

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

BETWEEN:

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent

**FACTUM OF EMPLOYEES CINDY BEAM AND KATHLEEN CLEMENTS
(returnable April 8, 2025)**

April 7, 2025

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To: SERVICE LIST

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PART I - OVERVIEW

1. Cindy Beam, the Store Manager and Manager of Human Resources of Peace Bridge Duty Free Inc. ("**PBDF**"), and Kathleen Clements, the Liquor Specialist and Sales Associate of PBDF (together, the "**Employees**"), submit that this court should only grant the limited appointment sought by the Royal Bank of Canada ("**RBC**"), whose loan is not in default, of msi Spergel inc. ("**Spergel**") as receiver, but not as manager, over PBDF's assets and inventory.

2. Practically, the appointment of a receiver and manager by RBC is effectively an order for the liquidation and shut down of PBDF and the termination of all its 40 employees because the appointment of a receiver and manager is cause for revocation of PBDF's Canada Customs and Revenue Agency licence to operate a duty free business.

3. The appointment of a *limited* receiver, however, would allow RBC control over the collateral of PBDF, while avoiding the onerous provisions that are imposed on receiver-managers under the *Customs Act*.¹ The Employees submit that only the appointment of a receiver, but not a manager, is just or convenient.

PART II - THE FACTS

4. PBDF is a retail company based in Fort Erie, Ontario and was formed by way of amalgamation of a company by the same name and Giving Gallery Inc. on March 1, 2012 under the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16.

¹ [R.S.C., 1985, c. 1 \(2nd Supp.\)](#)

5. PBDF has 40 employees, of which four are salaried and 36 are part-time staff, and is licenced by the Canada Border Services Agency ("CBSA") to operate two duty free shops: one in Fort Erie, Ontario, and the other in the Hamilton International Airport. The license of the duty free shop in Fort Erie is effective from January 26, 2025 to January 25, 2035, whereas the Hamilton International Airport license is effective from May 1, 2017 to April 30, 2027.

PART III - THE ISSUE

6. Should Spergel be appointed as a receiver and manager, pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*² and section 101 of the *Courts of Justice Act* (Ontario)³, without security, of all the assets, properties and undertakings of PBDF acquired for, or used in relation to a business carried on by PBDF, and all proceeds thereof?

Answer: No – Spergel should only be appointed a receiver, but not manager, over the assets and inventory of PBDF so that PBDF can continue to operate and keep the jobs of the employees.

PART IV - THE LAW & ARGUMENT

7. A duty free business is unique and operates pursuant to a specialized duty and tax exclusion regime. CBSA licenses duty free operators, which sell goods to travellers who are about to leave Canada. PBDF can only operate if it has a valid license.

² [R.S.C. 1985, c. B-3.](#)

³ [R.S.O. 1990, c. C.43.](#)

8. CBSA oversees the licensing of duty free shops for two reasons: to ensure duty-free goods are properly accounted for and exported, and to ensure they comply with government requirements and maintain related regulations and policies.

9. To obtain a license to operate a duty free business, an applicant must satisfy a rigorous government application process which discloses ownership structure, criminal checks, and provincial liquor authorization to sell alcohol.⁴

10. Licences to operate duty free shops are granted by the federal Minister of Public Safety and Emergency Preparedness pursuant to section 24 of the *Customs Act*. Duty free shops are regulated pursuant to the *Duty Free Shop Regulations*⁵ (the "**Regulations**") under the *Customs Act*. The Regulations identify who may apply for a license, the terms that may be imposed on any such license, and how licenses are cancelled.

The appointment of a receiver and manager will result in the shut down of the business

11. Importantly for this case, section 9(1)(a) of the Regulations states that a receivership of a licensee is grounds for the suspension or cancellation of the duty-free shop licence which means it can not longer operate:

Cancellation or Suspension of Licences

...

9 (1) Subject to section 10, the Minister may suspend or cancel a licence where the licensee

⁴ *Duty Free Shop Regulations*, [SOR/86-1072](#) at [s. 3](#).

⁵ *Ibid.*

(a) is the subject of a receivership in respect of his debts;⁶

12. The statutory construction of the *Customs Act* and the Regulations illustrates that only the existing Ministerially-approved licensee can operate the business.

