

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

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

and

PEACE BRIDGE DUTY FREE INC.

Respondent

APPLICATION UNDER SUBSECTION 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

AIDE MEMOIRE OF THE AUTHORITY

(8 February 2024)

1. The primary purpose of the attendance on 9 February 2024 is to settle the Orders arising out of Your Honour's Reasons dated 15 December 2023. PBDF has perfected and the Court of Appeal has indicated that the Appeal will be dismissed if PBDF does not perfect its Appeal by 23 February 2024.
2. Collateral to the Orders is the issue of the rent that PBDF is to be paying pending the return of the Receivership Application.
3. PBDF is proposing two Orders: one Order relating to the dismissal of the Cross-Motion and a second Order dealing with the issue of costs. Marked-up versions of the Orders drafted by PBDF showing PBA's proposed changes are attached. **[Tab 1 (Cross-Motion) and Tab 2 (Costs)]**

4. The Lease requires PBDF to pay Base Rent of \$333,333 per month plus Percentage Rent. From the Spring of 2023, PBDF paid rent of at least \$333,333 per month based on an Interim Order that was intended to ensure that PBA would not suffer further losses pending the hearing of the Cross-Motion and the Receivership Application. **[See Endorsement dated 17 May 2023 (paras 9 and 10), 16 June 2023 (paras 9-11) and 26 July 2023 (para 4), Tab 3]**

5. On 1 February 2024, PBDF unilaterally and without any explanation, discussion or consultation paid rent of only \$205,000. This represents a shortfall of over \$125,000.

6. PBDF appears to be taking the position that, notwithstanding that the Cross-Motion was dismissed, it is entitled to unilaterally and without the agreement of PBA pay something other than the rent required by the Lease. In this regard, PBDF appears to rely on paragraph 160 of the Reasons, which says:

[160] In light of the Landlord's undertaking not to take any enforcement steps pending the return of the Receivership Application (and the continuing stay) so that there is no uncertainty in the interim, if the Tenant continues to operate its duty free store from the Leased Premises, it shall continue to pay the agreed upon without prejudice rent for the Ramp Up Period, subject to further orders of this court. A similar order for the payment of rent pending the return of the Receivership Application was made in the Interim Rent Endorsement, but the amounts to be paid should during this interim period now align with what the parties have agreed to and have been following during the Ramp Up Period.

7. However, paragraph 156 and 157 of the Reasons appear clear that Your Honour was not ordering that PBDF could unilaterally take a rent abatement or pay only percentage rent:

[156] The Tenant asked at the conclusion of the hearing that, at the very least, the court order that the terms of the tenancy be continued on the basis of the Landlord's last proposal (or at least the last one that was in evidence, which was made in March 2023 and stated to expire after ninety days). While the Tenant may not have considered that offer to be reasonable at the time, it is the only metric or benchmark that the court could apply that the Landlord has propounded to be reasonable. The Tenant would prefer this outcome to the alternative of having to seek relief from forfeiture.

[157] The court cannot turn back the clock and order this offer from the Landlord, which has lapsed, to now be implemented. The Landlord has indicated since the early days of the Scheduling Endorsements that, if it is successful, it will not take any steps arising out of the court's decision on this Cross-Motion until the Receivership Application has been heard. I understand that the

Receivership Application has been scheduled for the end of January 2024. The stay of proceedings against the Tenant remains in effect. That timing creates a further opportunity for the Landlord and Tenant to continue their negotiations, which the court would encourage them to do based on the essential terms of the Landlord's March 2023 offer, updated to reflect relevant changes and the passage of time since then.

8. There was no "agreed upon rent for the Ramp Up Period". The parties had reached consensus as to what rent would be paid during the Ramp Up Period, **if the parties were able to reach agreement on the other matters in issue**. As Your Honour noted in paragraphs 12 and 13 of the Reasons:

*[12] By the time of the hearing, the parties **had been able to reach an agreement in principle** about the rent payable during the period commencing in November of 2021 and continuing until October 31, 2026, during which the Tenant would "Ramp Up" to paying \$4 million per annum in Base Rent as required under the Lease (the "Ramp Up Period"), as follows:*

- From and after the Lease Year ending 31 Oct 2022—Base Rent of \$2M or 20% of sales, whichever is greater.*
- From and after the Lease Year ending 31 Oct 2023—Base Rent of \$2.5M or 20% of sales, whichever is greater.*
- From and after the Lease Year ending 31 Oct 2024—Base Rent of \$3M or 20% of sales, whichever is greater.*
- From and after the Lease Year ending 31 Oct 2025—Base Rent of \$3.5M or 20% of sales, whichever is greater.*
- From and after the Lease Year ending 31 Oct 2026, Base Rent will be payable in accordance with the Lease.*

*[13] However, **this agreement in principle was subject to the parties reaching an agreement about the rent payable during the Closure Period**... (emphasis added)*

9. It is PBA's position that, absent an agreement between the parties, PBDF should be paying rent in accordance with the Lease until the Receivership Application is determined.

10. The fact that PBDF asserts that it cannot afford to pay to PBA the rent as required by the Lease and continue to keep RBC current is not—or ought not to be—relevant to the rent that PBDF must pay pending the hearing of the Receivership Application or the determination of its Appeal.

11. PBDF now owes PBA in excess of \$14 million. It would be materially unfair for PBDF to be allowed to “short pay” PBA another almost \$400,000 pending the return of the Receivership Application, which was originally scheduled to be heard on 29 January 2024, but is, as a result of (further) efforts by PBDF to delay matters, is now not scheduled to be heard until 26 April 2024.

12. It is now clear that, absent a negotiated resolution with PBA or a successful appeal, PBDF is insolvent and allowing PBDF to “short pay” rent until the Receivership Application is heard will increase PBA’s exposure to financial loss as a creditor.

13. In the interim until the Receivership Applications is heard, the interests of RBC as a secured creditor cannot be given priority over or “trump” the interests of PBA as a landlord who is owed rent.

14. PBDF is able to generate revenue to pay RBC because it has the use of the Leased Premises to operate its business. PBDF’s ability to use the Leased Premises is predicated on it paying rent in accordance with the Lease.

15. PBA did not consent to the grant by PBDF of security to RBC.

16. RBC does not have first-ranking security on PBDF’s inventory. PBA’s distraint right has priority over RBC’s security interest in PBDF’s inventory, unless PBDF is bankrupted. There is no landlord waiver or other agreement between RBC and PBA pursuant to which PBA waived its distraint rights or agreed that RBC’s security over PBDF’s inventory would have priority.

17. It was not until 23 January 2024 that PBDF reached out to settle the Orders and provided drafts. **[Tabs 4 and 6]** PBA responded immediately—literally within minutes—with comments on the drafts. **[Tabs 5 and 7]** There were, however no further communications from PBDF and no further drafts were provided by PBDF.

18. After multiple e-mails from PBA, PBDF delivered a proposal—the first proposal made by PBDF since the Reasons were released—at 20:04 on 24 January 2024. [Tab 8] This was less than 30 minutes before PBDF served the Affidavit of Jim Pearce sworn 24 January 2024 [Tab 9] in which it is asserted:

28. The court dismissed the Company's motion on December 15, 2023, but did affirm that the Company was entitled to a rent abatement and that the Company could continue to pay the so called Ramp Up rent (being a phased in return to full rent which both parties agreed was reasonable) while this matter continued.

...

31. Pending the completion of the appeal, the orders of this court in respect of the Decision is stayed, including the cost award made in conjunction therewith. As such, it remains the position of the Company that no amount is owing to the Landlord and that the Landlord is not entitled to any arrears.

...

