast, Express GTPS appears to operate its business without the need for any general secured borrowings of its own (apart from security given to its automotive parts’ supplier, Uni-Select Canada Inc., which previously supplied the Original GTPS Borrowers on a secured basis with the same items and payment terms as now supplied to Express GTPS).

Gordon Affidavit, *supra*, at paras. 12-13.

Kaur Transcript, *supra*, at questions 75-76.

Express GTPS Has Assumed the Original GTPS Borrowers’ Businesses and Assets

12. Express GTPS now operates from three locations – 341 Guelph Street in Georgetown (the “**Georgetown Location**”), 21 Regan Road in Brampton (the “**Brampton Location**”) and the Caledon Location (together with the Georgetown Location and the Brampton Location, the “**Three Locations**”). Express GTPS has never had any operating location other than the Three Locations. As recently as April 2023, Express GTPS’ own website still referenced the Original GTPS Borrowers operating all Three Locations. The Original GTPS Borrowers’ defunct website continues to reflect the same thing.

Kaur Affidavit, *supra*, at para. 8.

Kaur Transcript, *supra*, at questions 125-126, 387-397 and 419 and exhibits F and H thereto.

Gordon Affidavit, *supra*, at para. 5-8.

The Georgetown Location

13. The Georgetown Location appears to be the most recent addition to Express GTPS' operating portfolio. According to Ms. Kaur, her husband informed her "*In or around the Fall of 2022*" that he was "*relocating*" the Original GTPS Borrowers' existing business from the Georgetown Location, "*which was the location that GTPS was operating out of at the time,*" and asked her if Express GTPS wanted to "*take over*" the lease at the Georgetown Location (the "**Georgetown Lease**").

Kaur Affidavit, *supra*, at para. 10.

14. Ms. Kaur supposedly agreed, and Express GTPS took an assignment of the Georgetown Lease pursuant to an assignment agreement dated October 4, 2022 and effective September 30, 2022 (the "**Georgetown Lease Assignment Agreement**").

Kaur Affidavit, *supra*, at paras. 11 and 12 and exhibit B thereto.

15. To obtain the landlord's consent to the assignment of the Georgetown Lease, Ms. Kaur's testimony is that Express GTPS paid \$64,334.66 in rent arrears to the landlord on October 4, 2022. This is the equivalent of approximately two years' rent arrears.

Kaur Affidavit, *supra*, at para. 13.

16. On cross-examination, Ms. Kaur admitted that: (i) RBC was not informed about this transaction; and (ii) Express GTPS did not pay anything to the Original GTPS Borrowers to assume the go-forward rights under the Georgetown Lease. In comparison, the terms of Ms. Kaur's own separation agreement with her husband provided that the business at the Georgetown Location was valued at approximately \$250,000 and would remain her husband's.

Kaur Transcript, *supra*, at questions 120, 121, 398 and 429.

Kaur Affidavit, *supra*, at exhibit A thereto.

17. Ms. Kaur also conceded on cross-examination that, despite not paying anything to the Original GTPS Borrowers to assume the go-forward rights under the Georgetown Lease, these rights did in fact have real value for Express GTPS:

309 Q. So is it your evidence that the value of the Georgetown location when you took it was worth zero?

A. Georgetown location? Okay, if I say that according to my separation, the Georgetown location was worth up for \$250,000, right? So it was not \$250,000 for the owner of that building. For the owner, it was just an empty building. So it was the same thing to me. The person who is running a business there maybe is for \$500,000 or maybe a million dollars for them, but for a new person, it's just a building. I don't know how you can relate that to me.

310 Q. Okay. So let me put it to you bluntly, Ms. Kaur. When I looked at the lease at the Georgetown location and I looked at the amount, I think it's \$60,000 that [Express GTPS paid] in rent arrears –

A. Yes.

311 Q. That translated roughly to about two years worth of rent arrears at that location.

A. Yes.

312 Q. So if it was just a building and it didn't have any value to you, why would you have agreed to pay two years worth of rent arrears to take over that building? Why wouldn't you have just moved somewhere else, started somewhere else, where you didn't have two years of rent arrears to pay?

