

**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

**AIDE-MÉMOIRE OF ROYAL BANK OF CANADA
(Chambers Appointment – Tuesday, November 29, 2022)**

1. Peace Bridge Duty Free Inc. (the “**Debtor**”) operates a duty free shop from a location that it rents from The Buffalo and Fort Erie Public Bridge Authority (the “**Landlord**”). Royal Bank of Canada (“**RBC**”) is the Debtor’s general secured creditor. Substantively all the property secured by RBC’s security is located at the Debtor’s leased premises.

2. On September 8, 2021, the Landlord delivered notices of default to the Debtor (which were shared with RBC), advising that the Debtor had accumulated significant unpaid rental arrears, and that, absent payment, the Landlord “*will have no choice but to resort to its remedies, ... including without limitation, distraining [the Debtor’s] goods and applying the proceeds on account of the payment of [arrears], or alternatively, re-entering the [premises] and terminating the Lease.*”

3. RBC and the Debtor then entered into a forbearance agreement, one of the requirements of which was that, by no later than November 15, 2021, the Debtor was to deliver to RBC evidence of a satisfactory arrangement between the Debtor and the Landlord in respect of the lease and the defaults thereunder. No such evidence was provided to RBC.

4. On November 21, 2021, the Landlord advised RBC (through counsel) that the Landlord “*has been unable to resolve issues concerning the default of its tenant, Peace Bridge Duty Free Inc., and [the Landlord] intends to exercise its remedies under the default provisions of the Lease.*”

5. RBC then brought the within receivership application, originally returnable in December 2021, to appoint msi Spergel inc. (“**Spergel**”) as receiver of all the Debtor’s assets, properties and undertakings (collectively, the “**Property**”), noting that *“In the absence of such relief being granted, [RBC is] concerned about the lease being terminated to the prejudice of stakeholders.”*

6. On December 13, 2021, the Debtor filed responding materials, in which it: (i) confirmed that the receivership application *“was brought because of RBC’s concern the Landlord may distrain the [Debtor]’s goods and/or terminate the Lease;”* and (ii) proposed an adjournment of the application to *“permit the [Debtor] to reach a commercial resolution with the Landlord.”*

7. On December 14, 2021, on the consent of each of RBC, the Debtor and the Landlord, the receivership application was adjourned to January 17, 2022, subject to: (i) appointing Spergel as the Debtor’s monitor (the “**Monitor**”); and (ii) imposing a stay of proceedings in favour of the Debtor and its Property (the “**Stay**”). The Stay is an essential aspect of the adjournment of RBC’s receivership application, because it means that the Landlord cannot distrain the Debtor’s goods or terminate the Debtor’s lease while RBC’s receivership application is adjourned.

8. The adjournment of the receivership application has been extended several times (and is now adjourned *sine die*), but always subject to the Monitor’s appointment and the Stay.

9. The Debtor and the Landlord have apparently not resolved their dispute, and, in August/September 2022, the Landlord served a motion to lift the Stay to permit it to *“exercise its remedies under the Lease, including terminating the Lease and evicting [the Debtor].”*

10. The Landlord’s motion is scheduled for December 9, 2022. At the scheduling hearing, RBC expressed concern that the Stay ought not to be lifted in favour of only one party while maintaining a stay over the Debtor’s other stakeholders due to the anticipated prejudice to other stakeholders including RBC. No arrangements have been put in place to protect the security of RBC if the lease were to be terminated without allowing other creditors to also resort to their rights and remedies.

11. As reflected in the Court’s endorsement dated October 6, 2022, The Honourable Madam Justice Kimmel acknowledged the prejudice that RBC would suffer if the Stay is lifted only for the Landlord, and offered a further scheduling appointment to address this concern.

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Respondent

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

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Proceedings commenced at Toronto

**AIDE-MÉMOIRE OF ROYAL BANK OF CANADA
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