



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-21-00673084-00CL

HEARING

DATE: January 19, 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: RBC 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	smitra@airdberlis.com

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
David Ullman	Peace Bridge Duty Free Inc.	dullmann@blaney.com

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Leanne Williams	Monitor (Spergel)	lwilliams@tgf.ca
Patrick Shea	Counsel to the Authority	Patrick.shea@gowlingwlg.com

---

**ENDORSEMENT OF JUSTICE KIMMEL:**

1. This case conference was scheduled to address matters arising out of my previous endorsements, including my most recent endorsement of January 16, 2023.
2. Further to the court's direction, Peace Bridge Duty Free Inc. ("PBDF" or the "Tenant") and the Buffalo & Fort Erie Public Bridge Authority (the "Authority" or the "Landlord") are in the process of booking a mediation which is expected to be completed by March 28, 2023. That mediation shall be briefed in accordance with the directions contained in my January 16, 2023 endorsement.
3. As directed by my last endorsement, the Landlord and Tenant have also reached an agreement about the procedure for addressing the issues raised in the Tenant's cross-motion (notice of motion dated November 13, 2022). In its cross-motion, the Tenant seeks the determination of various issues and damages, dependent upon the interpretation of Article 18.07 of the subject Lease which, in turn, the court has indicated will require a more fulsome evidentiary record that considers the factual matrix from which the Lease arose, as well as conduct of the parties since March 2020 given the allegations of a failure to negotiate or consult in "good faith".
4. The relief sought by the Tenant against the Landlord on its cross-motion falls procedurally outside of the within receivership application, to which the Landlord is not a party. In the interests of efficiency, recognizing that the separate proceeding would be brought before this court in any event, the parties have reached the following agreement regarding the court's jurisdiction and binding nature of the adjudication of the issues raised and to be decided on the Tenant's cross-motion (provided by the parties on January 25, 2023):

For the purpose of the Tenant's Cross Motion the Landlord is a Respondent to that motion and the court shall have jurisdiction to grant the relief sought against the Landlord by the Tenant therein, including, without limitation, with respect to damages, if any, to which the Tenant might be entitled. The Landlord and the Tenant agree that the question of the interpretation of rent payable under the Lease and the amount, if any, of any damages to which the Landlord is entitled to offset rent owing under the Lease as determined at the Cross Motion (or in any appeal arising therefrom) shall be binding on the parties for all purposes.

5. As the court previously directed, the Landlord and Tenant have agreed that the Tenant shall deliver any further evidence upon which it intends to rely on its cross-motion within three weeks of the case conference held on January 19, 2023 and the Landlord shall deliver its responding evidence and record on the cross-motion within two weeks thereafter. This evidence may also be used at the mediation.
6. The parties shall all re-attend at a case conference before me that has been scheduled for two hours commencing at 10:00 a.m. on April 4, 2023. Aide Memoires shall be filed in advance of no more than ten pages double spaced by each participating party. The Aide Memoires and any other materials intended to be referred to at this case conference shall be uploaded by each party into the appropriate bundle for this case conference by no later than noon on April 3, 2023.
7. Matters that ,au be addressed at the post-mediation case conference include:
  - a. A report from the parties about any aspects of their disputes that have been resolved;
  - b. The costs of the Landlord's stay motion (decided by my January 16, 2023 endorsement) and whether those costs should be decided now or deferred to be decided in connection with the

Tenant's cross-motion. In addition to the timing of the decision regarding the costs of the stay motion, the court may hear brief submissions, if time permits, on any other aspects of the question of costs not already addressed in the costs outlines filed for the landlord's stay motion. The court was asked not to decide the matter of costs of these two motions until at least this further case conference, at or after which directions, or a decision, regarding these costs may be provided by the court.

- c. As was indicated in paragraph 60 of my last endorsement, if the mediation has not successfully resolved some or all of the issues in dispute between the Landlord and the Tenant, the parties may provide further submissions (to be included in Aide Memoires and evidence to be filed in advance), and the court may provide further directions, regarding the stay and restrictions contained in, and "normal rent" payable under, the Appointment Order, including with respect to: i) the lifting of the stay of proceedings in paragraph 9 of the Appointment Order and/or relieving the Landlord of the restrictions under paragraph 11, ii) vacating or terminating the Appointment Order, and/or iii) the amount of "normal rent" that the Tenant should be paying to the Landlord pursuant to paragraph 11 of the Appointment Order if it is to remain in place pending the decision of the court on the Tenant's cross-motion, based on the enhanced financial disclosure that the Tenant will have by that time provided in its further evidence on its cross-motion and/or in materials provided in the context of the mediation and extracted for the court's consideration (to be filed in accordance with the existing sealing order).
  - d. Submissions may be made, and directions provided, regarding any proposed 39.03 examinations that are objected to in connection with the Tenant's cross-motion.
  - e. Submissions may be made, and directions provided, regarding the timetabling of the cross-examinations, the exchange of expert reports (if any), the need for any *viva voce* evidence, the exchange of written submissions and the eventual hearing of the Tenant's cross-motion.
  - f. Submissions may be made, and directions provided, regarding the timetabling of the receivership application and any other matters arising in connection with the receivership application and/or the continuing role of the Monitor.
8. This endorsement and the orders and directions contained in it shall have the immediate effect of a court order without the necessity of a formal order being taken out.

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

KIMMEL J.

January 25, 2023