

Court of Appeal File No.: **COA-23-OM-0304**
Court File No.: **CV-23-00705869-00CL**

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

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

Appellants

- and -

ROYAL BANK OF CANADA

Respondent

**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**

THE APPELLANTS' MOTION RECORD

December 7, 2023

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Lawyers for the Appellants

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AND TO:	<p>HARRISON PENZA LLP 130 Dufferin Avenue, Suite 1101 London, ON N6A 5R2 Tel: (519) 679-9660 Fax: (519) 667-3362</p> <p>Tim Hogan Tel: (519) 661-6743 thogan@harrisonpensa.com</p> <p>Lawyers for msi Spergel Inc., Receiver</p>
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AND TO:	<p>BODKIN, A DIVISION OF BENNINGTON FINANCIAL CORP. 102-1465 North Service Rd E Oakville, ON L6H 1A7 Email: executiveoffice@benningtonfinancial.ca</p>
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TAB 1

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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ROYAL BANK OF CANADA

- and -

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

Applicant/Responding Party

Respondents/Moving Parties

**ONTARIO
COURT OF APPEAL**

**AMENDED NOTICE OF MOTION
FOR LEAVE TO APPEAL**

**M. SINGH LAW
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Lawyers for the Respondents / Moving Parties

TAB 2

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

ROYAL BANK OF CANADA

Applicants / Respondent

- and -

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

Respondents / Appellants

**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**

AFFIDAVIT OF ADAM ASGARALI

**I, Adam Asgarali, of the City of Richmond Hill, in the Province of Ontario, MAKE OATH AND
SAY:**

1. I am an Associate of M. Singh Law Professional Corporation, Lawyers of Record for the Appellants and, as such, I have knowledge of the matters to which I hereinafter depose. Where my knowledge is based on information and belief, I have identified the source of such knowledge and I verily believe such information to be true.

2. At paragraph 13 of the Affidavit of Tro Derbedrossian, sworn September 12, 2023, the Respondent alleges that the Appellant Ten 4 System Ltd. (hereinafter “**Ten-4**”) owes it USD \$452,915.45 which converted to Canadian currency would have equaled CAD \$621,074.00 as of the date of the endorsement (viz., October 18, 2023). Attached hereto and marked as **Exhibit “A”** is a true copy of the screenshot of an online currency exchange converter website showing the Canadian currency value of USD \$452,915.45 on October 18, 2023.

3. At paragraph 14 of the Respondent’s Reply Affidavit, sworn by Tro Derbedrossian on October 4, 2023, the Respondent refers to a so-called secret *confidential brief* of documents which it alleges suggested “*unusual activity*” related to the Appellants’ bank accounts. However, the Respondent’s so-called secret *confidential brief* was neither disclosed or served upon the Appellants, nor filed with the Superior Court of Justice, nor provided to the judge presiding over the Application.

4. At paragraph 22 of the Honourable Justice Osborne’s October 18, 2023 Endorsement, His Honour adopted and relied upon the characterization of “*unusual activity*” ascribed by the Respondent to the Appellants’ bank accounts based upon the Respondent’s secret *confidential brief* of documents. His Honour also characterized said bank account activity as “*suspicious*”, notwithstanding the fact that His Honour had not actually reviewed the Respondent’s so-called secret *confidential brief* of documents. Attached hereto and marked as **Exhibit “B”** is a true copy of the Endorsement of the Honourable Justice Osborne, dated October 18, 2023.

5. As per paragraph 2 of the October 18, 2023 Order of the Honourable Justice Osborne, the Superior Court of Justice appointed, without security, an indefinite receivership over all of the assets, undertakings and properties of all three of the Appellants, pursuant to both section 243 (1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act*. Attached hereto and marked as **Exhibit “C”** is a true copy of the Order of the Honourable Justice Osborne, dated October 18, 2023.

6. The parties, through their counsel, have agreed and jointly requested that the within motion be heard on an expedited basis. If granted, the Appellants shall similarly agree to making a joint request that the appeal be heard on an expedited basis as well.

7. I make this Affidavit in support of the Appellants’ Motion for Leave to Appeal and for no other or improper purpose.

**REMOTELY AFFIRMED BEFORE
ME** at the City of Toronto, in the
Province of Ontario on December 7,
2023.



Commissioner for Taking Affidavits
MANJIT SINGH
(LSO #55976D)



ADAM ASGARALI

This is Exhibit "A" referred to in the Affidavit of
Adam Asgarali, sworn December 7, 2023.