A. If I don't do that, there's another competitor, he can come there and because the Brampton and Georgetown location are too close, that's going to affect me here, too. And I know that if I pay them this, I can keep them away from my territory and I can make that money easily.

313 Q. So the location is not worth zero to you, it's worth something more than zero.

A. If I work harder, it was worth to me, yes.

Kaur Transcript, *supra*, at questions 309-313 and 398.

18. Ms. Kaur originally testified in her affidavit that, “*Despite moving to a different location, GTPS left some of its inventory and other items at the [Georgetown Location]*” (the “**Subject Goods**”). According to Ms. Kaur, Express GTPS agreed to purchase the Subject Goods because, amongst other things, doing so “*would prevent [her husband] and his business partners from needing to visit the Property in the future to take them.*” Attached to Ms. Kaur’s affidavit were copies of 30 cheques to the Original GTPS Borrowers totalling approximately \$87,450, together with purported corresponding invoices from the Original GTPS Borrowers for the sale of the Subject Goods.

Kaur Affidavit, *supra*, at paras. 16 and 17 and exhibits F and G thereto.

19. In fact, the cheques and purported invoices appended to Ms. Kaur’s affidavit were dated months before Express GTPS took over the Georgetown Lease. Similarly, the banking records appended to Ms. Kaur’s affidavit reflect that the cheques were also deposited months before Express GTPS took over the Georgetown Lease. These facts are inconsistent with the narrative in Ms. Kaur’s affidavit, including her desire to prevent interactions with her husband.

Kaur Affidavit, *supra*, at exhibits E, F and G thereto.

20. Less than 24 hours before Ms. Kaur’s cross-examination, Express GTPS’ counsel issued a letter purporting to correct Ms. Kaur’s evidence regarding the Subject Goods. In substance, the letter advises that the Subject Goods were purportedly purchased by Express GTPS from the Brampton Location and not from the Georgetown Location.

Kaur Transcript, *supra*, at exhibit A thereto.

The Brampton Location

21. Ms. Kaur’s affidavit is silent about Express GTPS’ operations at the Brampton Location. This silence includes how and when Express GTPS started operating there.

22. When Ms. Kaur was asked on cross-examination why “*there was never any reference in your affidavit anywhere about how Express GT Parts Serve Inc. started operating in Brampton?*,” its counsel commented “*Because that was not a transaction with GT Parts Serve.*” This, despite Ms. Kaur and her husband clearly deviating from the terms of their own separation agreement, which provided that the Brampton Location’s business would remain with Mr. Randhawa.

Kaur Transcript, *supra*, at questions 404-405.

Kaur Affidavit, *supra*, at exhibit A thereto.

23. In a very similar fashion to what occurred at the Georgetown Location, Express GTPS took over the Brampton Location from the Original GTPS Borrowers, this time pursuant to a purportedly “*fresh*” lease with the landlord dated March 31, 2022 and effective May 1, 2022 (the “**Brampton Lease**”). The Brampton Lease was disclosed for the first time during Ms. Kaur’s cross-examination, and a copy was provided after her cross-examination. Amongst other things, the Brampton Lease contains clauses pursuant to which:

- (a) “*THE LANDLORD acknowledges the sum of \$5,843.52 being transferred from old tenant to current tenant ... representing payment on account of rental security ...;*”
- (b) “*The Tenant agrees to take the Unit ‘as is’ as accepted from previous Tenant without recourse of any repairs from the Landlord;*” and
- (c) “*The Tenant agrees to obtain updated/revised occupancy permit under the new business name at its’ [sic] sole expense.*”

Kaur Transcript, *supra*, at questions 292-293.

Brampton Lease, ss. 0.01 and Schedule C thereto, at Tab 4 of the Transcript Brief.

