

Court File No. CV-24-00086229-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

and

SMART SUPER MART LTD.

Respondent

BOOK OF ADDITIONAL AUTHORITIES
(Receiver's Motion for Approval of
Amending Sale Agreement)

August 20, 2026

GOWLING WLG (CANADA) LLP

1 Main Street West
Hamilton, ON L8P 4Z5

Tel: 905-528-8208

Bart Sarsh (LSO 59208N)

Tel: 905-540-3242

Email: bart.sarsh@gowlingwlg.com

Rachel Moses (LSO 42081V)

Tel: 416-862-3630

Email: rachel.moses@gowlingwlg.com

Lawyers for the Receiver msi Spergel Inc.

TO: THE SERVICE LIST

SERVICE LIST
as of August 4, 2026

HARRISON PENSA LLP 130 Dufferin Avenue, Suite 1101 London, ON N6A 5R2 Timothy C. Hogan (LSO #36553S) Tel: 519-679-9660 Fax: 519-667-3362 Email: thogan@harrisonpensa.com Lawyers for the Applicant, Royal Bank of Canada	SMART SUPER MART LTD. 213 Edenbrook Hill Drive Brampton, ON L7A 2V4 Email: smartsupermartltd@gmail.com Email: rickchohan72@gmail.com Respondent / Debtor
GOWLING WLG (CANADA) LLP 1 Main Street West Hamilton, ON L8P 4Z5 Tel: 905-540-8208 Bart Sarsh (LSO No. 59208N) Tel: 905-540-3242 Email: bart.sarsh@gowlingwlq.com Rachel Moses (LSO 42081V) Tel: 416-862-3630 Email: rachel.moses@gowlingwlq.com Lawyers for Receiver, msi Spergel Inc.	MSI SPERGEL INC. 505 Consumers Road, Suite 200 Toronto, ON M2J 4V8 Mukul Manchanda Tel: 416-498-4314 Email: mmanchanda@spergel.ca Philip Gennis Tel: 416-498-4325 Email: pgennis@spergel.ca Receiver
CAPSTONE LEGAL 1370 Hurontario Street Mississauga, ON L5G 3H4 Pavninder S. Athwal (LSO #91514C) Tel: 416-414-3311 Email: pa@capstonelegal.ca Counsel for the Guarantors, Ravinder Singh Chohan, Shaina Rathore, Satvinder Kaur Chahuan and Baljinder Chahuan (on a limited retainer basis)	

NISSAN CANADA INC. 5290 Orbitor Drive Mississauga, ON L4W 4Z5 Secured Creditor	CITY OF ST. CATHARINES Tax Department 50 Church Street P.O. Box 3012 St. Catharines, ON L2R 7C2 Tel: 905-688-5600 Email: taxes@stcatharines.ca
CITY OF ST. CATHARINES By-Law Enforcement 50 Church Street P.O. Box 3012 St. Catharines, ON L2R 7C2 Tel: 905-708-0852 Email: tdressel@stcatharines.ca	OFFICE OF THE SUPERINTENDENT OF BANKRUPTCY CANADA 151 Yonge Street, 4 th Floor Toronto, ON M5C 2W7 Email: osbservice-bsfservice@ised-isde.gc.ca
CANADA REVENUE AGENCY c/o Department of Justice Ontario Regional Office 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1 Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca	HIS MAJESTY THE KING IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF FINANCE Revenue Collections Branch – Insolvency Unit 33 King Street West, P.O. Box 627 Oshawa, ON L1H 8H5 Email: insolvency.unit@ontario.ca
ALLEN P. WELMAN (LSO 20818L) 1034A Bloor St W Toronto, ON M6H 1M3 Tel: 416 532 2871 Email: allenwelman@rogers.com Lawyers for Purchaser, Ahmed Petroleum Services Inc.	MCDUGALL ENERGY INC. Station Tower, 421 Bay Street, Suite 301 Sault Ste. Marie, ON P6A 1X3 Daniel Shunock (LSO 76064R) Corporate Counsel Tel: 705-971-7887 Email: danielshunock@mcdougallenergy.com Fuel Supplier

EMAIL SERVICE LIST

thogan@harrisonpensa.com; smartsupermartltd@gmail.com; rickchohan72@gmail.com;
bart.sarsh@gowlingwlq.com; rachel.moses@gowlingwlq.com; mmanchanda@spergel.ca;
pgennis@spergel.ca; pa@capstonelegal.ca; taxes@stcatharines.ca;
tdressel@stcatharines.ca; osbservice-bsfservice@ised-isde.gc.ca; AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca;
insolvency.unit@ontario.ca; allenwelman@rogers.com;
danielshunock@mcdougallenergy.com

Court File No. CV-24-00086229-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

and

SMART SUPER MART LTD.