M Singh

Commissioner for Taking Affidavits (or as may be)

MANJIT SINGH



EXCHANGE RATES / USD TO CAD / 2023 / USD TO CAD EXCHANGE RATE HISTORY ON 2023-10-18

US Dollar (USD) To Canadian Dollar (CAD) Exchange Rate History for October 18, 2023

View US Dollar to Canadian Dollar exchange rate history for 2023-10-18 as well as high, low and average USD/CAD exchange rates for 2023.



USD to CAD Currency Converter for 2023-10-18

Invert

Calculate exchange rates between the US Dollar and the Canadian Dollar as of 2023-10-18.



452,915.45

=



621,074

as of 2023-10-18



USD to CAD on 2023-10-111

This is Exhibit "B" referred to in the Affidavit of
Adam Asgarali, sworn December 7, 2023.

M Singh

Commissioner for Taking Affidavits (or as may be)

MANJIT SINGH



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP / ENDORSEMENT

COURT FILE NO.: CV-23-00705869-00CL DATE: October 18, 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: **RBC V.TEN 4 SYSTEM LTD et. al**

BEFORE JUSTICE: **Osborne**

PARTICIPANT INFORMATION

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Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT OF JUSTICE OSBORNE:

Chronology

1. The Applicant, RBC, seeks an order appointing msi Spergel Inc. as receiver over the assets and properties of the Respondents/Debtors Ten 4 System Ltd., 1000043321 Ontario Inc. and 1000122550 Ontario Inc. pursuant to section 243(1) of the *BIA* and section 101 of the *CJA*.
2. The full Application Record was originally served September 13, 2023. At the first return date of September 20, 2023, I scheduled the hearing of the Application on the merits for October 11, 2023 at the request of the Respondents, Debtors, to give them their requested additional opportunity to fully respond and to file responding materials. I imposed a timetable that required the delivery of responding materials by October 2.
3. The Application was heard on the merits as scheduled on October 11, 2023.
4. While the matter was under reserve, counsel for the Respondents wrote to the Court unilaterally to advise that a funding commitment had been obtained. The Applicant objected to the unilateral communication, but requested a short case conference before the Court to address the matter. That case conference proceeded today.
5. Just prior to the case conference, the Respondents filed supplementary materials including, as discussed below, the late-breaking commitment referred to above.
6. The Applicant maintains its position that the appointment of a receiver is appropriate. The Respondent urges the Court to consider alternatives as further described below.

The Test for the Appointment of a Receiver

7. The test for the appointment of a receiver pursuant to section 243 of the *BIA* or section 101 of the *CJA* is not in dispute. Is it just or convenient to do so?
8. In making a determination about whether it is, in the circumstances of a particular case, just or convenient to appoint a receiver, the Court must have regard to all of the circumstances, but in particular the nature of the property and the rights and interests of all parties in relation thereto. These include the rights of the secured creditor pursuant to its security: *Bank of Nova Scotia v. Freure Village on the Clair Creek*, 1996 O.J. No. 5088, 1996 CanLII 8258.
9. Where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: while the appointment of a receiver is generally an extraordinary equitable remedy, the courts do not so regard the nature of the remedy where the relevant security permits the appointment and as a result, the applicant is merely seeking to enforce a term of an agreement already made by both parties: *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 at para. 27. However, the presence or lack of such a contractual entitlement is not determinative of the issue.
10. The Courts have considered numerous factors which have been historically taken into account in the determination of whether it is appropriate to appoint a receiver and which I have considered in this case:
 - 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;
- 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.

See: *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186, and *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para. 25, citing *Bennett on Receivership*, 2nd ed. (Toronto, Carswell, 1999).

11. How are these factors to be applied? The British Columbia Supreme Court put it, I think, correctly: “these factors are not a checklist but a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient: *Pandion Mine Finance Fund LP v. Otso Gold Corp.*, 2022 BCSC 136 at para. 54).
12. The issue is whether a receiver should be appointed in the circumstances of this case.