24. As with the Georgetown Lease, Ms. Kaur admitted on cross-examination that: (i) RBC was not informed about this transaction; and (ii) Express GTPS did not pay anything to the Original GTPS Borrowers in connection with the taking of the Brampton Lease, notwithstanding that the Brampton business was valued at approximately \$500,000 for the benefit of her husband in their separation agreement.

Kaur Transcript, *supra*, at questions 117-119, 307, 398 and 430-431.

25. As with the Georgetown Lease, the Brampton Lease had real value for Express GTPS beyond any Subject Goods that Ms. Kaur now claims were left behind at the Brampton Location instead of the Georgetown Location:

303 Q. ... So it's not your evidence that a year after the \$500,000 valuation is made in the separation agreement [regarding GTPS' business at the Brampton Location], that the business at that same location was now only worth the \$87,450 that Express GT Parts Serve paid for the inventory and other assets at that location?

MR. DRYER: I'm sorry. I have to object because I think you're mixing up different things. Well, I don't know exactly what's meant by the word "assets" in that separation agreement. I was looking for it here. It's not spelled out. But it's not necessarily apples to apples, the same thing as the itemized inventory of auto parts that she purchased a year or so later.

MR. NEMERS: I agree with that. I agree with that, Mr. Dryer. There's something more. There's inventory, that's a certain part of the value, but then there's –

MR. DRYER: It could have been the value of the lease, the value of the goodwill, we don't know exactly. We don't know what inventory was sold off in the intervening year or how much time was left on the lease. You know, all the factors that give value of a business as a full undertaking in itself.

MR. NEMERS: Right.

Kaur Transcript, *supra*, at question 303.

26. Indeed, Ms. Kaur openly acknowledged on cross-examination that: (i) her husband “*knew that from the Brampton and the Georgetown location, he’s making money;*” and (ii) she sought to replicate her husband’s business under the Express GTPS banner by using almost the exact same slogans, logos and marketing techniques of the Original GTPS Borrowers, without paying anything for them:

416 Q. Did Express GT Parts Serve acquire GT Parts Serve’s intellectual property?

A. I can give you the answer for this is, you will see that there’s so many other companies doing this. You can see the logo is almost identical, because you don’t want the people to think that there’s someone totally new in the area. So just to get an idea. I don’t want to distract people. So these are common media practices that everyone is doing. This is nothing – nothing is wrong with it. So if the previous business what they were doing, I’m going to do the same thing, there is nothing wrong to say the same thing.

417. Q. So putting aside the view on whether it’s right or wrong, you acknowledge that, as much as possible, your marketing approach for Express GT Parts Serve Inc. was to mirror [the] same type of advertising language that GT Parts Serve was using, so that from the customer’s perspective, it would appear to be the same business; is that correct?

A. Yes. I don’t want them to think this is totally new thing. So, yeah.

Kaur Transcript, *supra*, at questions 168, 303 and 416-418.

27. The only thing Ms. Kaur says that Express GTPS paid to the Original GTPS Borrowers was \$87,450 for the Subject Goods, which she now says were purchased from the Brampton Location instead of the Georgetown Location. Regardless of the location, it is noteworthy that all 30 of the invoices evidencing the purported sale of the Subject Goods are: (i) for round dollar numbers; and (ii) provide heavily discounted purchase prices akin to the same discounts received from Uni-Select. Ms. Kaur’s testimony is that “*the more you buy, the cheaper price you get,*” and that the invoices from Uni-Select are “*like hundreds and thousands of parts we are ordering per month.*”

Kaur Affidavit, *supra*, at paras. 24 and 27 and exhibit F thereto.

Kaur Transcript, *supra*, at questions 84 and 88-98.

28. It is also noteworthy that none of the 30 invoices evidencing the purported sale of the Subject Goods contains the vendor's address or contact information. This gave rise to the following exchange with Ms. Kaur during her cross examination regarding the purported "ordinary course" nature of these transactions:

366 Q. And I can't help but notice that on all of these invoices, every single one, even though there's an address for your business, Express GT Parts Serve Inc., the issuing entity of the invoice, GT Parts Serve Ltd., there's no address for it on any of these invoices, there's no telephone number, no e-mail address, no way at all in getting into contact with the vendor. Does that strike you as odd on an invoice, Ms. Kaur?

