

**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**

**REPLY AFFIDAVIT OF TRO DERBEDROSSIAN
(Sworn October 4, 2023)**

I, **TRO DERBEDROSSIAN**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY** as follows:

1. I am Director in the Special Loans and Advisory Services (“**SLAS**”) of the Applicant, Royal Bank of Canada (the “**Bank**” or “**RBC**”) and as such have knowledge of the matters hereinafter deposed to, or where I do not possess such personal knowledge, I have stated the source of my information and in all such cases do verily believe it to be true.
2. This Affidavit is supplementary to my affidavit sworn on September 12, 2023 (the “**Initial Affidavit**”) and in response to the affidavit of Nasir Mahmood dated October 2, 2023 (the “**Mahmood Affidavit**”). Capitalized terms not defined herein shall have the meanings ascribed thereto in the Initial Affidavit.

3. References to amounts herein shall be in Canadian currency, unless otherwise specified.

Reasons for Initiating these Proceedings

4. In response to paragraph 13 of the Mahmood Affidavit, I can advise that the fact that Ten 4's accounts with the Bank are overdrawn is only one reason for the Bank initiating these proceedings.
5. The Ten 4 EOI and the Visa Agreement contain provisions requiring Ten 4 to report to the Bank on a monthly and quarterly basis on such matters as the monthly borrowing limit, the monthly aged list of accounts receivable and the quarterly financial statements (the **"Reporting Covenants"**).
6. Ten 4 failed to report to the Bank on May 15, 2023 and August 14, 2023, as required and is therefore in breach of its quarterly Reporting Covenants.
7. Ten 4 was required to provide their monthly reporting (borrowing base certificate, aged accounts receivable, aged accounts payable, priority payables listing and the list of lienable payables on September 30, 2023. This information was not provided to the Bank.
8. Further, as outlined in paragraph 24 of the Initial Affidavit, there has been unusual activity involving the accounts of the Debtors, which resulted in the accounts of the Debtors being transferred to SLAS.
9. In fact, the unusual account activity includes the company mentioned in the Mahmood Affidavit, namely, Northwest Carrier Ltd. (**"Northwest"**). However, the unusual account activity is much more extensive than only the return of \$1,100,000 in cheques from Northwest due to non-sufficient funds, as referenced in paragraphs 4, 9 and 10 of the Mahmood Affidavit.
10. In fact, the unusual banking activity relates to a significant increase in the volume of activity in the Ten 4 RBC accounts during the period July 1 to August 14, 2023 that is disproportionate to the levels of activity in the preceding six months. Further, this increase in activity volume is attributable to numerous suspicious deposits sourced from Northwest and other entities into Ten 4's accounts with the Bank, and then electronic funds transfers

from Ten 4's accounts with the Bank to companies related to the Debtors in July and August of 2023. In fact, in late July and early August 2023, there was also an increase in the number of cheque deposits received from the Northwest and other entities that were subsequently returned, the large majority due to having insufficient funds to clear the originating account. These returns included 51 cheques with a combined value of over \$3,000,000 received from Northwest, 46 of which were returned due to having insufficient funds to clear.

11. Of the 36 Northwest cheques dated August 4 and 8, 2023 that are referenced in Exhibit "A" to Mahmood Affidavit. 29 cheques totalling \$1,989,360 and four cheques totaling US \$110,010 (as opposed to the \$1,100,000 referenced in para. 4 of the Mahmood affidavit) were returned on August 9 and 10, 2023, due to having insufficient funds to clear.
12. These returned Northwest cheques were effectively replaced on August 9 and 10, 2023 with the deposit to the Ten 4 accounts of a further series of 69 cheques, totalling over \$3,500,000, from two other entities that we believe to be connected to Ten 4 and/or Nasir Mahmood. These 69 cheques were also all subsequently returned, between August 11 and 14, 2023, due to having insufficient funds to clear. The return of these 69 cheques deposits left the RBC accounts of Ten 4 in an overdraft position of \$2,466,785 and US \$452,385 as at end of day of August 14, 2023.
13. Further, Ten 4 has not made deposits to the accounts it has at RBC since August 10, 2023. Additionally, the alleged partial payment received by Ten 4 from Northwest in the form of a \$720,840.57 draft, referenced as Exhibit "C" to the Mahmood Affidavit, has not been deposited to the Ten 4 accounts held at RBC, which remain in a significant overdraft position as reflected in para 12. above.
14. Further, the Bank has received information from Northwest's bankers that certain of Northwest's accounts have been "exited" as a result of unusual activity involving a number of parties, including Ten 4. A confidential brief ("**Confidential Brief**") evidencing the unusual account activity of the Debtors has been prepared and will be made available to the Court, if the Court requests same at the hearing of this application. In the event that the Court requests that the Applicant produce the Confidential Brief, I understand that counsel

for the Bank will request that the Court grant a sealing Order in respect of same, until further Order of the Court.

