Court File No. CV-24-00086229-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

ROYAL BANK OF CANADA

Applicant

-and-

SMART SUPER MART LTD.

Respondent

FACTUM OF THE APPLICANT

(Application Returnable July 18, 2024)

July 8, 2024

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TO: Service List

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PART I – THE MOTION

The Applicant, Royal Bank of Canada (the "**Bank**") seeks the following Order, substantially in the form attached as Schedule "A" and in template form (the "**Appointment Order**") to the Notice of Application:

a) Appointing msi Spergel inc. ("**Spergel**" or the "**Receiver**"), as Receiver, without security, of all of the assets, undertakings and properties of the Respondent, Smart Super Mart Ltd. (the "**Debtor**") acquired for, or used in relation to the gasoline and petroleum products retail business carried on by the Debtor, including the Real Property (as defined below);

b) That the time for service, filing and confirming of the Notice of Application and the Application Record be abridged and validated so that this application is properly returnable today and dispensing with further service thereof; and,

c) Such further and other relief as to this Honourable Court may seem just.

The Position of the Bank

1. It is the Bank's position that the present circumstances are an appropriate case for the appointment of the Receiver, including the following (all capitalized terms as defined herein):

    a) The Bank is a secured creditor of the Debtor pursuant to the GSA and the Mortgage;

    b) The Debtor defaulted under the terms of the Letter Agreement, as a result of, *inter alia*, borrowing in excess of credit limits, the failure to keep realty taxes current in relation to the Real Property and has has encumbered the Real Property by way of a Tax Certificate;

    c) The Debtor has failed to cure the Defaults, and the Demands issued by the Bank have expired;

    d) In the face of the expired Demands, the Debtor is insolvent. No further terms of credit nor forbearance is available to the Debtor from the Bank. It is necessary for the protection of the Debtor's estate that a Receiver be appointed;

    e) The Bank's Security provides the Bank with the right to appoint a Receiver over all property of the Debtor, as a result of the Defaults; and,

    f) A Receiver will also be required to preserve the property of the Debtor and complete the orderly sale of same, and to ensure that the proceeds of any such sale are applied to the Debtor's obligations. In relation to any such sale, the Appointment of Receiver is also necessary to deal with the subsequent claims to the proceeds.

PART II – FACTS/OVERVIEW

2. The Debtor is a company incorporated pursuant to the laws of the Province of Ontario, with its registered office located in the City of Brampton, Ontario.

Reference: Affidavit of Craig McInnes, sworn July 3, 2024, at para 2 and Exhibit "A" thereto (the "McInnes Affidavit").

3. The Debtor operates an "Esso" gas station, from owned real property, municipally known as 179-185 St. Paul Street West, St. Catherines, Ontario, legally described as:

    i. PART LOTS 1852-1854 CP PL 2 GRANTHAM, DESIGNATED AS PART 2 30R15372; CITY OF ST CATHARINES (PIN 46179-0340 (LT)) (the "**Real Property**")

Reference: McInnes Affidavit, at para 3 and Exhibit "B" thereto.

4. The Debtor is insolvent, and is currently in Default (a "**Default**", or the "**Defaults**") of its obligations to the Bank as a result of the following:

    a) failure to maintain realty taxes with respect to the Real Property current,

    b) borrowing in excess of credit limits; and,

    c) has encumbered the Real Property by way of a Tax Certificate registered by The Corporation of the City of St. Catharines (the "**City**") on July 26, 2023 (the "**Tax Notice**"). The City is in a position to commence a tax sale of the real property on July 27, 2024 and is owed $157,245.87 as of June 12, 2024.

Reference: McInnes Affidavit at para 4 and Exhibit "B" thereto.

<u>The Obligations to the Bank and Security Held</u>

5. As of June 17, 2024, the Debtor was indebted to the Bank in the amount of $1,762,861.57, plus accruing interest and the Bank's continuing costs of enforcement including legal and professional costs (the "**Obligations**"), in respect of certain financing advanced to the Debtor pursuant to the terms of a Letter Agreement dated June 28, 2021, and amended by Amending

Agreements dated January 19, 2022, and November 2, 2022 (the "**Letter Agreement**").

Reference: McInnes Affidavit, at para 6 and Exhibit "C".