33. The Company has, today, made an offer to the Landlord to settle the issue with the Landlord. The offer made to the Landlord is consistent with the terms which the Landlord had previously said it would accept, albeit before the Decision. We do not have a response as of yet. As further set out herein the sending of that offer was delayed by negotiations with the Bank.

ALL OF WHICH IS SUBMITTED this 8th day of February 2024

E. Patrick Shea, KC

E. Patrick Shea, KC

TAB 1

of PBDF dated October 27, 2023, and Compendium of PBDF dated October 31, 2023, and Brief of Offers of PBDF dated November 2, 2023, and the Costs Submissions of PBDF dated November 24, 2023, and upon reading the Factum of the Buffalo and Fort Erie Public Bridge Authority (the “**Authority**”) dated October 23, 2023, the Authority’s Brief of Excerpts from Transcripts dated October 23, 2023, Affidavits of Ron Rienas dated September 7, 2022, November 26, 2022 and March 1, 2023, Transcript of Mills dated August 17, 2023, Transcript of Jim Pearce dated August 31, 2023, Transcript of Ephraim Stulberg dated September 29, 2023, Transcript of Lisa Hutcheson dated September 29, 2023, and Affidavit of Amanda Singh dated October 23, 2023, and Brief of Documents of the Authority for Argument dated October 30, 2023, filed,

AND ON HEARING the submissions of counsel for PBDF and the Authority,

1. **THIS COURT ORDERS** that the PBDF’s motion is dismissed.
2. **THIS COURT ORDERS** that pending the return of the Receivership Application, PBDF shall continue to pay rent in accordance with the Lease~~the agreed-upon without prejudice rent for the Ramp Up Period~~, subject to further orders of the Court,~~which amounts should now align with what the parties have agreed to and have been following during the Ramp Up Period.~~

Justice Kimmel

ROYAL BANK OF CANADA

and

PEACE BRIDGE DUTY FREE INC.

Applicant

Respondent (Moving Party)

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

ORDER

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Lawyers for the Respondent/Moving Party
Peace Bridge Duty Free Inc.

TAB 2

THIS CROSS-MOTION, made by the Moving Party, Peace Bridge Duty Free Inc. (“**PBDF**”), was heard November 1st, 2nd, and 3rd, 2023, and the motion being dismissed on December 15th, 2023, with the decision with respect to costs being reserved until this day.

ON READING PBDF's Costs Submissions Brief dated November 24, 2023, and Reply Costs Submissions dated December 1, 2023, and the Costs Submissions of the Buffalo and Fort Erie Public Bridge Authority (the "**Authority**") dated November 24, 2023, and Reply Costs Submissions of the Landlord dated December 1, 2023, filed,

4. — **THIS COURT ORDERS** that PBDF pay the Authority net costs of the Cross-Motion and Lift Stay Motion in the total all inclusive amount of \$259,997.19, within thirty (30) days.

2.1. ~~**THIS COURT ORDERS**~~ the paragraph 1 of this order is subject to the stay in these proceedings that is currently in place pending the return of the Receivership Application and any other relevant considerations which may be raised with the court at a future attendance (if applicable).

Justice Kimmel

ROYAL BANK OF CANADA

and

PEACE BRIDGE DUTY FREE INC.

Applicant

Respondent (Moving Party)

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

**ORDER
(Re: Costs)**

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Peace Bridge Duty Free Inc.

TAB 3



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-21-00673084-00CL

DATE: 17 May 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: **ROYAL BANK OF CANADA v. PEACE BRIDGE DUTY FREE
INC.**

BEFORE JUSTICE: **KIMMEL**

PARTICIPANT INFORMATION

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Name of Person Appearing	Name of Party	Contact Info
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Patrick Shea	Lawyer for Buffalo and Fort Erie Public Bridge Authority, Landlord	patrick.shea@gowlingwlg.com

ENDORSEMENT OF MADAM JUSTICE KIMMEL:

1. This case conference was scheduled pursuant to the court's last endorsement of April 4, 2023. The primary issue to be addressed was the question of what amount of rent the Tenant could afford to be paying to the Landlord pending the court's decision on the Tenant's Cross-Motion now scheduled to be heard on July 25, 26 and 27, 2023.
2. As provided for in my April 4, 2023 endorsement, the Monitor conducted an independent review and analysis of the Tenant's cash flows and prepared a report that was provided to the Tenant and to RBC on May 5, 2023. The purpose of this report was to ascertain whether the Tenant is able to pay more than 20% of its gross sales in rent pending the determination of its Cross-Motion. As was noted in that endorsement, the Tenant had agreed that it will abide by any direction from the court regarding any increased amount of rent to be paid pending the court's determination of the Lease interpretation point raised by its Cross-Motion, based on the Monitor's report.
3. The court and the Landlord were provided with the following summary of the Monitor's rent affordability report:

The Report concluded that Peace Bridge is able to increase its monthly rent payments to the base rent of \$333,333 ("**Base Rent**") during the period ending September 19, 2023 (the "**Review Period**"), being the date of the return of RBC's motion to appoint a receiver. Notwithstanding that Peace Bridge is financially able to pay the Base Rent, the payment of same will decrease its cash reserves. The Monitor discussed its report and conclusions with RBC who advised that they do not object to Peace Bridge paying Base Rent during the Review Period.

4. The specified Review Period ends on September 19, 2023 which is actually a few days prior to the hearing date that has been scheduled for the Bank's receivership motion (currently returnable on September 22, 2023). This is the period for which the Monitor had the cash flow information and projections from the Tenant.
5. Based on this report from the Monitor, the Tenant made an on the record offer to the Landlord to pay rent (monthly, in arrears) starting on June 1 (for the month of May) and continuing to September 30, over and above the 20% of gross sales that it has been paying, to top up the monthly amount being paid during this interim period to the minimum Base Rent specified in the Lease of \$333,000 per month plus HST. The Tenant's offer was to pay any such "topped up" amount on a without prejudice basis to the Monitor to hold and release to either the Landlord or the Tenant, depending on the outcome of the Cross-Motion.
6. The Landlord's position is that any interim payments of rent should be paid to the Landlord to avoid the continued accrual of interest (at the rate specified in the Lease of 26% per annum). The Landlord says it is good for the money if it is later determined that the Rent owing under the Lease was less than this and if the Landlord is not found to be entitled to set off any such overpayments against outstanding amounts claimed to be owing to the Landlord by the Tenant.
7. The Landlord also indicated that the amount payable in this interim period should be the greater of 20% of the Tenant's gross sales or the specified minimum Base Rent of \$333,333 per month. While viewed as optimistic, the Tenant advised that it is prepared to pay the greater amount if its gross sales translate into a higher amount to be paid, and RBC expressed no objection or concern about this.

8. The court raised questions about the precise period that would be covered by this interim arrangement, with the result that it was determined that it can and should only apply until the payment of rent by the Tenant for the month of August that would be due on September 1, 2023. The Monitor's cash flows and report do not extend to the end of September and a receiver could be appointed in September. For these and other reasons, all parties agree that it would be advisable to have the Monitor prepare a further report, on the same basis as this last one, that covers the month of September and beyond (the "Monitor's second rent affordability report").
9. After reviewing and considering the letters filed by the Tenant and the Monitor, and hearing the submissions of all counsel appearing, the court directs that the Tenant shall pay monthly rent in arrears directly to the Landlord on an interim basis commencing on June 1, 2023 and continuing until September 1, 2023 (the "Interim Period") of the greater of: (i) 20% of the Tenant's gross sales, and (ii) the specified minimum Base Rent under the Lease of \$333,333 plus HST. I do not see any reason to involve the Monitor in the rental payments given the amounts at issue. Further, while perhaps immaterial in the grand scheme of this dispute, payment directly to the Landlord (on the terms indicated previously, with any overpayments later determined to either be set off or repaid by the Landlord upon the agreement of the parties or, failing agreement, a court order) will avoid the continued accrual of interest if the Landlord's position prevails. The contractual interest rate of 26% is not one that the Monitor could be expected to achieve through the investment of funds paid to it under the Tenant's proposed arrangement.
10. The court's direction regarding these interim payments is without prejudice to any party's position regarding the Rent that is payable under the Lease during this interim period, or during the stay period that preceded it, as may be later determined by the court.
11. The parties reported that they are so far on track in their timetable for pre-hearing steps for the Cross-Motion. Due to a scheduling conflict for one of the lawyers, the June 14, 2023 case conference that was ordered by the court's April 4, 2023 endorsement will now commence at 4:30 p.m. instead of 9:00 a.m.
12. The Monitor's second rent affordability report shall be paid for by the Tenant and shall be prepared on the same terms as the last one, to cover the period to the end of 2023 if possible. The parties shall incorporate the time for delivery of that report into the timetable that they are to agree upon for the Receivership Application.
13. This endorsement and the orders and directions contained in it shall have the immediate effect of a court order without the necessity of a formal order being taken out.