The Facts and Application of the Relevant Factors

13. Many, and indeed almost all, of the material facts are not in dispute. The Applicant relies on the Affidavit of Tro DerBedrossian sworn September 12, 2023 together with Exhibits thereto, and the Reply affidavit sworn October 4, 2023 together with Exhibits thereto.
14. Defined terms in this Endorsement have the meaning given to them in the Application materials unless otherwise stated.
15. Ten 4 is an Alberta Corporation extra provincially registered in Ontario, primarily engaged in the business of shipping, transportation and logistics. The director of Ten 4 is Nasir Mahmood. The other two numbered company Respondents are essentially holding companies that hold title to real estate properties.
16. RBC made available to the Debtors credit facilities. Those included an RBC visa business card agreement. The obligations of Ten 4 to RBC were guaranteed by each of the two numbered company Respondents and by Mr. Mahmood. His guarantee is for a maximum amount of \$2.5 million plus interest.

17. As security for the advances thereunder, the parties entered into three general security agreements; one from each of the Debtors. Each GSA gives RBC the contractual right to appoint a receiver. The guarantees were entered into also. Mortgages registered on title to real property and assignments of rents and insurance were also given.
18. The Debtors are in default of their obligations. RBC has delivered demands and section 244 Notices of Intention. The defaults are material and have not been waived. As of August 31, 2023, Ten 4 was indebted to RBC in amounts as set out in the Application materials of approximately CDN \$5,200,000 and USD \$453,000. The numbered company Respondents are indebted in the approximate amounts of CDN \$4.2 million and CDN \$5.3 million respectively.
19. The concern of RBC has been exacerbated by the fact, of which it has just recently learned, that a writ of execution has been filed against Ten 4 on August 10, 2023 in respect of a judgment in favour of BVD Capital Corporation in the amount of \$1,099,763.44, the enforcement of which would erode the RBC security.
20. In addition, the Respondents have committed covenant defaults in that, for example, Ten 4 is required to report to the bank on a monthly and quarterly basis with respect to aged accounts receivable and quarterly financial statements, neither of which were received on either of May 15, 2023 or August 14, 2023, as required. In addition, monthly reporting of borrowing base certificate, aged accounts receivables, payables in priority payables was not provided on September 30 as required.
21. RBC has therefore demanded payment of the obligations which are clearly (and admitted to be) repayable on demand according to their contractual terms. As stated above, demands and section 244 Notices were delivered, all in August, 2023. No repayment has been made by any of the Debtors or the guarantors.
22. RBC's concern, said in its materials to have been contributed to by unusual and suspicious account activity, was exacerbated by both the writ of action referred to above and also the non-payment of property taxes as a result of all of which the bank has significant concerns with respect to the business and stability of the Debtors and wishes to ensure that a Receiver is appointed to secure the collateral for the benefit of all stakeholders.
23. The Respondents rely on the Affidavit of Mr. Mahmood affirmed October 2, 2023, together with Exhibits thereto, the Supplementary Affidavit sworn October 10, 2023 together with Exhibits thereto, the Further Supplementary Affidavit of October 17, 2023 and the Affidavit of Abdul Ishaq sworn October 17, 2023 together with the one Exhibit thereto. I pause to observe that the last two affidavits were filed yesterday, without leave, in advance of the case conference today.
24. The Respondents advance the position that the triggering event for RBC was the fact that one of the primary customers of Ten 4, Northwest Carrier Ltd., paid certain outstanding accounts in the amount of CDN \$1.1 million by cheque, and certain of those cheques were returned as NSF. All of this resulted in a trickle-down effect on the liquidity of the Respondents and their inability to pay RBC. The Respondents emphasized that this event was out of their control.
25. In addition, the Respondents say that Northwest subsequently paid approximately two thirds of the amount owing (CAD \$720,840.57) but the balance remains outstanding. RBC submits and the banking records show that the relationship and transactions with Northwest are more complicated than indicated. Numerous different cheques from two different entities were sent. The returned cheques were effectively replaced on August 9 and 10, 2023, with the deposit to accounts of Ten 4 of a further series of 69 checks, totaling over \$3,500,000 in the aggregate from two other entities that RBC believes to be connected to the Respondents or their principal. All of those 69 cheques were also all subsequently returned NSF between August 11 and August 14, 2023. This resulted in the overdraft position referred to above.