6. The credit facilities established by the Letter Agreement are:

    a) Term Loan: in the sum of $1,769,033.64, upon which the sum of $1,625,711.50 was owing as at June 17, 2024;

    b) Revolving Demand Facility: in the sum of $75,000.00, upon which the sum of $75,398.68 was owing as at June 17, 2024;

    c) Letter of Credit: in the sum of $50,000.00, upon which the sum of $50,000.00 was owing as at June 17, 2024; and,

    d) Credit Card Facility: with a credit limit of $10,000.00, upon which the sum of $11,751.39 was owing as at June 17, 2024

    (collectively, the "**Financing**").

Reference: McInnes Affidavit, at para 7.

7. The terms and conditions of each the Letter Agreement required the Debtor to (i) pay all material taxes or potential prior-ranking claims which may take priority over the Obligations; (ii) to not borrow in excess of the credit limits of the Financing; and (iii) not to further encumber the Real Property.

Reference: McInnes Affidavit, at para 8.

8. The Financing is secured by, *inter alia*, the following:

    a) General Security Agreement from the Debtor dated January 11, 2020 (the "**GSA**"); and,

b) First position Charge/Mortgage, in the principal sum of $2,135,000.00, receipted as instrument number NR547245 on July 23, 2020 over the Real Property (the "**Mortgage**"), as governed by Standard Charge Terms No. 200015 (the "**Standard Charge Terms**").

(collectively, the "**Security**").

Reference: McInnes Affidavit, at para 9 and Exhibits "D" to "F" thereto.

The Bank's Security Interest in The Personal Property of the Debtor

9. The GSA secures all personal property of the Debtor. The Bank has registered a Financing Statement as against the Debtor pursuant to the provisions of the *Personal Property Security Act* (Ontario) to perfect its security interest in the personal property of the Debtor secured under the GSA.

Reference: McInnes Affidavit, at paras 10-12, and Exhibit "G" thereto.

The Bank's Security Interest in the Real Property

10. The Bank's interest in the Real Property is secured by the Mortgage, which constitutes a first charge on the Real Property, as governed by the Standard Charge Terms.

Reference: McInnes Affidavit, at paras 13-15.

Defaults and Demands

11. On October 20, 2023, the Bank delivered a letter to the Debtor advising of certain defaults and requesting that the Debtor remedy such by November 13, 2023.

Reference: McInnes Affidavit, at para 16 and Exhibit "H" thereto

12. On January 2, 2024, the Bank received a letter from counsel for the Debtor, advising that the Debtor was arranging for a second mortgage to be registered against the Real Property.

Reference: McInnes Affidavit, at para 17 and Exhibit "I" thereto.

13. On January 9, 2024, counsel for the Bank emailed counsel for the Debtor noting that the Debtor was not permitted to further encumber the Real Property, and that the Debtor was in default as a result of:

    a) Reporting defaults, as set out in the Bank's letter dated October 20, 2023;

    b) Failing to make payments to the Bank as they became due; and,

    c) Property tax arrears in relation to the Real Property

Reference: McInnes Affidavit, at para 18 and Exhibit "J" thereto.

14. On January 19, 2024, counsel for the Bank emailed counsel for the Debtor advising that despite the defaults of the Debtor, the Bank was willing to permit the sought second charge against the Real Property, subject to certain terms. Ther terms included, but were not limited to, that the property tax arrears against the Real Property were paid in full and the City certificate registered against the Real Property was deleted from title to the Real Property.

Reference: McInnes Affidavit, at para 19, and Exhibit "K" thereto.

15. On March 15, 2024, counsel for the Bank emailed counsel for the Debtor advising that that the Financing had been brought current, but counsel recorded no response to his email on January 19, 2024 and asked for details on:

a) The status of the Debtor's property tax arrears and whether the registration by the City had been deleted from the Real Property;

b) The status of the Debtor's accounts with the Canada Revenue Agency; and,

c) The status of the financing in relation to the second charge against the Real Property

Reference: McInnes Affidavit, at para 20, and Exhibit "L" thereto.

16. On March 15, 2024, counsel for the Debtor emailed counsel for the Bank advising that he would respond accordingly.

Reference: McInnes Affidavit, at para 21 and Exhibit "M" thereto.

17. On March 15, 2024, counsel for the Bank emailed counsel for the Debtor noting that the registration by the City was still on title to the Real Property, and such had to be dealt with as it was a major default and concern.

Reference: McInnes Affidavit, at para 22 and Exhibit "N" thereto.

18. Counsel for the Bank did not receive a further response from counsel for the Debtor.

Reference: McInnes Affidavit, at para 23.

