

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

ARKLE MOTOR FREIGHT INC. and 15383960 CANADA INC.

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**FACTUM OF THE APPLICANT, ROYAL BANK OF CANADA
(returnable January 16, 2025)**

January 3, 2025

AIRD & BERLIS LLP

Barristers and Solicitors

Brookfield Place

181 Bay Street, Suite 1800

Toronto, Ontario M5J 2T9

Sanjeev P.R. Mitra (LSO # 37934U)

Tel: (416) 865-3085

Email: smitra@airdberlis.com

Jeremy Nemers (LSO # 66410Q)

Tel : (416) 865-7724

E-mail: jnemers@airdberlis.com

Calvin Horsten (LSO # 90418I)

Tel : (416) 865-3077

E-mail: chorsten@airdberlis.com

Lawyers for Royal Bank of Canada

PART I – NATURE OF THE APPLICATION

1. The Applicant, Royal Bank of Canada (“**RBC**”), makes an application for an Order (the “**Receivership Order**”), in substance, appointing msi Spergel inc. (“**Spergel**”) as receiver (in such capacity, the “**Receiver**”), without security, of all the assets, properties and undertakings of Arkle Motor Freight Inc. (“**Arkle**”) and 15383960 Canada Inc. (“**153**” and, together with Arkle, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors and all proceeds thereof (collectively, the “**Property**”), including, without limitation, the real property municipally known as 20 Newkirk Court, Unit B7 22, Brampton, Ontario and legally described by PIN 20135-0022 (LT) (the “**Real Property**”).

2. The Debtors comprise a trucking transportation and logistics business, and owe RBC over \$3.2 million. RBC holds security over the assets of the Debtors, including general security agreements which give RBC the right to apply to court for the appointment of a receiver.

3. RBC has not heard from the Debtors since October 16, 2024, shortly after the Debtors were advised that the management of their accounts was being transferred to RBC’s Special Loans department. RBC made formal demand on the Debtors on October 25, 2024, which demand has not been honoured.

4. RBC is justified in having lost confidence in the Debtors and their management, and it is respectfully submitted that it is just and convenient for the Receiver to be appointed.

PART II – SUMMARY OF FACTS

5. Arkle is a privately-owned Ontario corporation, and 153 is an extra-provincial federal corporation. Mr. Anuj Goel (“**Mr. Goel**”) is the Debtors’ principal. The Debtors operate in the trucking transportation and logistics industry, and their website (arklemfi.com) reflects that their services include “*Packaging and Storage*” and “*Canada/USA Transport*.”

Affidavit of David Kennedy sworn November 29, 2024 [Kennedy Affidavit] at [paras. 3-4](#), Tab 4 of RBC’s Application Record dated December 6, 2024 [Application Record].

6. The Debtors are indebted to RBC in connection with certain credit facilities (the “**Credit Facilities**”) made available to the Debtors by RBC pursuant to and under the following agreements (the “**Credit Agreements**”):

- (a) the loan agreement dated November 10, 2023 between RBC and Arkle (the “**Arkle Credit Agreement**”);
- (b) the loan agreement dated November 10, 2023 between RBC and 153 (the “**153 Credit Agreement**”); and
- (c) the credit card agreement dated November 11, 2023 between RBC and Arkle.

Kennedy Affidavit, *supra* at [para. 6](#).

7. Arkle’s obligations to RBC are guaranteed by Mr. Goel up to the principal amount of \$700,000.00, and by 153 up to the principal amount of \$1,433,378.00. 153’s obligations to RBC are guaranteed by Mr Goel up to the principal amount of \$500,000.00, and by Arkle up to the principal amount of \$1,997,500.00 (together, the “**Guarantees**”).

Kennedy Affidavit, *supra* at [paras. 8-9](#).

8. To secure their obligations to RBC, the Debtors provided security to RBC (the “**Security**”), including, without limitation:

- (a) the general security agreement dated November 11, 2023 granted by Arkle (the “**Arkle GSA**”), registration in respect of which was duly made pursuant to the *Personal Property Security Act* (Ontario) (the “**PPSA**”);
- (b) the general security agreement dated November 11, 2023 granted by 153 (the “**153 GSA**”), registration in respect of which was duly made pursuant to the PPSA;
- (c) the first charge/mortgage in the principal amount of \$2,350,000 in respect of the Real Property (the “**Mortgage**”), which was registered on title as Instrument No. PR4279590 on December 1, 2023; and
- (d) the general assignment of rents in respect of the Real Property (the “**GAR**”), which was registered on title as Instrument No. PR4279636 on December 1, 2023.

Kennedy Affidavit, *supra* at [para. 7](#).

9. RBC has PPSA registrations against each of the Debtors in respect of all collateral classifications other than consumer goods (the “**General RBC Registrations**”). RBC is the sole registered secured creditor of 153. In addition to the General RBC Registration against Arkle, Arkle’s certified PPSA search results reflect 16 different registration families. All these other registrations appear either to be limited to certain equipment/motor vehicles and/or registered after the General RBC Registration.

Kennedy Affidavit, *supra* at [paras. 13-14](#).