26. With respect to property taxes, the Respondents asserted, and subsequently filed supplementary materials confirm, that real property taxes had in fact been paid.
27. The Respondents stated that the accountant for Ten 4 was out of the country between July and September for vacation with the result that the company could not provide its August and September reports to RBC. In my view, it is not an answer to a contractual commitment to provide formal reports on the agreed-upon terms and by the agreed-upon deadlines, to say that an accountant was on vacation for some three months.
28. Concerningly to RBC, however, the Respondents disclosed for the first time in their responding materials filed just prior to the hearing of the Application that they are currently in the process of removing a charge registered by a non-party (Pride Truck Sales Ltd.) but encumbering the property of the Respondents in the amount of \$6 million.
29. The Respondents maintain, however, that the \$6 million charge against title to the property was registered in error, and that in fact it was supposed to be registered in a maximum amount of \$3 million and moreover, the debt outstanding that is secured by the charge totals significantly less than that, and in any event, counsel for the Respondents advises that the Respondents are “in the process of settling that dispute”. There is, however, no evidence in the Record beyond the admitted fact of the \$6 million charge.
30. Finally, the Respondents submitted an appraisal report of the Property dated October 10, 2023 reflecting a current value of \$17,140,000, with the result, the Respondents submit, that the bank is not at risk since there is ample equity in the property to pay out all indebtedness to RBC, even if that became necessary.
31. At the hearing of this Application on October 11, 2023, counsel for the Respondents advised that while the Respondents had no firm commitment for refinancing or a buyout, they were in active negotiations with third parties. No commitment was in the record.
32. As noted above, following the hearing, counsel to the Respondents wrote to the Court unilaterally to advise that commitment had in fact been obtained, resulting in the case conference today at the request of the Applicant. Also as noted above, further affidavit evidence was filed without leave yesterday, but I have considered it nonetheless.
33. As part of that evidence is what was represented by the Respondents to be a commitment letter which would fully satisfy the obligations to RBC. That commitment letter, dated October 12, 2023, is attached as Exhibit “A” to the affidavit of Abdul Ishaq.
34. However, and as submitted by counsel for the Applicant, the commitment letter is problematic in a number of ways:
 - a. it contemplates first mortgage financing for the numbered company Respondents over the Property;
 - b. the commitment, from Toronto Wire Solutions Corp., contemplates the numbered company Respondents as borrowers and a number of other parties, including Nasir Mahmood, to be joint and several guarantors;
 - c. it contemplates a loan amount of \$23,600,000 “in favour of [existing properties]”, interest at 9% per annum payable monthly on account of interest-only in the amount of \$177,000 per month or a one year term;
 - d. it contemplates an advance date of January 16, 2024; and
 - e. it includes various express conditions precedent to which the obligation to advance funds are expressly subject, including appraisals, inspections, surveys, “up-to-date Environmental Reports, satisfactory to the lender in its sole discretion” and other conditions.

35. In short, and having considered the commitment letter notwithstanding the manner and timing of its filing, it does not get the Respondents where they need to be. The commitment is highly conditional, and even if the conditions were met, it does not provide for funding until January next year. It simply does not answer the problem, let alone do so in any timely way.
36. I am satisfied that, considering all of the relevant factors in the circumstances of this case, that the appointment of a receiver is appropriate. Not only have the parties contractually agreed the appointment of a receiver in an event of default, which has clearly occurred here, but I am satisfied that it would otherwise be appropriate in any event.
37. The indebtedness is outstanding and payments are not being made. A receivership will provide for stability, transparency and orderly conduct under the supervision of a court-appointed officer that is necessary here. It may well be that the receiver negotiates a firm, unconditional and more expedient source of alternative funds, either with the proposed lender referred to in the commitment letter discussed above, or any other investor or lender. I would expect the receiver to investigate and explore all available options.
38. If those options bear fruit in the sense that there is a binding and unconditional commitment that will generate funds sufficient to pay out RBC inclusive of all indebtedness, fees, interest and costs, I would expect that the receivership could be terminated relatively quickly. But unless and until that occurs, a receivership is appropriate here.
39. There is considerable uncertainty about the status and amount of possibly competing claims. There is uncertainty about whether the value of the Property, even if accurate as reflected in the appraisal report, would be sufficient to pay out all claims. The fact that the mortgage is currently registered in the amount of \$6 million (in addition to the security of RBC) suggests that there may not be a material surplus, if indeed there is any at all.
40. A receivership will allow for the orderly exploration, investigation and analysis of those claims, and the available assets, all in circumstances where potential chaos of competing claims, and the ensuing expensive litigation, can be avoided or minimized. It will also allow for the avoidance of further chaos and an analysis of the receivables and payables of the Debtors.
41. Counsel for the Respondents urges that the Court considered creative or more flexible relief, such as a standstill agreement and an order imposing terms that no further encumbrances could be placed on the Property of the Debtors without consent or order of the Court, and that the indebtedness to Pride secured by the mortgage is in question referred to above in the aggregate sum of \$6 million, be limited to an amount of \$2 million in the aggregate.
42. Even if I had the jurisdiction to impose such terms, which I am far from certain I do, I would decline to do so in the circumstances of this case. Such would amount to rewriting of the agreements between the Debtors and counterparties which are not represented here and in which in my view would not be appropriate in any event.
43. For all of these reasons, I am satisfied that the appointment of a receiver is not only just or convenient, as is the test, but indeed that it is just *and* convenient in the circumstances.
44. Order to go in the form signed by me today which is effective immediately and without the necessity of issuing and entering.

