

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

B E T W E E N:

**ROYAL BANK OF CANADA**

Applicant

- and -

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

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION  
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**

---

October 2, 2023

**M. SINGH LAW  
PROFESSIONAL CORPORATION**

100 King Street West – Suite 5700  
First Canadian Place  
Toronto, Ontario  
M5X 1C7

**Manjit Singh (LSO# 55976D)**

Email: MSingh@MSinghLaw.ca  
Tel: 647.722.8400

**Lawyers for the Respondents**

## I – INTRODUCTION

1. The herein Application is made for an Order under subsection 243(1) of the *Bankruptcy and Insolvency Act (Canada)* and section 101 of the *Courts of Justice Act (Ontario)* appointing a Receiver of all the assets, undertakings, and properties of the Respondents.
2. The Respondents assert that the appointment of a Receiver by this Honourable Court would not be “**just and convenient**” in the given situation.

## II - THE FACTS

3. The Respondent Ten 4 Systems Ltd. (hereinafter “**Ten 4**”) operates within the shipping, transportation, and/or logistics industry and depends upon regular and timely payments from its various Vendors in order to be able to satisfy its own debt obligations, including those to the Applicant.<sup>1</sup>
4. One of Ten 4’s primary Vendors is Northwest Carrier Ltd. (hereinafter “Northwest”). Northwest’s payments for the services provided to it by Ten 4 are regularly facilitated through direct contact with its Director, Anoop Mokha (hereinafter “**Mokha**”).<sup>2</sup>
5. Mokha was supposed to remit payment on behalf of Northwest for carrier-related services to Ten 4 in the amount of \$1,100,000 CAD, which he purported to do via cheques dated August 4, 2023 and August 8, 2023 (the “**Cheques**”).<sup>3</sup>

---

<sup>1</sup> Affidavit of Nasir Mehmood Para 2 – Responding Record TAB 1

<sup>2</sup> Ibid., Para 3

<sup>3</sup> Ibid., Para 4

6. Accordingly, Ten 4 deposited the Cheques into its RBC account in good faith and under the impression that there were sufficient funds in Northwest's originating account to satisfy the deposit of the Cheques.<sup>4</sup>
7. At no time did Mokha or anyone from or on behalf of Northwest inform Ten 4, or anyone on behalf of Ten 4, that Northwest's originating account did not have sufficient funds to satisfy the **Cheques**.<sup>5</sup>
8. Unfortunately, the **Cheques** were subsequently returned due to non-sufficient funds.<sup>6</sup>
9. The return of the **Cheques** due to non-sufficient funds was the Triggering Event that led the Applicants to demand repayment of debt obligations from the Respondents.<sup>7</sup>
10. The Triggering Event, namely the return of the **Cheques** due to non-sufficient funds in the third party's (viz., Northwest's) bank account, was entirely outside of the control, knowledge, and/or foresight of the Respondents.<sup>8</sup>
11. Upon learning that the **Cheques** were returned due to non-sufficient funds, Ten 4 promptly communicated this issue to Mokha and Northwest.<sup>9</sup>

---

<sup>4</sup> Ibid., Para 5

<sup>5</sup> Ibid., Para 6

<sup>6</sup> Ibid., Para 7

<sup>7</sup> Ibid., Para 8

<sup>8</sup> Ibid., Para 9

<sup>9</sup> Ibid., Para 10

12. After the release of funds from Northwest's bank to Northwest, the latter remitted partial payment of \$720,840.57 CAD to Ten 4 via certified cheque. Thus, Northwest still owes \$379,159.43 CAD to Ten 4.<sup>10</sup>
13. The Respondents have not, nor are in the process of endangering, selling, transferring and/or dissipating any of their property and/or assets.<sup>11</sup>
14. The Applicant knew or ought to have known that Ten 4 had overdrawn its business-related credit account prior to the Triggering Event.<sup>12</sup>
15. The property taxes on the Property are paid and are up-to-date.<sup>13</sup>
16. Finally, the Respondents are currently in the process of removing a total charge of \$6,000,000 Canadian dollars that was erroneously registered on, and hence is wrongfully encumbering, the Property.<sup>14</sup>

### III- ISSUE

17. Is the appointment of a Receiver by this Honourable Court “**just and convenient**” in the given situation?

---

<sup>10</sup> Ibid., Para 11.

<sup>11</sup> Ibid., Para 12.

<sup>12</sup> Ibid., Para 13.

<sup>13</sup> Ibid., Para 14.

<sup>14</sup> Ibid., Para 16

#### IV - THE LAW

18. *Section 101(1) of the Court of Justice Act*, which the Applicant relies upon, states as follows:

**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. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).<sup>15</sup>

19. However, in *Royal Bank of Canada v. CFNDRS Inc., 2017 ONSC 7661*<sup>16</sup>, this Honourable Court stated, “*Section 101 of the Courts of Justice Act* does not apply in this application. The section involves only interlocutory orders.”

20. *Section 243(1) of the Bankruptcy and Insolvency Act 1985* provides, in part, as follows:

**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.<sup>17</sup>

---

<sup>15</sup> *Section 101(1) of the Court of Justice Act* - TAB 1 of the Book of Authorities.