13. The definition of "receiver" in the *Customs Act* suggests that receivership proceedings that trigger license suspension involve a receiver-*manager* or receiver-*liquidator*, but not a receiver of part of the licensee's property. Section 97.21 of the *Customs Act* uses the following definition of "receiver":

97.21 The definitions in this section apply in this Part.

...

receiver means a person who

(a) under the authority of a debenture, bond or other debt security, a court order or an Act of Parliament or of the legislature of a province, *is empowered to operate or manage a business or a property of another person*;

(b) is appointed by a trustee under a trust deed in respect of a debt security to exercise the authority of the trustee to manage or operate a business or a property of the debtor under the debt security;

(c) is appointed by a bank to act as agent of the bank in the exercise of the authority of the bank under subsection 426(3) of the *Bank Act* in respect of property of another person;

(d) is appointed as a liquidator to liquidate the assets of a corporation or to wind up the affairs of a corporation; or

(e) is appointed as a committee, guardian or curator with authority to manage and care for the affairs and assets of an individual who is incapable of managing those affairs and assets.

It includes a person who is appointed to exercise the authority of a creditor under a debenture, bond or other debt security to operate or manage a business or a property of another person. However, if a person is so appointed it does not include that creditor.⁷

⁶ *Ibid.*, at [s. 9\(1\)\(a\)](#).

⁷ *Customs Act*, s. 97.21.

In other words, if a receiver-*manager* is appointed by the Court to take over the business, then the Minister can cancel PBD's license and if so, it can no longer operate and will have to be shut down and all employees will be terminated.

14. The policy concern the *Customs Act* aims to address is that another party, who is not the licensee is interposed or empowered to "operate or manage", "act as agent", or "liquidate" the licensee, has not been vetted by the government cannot simply step in or take over the business. This makes sense in context: only the specific licensee has applied for, been vetted, and obtained a license to operate pursuant to Ministerial decree. Displacing government-approved management with a third-party receiver and manager should, and does, vitiate the license.

15. This conclusion is further supported by CBSA's Memorandum D4-3-2: Duty Free Shop – Licensing, which provides that where a duty free shop is placed "under the control of a receiver", operations must stop unless two events occur:

- (a) the licensee must "request" the government to allow the receiver "*be allowed* [by the government] *to continue the day-to-day operations of the shop*" and,
- (b) the receiver must meet the requirements of the duty free shop program:

Receivership or Bankruptcy

43. When it is expected that a DFS will be placed under the **control** of a receiver or may go bankrupt, the DFS licensee must notify the CBSA immediately by sending a notice through the CCP.

44. The trustees and the licensee may be given limited access to the DFS *but no sale or movement of goods is to take place without prior approval of the local CBSA office. In the case of a receivership, the licensee may request that the receivers be allowed to continue the day-to-day operations of the shop providing they meet the requirements of the DFS*

program. In the case of a bankruptcy, the DFS license is automatically cancelled, and the DFS will be locked and secured by the local CBSA.⁸

16. There is no evidence in the existing voluminous record that Spergel would meet "*the requirements of the DFS program*" and how long the approval process would take. In the meantime, the business would not be operating and would lose its flow of income-producing customers.

17. As a result, the Employees submit that there is a very high likelihood that the imposition of a receiver and manager will result in the termination of PDBF's licence to operate both of its duty-free shop locations. Not being able to run the business means that there is nothing for the manager to *manage*, only to liquidate. Liquidating PDBF when PDBF has not defaulted in servicing its debt with RBC would be unjust and inconvenient.

18. The provisions of the *Customs Act* also impose statutory duties and obligations on receiver-managers that may not be expected in this case. Pursuant to section 97.37 of the *Customs Act*, receiver-managers are bound by the statutory obligations of the licensee, and become jointly liable with the licensee for all amounts payable under the Act:

Receivers

(2) The following rules apply to a receiver who on a particular day is vested with the authority to **manage, operate, liquidate or wind up any business or property, or to manage and care for the affairs and assets**, of a person:

(a) the receiver is an agent of the person and any act performed by the receiver in respect of the relevant assets of the receiver is deemed to have been performed, as the case may be, by the receiver as agent on behalf of the person;

⁸ Canada Border Services Agency's Memorandum D4-3-2: Duty Free Shop – Licensing, Exhibit "D" to the Affidavit of Cindy Beam sworn April 7, 2025. Also found at: <https://www.cbsa-asfc.gc.ca/publications/dm-md/pdf/d4-3-2-eng.pdf>.