10. RBC is the only secured creditor over the Real Property pursuant to the Mortgage.

Kennedy Affidavit, *supra* at [para. 15](#).

11. All PPSA registrants against the Debtors have been served with this application.

Kennedy Affidavit, *supra* at [para. 16](#).

[Affidavit of Service of Christine Doyle sworn December 6, 2024.](#)

12. Certain of the Credit Facilities are repayable on demand. In addition, over the pendency of the lending relationship between RBC and the Debtors, numerous defaults have occurred, including, without limitation, the Debtors' failure to observe the covenants under the Credit Agreements pertaining to: (i) making regular payments when due; (ii) fulfilling reporting requirements; and (iii) paying all taxes when due.

Kennedy Affidavit, *supra* at [paras. 17-18](#) and [Exhibit "D"](#) thereto.

13. On June 13, 2024, RBC issued a non-tolerance letter to Arkle with reference to the aforementioned reporting defaults, and acknowledging Arkle's plan to remedy such defaults by June 21, 2024. However, nothing was ever received by RBC to rectify the reporting defaults.

Kennedy Affidavit, *supra* at [para. 19](#).

14. Despite numerous attempts by RBC to contact Mr. Goel in June, July, September and October 2024, Mr. Goel did not respond to any of RBC's emails until October 16, 2024, shortly after learning that management of the Debtors' accounts had been transferred to RBC's Special Loans department. RBC replied, asking Mr. Goel to make himself available for a call to discuss RBC's concerns, yet no response was ever received from Mr. Goel.

Kennedy Affidavit, *supra* at [para. 20](#).

15. By mid-October 2023, the monetary defaults under the Credit Facilities included unpaid interest in respect of the revolving credit line under the Arkle Credit Agreement, and payment arrears in respect of the term facility under the 153 Credit Agreement, with no funds being deposited to cover the missed payments. 153 had missed making term loan payments each in the sum of \$14,072.20 for September and October 2024.

Kennedy Affidavit, *supra* at [para. 21](#).

16. There being no further response from Mr. Goel, RBC proceeded on October 25, 2024 to make formal written demand on the Debtors and Mr. Goel for payment of the amounts owed to RBC under the Credit Agreements and the Guarantees, as applicable (the “**Demand Letters**”). Notices of intention to enforce security (the “**BIA Notices**”) pursuant to subsection 244(1) of the BIA accompanied the Demand Letters sent to the Debtors.

Kennedy Affidavit, *supra* at [para. 22](#).

***Bankruptcy and Insolvency Act (Canada)* [BIA], [s. 244\(1\)](#).**

17. As particularized in more detail in the Demand Letters, \$3,265,650.84 was owing by the Debtors for principal, interest and legal fees as of October 25, 2024, plus accruing interest and costs (the “**October Indebtedness**”).

Kennedy Affidavit, *supra* at [para. 23](#).

18. No communication has been received from the Debtors or Mr. Goel since October 16, 2024, including following the issuance of the Demand Letters and the BIA Notices, and the October Indebtedness has not been repaid in full or in part.

Kennedy Affidavit, *supra* at paras. [20](#) and [24](#).

19. At this stage, RBC believes that the only reasonable and prudent path forward is to take any and all steps necessary to protect the Property by having a receiver appointed. It is within RBC's rights under its security to do so.

Kennedy Affidavit, *supra* at [para. 25](#).

PART III – ISSUE

20. The issue to be determined on this application is whether it is just and convenient for this Court to appoint Spergel as receiver over the Property.

PART IV – LAW AND ARGUMENT

The Test for Appointing a Receiver

21. On a demand loan (as in the case of the primary credit facility under the Arkle Credit Agreement), “*the reasonable time to repay after demand is a very finite time measured in days, not weeks, and it is not ‘open ended’ beyond this by the difficulties that a borrower may have in seeking replacement financing, be it bridge or permanent.*” Reasonable time “*is not encompassing anything approaching 30 days.*”

Bank of Montreal v Carnival National Leasing Limited, [2011 ONSC 1007](#) at [para. 13](#) [*Carnival Leasing*].

22. RBC seeks the appointment of a receiver pursuant to subsection 243(1) of the BIA and section 101 of the CJA. Both statutes enable the Court to appoint a receiver and manager where such appointment is “*just or convenient.*”

BIA, *supra* [s. 243\(1\)](#).

Courts of Justice Act (Ontario) [CJA], [s. 101](#).

23. In determining whether it is “*just or convenient*” to appoint a receiver under either the BIA or CJA, Ontario courts have applied the decision of The Honourable Mr. Justice Blair in *Freure Village*. In that case, His Honour confirmed that, in deciding whether the appointment of a receiver is just or convenient, the court “*must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto,*” which includes the rights of the secured creditor under its security.

Bank of Nova Scotia v. Freure Village on Clair Creek, [40 C.B.R. \(3d\) 274, \[1996\] O.J. No. 5088 at para. 10](#) (Gen. Div. [Comm. List]) [*Freure Village*].

24. When the rights of the secured creditor under its security include a specific right to the appointment of a receiver (as in the present case), the burden on the applicant seeking the relief is relaxed. Indeed, The Honourable Mr. Chief Justice Morawetz held in *Elleway Acquisitions* that:

... while the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties.

