



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL SLIP/ENDORSEMENT**

**COURT FILE NO.:** CV-21-00673084-00CL **DATE:** 6 September 2023

**NO. ON LIST:** 1

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

**BEFORE JUSTICE:** KIMMEL

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

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Name of Person Appearing	Name of Party	Contact Info
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**ENDORSEMENT OF JUSTICE KIMMEL:**

1. Today's case conference was previously scheduled by the court to address logistics for the hearing of the Tenant's cross-motion returnable on September 19, 21 and 22, 2023. The Tenant's cross-motion had been scheduled on an expedited basis to be heard originally in July, 2023 and has already once been adjourned at the Tenant's request.
2. The Tenant seeks a further adjournment of the September hearing dates on various grounds, including that it was not able to meet the current schedule for delivery of its factum, which in turn was a function of the timing of the cross-examinations having been conducted in the latter part of August and transcripts not being available. The court was advised that the transcripts became available today. The cross-examinations were scheduled at the end of August (rather than earlier in the month) based on the availability of the Tenant's counsel.
3. The Tenant also delivered two expert reports on August 21, 2023 that had not been timetabled. They were delivered just prior to the scheduled date of Mr. Rienas' cross examination on August 23, 2023 and the cross-examination of Mr. Pearce held on August 31, 2023. The court's original scheduling endorsement dated April 4, 2023 provided (at para. 20) that:

If the Tenant intends to deliver an expert report on issues relevant to the aspects of its Cross-Motion that are being adjudicated on July 25-27, 2023 (notice of Cross-Motion paragraphs 1-6 and 11, Lease interpretation issues) counsel shall agree by April 10, 2023 on a timetable for the exchange of expert reports that is completed by no later than May 30, 2023 so that the experts can be examined immediately after the completion of the other witness examinations.  
[emphasis in original]

4. The Tenant did not indicate that it intended to deliver an expert report prior to April 10, 2023 or at any time prior to the delivery of the two experts reports on August 21, 2023. There was thus no opportunity for any discussion about timetabling these (and any responding reports from the Landlord) or about timetabling the cross-examinations of experts. This notwithstanding that the parties attended two other case conferences dealing with scheduling and other matters after April 10, 2023 (in June and July, 2023) and notwithstanding that it appears from at least one of the expert reports that the Tenant was dealing with the experts by at least June, 2023.
5. The Landlord opposes the adjournment request and opposes the introduction of the expert reports delivered by the Tenant. It proposed a truncated revised schedule for the delivery of factums in advance of the September 19, 2023 hearing date. The Tenant suggested that, if the hearing is not adjourned and proceeds on the September dates, the court should receive written submissions after the oral submissions on the cross-motion and hear arguments about the objections to the expert reports at that time.
6. I reluctantly have decided to adjourn the hearing dates again, to the next available dates before me on November 1, 2 and 3, 2023. While the court is not impressed by the Tenant's handling of the delivery of its expert reports, the objections to them cannot be fully addressed at a case conference when the Tenant says they are necessary and relevant to its position on the cross-motion. I am not prepared to exclude them over a matter of five weeks when the Landlord continues to be protected by the without prejudice agreement for the Tenant to pay full rent during the Interim Period. That Interim Period was last extended to December 31, 2023 by the court's endorsement of July 26, 2023, and is now further extended to January 31, 2023.
7. Out of an abundance of caution, the court asked the Tenant to work with the Monitor to provide a further updated rent affordability report from the Monitor updated to January 31, 2023 so as to provide

additional comfort to RBC that its position is not being eroded by this further adjournment and the prospect that the court's decision on the Tenant's cross-motion may be further delayed as a result. The Tenant also offered to provide an undertaking to conduct business as usual during this further extended Interim Period.

8. The adjournment is being granted on the following terms:
  - a. It is peremptory to the Tenant.
  - b. The Landlord shall be entitled to review the experts' files and to be provided with any information or documents that the experts have and/or relied upon that was not previously produced to the Landlord in this proceeding.
  - c. At this time the Landlord does not anticipate delivering responding expert reports, although it may need to retain now (on an urgent basis and at some considerable cost) its own experts to assist in the assessment of the Tenant's expert reports and any cross-examinations to be conducted in respect of those expert reports.
  - d. The Landlord may cross-examine the Tenant's experts and may conduct a further examination of the Tenant's representative Mr. Pearce (either before or after cross-examining the experts, at the Landlord's option), on dates to be scheduled so as to accommodate the exchange of factums, including a reply factum from the Tenant of up to a maximum of 5 pages double spaced, all to be filed and uploaded onto CaseLines by no later than October 27, 2023.
  - e. The Landlord shall be entitled to its incremental costs incurred and any costs thrown away as a result of the late delivery of the Tenant's expert reports, in any event of the cause.
  - f. Any continuing objections of the Landlord to the relevance and propriety of the Tenant's expert reports shall be addressed as part of the submissions on the motion.
9. Counsel for RBC may contact the Commercial Court scheduling office to schedule a date for the return of the Bank's receivership application, before me if my schedule permits, on a date in the latter part of January or early February 2024, so that there is a date booked in the event RBC decides to proceed with that application once the court's decision on the cross-motion has been released. This receivership application had been adjourned originally to September 19, 2023 and was then adjourned *sine die* when the cross-motion was moved to the September dates. It is not unreasonable for the Bank to have a date scheduled for its receivership application now that the cross-motion is once again being adjourned and pushed closer to the end of the year.
10. The parties agree that there is no need for *viva voce* evidence at the hearing of the cross-motion, so it shall proceed on a written record on the new dates of November 1, 2 and 3, 2023.

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

KIMMEL J.