



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.:

CV-21-00673084-00CL

DATE: 9 December 2022

NO. ON LIST: 2

TITLE OF PROCEEDING: ROYAL BANK OF CANADA v. PEACE BRIDGE DUTY
FREE INC.

BEFORE JUSTICE: MADAM JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Sanjeev Mitra	RBC, applicant	smitra@airdberlis.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Patrick Shea	Landlord, Bridge Authority	Patrick.shea@gowlingwlg.com
Leeanne Williams	Monitor	lwilliams@tgf.ca

ENDORSEMENT OF JUSTICE KIMMEL:

1. In furtherance of my November 30, 2022 endorsement in this matter, various materials were filed and the parties attended a case conference today that was scheduled to enable them to make more fulsome submissions about whether the court should hear the Landlord's motion (and corresponding more limited aspects of the tenant's cross-motion that respond to the Landlord's motion) on January 5, 2023, before the broader issues raised by the tenant's cross-motion have been fully briefed and argued.
2. I had previously described the Landlord's motion to be a "Motion to Terminate the Lease", but it is more properly described as a motion to lift the stay of proceedings under paragraph 9 and the restrictions contained in 11 of the court's December 14, 2021 Appointment Order to permit the Landlord to exercise remedies under the Lease for the Tenant's alleged failure to pay rent to the Landlord in accordance with the Landlord's interpretation of what the Appointment Order required.
3. The parties filed materials and Aide Memoires and made submissions about what the court should and could adjudicate on January 5, 2023, while preserving the aspects of the relief sought by the Tenant in what has currently been constituted as a cross-motion. The Tenant's cross-motion raises various issues that all parties recognize are not amenable to determination on an entirely paper record and will likely require examinations and possibility *viva voce* evidence, and possibly further documentary production.
4. The discussion at the case conference helpfully illuminated what the Landlord's motion is, and is not, seeking at this time. I have determined that the Landlord's motion, relief sought in paragraphs 1 (a) and (b) of its notice of motion, can proceed and will be heard on January 6, 2022. It is understood that the Landlord has not waived its rights in connection with any claims for rent owing by the Tenant for the period prior to December 14, 2021. That is an issue for another day.
5. The Tenant will rely on its responding/cross-motion record but it has been determined that the Tenant's cross-motion will not be adjudicated at this time (and there may need to be some different procedure put in place for the broader issues raised by the Tenant to be adjudicated). The arguments the Tenant seeks to make in opposition to the relief the Landlord seeks (to lift the stay and/or restrictions imposed on the landlord under the paragraphs 9 and 11 of the Appointment Order) can be made in reliance upon the material contained in its responding/cross-motion record.
6. No one expects the adjudication of the Landlord's motion to determine all issues between the parties. However, there are some threshold questions about whether the rent that the Tenant has paid since the Appointment Order is in compliance with that order, and, if not, whether the Landlord should be relieved of the stay/restrictions imposed by the Appointment Order. Those threshold questions raised by sub-paragraphs 1 (a) and (b) of the Landlord's Notice of Motion will be adjudicated on January 5, 2023.
7. The Landlord insists that the Tenant was obligated by the Appointment Order to pay the Base Minimum Rent specified in the Lease. The Tenant disputes this, and argues that there is no scenario under which it was obligated by the Appointment Order to pay the specified Base Minimum Rent under the Lease. It maintains that the amounts it has paid are what the Appointment Order obligated it to pay (admittedly not the Base Minimum Rent specified in the Lease); however, if not what it has paid, the Tenant maintains that the determination of the amount it should have paid requires an adjudication of at least some of the broader issues raised in the Tenant's cross-motion that will not be before the court on January 5, 2023.
8. With the benefit of what was discussed at today's case conference, if either the Landlord or the Tenant wish to file an amended factum for the January 5, 2023 motion, they may do so between now and December 23, 2022, as long as it remains within the page limits.
9. The Monitor will still provide its report by January 3, 2023 as previously agreed and directed.

10. RBC will no longer be required to deliver its updated application record by December 16, 2022. It was agreed today that the January 19, 2023 hearing date will be converted to a case conference to discuss the next procedural steps arising out of whatever remains to be determined in the two motions and the receivership application. Even if the court has rendered its decision by January 19, 2023 (which is not guaranteed), and if the Landlord is successful on its motion, the stay contained in the Appointment Order will remain in effect until at least the January 19, 2023 case conference and for a reasonable period thereafter to allow the applicant to bring back on its application to appoint a receiver.

A handwritten signature in black ink, appearing to read "Kimmel J.", with a stylized, cursive script.

KIMMEL J.