Elleway Acquisitions Ltd. v. Cruise Professionals Ltd., [2013 ONSC 6866 at para. 27](#) [*Elleway Acquisitions*].

25. More recently, The Honourable Mr. Chief Justice Morawetz’s holding in *Elleway Acquisitions* was further affirmed in *iSpan Systems* by The Honourable Mr. Justice Osborne:

Where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: while the appointment of a receiver is generally an extraordinary equitable remedy, the courts do not so regard the nature of the remedy where the relevant security permits the appointment and as a result, the applicant is merely seeking to enforce a term of an agreement already made by both parties [citations omitted].

iSpan Systems LP, [2023 ONSC 6912 at para. 31](#) [*iSpan Systems*].

26. Furthermore, the appointment of a receiver becomes less extraordinary still when dealing with a default under a mortgage.

BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.,
[2020 ONSC 1953](#) at [paras. 43-44](#).

27. It is not essential that the applicant establish, prior to the appointment of a receiver, that it will suffer irreparable harm or that the situation is urgent.

Carnival Leasing, *supra* at [paras. 24](#) and [28-29](#).

It is Just and Convenient to Appoint the Receiver

28. More than a reasonable time for the Debtors to repay RBC has elapsed since issuance of the BIA Notices on October 25, 2024. The scheduled hearing date for this application marks: (i) exactly three months since RBC last heard from the Debtors; and (ii) almost three months from the issuance of the BIA Notices, which period far exceeds that which is considered reasonable.

Arnold Affidavit, *supra* at [paras. 20](#) and [22](#).

Carnival Leasing, *supra* at [para. 13](#).

29. RBC submits that the test for the appointment of a receiver is met. RBC is contractually entitled to have a receiver appointed over the Debtors upon default. Such default has occurred and the appointment of Spergel as receiver is not an extraordinary remedy; it is simply the result of enforcing a contractual term that was mutually assented to by the Debtors and RBC.

Kennedy Affidavit, *supra* at Exhibit “E”, Arkle GSA, [s. 13\(a\)](#).

Kennedy Affidavit, *supra* at Exhibit “E”, 153 GSA, [s. 13\(a\)](#).

30. RBC wishes to take any and all steps necessary to enforce its security and realize on same, and the appointment of Spergel as receiver is necessary for the protection of the Debtors' estate and the interests of RBC as a secured creditor. The Debtors have had ample time to address their defaults with RBC, but have instead been unresponsive and continue to default.

Kennedy Affidavit, *supra* at paras. [20-21](#) and [25](#).

31. Spergel is a licensed insolvency trustee and is familiar with the circumstances of the Debtors and their arrangements with RBC. Spergel has consented to act as the Receiver should the Court so appoint it.

Kennedy Affidavit, *supra* at [paras. 28-29](#).

PART V – RELIEF REQUESTED

32. In light of the foregoing, it is respectfully submitted that this Court should grant the Receivership Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of January, 2025.



AIRD & BERLIS LLP

Barristers and Solicitors
 Brookfield Place
 181 Bay Street, Suite 1800
 Toronto, Ontario M5J 2T9

Sanjeev P.R. Mitra (LSO # 37934U)
 Email: smitra@airdberlis.com

Jeremy Nemers (LSO # 66410Q)
 E-mail: jnemers@airdberlis.com

Calvin Horsten (LSO # 90418I)
 Email: chorsten@airdberlis.com

Lawyers for Royal Bank of Canada

**SCHEDULE “A”
AUTHORITIES CITED**

Jurisprudence

1. *Bank of Montreal v Carnival National Leasing Limited*, [2011 ONSC 1007](#).
2. *Bank of Nova Scotia v. Freure Village on Clair Creek*, [40 C.B.R. \(3d\) 274](#),
[\[1996\] O.J. No. 5088](#) (Gen. Div. [Comm. List]).
3. *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, [2020 ONSC 1953](#).
4. *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, [2013 ONSC 6866](#).
5. *iSpan Systems LP*, [2023 ONSC 6212](#).

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended, s. 243

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

Definition of receiver

(2) Subject to subsections (3) and (4), in this Part, receiver means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
 - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or
 - (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of receiver — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of disbursements

(7) In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

Advance notice

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or
- (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Courts of Justice Act, R.S.O. 1990, c. C-34, as amended, s. 101

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

ROYAL BANK OF CANADA

- and -

ARKLE MOTOR FREIGHT INC. and 15383960 CANADA INC.

Applicant

Respondents

Court File No. CV-24-00005631-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings commenced at Brampton

FACTUM OF THE APPLICANT
(returnable January 16, 2025)

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Sanjeev P.R. Mitra (LSO # 37934U)
Tel: (416) 865-3085
Email: smitra@airdberlis.com

Jeremy Nemers (LSO # 66410Q)
Tel: (416) 865-7724
Email: jnemers@airdberlis.com

Calvin Horsten (LSO # 90418I)
Tel: (416) 865-3077
Email: chorsten@airdberlis.com

Lawyers for Royal Bank of Canada