Respondent

INDEX

Tab Document

TAB 1 *Bank of America Canada v. Willann Investments Ltd.*, [1993] OJ No. 1647 (Ont SCJ)

TAB 1

1993 CarswellOnt 216
Ontario Court of Justice (General Division)

Bank of America Canada v. Willann Investments Ltd.

1993 CarswellOnt 216, [1993] O.J. No. 1647, 17 C.P.C.
(3d) 296, 20 C.B.R. (3d) 223, 41 A.C.W.S. (3d) 662

**BANK OF AMERICA CANADA v. WILLANN INVESTMENTS
LIMITED and CRANBERRY VILLAGE, COLLINGWOOD INC.**

Farley J.

Judgment: June 28, 1993
Docket: Doc. B22/91

Counsel: *Harry Underwood*, for receiver, Coopers & Lybrand Ltd.

Stephen Schwartz, for Prenor Trust Co. of Canada.

Frank Bennett and *John Spencer*, for Attorney General of Canada on behalf of Her Majesty the Queen in Right of Canada and in Right of Ontario.

Subject: Corporate and Commercial; Insolvency; Civil Practice and Procedure

Related Abridgment Classifications

Debtors and creditors

VII Receivers

VII.6 Conduct and liability of receiver

VII.6.a General conduct of receiver

Headnote

Receivers --- Conduct and liability of receiver — General conduct of receiver

Receivers — Jurisdiction of court to approve activities and fees — Jurisdiction not requiring specific authorization in order establishing receivership — Court having inherent jurisdiction to review activities and fees of receiver.

Costs — Award of costs — Costs awarded against Crown for wasting court time with repeated adjournment requests and for failing to give advance notice of proposed jurisdiction challenge.

A receiver brought a motion for approval of its activities and fees as set out in two reports. The Crown raised an objection to the court's jurisdiction to hear the motion, arguing that there was nothing in the original order establishing the receivership to allow for after-the-fact approval of the receiver's activities. The Crown argued that the court had jurisdiction only to pass the accounts and approve the fees of the receiver.

Held:

The receiver's activities and fees were approved.

The approval of the activities of a receiver, a court appointee and officer of the court, does not require specific words of authorization in the original order. The court has inherent jurisdiction to review and either approve or disapprove of the activities of a court-appointed receiver.

Creditors who take a reasonable position should not be punished by costs in the event they do not succeed. However, given the Crown's repeated requests for adjournments and resulting time wasted, the failure to give advance notice of the jurisdiction challenge and the late filings, an award of costs against the Crown was appropriate in this case.

Table of Authorities

Cases considered:

80 Wellesley Street East Ltd. v. Fundy Bay Builders Ltd. , [1972] 2 O.R. 280, 25 D.L.R. (3d) 386 (C.A.) — referred to

Motion for order approving receiver's activities and fees.

Farley J.:

1 This was a motion for an order approving the receiver's activities and fees (including the fees of its counsel) as set out in the receiver's sixth report (covering the period October 1, 1992 to April 19, 1993) and seventh report (April 20, 1993 to June 13, 1993). At a previous hearing on May 14, 1993 the Crown had asked for an adjournment concerning the sixth report (the only report outstanding at that time) for the specific purpose of conducting consensual cross-examinations. Mr. Bennett who was fresh on the record (as of mid-morning today with no advance notice to other counsel) raised an objection as to my jurisdiction to hear the motion indicating that there was nothing in Blair J.'s original order establishing the receivership to allow for after-the-fact approval of the receiver's activities. His position was that the only jurisdiction I had was to pass the accounts of the receiver and approve its fees. He maintained that there was an inherent difference between passing of accounts and approval of activities.

2 I dealt with this general area in my earlier endorsement in this relating to previous reports (endorsement of May 2, 1993: see pp. 16-18). I again note that Mr. Bennett in his own text: F. Bennett, *Receiverships* (Carswell: Toronto, 1985), said at p. 297:

One of the purposes of passing accounts is to afford the receiver judicial protection in carrying out his powers and duties. Another purpose is to afford the debtor, the security holder and any other interested person the opportunity to question the receiver's activities to date.