A. No.

367 Q. Sorry, did you say "no"?

A. No. I clarified that before also that the only purpose I was doing this is to get rid of him.

368 Q. Yes?

A. So anyway, if the thing doesn't work, I was not going back to him and ask him to give me the credit and stuff like that for the stuff that is not working. So at that time, it was not my intention to verify where is he going, what is he doing, and why is he doing that.

Kaur Affidavit, *supra*, at paras. 24 and 27 and exhibit F thereto.

Kaur Transcript, *supra*, at questions 366-368.

29. Whereas Ms. Kaur's original evidence was that the Subject Goods were left behind at the Georgetown Location, and her revised evidence was that they were left behind at the Brampton Location, the 30 invoices themselves list only the Caledon Location (and as the purchaser's address).

Kaur Affidavit, *supra*, at exhibits F thereto.

The Caledon Location

30. Just like the Brampton Location, Ms. Kaur's affidavit is silent about Express GTPS' operations at the Caledon Location. This silence includes how and when Express GTPS started operating there.

31. Ms. Kaur's position during cross-examination was that the Original GTPS Borrowers never operated from the Caledon Location, but that is inconsistent with the objective evidence:

- (a) as recently as April 2023, Express GTPS' own website listed the Caledon Location as one of the Original GTPS Borrowers' operating locations;
- (b) the Original GTPS Borrowers' defunct website continues to list the Caledon Location as one of their operating locations;
- (c) the notice provision in the Georgetown Lease Assignment Agreement, entered into with the landlord at the Georgetown Location in October 2022, lists the Caledon Location for the Original GTPS Borrowers (distinct from the Georgetown Location for Express GTPS);
- (d) the financial covenants under the Credit Agreements are all measured on a combined basis for 284 (owner of the Caledon Location) and the Original GTPS Borrowers; and
- (e) when RBC provided 284 with funding to purchase the Caledon Location in November 2021 (from an arm's-length party), Mr. Randhawa and not Ms. Kaur gave a personal guarantee to RBC.

Kaur Transcript, *supra*, at questions 374-392 and 419 and exhibits F and H thereto.

Kaur Affidavit, *supra*, at exhibit B thereto.

Gordon Affidavit, *supra*, at exhibit C thereto.

32. It was put to Ms. Kaur on cross-examination that "*your husband guaranteeing the Caledon property's mortgage would make a lot more sense if both you and your husband were operating the Caledon location; isn't that correct?*" Express GTPS' counsel did not allow Ms. Kaur to answer, interjecting that it was "*a speculative question.*"

Kaur Transcript, *supra*, at question 214.

33. Ms. Kaur was also asked to be fully transparent by providing Express GTPS' bank statements from its incorporation in June 2021 and onwards (i.e., beyond the three months in the summer of 2022 that were attached to her affidavit), which “*might be helpful for the court and all the stakeholders in validating Ms. Kaur’s testimony and the narrative she’s put together in her affidavit.*” The request was taken under-advisement and ultimately refused.

Kaur Transcript, *supra*, at questions 402 405.

Transcript Brief, *supra*, at Tab 4.

RBC Discovers Wrongdoing and Takes Immediate Steps

34. The Original GTPS Borrowers were dissolved without notice to RBC on February 23, 2023, in the face of the outstanding RBC Indebtedness (and, apparently, monies also owing to BMO).

Gordon Affidavit, *supra*, at paras. 1, 9 and 10.

Swanson Affidavit, *supra*, at para. 13.

35. RBC first became aware of the dissolutions a few days later, on or about March 7, 2023, after being contacted by the Original GTPS Borrowers' accountant. The accountant advised RBC that he had been advised of the dissolutions by Canada Revenue Agency, and corporate profile searches pulled by RBC's counsel on March 7, 2023 confirmed the dissolutions. The Original GTPS Borrowers were then transferred to RBC's special loans group.