...

(d) **the person and the receiver are jointly and severally or solidarily liable for the payment of all amounts that become payable by the person under this Act before or during the period during which the receiver is acting as receiver** of the person to the extent that the amounts can reasonably be considered to relate to the relevant assets of the receiver or to the businesses, properties, affairs or assets of the person that would have been the relevant assets of the receiver if the receiver had been acting as receiver of the person at the time the amounts became payable except that

(i) the receiver is liable for the payment of amounts that became payable before that period only to the extent of the property and money of the person in possession or under the control and management of the receiver after

(A) satisfying the claims of creditors whose claims ranked, on the particular day, in priority to the claim of the Crown in respect of the amounts, and

(B) paying any amounts that the receiver is required to pay to a trustee in bankruptcy of the person, and

(ii) the payment by the person or the receiver of an amount in respect of the liability discharges the joint liability to the extent of that amount;

(e) **the receiver shall perform all the obligations, in respect of the relevant assets of the receiver for the period during which the receiver is acting as receiver**, that are required under this Act to be performed by the person, as if the relevant assets were the only properties, businesses, affairs and assets of the person; and

(f) if the person has not on or before the particular day fulfilled their obligations under this Act before the period during which the receiver was acting as receiver, the receiver shall fulfil those obligations for that period that relate to the businesses, properties, affairs or assets of the person that would have been the relevant assets of the receiver if the receiver had been acting as receiver of the person during that period, unless the Minister waives in writing the requirement for the receiver to do so. [emphasis added]⁹

19. Conversely, the better approach of appointing Spergel as a receiver but not manager would allow it to avoid the imposition of the *Customs Act* and the Regulations, while in the meantime giving regard to RBC's rights as a secured creditor.

⁹ *Customs Act*, [section 97.37\(2\)](#).

20. PBDF has operated under the duty-free shop regulatory regime since November 1, 2016.¹⁰ It is minimally impairing on all stakeholders if it continues to run the duty-free business while Spergel has control over the assets and inventory. The Employees submit that it would be inconvenient for Spergel to be appointed to a specialized regulatory regime under which there is no evidence in the record that he has experience with.

The appointment of a receiver and manager will lead to mass job losses in a poor job market

21. The appointment of a receiver, but not manager, is just or convenient in these particular circumstances. In the list of factors to take into account when appointing a receiver, as set out in *Kingsett*,¹¹ the holistic approach of this Court should be to recognize and protect the interests of RBC without the effective liquidation of the business and the loss of 40 jobs. PBDF has consistently paid RBC and has sufficient cash collateral to repay almost all of its debt, Spergel should only be appointed as a limited receiver.

22. Potential job losses are a significant factor considered by courts in determining whether it is just or convenient to appoint a receiver. In *8527504 Canada Inc v Rev Sleep Corp.*, the Ontario Superior Court cited the "preservation of the jobs of most of the 145 employees" as a factor in determining whether to appoint a receiver.¹² In the circumstances of this case, the limited appointment of Spergel as a receiver, but not manager, would preserve 40 Canadian jobs, which the Court should consider.

¹⁰ Affidavit of Jim Pearce sworn on December 12, 2021, at para. 6.

¹¹ *Kingsett Mortgage Corp. v. Maplevue Developments Ltd., et al.*, [2024 ONSC 1983](#), at paras. [24-25](#)

¹² [2013 ONSC 5862](#) at [para 2](#).

Courts have held limited receiverships are appropriate

23. Canadian courts have also abstained from appointing a full receivership over a debtor company if the debtor "is a money-making venture" and "a going concern", which PBDF is:

[141] The receiver order sought would encompass every aspect of Teknocal's business and operation. Teknocal is a going concern. *To take the management of the company out of the hands of the directors is draconian in these circumstances.*¹³ [emphasis added]

24. Similarly, motions in support of a full receivership should only be granted in circumstances where the debtor company "cannot meet their liabilities as they fall due" and "that assets may disappear and the estates may be adversely affected in the absence of a full receivership."¹⁴ Those facts do not exist in this case. Throughout this proceeding, PBDF has been paying its debts to RBC and there is no reason to suspect that the company will not be able to do so going forward.