KIMMEL J.



SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-21-00673084-00CL

HEARING June 14 and 15 2023

DATE: _____

NO. ON LIST: 5

TITLE OF PROCEEDING: ROYAL BANK OF CANADA v. PEACE BRIDGE DUTY FREE
INC.

BEFORE JUSTICE: KIMMEL

PARTICIPANT INFORMATION

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ENDORSEMENT OF MADAM JUSTICE KIMMEL:

Issues Raised for Consideration

1. There is a three day hearing scheduled before me on July 25, 26 and 27, 2023 for the Tenant's cross-motion. I will not repeat in this endorsement the history of the proceedings that led the scheduling of that motion. Pre-hearing steps leading up to that motion were timetabled in my endorsement of April 4, 2023.
2. One of those steps was a case conference to be held on June 14, 2023, "which shall be primarily to address evidentiary considerations for the hearing of the Cross-Motion, including whether any party considers that it might be necessary for the court to hear *viva voce* evidence from any of the witnesses. The parties should come to this case conference prepared to discuss any other logistics for the hearing, including any sealing orders that might be requested."
3. Unfortunately, these hearing logistics could not be addressed because the parties reported to the court that various deadlines have been missed in the timetable, specifically:
 - a. The May 26, 2023 deadline for completing r. 39.03 examinations; and
 - b. The June 7, 2023 deadline for completing cross-examinations.
4. These deadlines were missed because of concerns that the Tenant has about the sufficiency of documentary disclosure by the Landlord and the scope of inquiry that the Landlord was prepared to permit on the r. 39.03 examinations of its representatives. These concerns led the Tenant to adjourn the r. 39.03 examinations that had commenced. That, in turn, led to the delay of the cross-examinations which, without leave of the court, cannot proceed until the r. 39.03 examinations have been completed. While the Landlord decided not to conduct any r. 39.03 examinations itself, the sequencing is still applicable to its cross-examinations because the Landlord had exercised its right to examine the Tenant's Rule 30.03 witnesses.
5. The Landlord disagrees with the Tenant's complaints about the sufficiency of its production and disclosure, and observes that there are deficiencies in the Tenant's disclosure as well.
6. Detailed Aide Memoire's were filed for this case conference outlining a multitude of production and disclosure disputes.
7. In general terms, the Tenant was seeking certain directions from the court, but at the same time contending that no substantive orders about production issues could be made without a formal motion. The Tenant suggested that its cross-motion be adjourned to the fall, that the receivership motion currently scheduled for September 22, 2023 be adjourned and that the court time in July be used for production and refusals motions.
8. In general terms, the Landlord was seeking directions on all issues today with a view to requiring the parties to make whatever further disclosure the court might order within a week and complete all examinations by June 30, 2023. It was suggested that, with a compressed revised timetable for answering undertakings and the exchange of factums thereafter, the hearing dates in July for the Tenant's cross-motion could still be preserved.

Interim Period: Without Prejudice Rent and the Monitor's Second Rent Affordability Report

9. The Landlord has been consistent in its concerns raised about delaying the adjudication of the Tenant's cross-motion while the Tenant continues to enjoy the protection of what was supposed to be a temporary stay of proceedings that was put in place in December 2021 when the Monitor was

appointed. Beyond the concerns about the overall delay, the Landlord's concerns about direct prejudice from the Tenant's failure to pay the rent that the Landlord claims to be entitled to during the stay period (which is the very subject of the Tenant's cross-motion) were alleviated on a temporary and without prejudice basis by my endorsement of May 17, 2023 which directed "that the Tenant shall pay monthly rent in arrears directly to the Landlord on an interim basis commencing on June 1, 2023 and continuing until September 1, 2023 (the "Interim Period") of the greater of: (i) 20% of the Tenant's gross sales, and (ii) the specified minimum Base Rent under the Lease of \$333,333 plus HST."

10. Counsel for the Tenant had obtained instructions just prior to this case conference that the Tenant would agree to extend the Interim Period over which it will pay this without prejudice rent until the cross-motion is heard, and offered to work with the Monitor to prepare the second rent affordability report extending out the projections to the end of 2023 on an expedited timeline so that the court (and RBC) can be satisfied that this arrangement is sustainable if the cross-motion and receivership motion are adjourned.
11. The Tenant shall provide the Monitor with the necessary information to prepare this second rent affordability report by June 30, 2023 and the Monitor shall endeavour to have that report prepared and available for the parties' and the court's consideration in connection with the July 25 and 26, 2023 hearing dates (which are being re-purposed, as detailed below).

Adjournment of Tenant's Cross Motion and the Receivership Application

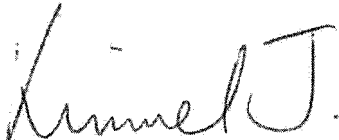
12. Because this case conference did not end until 6 pm on June 14, 2023, it was not possible to determine the court's availability to adjourn these motions. Accordingly, the parties were directed to re-attend upon the court's request the next day.
13. As a practical matter, it does not appear that the Tenant's cross-motion can realistically proceed on July 25, 26 and 27, 2023 given the state of the examinations.
14. The court is concerned about continuing delays and has thus now arranged the earliest possible dates in the fall for the cross-motion to be adjourned to which are September 19, 21 and 22, 2023.
15. The July 25 and 26, 2023 dates are being reserved to address production and disclosure and timetabling issues, as detailed below.
16. The intention when these matters were originally scheduled was that the receivership application would be heard after the Tenant's cross motion had been decided. The court's availability in the fall could end up pushing out the receivership application later than the parties are comfortable with, particularly given that the Landlord has been asked to agree to allow the stay to continue, even if it is successful on the Tenant's cross motion, until the receivership application is decided. RBC also may have its own concerns about delaying the receivership application depending on the results of the Monitor's second rent affordability report.
17. It was decided that the determination of a new date for the receivership application will be made when the parties are next before the court on July 25 and 26, 2023, when it is anticipated that the Monitor's second rent affordability report will be available.

