



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

**COUNSEL SLIP/ENDORSEMENT**

COURT FILE  
NO.:

CV-23-00705869-00CL

DATE: April 24, 2024

NO. ON LIST: 3

TITLE OF PROCEEDING: **Royal Bank of Canada v. Ten 4 System Ltd., et al.**  
BEFORE: **Justice Osborne**

**PARTICIPANT INFORMATION**

**For Applicant(s):**

Name of Person Appearing	Name of Party	Contact Info
Tim Hogan	Counsel to the Receiver (msi Spergel Inc.)	<a href="mailto:thogan@harrisonpensa.com">thogan@harrisonpensa.com</a>
Mukul Manchanda	Representative of the Receiver	<a href="mailto:mmanchanda@spergel.ca">mmanchanda@spergel.ca</a>

**For Respondent(s):**

Name of Person Appearing	Name of Party	Contact Info
Not Applicable		

**For Other(s):**

Name of Person Appearing	Name of Party	Contact Info
Roger Jaipargas	Counsel for Royal Bank of Canada	<a href="mailto:rjaipargas@blg.com">rjaipargas@blg.com</a>

**ENDORSEMENT OF JUSTICE OSBORNE:**

1. The Receiver brings this motion for an order:
  - a. approving the First Report of the Receiver dated April 3, 2024 and the activities scribed therein;
  - b. approving the Interim Statement of Receipts and Disbursements;

- c. directing the Debtors and the Principals to advise the Receiver of the location of, and to produce, all Property and Records as defined in the Appointment Order;
  - d. authorizing and directing the Receiver to execute a listing agreement for the sale of the Real Property and to carry out a Sale Process;
  - e. sealing the Confidential Appendices to the First Report until the completion of the Sale Process or further order; approving the fees and disbursements of the Receiver and its counsel; and
  - f. authorizing and confirming the termination of the Northwest Lease and if necessary granting leave to issue a writ of possession for the Real Property.
2. The Receiver relies upon the First Report and the facts described therein. Defined terms in this Endorsement have the meaning given to them in earlier endorsements in this matter and/or the motion materials, including but not limited to the First Report.
  3. The relief sought today is not opposed, and is fully supported by the primary creditor, RBC. No one appears for the Debtors, although properly served as is clear from the affidavits of service filed.
  4. The background for, and context of this motion is set out in the First Report. In my earlier Endorsements, Nasir Mahmood and Rupinder Taggar are the Principals. Mahmood is a director of each of the Debtors, and Taggar is a director of both 321 Ontario and 550 Ontario, which own certain adjoining real property located in Ayr, Ontario. The property is subject to a lease dated June 26, 2023 with Northwest Carrier as tenant, and the Debtors as landlord.
  5. The Receiver and its counsel have made multiple requests for copies of Books and Records, but the Debtors and/or the Principals have failed or refused to deliver them. They are required to administer the estate of the Debtors. There are serious and significant issues. For example, the materials that the Receiver has received relating to accounts receivable are irreconcilable with the substantially higher quantum of receivables described in the Supplementary Affidavit of Mahmood. The Receiver is entitled to explore the significant variance, among other issues, in order to determine what assets such as accounts receivable exist and are collectible.
  6. The Appointment Order authorizes the Receiver to market any Property of the Debtors. The Receiver has solicited to real estate brokers to submit listing proposals for the marketing and sale of the property described above, and recommends that it be authorized and directed to execute the listing agreement with Avison Young.
  7. I am satisfied that the proposed listing agreement is reasonable, appropriate and will be accretive to efforts to maximize recovery for stakeholders.
  8. The proposed Sale Process is appropriate and reasonable, and I am satisfied that it will also maximize the chances of securing the best price for the property and therefore maximize recovery for stakeholders, through a process that is transparent, fair, appropriate and has integrity. See: *Royal Bank of Canada v. Soundair Corp.*, and *CCM Master Qualified Fund v. bluetip Kap Power Technologies*. The Sale Process is approved.
  9. The Confidential Appendices to the First Report include commercially sensitive information and materials that could and likely would impair the objective of attempting to maximize value through the Sale Process. It is limited, both in scope (the materials covered) and in time (in effect only until the property is sold or further order of the Court).
  10. I am satisfied that the test set out by the Supreme Court of Canada in *Sierra Club* as refined in *Sherman Estate* has been met here.

11. I am also satisfied that the activities of the Receiver, and the fees of the Receiver and its counsel, are reasonable and appropriate in the circumstances, and are consistent with the mandate of the Receiver set out in the Appointment Order. See: *Bank of Nova Scotia v. Diemer*. They are approved.
12. The terms of the Northwest lease will have a significant impact on the value of the real property and the ability to sell it. The rent being charged appears to the Receiver to be well below market value. The lease includes an indefinite right of renewal provided to the tenant. The tenant is in default and the lease has been terminated by the Receiver.
13. On March 28, 2024, the Tenant confirmed it would vacate the property by April 4, 2024 and I am advised today that it did so with the result that no relief is now required with respect to that issue.
14. I observe as noted above that no one appears today to oppose the relief sought on this motion. In particular, the tenant (who is specifically on notice) has not appeared, and nor have the Debtors or the Principals. I have directed counsel to the Receiver to provide a copy of this Endorsement to Mr. Singh, who remains counsel to the Debtors in this proceeding. The Debtors are reminded that this Court expects their cooperation with the Receiver in fulfilling its mandate.
15. Order to go in the form signed by me today which has immediate effect without the necessity of issuing and entering.

Osawa, J.