



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-21-00673084-00CL DATE: 30 November 2022

NO. ON LIST: 2

TITLE OF PROCEEDING: Royal Bank of Canada v. Peace Bridge Duty Free Inc.

BEFORE MADAM JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Sanjeev Mitra	Royal Bank of Canada	smitra@airdberlis.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
John Wolf and David Ullmann	Peace Bridge Duty Free	jwolf@blaney.com dullmann@blaney.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
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Patrick Shea	Bridge Authority	Patrick.shea@gowlingwlg.com

ENDORSEMENT OF JUSTICE KIMMEL:

1. At a case conference on October 6, 2022 I scheduled a half day hearing on December 9, 2022 to hear a motion by the landlord (Peace Bridge Authority) to lift the stay of proceedings imposed under the court's December 14, 2021 appointment order and for a declaration that the tenant (respondent, Peace Bridge Duty Free Inc.) has failed to pay rent due and owing under its lease since the appointment order was made, is in breach of the lease and that entitles the landlord to terminate the lease (the "Landlord's Motion to Terminate the Lease"). The tenant did not deliver its responding materials and cross-motion until November 13, 2022.
2. The tenant's cross-motion deals with matters anticipated at the last appearance (in response to the dispute about the proper interpretation of the lease and the calculation of rent payable, and for declaratory relief regarding the rent owing under the lease and that the landlord should not be permitted to terminate the lease) but also seeks other remedies, including damages, that the landlord says are not properly before the court. The landlord delivered reply materials in respect of the lease interpretation issue (what rent was and is payable during the stay period) on Sunday November 27, 2022.
3. The parties appeared yesterday on a scheduling appointment to discuss what issues, if any, could be adjudicated on December 9, 2022. The tenant maintains that all should be heard together and none will be ready to be adjudicated on December 9, 2022. The landlord disagrees and wants the Landlord's Motion to Terminate the Lease to proceed, with the other issues in the tenant's cross-motion to be adjudicated at another time.
4. The court did not have an opportunity to review all of the voluminous materials (and Aide Memoires) filed for the November 29, 2022 appearance and the matter was adjourned to today. After hearing submissions from counsel for approximately an hour today, it became clear that there are concerns about the time needed to adjudicate all of the issues raised by the landlord and the tenant, whether they can be bifurcated and the appropriate sequencing of these issues. Depending on how those issues play out, the applicant's receivership application may also need to be heard.
5. So as to ensure that the court has the complete submissions on what appear to be nuanced and somewhat complex considerations about the inter-relationship between the narrow issue that the landlord would like to determine on the Landlord's Motion to Terminate the Lease (what rent was payable by the tenant from and after the appointment order during the stay period, and whether it has been paid, or conversely if the tenant is in breach of its obligations under the lease to pay rent and does that entitle the landlord to terminate the lease) and the broader issues raised by the tenant's cross-motion, that may include arguments of set-off and relief from forfeiture amount other considerations, the following directions are provided for the next steps:
 - a. The landlord says it has no further material that it wishes to file on the Landlord's Motion to Terminate the Lease. Its evidence and factum have been delivered in connection with that motion and the aspects of the tenant's cross-motion that are directly responsive to that motion. The landlord has not responded to the aspects of the tenant's cross-motion that seek damages or other affirmative relief from the landlord.
 - b. The tenant may file "reply" material to the material delivered by the landlord earlier this week on or before the end of the day on Friday December 2, 2022.
 - c. The tenant shall deliver its factum on the Landlord's Motion to Terminate the Lease (and corresponding issues on the tenant's cross-motion) on or before Wednesday December 7, 2022.
 - d. This will complete the evidence on the Landlord's Motion to Terminate the Lease and those aspects of the tenant's cross-motion addressing the question of the proper interpretation of the lease to determine what rent was and is payable by the tenant during the stay period, whether that

rent has been paid and, if not, whether the landlord is entitled to terminate the lease. No parties anticipate a need for cross-examinations on this evidence.

- e. All parties shall file a brief Aide Memoire on the question of whether the Landlord's Motion to Terminate the Lease (and corresponding more limited aspects of the tenant's cross-motion) should be heard first and before the broader issues raised by the tenant's cross-motion are fully briefed and argued.
 - f. On December 9, 2022, the court will hear submissions and thereafter decide whether to hear the Landlord's Motion to Terminate the Lease (and corresponding more limited aspects of the tenant's cross-motion) before the broader issues raised by the tenant's cross-motion have been fully briefed and argued. The parties will need to make their submissions in an orderly manner to ensure that they are completed within a maximum of 2.5 hours.
 - g. If the court decides to hear the Landlord's Motion to Terminate the Lease (and corresponding more limited aspects of the tenant's cross-motion) that will be heard on January 5, 2023 (booked for a half day). All material will have already been filed for that motion except the monitor's report, which will be delivered by January 3, 2023.
 - h. If the court does hear the Landlord's Motion to Terminate the Lease (and corresponding more limited aspects of the tenant's cross-motion) on January 5, 2023 and decides that in favour of the landlord, the stay will be continued on consent of all parties until RBC's application for the appointment of a receiver can be heard on January 19, 2023 (booked for a half day).
 - i. In anticipation of this possibility, RBC will deliver its updated application record for appointment of receiver on Dec 16, 2022.
 - j. The tenant and any other party who wishes to respond to that application shall do so on or before January 9, 2023. RBC shall deliver its reply record, if any, and factum by January 13, 2023.
 - k. The tenant and any other party taking a position on the receivership application shall deliver their responding factums on or before January 17, 2023.
 - l. It is not anticipated by any party at this time that there will be a need for cross-examinations on the application to appoint a receiver but if that anticipation changes, any party who may wish to cross-examine shall propose a revised timetable to allow for that by no later than December 28, 2022 and seek a further scheduling appointment if need be after fully canvassing revisions to the schedule that will still allow the receivership application to proceed on January 19, 2023.
6. The directions contained in this endorsement 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.