Disclosure Issues and Issues to be Determined on July 25 and 26, 2023

18. The Commercial Court does not schedule production and refusal motions. It deals with category based production and disclosure issues that require determinations on matters such as privilege and sealing and proportionality. Some of the concerns identified are about those types of issues. They will be determined by the court on July 25 and 26, 2023 if not resolved by the parties before then.
19. The following observations and expectations of the court are offered:

- a. Full documentary disclosure was not ordered.
 - b. Some directions were provided in the court's April 4, 2023 endorsement about categories of expected disclosure, although that was not intended to be a closed list of all potentially relevant categories of production and disclosure.
 - c. The court expects issues about missing documents within categories of produced documents to be identified and responded to in a timely manner before the examinations, and even if not satisfactorily resolved, to be explored by the parties during the examinations of witnesses familiar with the documents.
 - d. The court expects parties to respond promptly to inquiries about documents that might no longer exist and the circumstances under which they ceased to exist, and to explore this during the examinations if considered relevant.
 - e. The court expects documents in the identified categories that were withheld on grounds of privilege to be listed (as the parties appear now to agree upon).
 - f. The court expects concerns about privilege being addressed through redactions, rather than the withholding of entire documents, on the basis that doing so would not be relied upon as a waiver of privilege, with challenges to the redactions to be brought forward together with any other privilege challenges in a focused manner for the court's consideration and direction.
 - g. Subject to legitimate proportionality and privilege considerations, the court expects questions asked during the examinations to be answered (even if under reserve of objection as to relevance).
 - h. The court expects concerns about confidentiality (*vis-à-vis* the Tenant and/or *vis-à-vis* the public court file, the latter of which might give rise to limited sealing order requests) to be brought forward in focused manner for the court's consideration and direction. In the case of requests for disclosure of third party confidential information, consideration may need to be given to the rights and interests of those third parties and whether, and if so when, they may need to be given on notice.
 - i. The court expects the parties to co-operate in identifying the appropriate witnesses to answer questions, having regard to their scope of direct knowledge.
 - j. The court expects the parties to conduct focused examinations of witnesses; these are not discoveries.
20. With this guidance in mind, the following directions are provided in connection with the July 25, and 26 and September 19, 21 and 22, 2023 hearing dates:
- a. Any disclosure and production that has been previously requested and that the responding party is prepared to provide shall be provided by June 23, 2023;
 - b. The parties shall exchange lists of any remaining outstanding requests, deficiencies and/or production inquiries by June 30, 2023;
 - c. If the Landlord has other issues with the Tenant's performance of its obligations under the Lease, aside from the payment of rent, those should be identified at the same time as the disclosure deficiencies;
 - d. The parties shall attempt to narrow the issues by providing as much information in writing as they can, on the record, in response to the disclosure, production or performance sought;
 - e. Based on the list of outstanding issues, the parties shall agree upon a timetable for the exchange of materials that detail the issues that the court will be asked to decide on July 25 and 26, 2023 that ensures that all material has been exchanged and uploaded onto CaseLines by no later than July 21, 2023;
 - f. If proportionality is a ground for non-disclosure, some evidence will be required to support that;

- g. If the Tenant is seeking disclosure of documents and information about the US Tenant's contractual arrangements and dealings with the Landlord, the only issue that the court will be asked to decide on July 25 and 26, 2023 is the question of relevance of that requested disclosure. No order for production will be made without the US Tenant having been put on notice;
 - h. Time will be reserved on July 25 or 26, 2023 to address any concerns arising out of the Monitor's second rent affordability report. In the meantime, and unless and until the court orders otherwise, the Tenant shall continue to pay the without prejudice monthly rent agreed to at the May 17, 2023 case conference;
 - i. The maximum number of pages of submissions from any party on **all issues** to be considered at the July 25 and 26 hearing shall be 25 pages double-spaced;
 - j. In the meantime, the parties shall also revise the timetable for the Tenant's cross motion and re-schedule the r.39.03 examinations and cross examinations for some time in August, and reschedule the exchange of the remaining material thereafter, so that it has all been delivered and uploaded into CaseLines by no later than September 15, 2023.
21. This endorsement and the orders and directions contained in it shall have the immediate effect of a court order without the necessity of a formal order being taken out.

A handwritten signature in black ink, appearing to read 'Kimmel J.', with a stylized, cursive script.

KIMMEL J.

June 16, 2023



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-21-00673084-00CL DATE: July 25 and 26, 2023

NO. ON LIST: 3

TITLE OF PROCEEDING: ROYAL BANK OF CANADA v. PEACE BRIDGE DUTY FREE
INC.

BEFORE JUSTICE: KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Sanj Mitra	Lawyers for the Applicant	smitra@airdberlis.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Brendan Jones	Counsel for the Respondent	bjones@blaney.com
David Ullmann		dullmann@blaney.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Leanne Williams	Counsel for the Monitor	lwilliams@tgf.ca
E. Patrick Shea	Lawyers for Buffalo and Fort Erie Public Bridge Authority	patrick.shea@gowlingwlg.com
Mukul Manchanda	Proposed Receiver	mmanchanda@spergel.ca

ENDORSEMENT OF JUSTICE KIMMEL:

1. The parties appeared before the court over the course of two days (July 25-26, 2023) to deal with various production, disclosure and other pre-hearing matters so as to keep this matter on track for the hearing of the Tenant's cross-motion currently scheduled to commence on September 19 and to continue on September 21 and 22, 2023.
2. Upon reviewing the written submissions and materials filed by the parties and hearing the oral submissions of counsel over the course of the past two days, the following orders and directions are provided by the court at this time:
 - a. after having directed that a final notice be provided to the American duty free store tenant at the Peace Bridge (the "US Tenant") on July 25, 2023 (by way of the delivery of the court's preliminary endorsement of that day regarding the orders that the court intended to make for disclosure of certain documents relating to that tenancy in this proceeding) and the US Tenant not having raised any objections or concerns with respect to the intended order, the Landlord (Fort Erie Public Bridge Authority, the "Authority") is ordered to produce to the Tenant (Peace Bridge Duty Free Inc.) the following documents relating to the Authority's arrangements and dealings with its US Tenant:
 - i. The lease and any amendments thereto;
 - ii. Any agreements with the US Tenant to defer and/or abate rent;
 - iii. The April 24, 2020 report of the Authority (A869/20) that discusses arrangements with both the US Tenant and the Tenant.
 - iv. Report #934/21 referred to in the April 30, 2021 redacted minutes produced by the Authority.
 - b. If confidentiality concerns are later raised in respect of the filing of the disclosure of any parts of these (or other) documents that either party may wish to place in the public court file, those can be addressed at the September 6, 2023 case conference (scheduled below).
 - c. The Authority is directed to ask its affiant/representative in this proceeding, Mr. Clutterbuck, to send the attached focused list of production and disclosure requests to current and former members of the board of directors of the Authority during the relevant time period(s) and to ask them to provide their written responses on or before August 4, 2023 (or as soon thereafter as possible). After reviewing and vetting any responses received for privilege considerations, the Authority shall forthwith provide all responses received (redacted for privilege, if appropriate) to the Tenant. The court encourages the parties to take all reasonable steps to have these responses available before the resumption of the examinations of the Authority's representative(s).
 - d. The Tenant shall advise the Authority by Friday July 28, 2023 whether there are any ongoing email searches and reviews with respect to the emails identified in the June 23, 2023 letter from Blaney McMurtry relating to the 6,000 recovered emails of Mr. O'Hara from the back-up server and, if so, when that review is expected to be complete. The Tenant shall also advise the Authority by July 28, 2023 whether any emails have been identified for Mr. Pearce on the back-up server and, if so, the process for their review and when it is expected to be completed. The Tenant shall either provide the Authority with any emails identified from the back-up server as producible or advise the Authority if the result of these searches and reviews did not lead to the discovery of any producible emails.
 - e. The Tenant shall provide its further and supplementary responses to the Gowlings letter of June 26, 2023 seeking additional production and disclosure from the Tenant by this Friday, July 28, 2023. The Tenant is on notice (by this letter) of the information that the Authority will be seeking during the cross-examinations of the Tenant's representatives about the matters identified in this request letter and they should come to the examinations prepared to address

these matters, to the extent they have not done so in the supplementary responses delivered on July 28, 2023, keeping in mind the court's previous observations, expectations and directions regarding production and disclosure.

