

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

ROYAL BANK OF CANADA

Applicants/Responding Party

- and -

**TEN 4 SYSTEM LTD., 1000043321 ONTARIO INC. and 1000122550
ONTARIO INC.**

Respondents/Moving Parties

AMENDED NOTICE OF MOTION FOR LEAVE TO APPEAL

THE MOVING PARTIES Ten 4 System Ltd., 1000043321 Ontario Inc. and 1000122550 Ontario Inc. will make a motion to the Court on a date fixed by the Registrar.

THE METHOD OF HEARING: The motion will be heard in writing.

THE MOTION IS FOR:

1. An Order granting leave to appeal to the Court of Appeal from the Order of the Honourable Justice Osborne of the Superior Court of Justice, made on October 18, 2023;
2. Costs of this motion, if opposed; and,
3. Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. The learned Applications Judge erred in law by incorrectly relying upon the Applicant's characterization of evidence it had compiled in a so-called "confidential brief" that was neither served upon or made available to the Defendants or their counsel, nor filed with the Superior Court of Justice or put before the learned Applications Judge.
2. The learned Applications Judge erred in law by incorrectly applying section 101 of the *Courts of Justice Act* notwithstanding the fact that the relief sought in the application was for a final, and not an interlocutory, order;
3. The learned Applications Judge also made an overriding and palpable error of mixed fact and law by concluding that it was "*just and convenient*" to appoint a receiver notwithstanding the fact that reasonable alternatives were available in the circumstances;
4. In the alternative, the learned Applications Judge's discretionary decision to appoint a receiver, and/or the insufficient weight given to the relevant considerations of reasonable alternatives by the learned Applications Judge in coming to that decision, was so clearly wrong that it amounted to an injustice;
5. The Court of Appeal has jurisdiction to hear this Motion for Leave to Appeal and any related proceeding(s);
6. Sections 183 (2) & 193 (e) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
7. Section 6 (1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43; and,
8. Rule 61.03 (1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this motion:

1. The Order of the Honourable Justice Osborne, dated October 18, 2023;
2. The Motion Record and Factum of the Applicants; and,
3. Such further and other evidence as counsel may advise and this Honourable Court may allow.

Dated November 12, 2023

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Court of Appeal File No.:
Court File No.: CV-23-00705869-00CL

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