15. In any event, as outlined in the Initial Affidavit, the credit facilities extended by the Bank to Ten 4 are demand facilities and the Bank has demanded repayment in full.

Payment of Property Taxes

16. Appended to the Mahmood Affidavit at Exhibit "D" are what purports to be statements evidencing payments to the Township of Dumfries in September of 2013 by a company known as Vaho Truck Solutions Inc. The debtors have not, however, provided certified Tax Certificates from the Township to show that all property taxes have now been paid.
17. As noted at paragraph 31 of the Initial Affidavit, the failure to pay the property taxes was another cause for concern for the Bank. I am advised by Roger Jaipargas, a partner at BLG, and do verily believe, that property taxes are a priority payable that ranks ahead of the claims of the Bank, with respect to the two properties in Ayr, Ontario.
18. In any event, as noted at paragraph 26 of the Initial Affidavit, 321 Ontario and 550 Ontario failed to make payment of the principal and interest payments when due, which constituted a default which permitted the Bank to demand full repayment of the Indebtedness.

Deposits

19. With respect to paragraph 15 of the Mahmood Affidavit, it is not at all accurate to say that the mortgages are up to date.
20. I am advised by Mr. Jaipargas, and do verily believe, that on September 5, 2023 he advised counsel for the debtors in a "without prejudice" email that, without waiving any of the rights and remedies that the Bank has, the debtors were at liberty to make deposits into the accounts with certified funds that had been cleared and that any such deposits made would be without prejudice to the Bank's rights and would not be deemed to be a waiver of the Bank's rights.

21. While certain deposits have been made into the accounts of 550 Ontario and 321 Ontario, these funds have not yet been applied by the Bank to the indebtedness of 550 Ontario and 321 Ontario. The Bank's position is that the entire Indebtedness is due and owing and that absent a failure to make full payment of same, it has the right under the terms of its security to seek the appointment of a receiver.

The \$6,000,000 Charge against the Property

22. With respect to the information provided at paragraph 16 of the Mahmood Affidavit and the draft Notice of Application appended at Exhibit "F" thereto, the Bank had no knowledge of the loans discussed in the draft Notice of Application and that these charges had been registered against the Property owned by the Debtors. The Debtors failed to report these matters to the Bank until the Mahmood Affidavit was served in the afternoon of October 2, 2023.
23. This new development obviously causes the Bank to have even further significant concerns with respect to the stability of the Debtors and the risk to the Bank's collateral.
24. The Bank has lost confidence in the principals of the Respondents and is of the view that a Receiver should be appointed to secure the Property and develop a marketing and sale strategy, with a view to maximizing the realizations for the benefit of the stakeholders.
25. Further, a Receiver will be able to gather information with regard to the events that have transpired to date, as canvassed in this affidavit, to see if there are further avenues of recovery that should be explored, in light of the overdraft of the Ten 4 accounts.

26. This Affidavit is sworn in support of an Order for the appointment of Spergel as Receiver over the Property of the Debtors and for no other or improper purpose.

SWORN BEFORE ME over video conference)
this 4th day of October 2023, in accordance with)
Ontario Regulation 431/20. The affiant was)
located in Toronto, in the Province of Ontario,)
while the commissioner, Mariela Adriana)
Gasparini, was located in Vaughan, in the)
Province of Ontario.)



A Commissioner for taking affidavits)

LSO License No.: P14458



TRO DERBEDROSSIAN

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PROCEEDINGS COMMENCED AT TORONTO

REPLY AFFIDAVIT OF TRO
DERBEDROSSIAN
(Sworn October 4, 2023)

BORDEN LADNER GERVAIS LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON M5H 4E3
Tel: (416) 367-6000
Fax: (416) 367-6749

ROGER JAIPARGAS – LSO No. 43275C
Tel: (416) 367-6266
Email: rjaipargas@blg.com

Lawyers for the Applicant