- f. The court's observations, expectations and directions contained in the previous endorsements dealing with production, disclosure and the witness examinations, and the conduct of any other pre-hearings steps, all still continue to apply except to the extent expressly modified by a subsequent endorsement. In particular, but without limitation, subject to concerns about proportionality and privilege or confidentiality, objections on grounds of relevance may be stated and the parties' positions on relevance may be reserved but, relevance in and of itself should not serve as a basis for refusing to make reasonable production and disclosure or to answer reasonable questions during the examinations.
3. The Authority's Notice of Motion dated July 17, 2023 for leave to issue default notice(s) in respect of alleged non-monetary defaults by the Tenant under the Lease is adjourned *sine die*.
4. The court's June 16, 2023 endorsement reflected the Tenant's without prejudice agreement to extend the Interim Period over which the Tenant will pay the greater of: (i) 20% of the Tenant's gross sales, and (ii) the specified minimum Base Rent under the Lease of \$333,333 plus HST to December 31, 2023. The court asked for an updated rent affordability report from the Monitor to be satisfied that this arrangement is sustainable, which the Monitor has now provided.
5. Based on the Monitor's updated rent affordability report dated July 24, 2023, and so long as the minimum Base Rent that the Landlord claims to be entitled to continues to be paid by the Tenant through to the end of the now extended Interim Period, the Authority has advised that it is not seeking any further disclosure at this time about the source documents that were provided by the Tenant and reviewed by the Monitor for purposes of preparing this report.
6. The applicant's motion to appoint a receiver originally returnable on September 22, 2023 has been adjourned and the scheduling of that hearing, if necessary, will be revisited in the fall after the Tenant's cross-motion has been heard, at a case conference to be scheduled by counsel through the commercial list office.
7. The parties' costs of the matters addressed on July 25 and 26, 2023 shall be determined in the cause of the Tenant's cross-motion, or as may be further directed by this court.
8. The parties shall attend a one-hour case conference on September 6, 2023 commencing at 9:00 a.m. to consider any logistics for the hearing of the Tenant's cross-motion.
9. This endorsement and the orders and directions contained in it shall have the immediate effect of a court order without the necessity of a formal order being taken out.



KIMMEL J.
July 26, 2023

TAB 4

Shea, Patrick

From: Brendan Jones <BJones@blaney.com>
Sent: January-23-24 3:35 PM
To: Shea, Patrick
Cc: David T. Ullmann; John C. Wolf; Ariyana Botejue
Subject: RE: Royal Bank of Canada v Peace Bridge Duty Free
Attachments: 2024-01-23 - Draft Order dismissal of motion.docx; 2024-01-23 - Draft Costs Order.docx

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Good afternoon,

It came to our attention that a formal order has not been taken out. Please find attached draft orders relating to the hearing of the cross-motion and the costs decision of Justice Kimmel.

Please advise whether you have any proposed revisions. If not, kindly confirm whether you approve the form of each order as to form and content.

Regards,

Brendan Jones
Partner

bjones@blaney.com
📞 416-593-2997 | 📠 416-594-3593

From: Shea, Patrick <Patrick.Shea@gowlingwlg.com>
Sent: Thursday, January 18, 2024 9:02 AM
To: David T. Ullmann <DUllmann@blaney.com>; Brendan Jones <BJones@blaney.com>; John C. Wolf <jwolf@blaney.com>
Subject: RE: You have not responded....

Thank you. To be clear, any offer must reflect the passage of time and the amount now owing, including interest. Our client will also expect any offer to provide for 100% reimbursement for all of the the cost incurred by the Authority as a result of the litigation strategy employed by your client.

E. Patrick Shea, KC, LSM, CS (he/him)
Partner

T +1 416 369 7399
patrick.shea@gowlingwlg.com



Gowling WLG (Canada) LLP
Suite 1600, 1 First Canadian Place
100 King Street West
Toronto ON M5X 1G5
Canada



gowlingwlg.com

From: David T. Ullmann <DUllmann@blaney.com>

Sent: January-18-24 8:54 AM

To: Shea, Patrick <Patrick.Shea@ca.gowlingwlg.com>; Brendan Jones <BJones@blaney.com>; John C. Wolf <jwolf@blaney.com>

Cc: 'Jim Pearce' <JimP@dutyfree.ca>; Greg O'Hara <gohara@dutyfree.ca>

Subject: RE: You have not responded....

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Good Morning Patrick

Sorry for not responding sooner. I was waiting until I had all my variables figured out (which I still do not have) before I did so but I should have said as much to you. Also, I have been under pressure the last 10 days with two hotly contested unrelated matters, the second of which is in court this morning. I should have more time after today and be more available.

The state of play is this. With respect to your client, I acknowledge there is no outstanding offer. My client is interested in making an offer to yours and has asked us to prepare one. I do not think that will have any impact on the receivership proceedings, but in any event it is not being prepared for that purpose. I realize that your client has not committed to any position in respect of what it may or may not accept, but I do think we have exchanged enough offers to have a pretty good feel for what is reasonable here. We were also waiting for the costs decision, which has also added certainty as to what is required on that front. Payment of those costs would be part of our clients offer.

My client is also intending to perfect its appeal and we are working towards that. As you say, we have until the end of the month for that (or more precisely Jan 29 although in my experience the OCA is not rigid about these dates as they are with the date for filing the notice of appeal, which we met).

The issue which is delaying us making an offer to your client is this. Your client has made it repeatedly clear that a gating issue for your client is that our client should make an offer which sees effectively immediate payment (or 30 days from settlement which if effectively the same thing). Our clients are working towards that. However, the issue which we are dealing with is the terms under which the bank will or will not return to us the funds which they are holding as additional security in this process and whether or not the bank can prevent us from using the funds on hand in addition to those funds to pay your client. In this regard, you might find it unusual, but your client's interests and ours may end up being aligned. Said differently, our clients ability to make an acceptable offer to your client may depend on whether or not the Bank can seize or restrict all the company's cash. We say it cannot, but that is perhaps to be decided on Jan 29 if we cannot otherwise agree. You may find yourselves in the position of supporting our position at that motion. We will see.

As such, we intend to continue to negotiate with the Bank. I can advise you that our clients met directly with the Bank yesterday to attempt to find a way forward.

In the interim however, we will prepare to respond to the receivership motion, while hoping a resolution can be reached with the Bank which allows us the funds we believe we need to settle with your client.

Regards,

David

David T. Ullmann
Partner

dullmann@blaney.com

☎ 416-596-4289 | ☎ 416-594-2437

From: Shea, Patrick <Patrick.Shea@gowlingwlg.com>

Sent: January 18, 2024 7:35 AM

To: David T. Ullmann <DULLmann@blaney.com>; Brendan Jones <BJones@blaney.com>; John C. Wolf <jwolf@blaney.com>

Subject: You have not responded....

Good morning;

We have sent multiple e-mails and had no response whatsoever. We have now heard that your client may have advised RBC that there will be a resolution with our client to preserve the tenancy. I want to be clear: there are no offers on the table, there are no pending settlement discussions and I have confirmed with our client that your client has not made any outreach whatsoever.

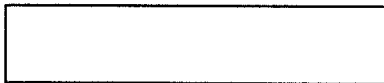
As I have previously advised, the unfortunately litigation strategy adopted by your client has destroyed the relationship and, while nothing is impossible, a last minute offer that will be relied upon to try to delay the receivership or to justify an extension of the time to perfect your client's appeal will not be viewed favourably by our client.