19. On May 22, 2024, the Bank received a Final Notice from the City dated May 10, 2024, advising, among other things, that the Real Property would be advertised for public sale unless the cancellation price was paid or an extension agreement was entered into before July 26, 2024..

Reference: McInnes Affidavit, at para 24 and Exhibit "O" thereto.

20. The Debtor is insolvent, and has defaulted under the Financing, as set out above.

Reference: McInnes Affidavit, at para 25.

21. As a result of the Defaults, the Bank delivered to the Debtor a demand for payment and a Notice of Intention to Enforce Security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (the "**BIA**"), each dated June 20, 2024, with respect to the indebtedness then owing. The Bank also delivered a demand to the guarantors of the Debtor, also dated June 20, 2024 (collectively, the "**Demands**").

Reference: McInnes Affidavit, at para 26, and Exhibit "P" thereto.

22. On June 21, 2024, the Bank's counsel received correspondence from a representative of the Debtor advising, among other things, that the Debtor was currently facing significant challenges, and was requesting an extension of at least one month.

Reference: McInnes Affidavit, at para 27 and Exhibit "Q" thereto.

23. On June 24, 2024, the Bank's counsel responded to the Debtor's request and advised that due to the City being in a position to commence a tax sale following July 26, 2024, the Bank would be applying to the Court for an Order appointing a Receiver, and that the Debtor should have its counsel contact the Bank's counsel.

Reference: McInnes Affidavit, at para 28 and Exhibit "R" thereto.

24. On June 24, 2024, the Bank's counsel received correspondence from a representative of the Debtor advising, among other things, that the Debtor was discussing the property taxes with the City officials, that they had requested a meeting with the City officials, and that an update would be provided.

Reference: McInnes Affidavit, at para 29 and Exhibit "S" thereto.

25. On July 2, 2024, the Bank received correspondence from a representative of the Debtor advising, among other things, that they had a meeting with the City, and that the City would like to have a meeting with the Bank.

Reference: McInnes Affidavit, at para 30, and Exhibit "T" thereto.

26. On July 2, 2024, the Bank's counsel responded to the Debtor and advised that it would be best if the City provided its position to the Bank in writing, and inquired if the Debtor could arrange for such.

Reference: McInnes Affidavit, at para 31 and Exhibit "U" thereto.

27. On July 2, 2024, the representative of the Debtor advised that they would check with the City and provide an update.

Reference: McInnes Affidavit, at para 32 and Exhibit "V" thereto.

28. At the time of swearing the McInnes Affidavit, the Bank has not been provided an update with respect to the property taxes or the position of the City.

Reference: McInnes Affidavit, at para 33.

29. All statutory notice periods in relation to the Demands have expired, and the Debtor and and the guarantors of the Debtor have failed to repay the Obligations due, despite the Demands.

Reference: McInnes Affidavit, at para 35.

The Appointment of a Receiver

30. The Obligations due pursuant to the Demands have not been paid. The ten (10) day period under section 244 of the BIA has expired. The Debtor in default of the Financing. The Bank is

unwilling to provide any further forbearance or credit to the Debtor. The Bank is in a position to appoint a receiver over the assets and property of the Debtor as secured by the Bank's Security, pursuant to section 243 of the BIA.

Reference: McInnes Affidavit, at paras 36 and 37.

31. The GSA grants the Bank the right to appoint a Receiver over all personal property of the Debtor, as a result of the Defaults of the Debtor under the Financing.

Reference: McInnes Affidavit, at paras 38 to 40.

32. The Standard Charge Terms grant the Bank the power to appoint a Receiver over the Real Property as a result of the Defaults.

Reference: McInnes Affidavit, at paras 41 and 42.

33. Spergel has consented to act as Receiver, should this Honourable Court so appoint it.

Reference: McInnes Affidavit, at para 53.

PART III – ISSUES, LAW AND ARGUMENT

Issues

34. The issues before this Court, and addressed below, are:

a) Does this Court have jurisdiction to appoint the Receiver?

b) Should this Court appoint the Receiver?

c) If this Court decides to appoint the Receiver, then are the terms of the Receivership Order appropriate in the circumstances of this receivership?

(a) This Court has jurisdiction to appoint the Receiver

35. Subsection 243(5) of the BIA provides that an application under subsection 243(1) of the BIA is to be filed in a court having jurisdiction in the judicial district of the "locality of the debtor", which is defined in section 2 of the BIA.

