

**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**

1. Based on the failure of PBDF to pay rent as required by the Lease, the Authority wishes to terminate the Lease and evict PBDF. The Authority is stayed by the Appointment Order from exercising its remedies against PBDF. The Monitor has refused to consent to the Authority exercising its remedies.
2. PBDF is seeking to delay the hearing of the Authority's Motion until sometime in mid-2023, while continuing to pay to the Authority only the rent that it wishes to pay, as opposed to the rent required by the Lease. This is prejudicial to the Authority. If the Authority is correct and PBDF is required to pay rent in accordance with the Lease, RBC will appoint a receiver over PBDF and there will be no money available to pay the Authority.
3. The basic timeline is:
  - 8 Sept 2021**—Authority delivers Notices of Default to PBDF based on *inter alia*, failure to pay rent.
  - 3 Dec 2021**—RBC commences enforcement under its security.
  - 12 Dec 2021**—PBDF delivers Affidavit of Jim Pearce raising issues with claim by Authority that PBDF has breached the Lease.
  - 14 Dec 2021**—Monitor appointed and the Authority is stayed. Appointment Order contemplates that PBDF will pay rent in accordance with the Lease.

**24 Feb 2022**—Authority advises PBDF that rent is not being paid in accordance with Lease.

**11 Apr 2022**—Authority advises PBDF that rent is not being paid in accordance with Lease.

**22 April 2022**—Provincial Eviction Moratorium expires.

**6 Jul 2022**—Authority advises PBDF that rent is not being paid in accordance with Lease.

**26 July 2022**—Authority requested consent from Monitor to exercise remedies.

**2 Aug 2022**—Authority makes demand on PBDF for post-14 Dec 2021 unpaid rent.

**19 Aug 2022**—Authority draft Notice of Motion delivered to PBDF. No substantive response.

**7 Sept 2022**—Authority sworn Affidavit and Exhibits delivered to PBDF. No substantive response.

**12 Sept 2022**—Parties Agree to 0930 on 6 Oct 2022 to Schedule.

**27 Sept 2022**—Authority follows up with PBDF re Responding Materials. No substantive response.

4. The Lease requires that PBDF pay Base Rent, Percentage Rent and any applicable sales taxes, as well property taxes, operating costs and utilities. The minimum monthly rent payable by PBDF is \$333,333.

5. PBDF has been paying only 20% of reported Gross Sales.

**Rent Ledger from Exhibits (Exhibit 4)**

2022	Gross Sales	Base Rent	Rent Paid	Date Paid
Jan.	\$266,000	\$333,333.33	\$53,200	16/02/2022
Feb.	\$317,000	\$333,333.33	\$63,400	10/03/2022
Mar.	\$575,000	\$333,333.33	\$115,000	11/04/2022
April	\$802,000	\$333,333.33	\$160,400	19/05/2022
May	\$840,000	\$333,333.33	\$168,000	21/06/2022
June	\$942,000	\$333,333.33	\$188,400	08/07/2022
July	\$1,332,000	\$333,333.33	\$266,400	11/08/2022
August	\$1,295,000	\$333,333.33	\$0	Not received as of 9/7/2022

6. Rent has not been paid in full or on time by PBDF since Exhibit 4 was prepared.

7. PBDF currently owes the Authority \$8 MM. The amount owing grows each month that PBDF does not pay rent as required by the Lease.

8. The extended schedule being proposed/sought by PBDF is a “stall” tactic that will result in prejudice to the Authority.
9. The Authority has no interest in mediation with PBDF and wishes to terminate the Lease and evict PBDF.
10. If PBDF has a defense to the Authority’s claim for rent, it has been aware of the specifics of that defense since at least 12 December 2021 when it delivered the Affidavit sworn by Jim Pearce and should be able to now respond to the Authority’s Motion.