Court File No. CV-23-00697106-00CL

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

**BETWEEN:**

**ROYAL BANK OF CANADA**

Applicant

- and -

**H.M POLYTHENE PRODUCTS LIMITED**

Respondent

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# BOOK OF AUTHORITIES OF THE RECEIVER

**(Motion Returnable June 15, 2023)**

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June 13, 2023

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**LIST OF AUTHORITIES**

# Tab 1

Court File No. B22/91

ONTARIO COURT (GENERAL DIVISION)

B E T W E E N:

BANK OF AMERICA CANADA

Plaintiff

- and -

WILLANN INVESTMENTS LIMITED
and CRANBERRY VILLAGE, COLLINGWOOD INC.

Defendants



Counsel:

Harry Underwood for the Receiver, Coopers & Lybrand Limited

Stephen Schwartz for Prenor Trust Company of Canada

Frank Bennett and John Spencer for the Attorney General of Canada on behalf of Her Majesty the Queen in Right of Canada and in Right of Ontario

Heard: June 28, 1993

Farley J.

This was a motion for an order approving the Receiver's activities and fees (including the fees of its counsel) as set out in the Receiver's sixth report (covering the period October 1, 1992 to April 19, 1993) and seventh report (April 20, 1993 to June 13, 1993). At a previous hearing on May 14, 1993 the Crown had asked for an adjournment concerning the sixth report (the only report outstanding at that time) for the specific purpose of conducting consensual cross-examinations. Mr. Bennett who was fresh on the record (as of mid morning today with no advance

notice to other counsel) raised an objection as to my jurisdiction to hear the motion indicating that there was nothing in Blair J's original order establishing the receivership to allow for after-the-fact approval of the Receiver's activities. His position was that the only jurisdiction I had was to pass the accounts of the Receiver and approve its fees. He maintained that there was an inherent difference between passing of accounts and approval of activities.

I dealt with this general area in my earlier endorsement in this relating to previous reports (endorsement of May 2, 1993); see pp. 16-8. I again note that Mr. Bennett in his own text: F. Bennett, Receiverships (1985: Carswell, Toronto) said at p. 297:

> One of the purposes of passing accounts is to afford the receiver judicial protection in carrying out his powers and duties. Another purpose is to afford the debtor, the security holder and any other interested person the opportunity to question the receiver's activities to date.

In reply Mr. Bennett referred me to p. 298 of his text without specifying what was contained there; he gave me a copy of that page after the hearing concluded. I could find nothing of assistance on that page. In my view Mr. Bennett's own text supports the position of the Receiver that I have jurisdiction. It seems to me that the nature of a specific approval hearing is much better to review conduct than a passing of accounts which focuses on receipts and disbursements.

It does not seem to me that approval of the activities of the Receiver, a court appointee and therefore an officer of the court, requires specific words of authorization in the original order. To the extent that certain approval activities are mentioned in that order, I would regard these references as merely examples of what may take place. In my view this Court has the inherent jurisdiction to review and either approve or disapprove of the activities of a court appointed receiver. I note here that in this instance the activities were well summarized in the two reports; however such approval (if given) would be to the extent that the reports accurately summarized the material activities of the Receiver. As to inherent jurisdiction, see 80 Wellesley St. East Ltd. v. Fundy Bay Builders Ltd. et al (1972), 25 D.L.R. (3d) 386 (Ont CA) at pp. 389-90.

I pause to note that it would be unusual and illogical that the Receiver could come to court for prior approval but not post approval. If that were the case, one might well expect the courts to be inundated with prior approval requests for virtually any activity.

It seems to me that a receiver should be able to come to court and bare its breast . Having done so, it has exposed itself to the sword of any interested party which may feel aggrieved of any action by that receiver. However, if the court

feels that the receiver has met the objective test required of it, then the court may bestow a shield to the receiver for that reviewed and approved activity. If the activity is disapproved, then the receiver is in the unenviable position of watching itself be disembowelled in court with sanctions then or to be dealt with in accordance with arrangements then worked out.

I would therefore dismiss the Crown's objection to my jurisdiction (now raised as to the sixth and seventh report but apparently the subject of appeal as to earlier approvals).

Having come to that conclusion, I have also concluded that the receiver has met the objective test and that its activities and fees for the period covered by the sixth and seventh report should be approved. I note in this respect while all concerned acknowledged that the fees were "expensive" that Prenor Trust which will ultimately bear the cost was supportive of the receiver. While "expensive", I found the fees in line with the complications and protractions of this receivership.

Costs were asked for in this instance. Mr. Bennett submitted that a costs award against the Crown would discourage creditors in general from appealing and objecting . That should of course be avoided where creditors have taken a reasonable position; in other words, the mere fact that a creditor is not successful in persuading a court of the rightness of its position

should not subject that creditor to a costs sanction. However I view this day's events in a different light. In my view much time was wasted in the Crown's several requests for a further adjournment and there was no advance notice that jurisdiction would be challenged. I would also observe that the scheduled time for this matter was therefore greatly exceeded. Counsel on all sides of a matter owe a duty to ensure that the court office is kept up to date with a realistic estimate of time required. This will, of course, require the cooperation of counsel amongst themselves. (In speaking of cooperation, I note in passing that this motion was merely one of six motions dealt with today concerning this project. Unfortunately none of the counsel involved in these six motions (there being other counsel with respect to the other five) was mindful of the practice directions request that in a continuing complex or multiple motion file there be a sorting through and grouping of the materials to be dealt with the next day. In the present situation, this meant that several motion records had to be retrieved from the office once all the files were sorted out. There were as well the to-be-discouraged late filings. I note that Mr. Bennett indicated that his client never gave him a copy of the seventh report to review and that he had only reviewed the sixth report some 5 or 6 weeks ago for another purpose. His submissions with respect to the actual activities being reviewed were therefore rather limited in extent and time . Costs are awarded against the Crown

payable forthwith to the Receiver in the amount of $1500 and Prenor Trust $500.

Farley, J.
June 28, 1993

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| ROYAL BANK OF CANADA | -and- | H.M. POLYTHENE PRODUCTS LIMITED |
| Applicant | | Respondent |

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

Proceeding commenced at
Toronto, Ontario

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