BIA, s. 2, Schedule "B"; BIA, s. 243(5), Schedule "B".

36. The Debtor is an Ontario corporation with its registered office in Ontario. The business carried on by the Debtor that is subject to the proposed receivership includes premises located in Ontario. The locality of the Debtor is, therefore, Ontario, and this application is properly brought before the Ontario Superior Court of Justice.

37. Subsection 243(4) of the BIA provides that only a trustee, as defined in section 2 of the BIA, may be appointed under subsection 234(1) of the BIA.

BIA, s. 2, Schedule "B"; BIA, s. 243(4), Schedule "B".

38. Spergel is a trustee as defined in the BIA, and therefore, satisfies the requirements for appointment pursuant to the BIA.

(b) This Court should appoint the Receiver

39. Section 244(1) requires that a secured creditor provide an insolvent person with the requisite advance notice of its intention to enforce security.

BIA, s. 244(1), Schedule "B".

40. The Applicant sent the Demands together with its Notice of Intention to Enforce Security pursuant to such section of the BIA, to the Debtor on June 20, 2024, and this application is being heard on a date that is after the date on which any applicable notice periods expired.

41. Section 101 of the *Courts of Justice Act,* R.S.O. 1990, c. C-43, as amended (the "**CJA**") provides for the appointment of a receiver by this Court where it is "just and convenient". Section 243(1) of the BIA also provides that, on an application by a secured creditor, this Court may appoint a receiver if it considers it to be just and convenient to do so to: (a) take possession over the assets of an insolvent person; (b) exercise any control that the Court considers advisable over the property and business; or (c) take any other action that the Court considers advisable.

CJA, s. 101, Schedule "B"; BIA, s. 243(1) and 243(2), Schedule "B".

42. Where the loan agreement and related transaction documents contemplate the appointment of a receiver, this Court may have regard to the principles summarized by Justice Newbould in *RMB Australia Holdings Limited v. Seafield Resources Ltd*:

> 28 In determining whether it is "just or convenient" to appoint a receiver under either the BIA or CJA, Blair J., as he then was, in *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 40 C.B.R. (3d) 274 (Ont. Gen. Div. [Commercial List]) stated that in deciding whether the appointment of a receiver was 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. He also referred to the relief being less extraordinary if a security instrument provided for the appointment of a receiver:
>
> > While I accept the general notion that the appointment of a receiver is an extraordinary remedy, it seems to me that where the security instrument permits the appointment of a private receiver — and even contemplates, as this one does, the secured creditor seeking a court appointed receiver — and where the circumstances of default justify the appointment of a private receiver, the "extraordinary" nature of the remedy sought is less essential to the inquiry. Rather, the "just or convenient" question becomes one of the Court determining, in the exercise of its discretion, whether it is more in the interests of all concerned to have the receiver appointed by the Court or not.
>
> 29 See also *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 (Ont. S.C.J. [Commercial List]), in which Morawetz J., as he then was, stated:
>
> > ...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. See *Textron Financial Canada Ltd. v. Chetwynd Motels Ltd.*, 2010 BCSC 477, [2010] B.C.J. No. 635 at paras. 50 and 75 (B.C. S.C. [In Chambers]); *Freure Village*, supra, at para. 12; *Canadian Tire Corp. v. Healy*, 2011 ONSC 4616, [2011] O.J. No. 3498 at para. 18 (S.C.J. [Commercial List]); *Bank of Montreal v. Carnival National Leasing Limited and Carnival Automobiles Limited*, 2011 ONSC 1007, [2011] O.J. No. 671 at para. 27 (S.C.J. [Commercial List].
>
> **RMB Australia Holdings Limited v. Seafield Resources Ltd., 2014 ONSC 5205 (CanLII), paras. 28-29.**

43. The existence of a contractual right to appoint a receiver in the loan agreement and related transaction documents is key. 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.

> **Elleway Acquisitions Limited v. The Cruise Professionals Limited, 2013 ONSC 6866 (CanLII) at para 27.**

44. This relief that is granted more as a matter of course, becomes even less extraordinary when dealing with a default under a mortgage. That is the case here.

