

Court File Number: CV-21-00665286-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

ROYAL BANK OF CANADA

Applicant

AND

**RJ PACKAGING INCORPORATED operating as CUSTOM FOOD PACKAGING,
SMIT RAMESH JANI, MITALI SMIT JANI and JAYANTKUMAR NAGJIBHAI
PANCHASARA**

Respondents

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Email/Facsimile No:
Rachel Moses for Applicant		
Milad Haghani for Respondents		

Order Direction for Registrar **(No formal order need be taken out)**
 Above action transferred to the Commercial List at Toronto **(No formal order need be taken out)**

Adjourned to: _____
 Time Table approved (as follows): _____

Date of Hearing:

August 19, 2021

ENDORSEMENT

- [1] Royal Bank of Canada (“RBC”) brings this application for the appointment of msi Spergel inc. as receiver in respect of all of the assets, undertakings and properties of RJ Packaging Incorporated operating as Custom Food Packaging (the “Debtor”).
- [2] The Debtor carries on business as a sales and service master distributor of custom and standard pressure sensitive labelling equipment and systems.
- [3] Pursuant to a commitment letter dated December 14, 2018 (the “Credit Agreement”), the Debtor is indebted to RBC in respect of the following credit facilities: (i) \$150,000 Revolving Demand Facility; (ii) \$50,000 Visa Facility, and (iii) \$350,000 Lease Facility.
- [4] The Revolving Demand Facility and the Visa Business Facility are repayable on demand. An event of default under the Lease Facility occurs if the Debtor fails to perform its obligations under the Credit Agreement, including a failure to pay the Revolving Demand Facility upon demand.
- [5] Under the Credit Agreement, the Debtor is required to provide RBC with certain financial reporting.
- [6] As security for the credit facilities, the Debtor granted RBC a general security agreement (“GSA”). The GSA provides for a right to appoint a receiver upon default.
- [7] The Debtor’s accounts were transferred to RBC’s Special Loans and Advisory Services Group in November 2024, for, among other things, breaching its reporting requirements under the Credit Agreement.
- [8] In various written communication sent by the Debtor in October and November 2020, the Debtor represented to RBC that it would repay all indebtedness by October 28, 2020, delayed to November 10, 2020, and further delayed to December 10, 2020. The Debtor did not repay the indebtedness. By email sent on January 24, 2021, the Debtor advised RBC that all indebtedness would be repaid in full by April 2021.
- [9] RBC made demand on the Debtor for payment of the Revolving Demand Facility and the Visa Facility on March 4, 2021 and issued a notice of intention to enforce security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act*.
- [10] The Debtor failed to repay the indebtedness owing under this demand letter. As a result, the Debtor was in default under the Lease Facility, entitling RBC to make demand for all amounts owing under the Lease Facility.
- [11] RBC made demand on the Debtor for payment of the Lease Facility on March 17, 2021 and issued a BIA notice.
- [12] Between March 8 and May 10, 2021, RBC and the Debtor tried unsuccessfully to enter into a forbearance agreement on terms first proposed by RBC to the Debtor on March 11, 2021.

- [13] The Debtor was asked to obtain other financing and on June 14, 2021, the Debtor advised RBC that CIBC had declined its request for financing.
- [14] The Debtor has not repaid the indebtedness owing to RBC. As at July 8, 2021, the Debtor was indebted to RBC in the amount of \$572,754.79 together with outstanding interest, fees and costs.
- [15] Pursuant to section 243(1) of the *BIA* and section 101 of the *Courts of Justice Act*, a court may appoint a receiver if it is just and convenient to do so. In deciding whether or not to appoint a receiver, the court must have regard to all of the circumstances, including the nature of the property and the rights and interests of all parties in relation thereto.
- [16] In this case, the first demand letter was issued on March 4, 2021 and the second demand letter was sent on March 17, 2021. RBC has provided more than the required time for the Debtor to repay the indebtedness.
- [17] Where the security instrument provides for a right to appoint a receiver upon default, the burden on the applicant and moving for the appointment of a receiver is relaxed. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties. See *Bank of Montreal v. Sherco Properties Inc.*, 2013 ON SC 7023, at para. 41.
- [18] The Debtor submits that it is not just and convenient for a receiver to be appointed because the Debtor is operational and continues to meet its obligations to RBC and its employees. The Debtor submits that there is no need to stabilize and preserve its business. The Debtor contends that RBC acted unreasonably in demanding repayment of all of the indebtedness and refusing to simply extend the credit facilities and accept payments of interest.
- [19] I am satisfied, based on the following circumstances, that it is just and convenient for a receiver to be appointed:
- a. Pursuant to the Credit Agreement, it is an event of default entitling RBC, in its discretion, to demand immediate repayment in full of all indebtedness and realize on the security under the GSA if the debtor (i) fails to pay any principal, interest or other amount when due pursuant to the Credit Agreement; (ii) fails to observe any covenant, term or condition or provision contained in the Credit Agreement, the GSA, or any other agreement delivered to RBC.
 - b. RBC made demand on the demand loans after the Debtor failed to provide financial reporting to RBC for the fiscal year end for 2019 and for 2020.
 - c. The GSA provides for the appointment of a receiver in the event of default.
 - d. The Debtor has failed to repay the amounts owing to it by RBC and it continues to be in default.
 - e. RBC has lost confidence in the Debtor.
 - f. The Debtor although opposing the appointment of a receiver and promising to service the indebtedness by payment of interest, has not provided evidence of a plan to repay the indebtedness owed to RBC.

[20] For these reasons, this application is granted. Order to issue in form of attached order signed by me.

Cavanagh J.

August 24, 2021