E. Patrick Shea, KC, LSM, CS (he/him)

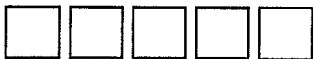
Partner

T +1 416 369 7399

patrick.shea@gowlingwlg.com



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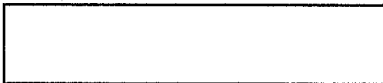


gowlingwlg.com

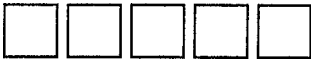
From: Shea, Patrick
Sent: January-11-24 2:11 PM
To: 'David T. Ullmann' <DUllmann@blaney.com>
Subject: RE: Perfecting Appeal

We have not had a response. Just so you are aware, the arrears (with interest) are now at over \$14MM.

E. Patrick Shea, KC, LSM, CS (he/him)
Partner
T +1 416 369 7399
patrick.shea@gowlingwlg.com



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Suite 1600, 1 First Canadian Place
100 King Street West
Toronto ON M5X 1G5
Canada



gowlingwlg.com

From: Shea, Patrick
Sent: January-10-24 1:12 PM
To: David T. Ullmann <DUllmann@blaney.com>
Subject: Perfecting Appeal

I think the deadline for perfecting the appeal is 29 January 2024...the same day the receivership application is returnable. Can you please let us know whether you will be perfecting the appeal? I have not yet heard from you as to what your client's intentions are with respect to the receivership.

E. Patrick Shea, KC, LSM, CS (he/him)
Partner
T +1 416 369 7399
patrick.shea@gowlingwlg.com



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of PBDF dated October 27, 2023, and Compendium of PBDF dated October 31, 2023, and Brief of Offers of PBDF dated November 2, 2023, and the Costs Submissions of PBDF dated November 24, 2023, and upon reading the Factum of the Buffalo and Fort Erie Public Bridge Authority (the “**Authority**”) dated October 23, 2023, the Authority’s Brief of Excerpts from Transcripts dated October 23, 2023, Affidavits of Ron Rienas dated September 7, 2022, November 26, 2022 and March 1, 2023, Transcript of Mills dated August 17, 2023, Transcript of Jim Pearce dated August 31, 2023, Transcript of Ephraim Stulberg dated September 29, 2023, Transcript of Lisa Hutcheson dated September 29, 2023, and Affidavit of Amanda Singh dated October 23, 2023, and Brief of Documents of the Authority for Argument dated October 30, 2023, filed,

AND ON HEARING the submissions of counsel for PBDF and the Authority,

1. **THIS COURT ORDERS** that the PBDF’s motion is dismissed.
2. **THIS COURT ORDERS** that pending the return of the Receivership Application, PBDF shall continue to pay the agreed upon without prejudice rent for the Ramp Up Period, subject to further orders of the Court, which amounts should now align with what the parties have agreed to and have been following during the Ramp Up Period.

Justice Kimmel

ROYAL BANK OF CANADA

and

PEACE BRIDGE DUTY FREE INC.

Applicant

Respondent (Moving Party)

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

ORDER

BLANEY McMURTRY LLP

Lawyers

2 Queen Street East, Suite 1500

Toronto, ON, M5C 3G5

David T. Ullmann (LSO #42357I)

Tel: (416) 596-4289

Email: dullmann@blaney.com

John C. Wolf (LSO #30165B)

Email: jwolf@blaney.com

Brendan Jones (LSO #56821F)

Email: bjones@blaney.com

Lawyers for the Respondent/Moving Party
Peace Bridge Duty Free Inc.

ON READING PBDF's Costs Submissions Brief dated November 24, 2023, and Reply Costs Submissions dated December 1, 2023, and the Costs Submissions of the Buffalo and Fort Erie Public Bridge Authority (the "**Authority**") dated November 24, 2023, and Reply Costs Submissions of the Landlord dated December 1, 2023, filed,

1. **THIS COURT ORDERS** that PBDF pay the Authority net costs of the Cross-Motion and Lift Stay Motion in the total all inclusive amount of \$259,997.19, within thirty (30) days.

Justice Kimmel

ROYAL BANK OF CANADA

and

PEACE BRIDGE DUTY FREE INC.

Applicant

Respondent (Moving Party)

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

**ORDER
(Re: Costs)**

BLANEY McMURTRY LLP

Lawyers

2 Queen Street East, Suite 1500

Toronto, ON, M5C 3G5

David T. Ullmann (LSO #42357I)

Tel: (416) 596-4289

Email: dullmann@blaney.com

John C. Wolf (LSO #30165B)

Email: jwolf@blaney.com

Brendan Jones (LSO #56821F)

Email: bjones@blaney.com

Lawyers for the Respondent/Moving Party

Peace Bridge Duty Free Inc.

TAB 5

Shea, Patrick

From: Shea, Patrick
Sent: January-23-24 3:48 PM
To: Brendan Jones
Cc: David T. Ullmann; John C. Wolf; Ariyana Botejue
Subject: RE: Royal Bank of Canada v Peace Bridge Duty Free

Thank you.
The costs order is fine.

The second paragraph of the dismissal order should be removed...the rent payable is the rent required by the Lease. The Cross-Motion was dismissed and any statement re the rent payable was, in our view, obiter.

E. Patrick Shea, KC, LSM, CS (he/him)
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T +1 416 369 7399
patrick.shea@gowlingwlg.com



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From: Brendan Jones <BJones@blaney.com>
Sent: January-23-24 3:35 PM
To: Shea, Patrick <Patrick.Shea@ca.gowlingwlg.com>
Cc: David T. Ullmann <DUllmann@blaney.com>; John C. Wolf <jwolf@blaney.com>; Ariyana Botejue <ABotejue@blaney.com>
Subject: RE: Royal Bank of Canada v Peace Bridge Duty Free

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Good afternoon,

It came to our attention that a formal order has not been taken out. Please find attached draft orders relating to the hearing of the cross-motion and the costs decision of Justice Kimmel.

Please advise whether you have any proposed revisions. If not, kindly confirm whether you approve the form of each order as to form and content.

Regards,

Brendan Jones
Partner

bjones@blaney.com

📞 416-593-2997 | 📠 416-594-3593

From: Shea, Patrick <Patrick.Shea@gowlingwlg.com>

Sent: Thursday, January 18, 2024 9:02 AM

To: David T. Ullmann <DUllmann@blaney.com>; Brendan Jones <BJones@blaney.com>; John C. Wolf <jwolf@blaney.com>

Subject: RE: You have not responded....

Thank you. To be clear, any offer must reflect the passage of time and the amount now owing, including interest. Our client will also expect any offer to provide for 100% reimbursement for all of the the cost incurred by the Authority as a result of the litigation strategy employed by your client.

E. Patrick Shea, KC, LSM, CS (he/him)

Partner

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patrick.shea@gowlingwlg.com



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From: David T. Ullmann <DUllmann@blaney.com>

Sent: January-18-24 8:54 AM

To: Shea, Patrick <Patrick.Shea@ca.gowlingwlg.com>; Brendan Jones <BJones@blaney.com>; John C. Wolf <jwolf@blaney.com>

Cc: 'Jim Pearce' <JimP@dutyfree.ca>; Greg O'Hara <gohara@dutyfree.ca>

Subject: RE: You have not responded....

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The state of play is this. With respect to your client, I acknowledge there is no outstanding offer. My client is interested in making an offer to yours and has asked us to prepare one. I do not think that will have any impact on the receivership proceedings, but in any event it is not being prepared for that purpose. I realize that your client has not committed to any position in respect of what it may or may not accept, but I do think we have exchanged enough offers to have a pretty good feel for what is reasonable here. We were also waiting for the costs decision, which has also added certainty as to what is required on that front. Payment of those costs would be part of our clients offer.

My client is also intending to perfect its appeal and we are working towards that. As you say, we have until the end of the month for that (or more precisely Jan 29 although in my experience the OCA is not rigid about these dates as they are with the date for filing the notice of appeal, which we met).

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In the interim however, we will prepare to respond to the receivership motion, while hoping a resolution can be reached with the Bank which allows us the funds we believe we need to settle with your client.