25. A limited receivership that provides RBC control over the collateral of PBDF and allows PBDF to continue to operate its licensed duty-free shops is just and convenient because this approach balances the interests of all parties and preserves 40 Canadian jobs in a very difficult job market.

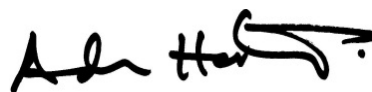
PART V - ORDER REQUESTED

26. In the circumstances of this case, the appointment of a receiver for RBC over accounts and inventory only, but not a manager, is just and convenient in these circumstances.

¹³ *Mirage Trading Corporation v Ghahroudi*, 2025 BCSC 588 at [paras 140-141](#).

¹⁴ *Royal Bank v Canadian Print Music Distributors Inc.*, 2006 CanLII 22932 at [para 22](#).

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of April, 2025.



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**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Kingsett Mortgage Corp. v. Mapleview Developments Ltd., et al.*, [2024 ONSC 1983](#).
2. *8527504 Canada Inc v Rev Sleep Corp.*, [2013 ONSC 5862](#).
3. *Mirage Trading Corporation v Ghahroud*, [2025 BCSC 588](#).
4. *Royal Bank v Canadian Print Music Distributors Inc.*, [2006 CanLII 22932 \(ONSC\)](#).

SECONDARY SOURCE

5. Canada Border Services Agency, "Memorandum D4-3-2: Duty Free Shop – Licensing" (21 October 2024), memorandum: <<https://www.cbsa-asfc.gc.ca/publications/dm-md/pdf/d4-3-2-eng.pdf>>.

**SCHEDULE “B”
RELEVANT STATUTES**

1. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvency person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

2. *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 101.

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

3. *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.)

Licenses

24(1) Subject to the regulations, the Minister may, where he deems it necessary or desirable to do so, issue to any person qualified under the regulations a licence for the operation of any place:

- (a) as a sufferance warehouse for the examination of imported goods that have not been released, or
- (b) [Repealed, 1995, c. 41, s. 6]
- (c) as a duty free shop for the sale of goods free of certain duties or taxes levied on goods under the *Customs Tariff*, the *Excise Act*, the *Excise Act, 2001*, the *Excise*

Tax Act, the *Special Import Measures Act* or any other law relating to customs, to persons who are about to leave Canada

and may specify in the licence any restriction as to the classes of goods that may be received therein or the circumstances in which goods may be received therein.

...

Definitions

97.21 The definitions in this section apply to this Part.

...

receiver means a person who :

- (a) under the authority of a debenture, bond or other debt security, a court order or an Act of Parliament or of the legislature of a province, is empowered to operate or manage a business or a property of another person;
- (b) is appointed by a trustee under a trust deed in respect of a debt security to exercise the authority of the trustee to manage or operate a business or a property of the debtor under the debt security;
- (c) is appointed by a bank to act as agent of the bank in the exercise of the authority of the bank under subsection 426(3) of the *Bank Act* in respect of property of another person;
- (d) is appointed as a liquidator to liquidate the assets of a corporation or to wind up the affairs of a corporation; or
- (e) is appointed as a committee, guardian or curator with authority to manage and care for the affairs and assets of an individual who is incapable of managing those affairs and assets.

It includes a person who is appointed to exercise the authority of a creditor under a debenture, bond or other debt security to operate or manage a business or a property of another person. However, if a person is so appointed it does not include that creditor. (séquestre)

...

Receivers

97.37 (2) The following rules apply to a receiver who on a particular day is vested with the authority to manage, operate, liquidate or wind up any business or property, or to manage and care for the affairs and assets, of a person:

(a) the receiver is an agent of the person and any act performed by the receiver in respect of the relevant assets of the receiver is deemed to have been performed, as the case may be, by the receiver as agent on behalf of the person;

(b) the receiver is not a trustee of the estate of the person or any part of the estate of the person;

(c) if the relevant assets of the receiver are a part and not all of the person's businesses, properties, affairs or assets, the relevant assets of the receiver are deemed to be, throughout the period during which the receiver is acting as receiver of the person, separate from the remainder of the businesses, properties, affairs or assets of the person as though the relevant assets were businesses, properties, affairs or assets, as the case may be, of a separate person;