Gordon Affidavit, *supra*, at paras. 1, 9 and 10 and exhibit A thereto.

Gordon Transcript, *supra*, at questions 14-20.

36. A meeting then occurred on March 9, 2023. Ms. Kaur had been in India since early November 2022 following a death in the family, and was unable to attend the meeting as the principal of 284 (or Express GTPS). She sent her cousin, Harry Pannu, in her place. RBC's affiant was in attendance at the meeting. He testified as follows under cross-examination:

52 Q. Okay, Mr. Gordon, what happened at the meeting? What was said and by whom?

A. Well, primarily the focus was talking to Gurbir Randhawa, who was the owner of the two operating companies that were dissolved. And I questioned him on what happened and why the companies were dissolved.

53 Q. What did he say?

A. He advised he had been told by an advisor that he should dissolve the companies. I asked him how the bank's loans were going to be repaid. He had no answer as to how that would occur. He confirmed that the assets of the GT Parts were sold the previous year and transferred to his wife's company, Gopinder, to Express GT Parts.

54 Q. Did anybody discuss what specific assets were transferred, and from who, to Express GT Parts?

A. Yes, we discussed the specific assets being the inventory, receivables, all the assets that would have been secured by the bank under the general security agreement with GT parts. He confirmed they were transferred to your client, client's company, the previous year.

55 Q. And was anyone at this meeting speaking for Express GT Parts?

A. Yes, Harry Pannu, the cousin of Gopinder.

56 Q. What did he say?

A. He acknowledged that the assets of the company were being managed by Express GT Parts and offered terms to the bank to repay the liabilities of GT Parts. He wanted to set up payment terms so that they could repay the bank.

57 Q. From whom to whom?

A. From Express GT Parts. He was speaking on behalf of his cousin, Gopinder, who is the owner of Express GT Parts, offering RBC terms to repay the loans that were outstanding to GT Parts.

58 Q. And what were the terms?

A. He wanted time over a year or two, a termed-out facility to repay the 750,000 operating loan. I believe that was outstanding at the time. That was what was offered.

59 Q. And the authority you say he had to speak for Express GT Parts was he was a cousin of Gopinder?

A. Yes. She had sent Harry Pannu, the cousin, to the meeting to represent her.

60 Q. And how do you know that?

A. Because she sent me an email to confirm that.

Kaur Transcript, *supra*, at questions 225-230.

Gordon Transcript, *supra*, at questions 52-60.

37. The email from Ms. Kaur to RBC, authorizing Mr. Pannu to represent her at the meeting (including written confirmation from Ms. Kaur that “*He can discuss about Express GT Parts*”) was requested by and provided to Express GTPS’ counsel, and is included in the Transcript Brief.

Transcript Brief, *supra*, at Tab 2.

38. For greater certainty, Mr. Gordon also specified that when referring to “GT Parts” during his examination, he was “*referring to the two companies together, GT Parts Serve and 269 together, because they were all operated as the parts selling stores.*”

Gordon Transcript, *supra*, at question 71.

39. Immediately following the meeting on March 9, 2023, RBC amended its existing PPSA registrations to add Express GTPS as an additional debtor. RBC then: (a) made formal written demand on the Original GTPS Borrowers, 284 and Mr. Randhawa (as personal guarantor); (b) issued a formal notice to Express GTPS; and (c) issued notices of intention to enforce security pursuant to section 244(1) of the BIA, including, without limitation, to Express GTPS.

Gordon Affidavit, *supra*, at paras. 10 and 14 and exhibits H and I thereto.

40. RBC has not received any payment (in full or part) of the RBC Indebtedness, and Express GTPS has failed to make alternative satisfactory arrangements with RBC (and, apparently, BMO).

Gordon Affidavit, *supra*, at para. 18.

Swanson Affidavit, *supra*, at paras. 2, 16 and 19.