<sup>16</sup> *Royal Bank of Canada v. CFNDRS Inc., 2017 ONSC 7661* Para 4 – TAB 3 of the Book of Authorities.

<sup>17</sup> *Section 243(1) of the Bankruptcy and Insolvency Act 1985* - TAB 2 of the Book of Authorities.

21. In Macquarie Equipment Finance Limited v. Validus Power Corp. et al., 2023 ONSC<sup>18</sup>,

this Honourable Court provided a non-exhaustive list of factors to determine if an appointment of a Receiver would be “**just and convenient**”. The list of factors are as follows:

- a) whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;
- b) the risk to the security holder taking into consideration the size of the debtor’s equity in the assets and the need for protection or safeguarding of assets while litigation takes place;
- c) the nature of the property;
- d) the apprehended or actual waste of the debtor’s assets;
- e) the preservation and protection of the property pending judicial resolution;
- f) the balance of convenience to the parties;
- g) the fact that the creditor has a right to appointment under the loan documentation;
- h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
- i) the principle that the appointment of a receiver should be granted cautiously;

---

<sup>18</sup> Macquarie Equipment Finance Limited v. Validus Power Corp. et al., 2023 ONSC Para 8 – TAB 4 of the Book of Authorities.

- j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
- k) the effect of the order upon the parties;
- l) the conduct of the parties;
- m) the length of time that a receiver may be in place;
- n) the cost to the parties;
- o) the likelihood of maximizing return to the parties; and
- p) the goal of facilitating the duties of the receiver.

## V – ARGUMENTS

22. The materials submitted by the Applicant indicate that it is seeking the appointment of a receiver on a final basis. If this is indeed true, then section 101 of *Courts of Justice Act* does not apply. As aforementioned in *Royal Bank of Canada v. CFNDRS Inc.*, section 101 of the *courts of Justice Act* would apply only if the Applicant was requesting an Interlocutory Order.
23. Therefore, the applicable statute is section 243(1) of the *Bankruptcy and Insolvency Act* which states that this Honourable Court may appoint a receiver if it is “**just and convenient**” to do so. What is “**just and convenient**” is described by this Honourable Court in *Macquarie Equipment Finance Limited v. Validus Power Corp. et al.*, as above.
24. It is respectfully submitted that of the factors enumerated by this Honourable Court in *Macquarie Equipment Finance Limited v. Validus Power Corp. et al.* to consider while determining whether the appointment of a receiver is “**just and convenient**”, the following factors are most applicable to the within Application:

d) **The apprehended or actual waste of the debtor's assets:**

The Respondents have not, nor are they in the process of selling, transferring, and/or dissipating any of their property and/or assets. Hence, it is respectfully submitted that there is no apprehension or actual waste of the debtor's assets whatsoever.

e) **The preservation and protection of the property pending judicial resolution:**

The Respondents have not, nor are they in the process of endangering, hiding, and/or removing their assets from outside of the location and/or reach of the Applicant or the jurisdiction of this Honourable Court. Hence, it is respectfully submitted that the Respondents' assets and/or property do not require any additional protection or preservation.

l) **The conduct of the parties:**

The Trigger Event, namely the return of the **Cheques** due to non-sufficient funds in a non-party's bank account, was entirely outside of the control, knowledge, and/or foresight of the Respondents. Since the Triggering Event was in no way due to the actions of the Respondents, it is respectfully submitted that the Applicant's issuance of numerous demand letters for repayment of the Respondents' debt obligations and, issuance of the herein application is not ultimately conduct that is reasonable. This is especially so given that the Applicants already knew that the Respondents had overdrawn their business-related credit accounts prior to the Triggering Event, but yet



had not taken steps at that time to either issue demand letters or initiate Receivership proceedings.

25. For the aforementioned reasons, the Respondents respectfully submit that is it not **just and convenient** for this Honourable Court to appoint a Receiver in the given situation.
26. In the alternative, the Respondents respectfully submit that it would be **just and convenient** for this Honourable Court to grant them reasonable time, according to a Court ordered timeline, to repay the debt owed to the Applicants.

#### **VI - ORDER REQUESTED**

27. The Respondents respectfully request that the Application be dismissed, with costs.

#### **ALL OF WHICH IS RESPECTFULLY SUBMITTED**

This 2<sup>nd</sup> day of October, 2023.

*Adam Asgarali*  
ADAM ASGARALI

**M. SINGH LAW  
PROFESSIONAL CORPORATION**

100 King Street West - Suite 5700  
First Canadian Place  
Toronto, ON  
M5X 1C7

**Adam Asgarali (LSO# 70518H)**

Email: AAsgarali@MSinghLaw.ca  
Tel: (519) 860-9875

**Lawyers for the Respondents**

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 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

ROYAL BANK OF CANADA

- and -

TEN 4 SYSTEM LTD., 1000043321 ONTARIO INC. AND  
1000122550 ONTARIO INC.

**Applicant**

**Respondents**

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

**FACTUM**

**M. SINGH LAW  
PROFESSIONAL CORPORATION**

100 King Street West – Suite 5700  
First Canadian Place  
Toronto, Ontario  
M5X 1C7

**Manjit Singh (LSO# 55976D)**

Email: MSingh@MSinghLaw.ca  
Tel: 647.722.8400

**Lawyers for the Respondents**