(d) the person and the receiver are jointly and severally or solidarily liable for the payment of all amounts that become payable by the person under this Act before or during the period during which the receiver is acting as receiver of the person to the extent that the amounts can reasonably be considered to relate to the relevant assets of the receiver or to the businesses, properties, affairs or assets of the person that would have been the relevant assets of the receiver if the receiver had been acting as receiver of the person at the time the amounts became payable except that

(i) the receiver is liable for the payment of amounts that became payable before that period only to the extent of the property and money of the person in possession or under the control and management of the receiver after

(A) satisfying the claims of creditors whose claims ranked, on the particular day, in priority to the claim of the Crown in respect of the amounts, and

(B) paying any amounts that the receiver is required to pay to a trustee in bankruptcy of the person, and

(ii) the payment by the person or the receiver of an amount in respect of the liability discharges the joint liability to the extent of that amount;

(e) the receiver shall perform all the obligations, in respect of the relevant assets of the receiver for the period during which the receiver is acting as receiver, that are required under this Act to be performed by the person, as if the relevant assets were the only properties, businesses, affairs and assets of the person; and

(f) if the person has not on or before the particular day fulfilled their obligations under this Act before the period during which the receiver was acting as receiver, the receiver shall fulfil those obligations for that period that relate to the businesses, properties, affairs or assets of the person that would have been the relevant assets of the receiver if the receiver had been acting as receiver of the person during that period, unless the Minister waives in writing the requirement for the receiver to do so.

4. *Duty Free Shop Regulations, SOR/86-1072.*

Issuance of License

3 (1) For the purposes of section 24 of the Act and subject to subsection (6), a licence may be issued to any qualified person who makes an application in accordance with subsection (2) and who gives the security required under section 4.

(2) The person must submit the application for a licence in the prescribed form by means of the electronic system specified by the Minister.

(3) A corporation is qualified to operate a duty free shop at a border crossing point if

- (a) the corporation is incorporated in Canada;
- (b) all the shares of the corporation are beneficially owned by
 - (i) a Canadian citizen or permanent resident,
 - (ii) another corporation that is incorporated in Canada all of whose shares are beneficially owned by a Canadian citizen or permanent resident, or
 - (iii) both a Canadian citizen or permanent resident and that other corporation; and
- (c) the Canadian citizen or permanent resident referred to in paragraph (b)
 - (i) is of good character,
 - (ii) maintains their principal residence in Canada, and
 - (iii) resided in Canada for at least 183 days of the year before the year in which the corporation makes the application for the licence.

(4) A person other than a corporation is qualified to operate a duty free shop at a border crossing point if the person

- (a) is a Canadian citizen or a permanent resident;
- (b) is of good character;
- (c) maintains his principal residence in Canada; and
- (d) resided in Canada for at least 183 days of the year preceding the year in which the person makes the application for the licence.

(5) A person is qualified to operate a duty free shop at an airport or at a border crossing point if the person has been granted a lease or other right to occupy the place proposed as the duty free shop.

(6) The Minister shall not issue a licence to an applicant unless

(a) the applicant meets the qualifications referred to in subsection (3) or (4) and subsection (5) in the case of a duty free shop at a border crossing point, or subsection (5) in the case of a duty free shop at an airport;

(b) [Repealed, SOR/96-153, s. 2]

(c) [Repealed, SOR/2019-259, s. 1]

(d) [Repealed, SOR/2019-259, s. 1]

(e) an adequate range of goods is not available in, or adequate service is not provided by, any duty free shop already located in the area in which the proposed duty free shop is to be located;

(f) the establishment of a duty free shop will not impede the flow of traffic in the vicinity in which the proposed duty free shop is to be located; and

(g) the Agency is able to provide customs services with respect to the proposed duty free shop.

(7) [Repealed, SOR/96-153, s. 2]

...

Cancellation or Suspension of Licenses

9(1) Subject to section 10, the Minister may suspend or cancel a license where the license

(a) is the subject of a receivership in respect of his debts.

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**FACTUM OF EMPLOYEES CINDY BEAM AND
KATHLEEN CLEMENTS**
(returnable April 8, 2025)

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