PART III – ISSUE

41. The issue to be considered by this Court is whether it is just and convenient to appoint Spergel as receiver of all the assets, undertakings and properties of Express GTPS acquired for, or used in relation to a business carried on by Express GTPS, and all proceeds thereof (collectively, the “**Property**”).

PART IV – LAW AND ARGUMENT

The Test for Appointing a Receiver, and the Scope of RBC's Security

42. RBC seeks the appointment of a receiver pursuant to subsection 243(1) of the BIA and section 101 of the *Courts of Justice Act* (Ontario) (the “CJA”). Both statutes enable the Court to appoint a receiver where such appointment is “*just or convenient.*”

BIA, s 243(1).

CJA, s 101.

43. In determining whether it is “*just or convenient*” to appoint a receiver under either the BIA or CJA, Ontario courts have applied the decision of The Honourable Mr. Justice Blair in *Freure Village*. In that case, His Honour confirmed that, in deciding whether the appointment of a receiver is just or convenient, 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,*” which includes the rights of the secured creditor under its security.

Bank of Nova Scotia v. Freure Village on Clair Creek (1996), 40 C.B.R. (3d) 274, [1996] O.J. No. 5088 at para. 10 (Gen. Div. [Comm. List]) [*Freure Village*] (CanLii: <http://canlii.ca/t/1wbtz>).

44. Where the enumerated rights of the secured creditor under its security include the right to seek the appointment of a receiver, the burden on the applicant seeking the relief is relaxed. The Honourable Mr. Chief Justice Morawetz previously held in *Elleway Acquisitions* that:

... while the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties.

Elleway Acquisitions Ltd. v. Cruise Professionals Ltd., 2013 ONSC 6866 at para. 27 [*Elleway Acquisitions*] (CanLii: <http://canlii.ca/t/g22q3>).

45. RBC's perfected security interest includes the contractual right to the appointment of a receiver. Moreover, the scope of RBC's perfected security interest extends to both RBC's collateral and the proceeds thereof, as provided by section 25(1) of the PPSA:

Perfecting as to Proceeds

- 25 (1)** Where collateral gives rise to proceeds, the security interest therein,
- (a) continues as to the collateral, unless the secured party expressly or impliedly authorized the dealing with the collateral free of the security interest; and
 - (b) extends to the proceeds.

GSAs, *supra*, at exhibit F to the Gordon Affidavit.

PPSA, *supra*, s. 25(1).

46. Given the unauthorized transfer of RBC's collateral to Express GTPS, and RBC taking immediate steps upon learning of the unauthorized transfer to add Express GTPS as an additional debtor under RBC's PPSA registrations, Express GTPS does not escape the reach of RBC's perfected security interest. This is provided by section 48(2) of the PPSA:

Transfer of Collateral

48 (2) Where a security interest is perfected by registration and the debtor, without the prior consent of the secured party, transfers the debtor's interest in all or part of the collateral, the security interest in the collateral transferred becomes unperfected thirty days after the later of,

- (a) the transfer, if the secured party had prior knowledge of the transfer and if the secured party had, at the time of the transfer, the information required to register a financing change statement; and
- (b) the day the secured party learns the information required to register a financing change statement,

unless the secured party registers a financing change statement or takes possession of the collateral within such thirty days [emphasis added].

PPSA, *supra*, s. 48(2).

It is Just and Convenient to Appoint the Receiver

47. Notwithstanding Ms. Kaur's efforts to portray Express GTPS' business as separate and independent from the Original GTPS Borrowers, it is very clear from the objective evidence canvassed earlier in this factum (including some of Ms. Kaur's own testimony and Mr. Pannu's admissions) that the Original GTPS Borrowers have transferred all or substantially all their business and assets to Express GTPS. This includes, but is not limited to, leases, goodwill, inventory, receivables and intellectual property. RBC has a perfected security interest in all this collateral and its proceeds, which Express GTPS has been using to run its business and generate additional proceeds (over which RBC's perfected security interest also attaches). Express GTPS has been doing this without any authorization of, or payment to, RBC. It is entirely just and equitable under these circumstances that a receiver be appointed.