In reply Mr. Bennett referred me to p. 298 of his text without specifying what was contained there; he gave me a copy of that page after the hearing concluded. I could find nothing of assistance on that page. In my view Mr. Bennett's own text supports the position of the receiver that I have jurisdiction. It seems to me that the nature of a specific approval hearing is much better to review conduct than a passing of accounts which focuses on receipts and disbursements.

3 It does not seem to me that approval of the activities of the receiver, a court appointee and therefore an officer of the court, requires specific words of authorization in the original order. To the extent that certain approval activities are mentioned in that order, I would regard these references as merely examples of what may take place. In my view this court has the inherent jurisdiction to review and either approve or disapprove of the activities of a court appointed receiver. I note here that in this instance the activities were well summarized in the two reports; however, such approval (if given) would be to the extent that the reports accurately summarized the material activities of the receiver. As to inherent jurisdiction, see *80 Wellesley Street East Ltd. v. Fundy Bay Builders Ltd.*  (1972), 25 D.L.R. (3d) 386 (Ont. C.A.), at pp. 389-390.

4 I pause to note that it would be unusual and illogical that the receiver could come to court for prior approval but not post approval. If that were the case, one might well expect the courts to be inundated with prior approval requests for virtually any activity.

5 It seems to me that a receiver should be able to come to court and bare its breast. Having done so, it has exposed itself to the sword of any interested party which may feel aggrieved of any action by that receiver. However, if the court feels that the receiver has met the objective test required of it, then the court may bestow a shield to the receiver for that reviewed and approved activity. If the activity is disapproved, then the receiver is in the unenviable position of watching itself be disembowelled in court with sanctions then or to be dealt with in accordance with arrangements then worked out.

6 I would therefore dismiss the Crown's objection to my jurisdiction (now raised as to the sixth and seventh report but apparently the subject of appeal as to earlier approvals).

7 Having come to that conclusion, I have also concluded that the receiver has met the objective test and that its activities and fees for the period covered by the sixth and seventh report should be approved. I note in this respect while all concerned acknowledged that the fees were "expensive" that Prenor Trust, which will ultimately bear the cost, was supportive of the receiver. While "expensive", I found the fees in line with the complications and protraction of this receivership.

8 Costs were asked for in this instance. Mr. Bennett submitted that a cost award against the Crown would discourage creditors in general from appealing and objecting. That should of course be avoided where creditors have taken a reasonable position; in other words, the mere fact that a

creditor is not successful in persuading a court of the rightness of its position should not subject that creditor to a costs sanction. However, I view this day's events in a different light. In my view much time was wasted in the Crown's several requests for a further adjournment and there was no advance notice that jurisdiction would be challenged. I would also observe that the scheduled time for this matter was therefore greatly exceeded. Counsel on all sides of a matter owe a duty to ensure that the court office is kept up to date with a realistic estimate of time required. This will, of course, require the cooperation of counsel amongst themselves. (In speaking of cooperation, I note in passing that this motion was merely one of six motions dealt with today concerning this project.) Unfortunately none of the counsel involved in these six motions (there being other counsel with respect to the other five) was mindful of the practice directions' request that in a continuing complex or multiple motion file there be a sorting through and grouping of the materials to be dealt with the next day. In the present situation, this meant that several motion records had to be retrieved from the office once all the files were sorted out. There were as well the to-be-discouraged late filings. I note that Mr. Bennett indicated that his client never gave him a copy of the seventh report to review and that he had only reviewed the sixth report some 5 or 6 weeks ago for another purpose. His submissions with respect to the actual activities being reviewed were therefore rather limited in extent and time. Costs are awarded against the Crown payable forthwith to the receiver in the amount of \$1500 and Prenor Trust \$500.

Order accordingly.

ROYAL BANK OF CANADA

Applicant

- and -

SMART SUPER MART LTD.

Respondent

Court File No. CV-24-00086229-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
HAMILTON

BOOK OF ADDITIONAL AUTHORITIES
(Receiver's Motion for Approval of
Amending Sale Agreement)

GOWLING WLG (CANADA) LLP
1 Main Street West
Hamilton, ON L8P 4Z5

Tel: 905-528-8208

Bart Sarsh (LSO 59208N)
Tel: 905-540-3242
Email: bart.sarsh@gowlingwlg.com

Rachel Moses (LSO 42081V)
Tel: 416-862-3630
Email: rachel.moses@gowlingwlg.com

Lawyers for the Receiver msi Spergel Inc.

File No. G10047010