Regards,

David

David T. Ullmann
Partner

dullmann@blaney.com

☎ 416-596-4289 | ☎ 416-594-2437

From: Shea, Patrick <Patrick.Shea@gowlingwlg.com>

Sent: January 18, 2024 7:35 AM

To: David T. Ullmann <DUllmann@blaney.com>; Brendan Jones <BJones@blaney.com>; John C. Wolf <jwolf@blaney.com>

Subject: You have not responded....

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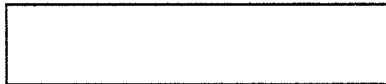
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E. Patrick Shea, KC, LSM, CS (he/him)

Partner

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patrick.shea@gowlingwlg.com



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Toronto ON M5X 1G5
Canada



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From: Shea, Patrick

Sent: January-11-24 2:11 PM

To: 'David T. Ullmann' <DUllmann@blaney.com>

Subject: RE: Perfecting Appeal

We have not had a response. Just so you are aware, the arrears (with interest) are now at over \$14MM.

E. Patrick Shea, KC, LSM, CS (he/him)

Partner

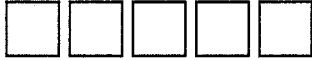
T +1 416 369 7399

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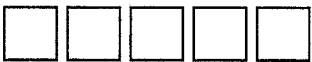
From: Shea, Patrick
Sent: January-10-24 1:12 PM
To: David T. Ullmann <DULLmann@blaney.com>
Subject: Perfecting Appeal

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E. Patrick Shea, KC, LSM, CS (he/him)
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Canada



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TAB 6

Shea, Patrick

From: Brendan Jones <BJones@blaney.com>
Sent: January-23-24 4:23 PM
To: Shea, Patrick
Cc: David T. Ullmann; John C. Wolf; Ariyana Botejue
Subject: RE: Royal Bank of Canada v Peace Bridge Duty Free
Attachments: 2024-01-23 - Draft Costs Order v2.docx

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

We note that the draft cost order that we sent did not include the direction from Her Honour with respect to the impact of the stay of proceedings on the obligation to pay the costs ordered at paragraph 41 of the endorsement.

I've attached an updated version of the cost order.

Brendan Jones
Partner

bjones@blaney.com
📞 416-593-2997 | 📠 416-594-3593

From: Brendan Jones
Sent: Tuesday, January 23, 2024 3:35 PM
To: 'Shea, Patrick' <Patrick.Shea@gowlingwlg.com>
Cc: David T. Ullmann <dullmann@blaney.com>; John C. Wolf <jwolf@blaney.com>; Ariyana Botejue <abotejue@blaney.com>
Subject: RE: Royal Bank of Canada v Peace Bridge Duty Free

Good afternoon,

It came to our attention that a formal order has not been taken out. Please find attached draft orders relating to the hearing of the cross-motion and the costs decision of Justice Kimmel.

Please advise whether you have any proposed revisions. If not, kindly confirm whether you approve the form of each order as to form and content.

Regards,

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Partner

bjones@blaney.com
📞 416-593-2997 | 📠 416-594-3593

From: Shea, Patrick <Patrick.Shea@gowlingwlg.com>
Sent: Thursday, January 18, 2024 9:02 AM
To: David T. Ullmann <DUllmann@blaney.com>; Brendan Jones <BJones@blaney.com>; John C. Wolf <jwolf@blaney.com>
Subject: RE: You have not responded....

Thank you. To be clear, any offer must reflect the passage of time and the amount now owing, including interest. Our client will also expect any offer to provide for 100% reimbursement for all of the the cost incurred by the Authority as a result of the litigation strategy employed by your client.

E. Patrick Shea, KC, LSM, CS (he/him)

Partner

T +1 416 369 7399

patrick.shea@gowlingwlg.com



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Suite 1600, 1 First Canadian Place
100 King Street West
Toronto ON M5X 1G5
Canada



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From: David T. Ullmann <DUllmann@blaney.com>

Sent: January-18-24 8:54 AM

To: Shea, Patrick <Patrick.Shea@ca.gowlingwlg.com>; Brendan Jones <BJones@blaney.com>; John C. Wolf <jwolf@blaney.com>

Cc: 'Jim Pearce' <JimP@dutyfree.ca>; Greg O'Hara <gohara@dutyfree.ca>

Subject: RE: You have not responded....

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Good Morning Patrick

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The state of play is this. With respect to your client, I acknowledge there is no outstanding offer. My client is interested in making an offer to yours and has asked us to prepare one. I do not think that will have any impact on the receivership proceedings, but in any event it is not being prepared for that purpose. I realize that your client has not committed to any position in respect of what it may or may not accept, but I do think we have exchanged enough offers to have a pretty good feel for what is reasonable here. We were also waiting for the costs decision, which has also added certainty as to what is required on that front. Payment of those costs would be part of our clients offer.

My client is also intending to perfect its appeal and we are working towards that. As you say, we have until the end of the month for that (or more precisely Jan 29 although in my experience the OCA is not rigid about these dates as they are with the date for filing the notice of appeal, which we met).

The issue which is delaying us making an offer to your client is this. Your client has made it repeatedly clear that a gating issue for your client is that our client should make an offer which sees effectively immediate payment (or 30 days from settlement which is effectively the same thing). Our clients are working towards that. However, the issue which we are dealing with is the terms under which the bank will or will not return to us the funds which they are holding as additional security in this process and whether or not the bank can prevent us from using the funds on hand in addition to those funds to pay your client. In this regard, you might find it unusual, but your client's interests and ours may end up being aligned. Said differently, our clients ability to make an acceptable offer to your client may depend on whether or not the Bank can seize or restrict all the company's cash. We say it cannot, but that is perhaps to be decided on Jan 29 if we cannot otherwise agree. You may find yourselves in the position of supporting our position at that motion. We will see.

As such, we intend to continue to negotiate with the Bank. I can advise you that our clients met directly with the Bank yesterday to attempt to find a way forward.

In the interim however, we will prepare to respond to the receivership motion, while hoping a resolution can be reached with the Bank which allows us the funds we believe we need to settle with your client.

Regards,

David

David T. Ullmann

Partner

dullmann@blaney.com

☎ 416-596-4289 | ☎ 416-594-2437

From: Shea, Patrick <Patrick.Shea@gowlingwlg.com>

Sent: January 18, 2024 7:35 AM

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E. Patrick Shea, KC, LSM, CS (he/him)

Partner

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patrick.shea@gowlingwlg.com



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From: Shea, Patrick
Sent: January-11-24 2:11 PM
To: 'David T. Ullmann' <DULLmann@blaney.com>
Subject: RE: Perfecting Appeal

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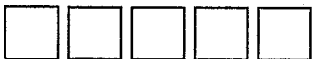
E. Patrick Shea, KC, LSM, CS (he/him)

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From: Shea, Patrick
Sent: January-10-24 1:12 PM
To: David T. Ullmann <DULLmann@blaney.com>
Subject: Perfecting Appeal

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E. Patrick Shea, KC, LSM, CS (he/him)

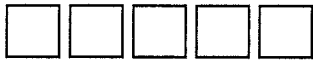
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ON READING PBDF's Costs Submissions Brief dated November 24, 2023, and Reply Costs Submissions dated December 1, 2023, and the Costs Submissions of the Buffalo and Fort Erie Public Bridge Authority (the "**Authority**") dated November 24, 2023, and Reply Costs Submissions of the Landlord dated December 1, 2023, filed,

1. **THIS COURT ORDERS** that PBDF pay the Authority net costs of the Cross-Motion and Lift Stay Motion in the total all inclusive amount of \$259,997.19, within thirty (30) days.
2. **THIS COURT ORDERS** the paragraph 1 of this order is subject to the stay in these proceedings that is currently in place pending the return of the Receivership Application and any other relevant considerations which may be raised with the court at a future attendance (if applicable).