Gordon Affidavit, *supra*, and exhibits thereto.

Kaur Affidavit, *supra*, and exhibits thereto.

Gordon Transcript, *supra*, and answers to under-advisements thereto.

Kaur Transcript, *supra*, and exhibits and answers to undertakings thereto.

48. There is no merit to the anticipated submissions of Express GTPS' counsel that the receivership ought to be avoided because: (a) Express GTPS allegedly paid \$87,450 to the Original GTPS Borrowers for certain inventory and other assets; and/or (b) the transactions between Express GTPS and the Original GTPS Borrowers were limited and/or conducted in the ordinary course of business.

Kaur Affidavit, *supra*, at para. 24.

Gordon Transcript, *supra*, at question 107.

49. The onus that a sale occurred in the ordinary course of business lies on Express GTPS.

***Ally Credit v. Almadi*, 2013 ONSC 2667 [Comm. List] (CanLii: <https://canlii.ca/t/fxdcz>) at para. 17.**

50. There is nothing “*ordinary*” about the purported intercompany sales totalling \$87,450 or any of the other transactions between Express GTPS and the Original GTPS Borrowers, which were far from limited. Indeed, the fact that none of the other transactions involved any monies whatsoever being paid to the Original GTPS Borrowers, but did result in Express GTPS taking over the totality of the Original GTPS Borrowers’ locations and business, is striking.

Gordon Affidavit, *supra*, and exhibits thereto.

Kaur Affidavit, *supra*, and exhibits thereto.

Gordon Transcript, *supra*, and answers to under-advisements thereto.

Kaur Transcript, *supra*, and exhibits and answers to undertakings thereto.

51. The purported intercompany sales totalling \$87,450 also lack the hallmarks of ordinary course sales, including, without limitation, for the following reasons:

- (a) the principals of the purported seller and buyer are husband and wife;
- (b) Express GTPS’ primary purpose (or “*only purpose*,” as testified by Ms. Kaur) for purportedly buying the Subject Goods was to “*get rid*” of her husband;
- (c) Express GTPS “*was not going back to him and ask him to give me the credit and stuff like that for the stuff that is not working;*”
- (d) none of the 30 invoices evidencing the purported sale of the Subject Goods contains the vendor’s address or contact information;
- (e) the Subject Goods were purportedly “*left behind*” by the Original GTPS Borrowers;
- (f) the purported sale of the Subject Goods resulted in the liquidation of the Original GTPS Borrowers’ inventory from the location in question (which location Ms. Kaur has been unable to demonstrate objectively);

- (g) all 30 of the invoices evidencing the purported sale of the Subject Goods are for round dollar numbers;
- (h) all 30 of the invoices evidencing the purported sale of the Subject Goods provide heavily discounted purchase prices; and
- (i) the purported Sale of the Subject Goods did not occur in isolation, was part of a broader series of transactions to evade the business' general secured creditors and was conducted without any sort of public sale process.

Gordon Affidavit, *supra*, and exhibits thereto.

Kaur Affidavit, *supra*, and exhibits thereto.

Gordon Transcript, *supra*, and answers to under-advisements thereto.

Kaur Transcript, *supra*, and exhibits and answers to undertakings thereto.

***85956 Holdings Ltd. v. Fayerman Brothers Ltd.* (1986), 25 D.L.R. (4th) 119 (Sask. C.A.)
(CanLII: <https://canlii.ca/t/1prwr>) at pages 6 and 7.**

***Thomson v Thomson*, 2015 SKQB 189 (CanLII: <https://canlii.ca/t/gjxzb>) at paras. 16-17.**

52. At this stage, the only reasonable and prudent path forward is to take any and all steps necessary to protect RBC's collateral and the proceeds thereof by having a receiver appointed over the Property. Based on the objective evidence, most (if not all) of the Property reasonably appears to be traceable back to RBC's collateral and the proceeds thereof, which conclusion is only reinforced by Ms. Kaur's admitted intention to make the Original GTPS Borrowers' business and Express GTPS' business "*appear to be the same business.*" Ms. Kaur must therefore take responsibility for any residual uncertainty in this regard.