Owen, J.

This is Exhibit "C" referred to in the Affidavit
of Adam Asgarali, sworn December 7, 2023.

M Singh

Commissioner for Taking Affidavits (or as may be)

MANJIT SINGH



Court File No. CV-23-00705869-00CL

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

THE HONOURABLE · MR.) TUESDAY, THE 18th
JUSTICE OSBORNE)
) DAY OF OCTOBER, 2023

ROYAL BANK OF CANADA

Applicant

- and -

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

Respondents

**ORDER
(Appointment Order)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing msi Spergel inc. as receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of Ten 4 System Ltd., 1000043321 Ontario Inc. and 1000122550 Ontario Inc. (collectively, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, was heard this day by Zoom videoconference.

ON READING the affidavit of Tro DerBedrossian sworn September 12, 2023 and the exhibits thereto and on hearing the submissions of counsel for Royal Bank of Canada and no one appearing for any other parties, although duly served, as appears from the affidavit of service of Mariela Adriana Gasparini sworn September , 2023 and on reading the consent of msi Spergel inc. to act as the Receiver.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, msi Spergel inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including and without limiting the generality of the foregoing, the lands and premises described in Schedule "A" hereto, and all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to make an assignment into bankruptcy on behalf of any of the Debtors;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;

- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that

nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to

the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal

information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may

consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further

orders that a Case Website shall be established in accordance with the Protocol with the following URL '<https://www.spergelcorporate.ca/engagements>'.

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

29. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to 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.

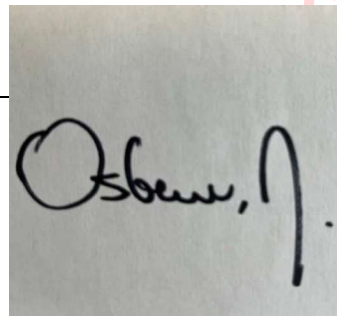
30. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within

proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. **THIS COURT ORDERS** that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

32. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

33. **THIS COURT ORDERS** that this Order and all of its provisions shall take effect as of 12:01a.m on the date of this Order and shall be immediately enforceable without the need for further entry or filing.



2023.10.1

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SCHEDULE "A"

Cedar Creek Rd, Ayr, Ontario

PIN 03848-0355 (LT)

PT LT 28, CON 11, PT 1, 58R15460; NORTH DUMFRIES.

Registered Owner: 1000043321 Ontario Inc.

2396 Cedar Creek Rd, Ayr, Ontario

PIN 03848-0068 (LT)

PT LT 28 CON 11 NORTH DUMFRIES AS IN WS546774; NORTH DUMFRIES

Registered Owner: 1000122550 Ontario Inc.

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that msi Spergel inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of acquired for, or used in relation to a business carried on Ten 4 System Ltd., 1000043321 Ontario Inc. and 1000122550 Ontario Inc. (collectively, the "**Debtors**"), including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 20th day of September, 2023 (the "**Order**") made in an action having Court file number __-CL-_____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

msi Spergel inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

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 100012255 ONTARIO INC.

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

ORDER
(Appointment Order)

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Lawyers for the Applicant

TEN 4 SYSTEM LTD. *et al.*
APPELLANTS

-and- ROYAL BANK OF CANADA.
RESPONDENT

**ONTARIO
COURT OF APPEAL**

AFFIDAVIT OF ADAM ASGARALI
(sworn December 7, 2023)

**M. SINGH LAW
PROFESSIONAL CORPORATION**

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Toronto, Ontario
M5X 1C7

Manjit Singh (LSO# 55976D)

Email: MSingh@MSinghLaw.ca

Tel: 647.722.8400

Lawyers for the Appellants

TEN 4 SYSTEM LTD. *et al.*
APPELLANTS

-and- ROYAL BANK OF CANADA.
RESPONDENT

ONTARIO
COURT OF APPEAL

APPELLANTS' MOTION RECORD

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Lawyers for the Appellants