Justice Kimmel

ROYAL BANK OF CANADA

and

PEACE BRIDGE DUTY FREE INC.

Applicant

Respondent (Moving Party)

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

**ORDER
(Re: Costs)**

BLANEY McMURTRY LLP

Lawyers

2 Queen Street East, Suite 1500
Toronto, ON, M5C 3G5

David T. Ullmann (LSO #42357I)

Tel: (416) 596-4289

Email: dullmann@blaney.com

John C. Wolf (LSO #30165B)

Email: jwolf@blaney.com

Brendan Jones (LSO #56821F)

Email: bjones@blaney.com

Lawyers for the Respondent/Moving Party
Peace Bridge Duty Free Inc.

TAB 7

Shea, Patrick

From: Shea, Patrick
Sent: January-23-24 4:40 PM
To: Brendan Jones
Cc: David T. Ullmann; John C. Wolf; Ariyana Botejue
Subject: RE: Royal Bank of Canada v Peace Bridge Duty Free

We do not accept this change to the costs order....If you wish to include the language from the last sentence of paragraph 41, you must be accurate. The language in that sentence modifies when the costs are payable, not the entire concept of costs...only the obligation to pay the costs in 30 days is subject to the stay and any other relevant consideration which may be raised with the court at a future attendance.

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Partner
T +1 416 369 7399
patrick.shea@gowlingwlg.com



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Cc: David T. Ullmann <DUllmann@blaney.com>; John C. Wolf <jwolf@blaney.com>; Ariyana Botejue <ABotejue@blaney.com>
Subject: RE: Royal Bank of Canada v Peace Bridge Duty Free

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We note that the draft cost order that we sent did not included the direction from Her Honour with respect to the impact of the stay of proceedings on the obligation to pay the costs ordered at paragraph 41 of the endorsement.

I've attached an updated version of the cost order.

Brendan Jones
Partner

bjones@blaney.com

☎ 416-593-2997 | ☎ 416-594-3593

From: Brendan Jones

Sent: Tuesday, January 23, 2024 3:35 PM

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Cc: David T. Ullmann <dullmann@blaney.com>; John C. Wolf <jwolf@blaney.com>; Ariyana Botejue <abotejue@blaney.com>

Subject: RE: Royal Bank of Canada v Peace Bridge Duty Free

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Please advise whether you have any proposed revisions. If not, kindly confirm whether you approve the form of each order as to form and content.

Regards,

Brendan Jones

Partner

bjones@blaney.com

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From: Shea, Patrick <Patrick.Shea@gowlingwlg.com>

Sent: Thursday, January 18, 2024 9:02 AM

To: David T. Ullmann <DUllmann@blaney.com>; Brendan Jones <BJones@blaney.com>; John C. Wolf <jwolf@blaney.com>

Subject: RE: You have not responded....

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From: David T. Ullmann <DULLmann@blaney.com>

Sent: January-18-24 8:54 AM

To: Shea, Patrick <Patrick.Shea@ca.gowlingwlg.com>; Brendan Jones <BJones@blaney.com>; John C. Wolf <jwolf@blaney.com>

Cc: 'Jim Pearce' <JimP@dutyfree.ca>; Greg O'Hara <gohara@dutyfree.ca>

Subject: RE: You have not responded....

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In the interim however, we will prepare to respond to the receivership motion, while hoping a resolution can be reached with the Bank which allows us the funds we believe we need to settle with your client.

Regards,

David

David T. Ullmann
Partner

dullmann@blaney.com

☎ 416-596-4289 | ☎ 416-594-2437

From: Shea, Patrick <Patrick.Shea@gowlingwlg.com>

Sent: January 18, 2024 7:35 AM

To: David T. Ullmann <DULLmann@blaney.com>; Brendan Jones <BJones@blaney.com>; John C. Wolf <jwolf@blaney.com>

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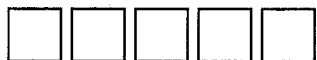
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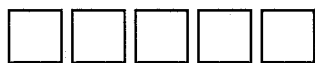
From: Shea, Patrick
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Subject: RE: Perfecting Appeal

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Partner
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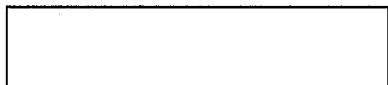
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TAB 8

Shea, Patrick

From: Ariyana Botejue <ABotejue@blaney.com>
Sent: January-24-24 8:04 PM
To: Shea, Patrick
Cc: David T. Ullmann; Ines Ferreira; Brendan Jones; John C. Wolf
Subject: RE: Offer Letter
Attachments: 2024-01-22 - LT Shea and Stanek final.pdf

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Good Evening Patrick,

Attached is the offer letter from our client.

Regards,

Sent on behalf of David Ullmann

David T. Ullmann
Partner

dullmann@blaney.com

📞 416-596-4289 | 📠 416-594-2437

From: Shea, Patrick <Patrick.Shea@gowlingwlg.com>

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Subject: RE: You have not responded....

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Partner

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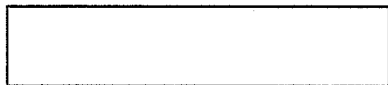
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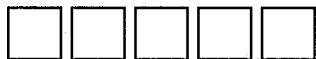
Partner

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patrick.shea@gowlingwlg.com



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Sent: January-11-24 2:11 PM
To: 'David T. Ullmann' <DUllmann@blaney.com>
Subject: RE: Perfecting Appeal

We have not had a response. Just so you are aware, the arrears (with interest) are now at over \$14MM.

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Partner
T +1 416 369 7399
patrick.shea@gowlingwlg.com



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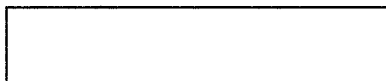


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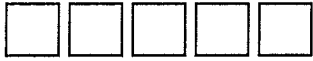
From: Shea, Patrick
Sent: January-10-24 1:12 PM
To: David T. Ullmann <DUllmann@blaney.com>
Subject: Perfecting Appeal

I think the deadline for perfecting the appeal is 29 January 2024...the same day the receivership application is returnable. Can you please let us know whether you will be perfecting the appeal? I have not yet heard from you as to what your client's intentions are with respect to the receivership.

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TAB 9

Shea, Patrick


From: Ariyana Botejue <ABotejue@blaney.com>
Sent: January-24-24 8:30 PM
To: Sanjeev Mitra; Sanjeev Mitra; mmanchanda@spergel.ca; Stanek, Chris; Shea, Patrick; AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca; steven.groeneveld@ontario.ca; leslie.crawford@ontario.ca; 'Insolvency.Unit@ontario.ca'
Cc: David T. Ullmann; John C. Wolf; Brendan Jones; Ines Ferreira
Subject: Service - Court File No. CV-21-00673084-00CL - Royal Bank of Canada v. Peace Bridge Duty Free
Attachments: 2024-01-24 - Non-Confidential Responding Motion Record of PBDF.pdf

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To the Service List,

Please find attached our non-confidential responding motion record of PBDF served pursuant to the Rules for the Bank's motion returnable January 29, 2024. A copy of the confidential responding motion record shall be provided to the Justice Kimmel.

Thank you,

 2 Queen Street East | Suite 1501
Toronto, Ontario M5C 3G5

Ariyana Botejue
Legal Assistant to Stephen Gaudreau & David Ullmann

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ROYAL BANK OF CANADA
Applicant

-and-

PEACE BRIDGE DUTY FREE INC.
Respondent

Court File No. CV-21-00673084-00CL

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SUPERIOR COURT OF JUSTICE

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Lawyers for Buffalo and Fort Erie Public Bridge Authority