Kaur Transcript, *supra*, at questions 416-417.

53. To the extent any residual piece of Property cannot ultimately be traced back to the collateral or its proceeds, it is still just and convenient to appoint a receiver over the totality of the Property to maximize recovery of the business as a whole (which is permitted, as the proposed appointment is also pursuant to section 101 of the CJA). The receiver, as an independent officer of the Court, will ultimately need to opine on which stakeholders are entitled to the proceeds of which assets.

CJA, s. 101.

54. In the circumstances set out above, it is just and equitable that a receiver be appointed. A receiver is necessary for the protection of the Property, the interests of RBC and, perhaps, other stakeholders. RBC understands that BMO consents to RBC's receivership application. RBC believes that the appointment of a receiver would enhance the prospect of recovery by RBC and protect all stakeholders.

Gordon Affidavit, *supra*, at paras. 17 and 19.

55. Spergel is a licensed insolvency trustee and is familiar with the circumstances of this matter. Spergel has consented to act as the Receiver.

Gordon Affidavit, *supra*, at paras. 20-22.

PART VI – RELIEF REQUESTED

56. It is respectfully submitted that this Court should grant an Order substantially in the form of the draft Order attached to and included in RBC's Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of August, 2023.



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SCHEDULE “A”**AUTHORITIES CITED**Jurisprudence

1. *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 40 C.B.R. (3d) 274, [1996] O.J. No. 5088 (Gen. Div. [Comm. List]) (CanLii: <http://canlii.ca/t/1wbtz>).
2. *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 (CanLii: <http://canlii.ca/t/g22q3>).
3. *Ally Credit v. Almadi*, 2013 ONSC 2667 [Comm. List] (CanLii: <https://canlii.ca/t/fxdcz>).
4. *85956 Holdings Ltd. v. Fayerman Brothers Ltd.* (1986), 25 D.L.R. (4th) 119 (Sask. C.A.) (CanLii: <https://canlii.ca/t/1prwr>).
5. *Thomson v Thomson*, 2015 SKQB 189 (CanLii: <https://canlii.ca/t/gjxzb>).

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended, s. 243

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

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

Definition of receiver

(2) Subject to subsections (3) and (4), in this Part, receiver means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — 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 — under
 - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or
 - (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of receiver — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the 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.

Meaning of disbursements

(7) In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

Courts of Justice Act, R.S.O. 1990, c. C-34, as amended, s. 101**Injunctions and receivers**

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

(2) An order under subsection (1) may include such terms as are considered just.

Personal Property Security Act, R.S.O. 1990, c. P.10, ss. 25(1), 28(1) and 48(2)**Perfecting as to proceeds**

25 (1) Where collateral gives rise to proceeds, the security interest therein,

(a) continues as to the collateral, unless the secured party expressly or impliedly authorized the dealing with the collateral free of the security interest; and

(b) extends to the proceeds.

Transactions in ordinary course of business

28 (1) A buyer of goods from a seller who sells the goods in the ordinary course of business takes them free from any security interest therein given by the seller even though it is perfected and the buyer knows of it, unless the buyer also knew that the sale constituted a breach of the security agreement.

Transfer of collateral

48 (2) Where a security interest is perfected by registration and the debtor, without the prior consent of the secured party, transfers the debtor's interest in all or part of the collateral, the security interest in the collateral transferred becomes unperfected thirty days after the later of,

(a) the transfer, if the secured party had prior knowledge of the transfer and if the secured party had, at the time of the transfer, the information required to register a financing change statement; and

(b) the day the secured party learns the information required to register a financing change statement, unless the secured party registers a financing change statement or takes possession of the collateral within such thirty days.

ROYAL BANK OF CANADA

- and -

EXPRESS GT PARTS SERVE INC.

Applicant

Respondent

Court File No. CV-23-00700602-00CL

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

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