

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE )  
JUSTICE )  
*HAINES* )

TUESDAY THE 4<sup>TH</sup> DAY  
OF DECEMBER, 2018



BETWEEN:

ROYAL BANK OF CANADA

Applicant

- and -

2236715 ONTARIO LIMITED  
o/a LUXURY AND SPORTS CARS

Respondent

APPROVAL AND VESTING ORDER

**THIS MOTION**, made by msi Spergel Inc., in its capacity as court appointed Receiver (in such capacities, the "**Receiver**"), without security, of all of the assets, undertakings and properties of 2236715 Ontario Limited o/a Luxury and Sports Cars (the "**Debtor**") appointed by Order of the Honourable Justice Dunphy dated August 3, 2018 (the "**Appointment Order**") for an Order for the following relief:

- a. An Order that the sale by auction (the "**Sale**") of the Vehicles as detailed at Schedule "A" (the "**Vehicles**") contemplated by the North Toronto Auction's Used Vehicle Consignment Agreement between the Receiver and Northern Auto Auctions of Canada Inc. o/a North Toronto Auction ("**NTA**") and appended to the First Report of the Receiver dated November 26, 2018 (the "**Auction Agreement**") be approved, and the execution of the Auction Agreement by the

Receiver be authorized and approved, with such minor amendments as the Receiver may deem necessary, and that the Receiver be authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Sale, and for the conveyance of the Vehicles to the Purchasers (the "**Purchased Vehicles**");

- b. An Order that the Vehicles shall be sold by auction as contemplated by the Auction Agreement, and upon delivery of a receipt for payment in full by NTA to each of the purchasers, that all of the Debtor's right, title and interest in and to each of the Purchased Vehicles so purchased shall vest in each of the purchasers (the "**Purchasers**") free and clear of 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 Appointment Order, (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**").
- c. An Order that for the purposes of determining the nature and priority of Claims, the proceeds received by the Receiver pursuant to the Auction Agreement shall stand in the place and instead of the Purchased Vehicles, and that following the

completion of the Sale, any and all Claims and Encumbrances shall attach to the proceeds received by the Receiver pursuant to the Auction Agreement with the same priority as they had with respect to the Vehicles sold at the Sale immediately prior to the Sale, as if the Purchased Vehicles had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

d. An Order that, notwithstanding:

- i. the pendency of these proceedings;
- ii. any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act (Canada)* in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- iii. any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Vehicles in each of the Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, 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.

e. A Request that any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, including the Ministry of Transportation Ontario, provide the aid and recognition to give effect to this

Order and to assist the Receiver, its agents or the Purchasers in carrying out the terms of this Order, and that all courts, tribunals, regulatory and administrative bodies make such orders and 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.

- f. Such further and other relief as counsel may request and this Honourable court may permit.

was heard this day at the Court House, 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion, the First Report of the Receiver dated November 26, 2018 and Affidavit of Service of Kelly Bryant sworn November 27, 2018 and on hearing submissions from all counsel in attendance,

1. **THIS COURT ORDERS** that the Sale contemplated by the Auction Agreement is hereby approved, and the execution of the Auction Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary, and that 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 Sale, and for the conveyance of the Purchased Vehicles to the Purchasers.
2. **THIS COURT ORDERS** that the Vehicles shall be sold by auction as contemplated by the Auction Agreement, and upon delivery of a receipt for payment in full by NTA to each of the Purchasers and that all of the Debtor's right, title and interest in and to each of the Purchased Vehicles so purchased shall vest in each of the

Purchasers free and clear of any Claims including, without limiting the generality of any Encumbrances.

3. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the proceeds received by the Receiver pursuant to the Auction Agreement shall stand in the place and instead of the Purchased Vehicles, and that following the completion of the Sale, any and all Claims and Encumbrances shall attach to the proceeds received by the Receiver pursuant to the Auction Agreement with the same priority as they had with respect to the Purchased Vehicles sold at the Sale immediately prior to the Sale, as if the Purchased Vehicles had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4. **THIS COURT ORDERS** that, notwithstanding:

- i. the pendency of these proceedings;
- ii. any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act (Canada)* in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- iii. any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Vehicles in each of the Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, 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.

5. **THIS COURT REQUESTS** that any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, including the Ministry of Transportation Ontario, provide the aid and recognition to give effect to this Order and to assist the Receiver, its agents or the Purchasers in carrying out the terms of this Order, and that all courts, tribunals, regulatory and administrative bodies make such orders and 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.

  
Justice, Ontario Superior Court of Justice  
Commercial List

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

DEC 04 2018

PER / PAR: 

## Schedule "A"

<b>VEHICLES</b>	<b>VIN</b>
2015 Mercedes-Benz M-Class	4JGDA2EB7FA452675
2014 Mercedes-Benz CLS-Class Luxury Sedan	WDDLJ9BB6EA094485
2011 Porsche Panamera	WP0AA2A76BL014785
2016 BMW X3	5UXWX9C53G0D63101
2014 BMW 5351	WBA5B3C57ED530245
2014 Mercedes-Benz M-Class Luxury	4JGDA2EB1EA386851
2014 Audi S5	WAULGBFR7EA039791

ROYAL BANK OF CANADA

v.

2236715 ONTARIO LIMITED *of a* LUXURY AND SPORTS CARS

Applicant

Respondent

Court File No. CV-18-00600821-00CL

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**ONTARIO**  
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

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**APPROVAL AND VESTING ORDER**

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