> **BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc., 2020 ONSC 1953 (CanLII) at paragraph 44.**

45. This even further lowered burden in cases in which there has been a default by a mortgagor is described by Justice Farley in *Confederation Life Insurance Co. v. Double Y Holdings Inc.*:

> 20 I must also note that there appears to be a major distinction between those case where the borrower is in default and those where it is not (or a receiver is being asked for in say a shareholder dispute - e.g. *Goldtex Mines Ltd. v. Nevill* (1974), 7 O.R. (2d) 216 (Ont. C.A.)). See *Receiverships*, *Bennet* (1985), at p.91 referring to: "In many cases, a security holder whose instrument charges all or substantially all of the debtor's property will request a court - appointed receivership if the debtor is in default". (In this case the plaintiffs have a very strong case - not only are the loans in default, they have matured). See also *Kerr on Receiverships* (1983), 16th ed. at p.5:

> There are two main classes of cases in which appointment is made: (1) to enable persons who possess rights over property to obtain the benefit of those rights and to preserve the property, pending realization, where ordinary legal remedies are defective and (2) to preserve property from some danger which threatens it.
>
> Appointment to Enforce Rights
>
> In the first class of cases are included those in which the court appoints a receiver at the instance of a mortgagee whose principal is immediately payable or whose interest is in arrear. ... In such cases the appointment is made as a matter of course as soon as the applicant's right is established and it is unnecessary to allege any danger to the property.
>
> ***Confederation Life Insurance Co. v. Double Y Holdings Inc.*, 1991 CarswellOnt 1511 (Ont. S.C.J. (Commercial List)) ["*Confederation Life*"], para. 20, Tab 1 of the Applicant's Book of Authorities.**

46. In the present case, the Debtor is in default under the loan agreement and related transaction documents and the Mortgage is immediately payable, meaning that this is the first class of cases referred in *Confederation Life*. In this sort of case, allegations of danger to the property are not necessary, though such allegations do exist in this case, as described in the McInnes Affidavit.

    ***Confederation Life,* para. 20.**

47. Thus, with the Applicant's contractual entitlement to appoint a receiver and the existence of a mortgage default, the appointment of a receiver is not extraordinary relief, and the burden has been lowered further. With this lower burden, the following additional "just or convenient" factors identified by Justice Farley in *Confederation Life* may be considered:

    a) The lenders' security is at risk of deteriorating;

    b) There is need to stabilize and preserve the Debtor's business;

    c) Loss of confidence in the Debtor's management; and,

    d) Positions and interests of other creditors.

    ***Confederation Life* paras. 19-24.**

48. It is not essential that the moving party/secured creditor establish that it will suffer irreparable harm if a receiver/manager is not appointed.

> ***Swiss Bank Corporation (Canada) v. Odyssey Industries Incorporated*** **(1995), 30 C.B.R. (3d) 49 at paragraph 28, Tab 2 of the Applicant's Book of Authorities.**

49. When the above *Confederation Life* factors are applied to this case, the Applicant submits that the burden to appoint a receiver has been met and that such appointment is just and convenient in the circumstances:

a) ***The Debtor contractually agreed to the appointment of a receiver.*** The loan agreements and the related transaction documents among the Applicant and the Debtor expressly entitle the Applicant to appoint a receiver under certain circumstances, including the present circumstances. The Applicant now exercises these entitlements, subject to this Court's authority.

b) ***The loan agreement is in default.*** As set out above, events of default have occurred and are continuing under the loan agreement and the related transaction documents. The Applicant has demanded on the Obligations. The Applicant provided the Debtor with statutory notice of their intention to enforce security, and the applicable notice periods have elapsed.

c) ***The lenders' security is at risk of deteriorating.*** The Bank is concerned that the Debtor does not have the working capital needed to maintain the Real Property. If the property of the Debtor, including the Real Property, deteriorates, the realizable value of the Security will diminish as a result.

d) ***The Debtor's business needs to be stabilized and preserved.*** The Debtor's liquidity crisis will continue to worsen in the absence of action. The City is in a

position to commence a tax sale of the real property on July 27, 2024. A receiver will be able to take the necessary steps to preserve the Security, including conducting an orderly sale process that will generate recoveries for creditors. If the Debtor's business experiences further disarray, or the Security is not preserved, there will be further negative consequences.

e) ***The Applicant has lost confidence in the Debtor's management.*** The Debtor has not resolved the Tax Notice and has not advised or provided evidence of alternatives to a receivership that stand any reasonable chance of success, despite significant time in which to do so. The Applicant has justifiably lost confidence in the management of the Debtor due to the events described in the McInnes Affidavit.

f) ***Position and interests of other Creditors.*** The Applicant is not the only creditor of the Debtor. As at the date of this Factum, no creditor has opposed the receivership application. The Receiver will be able to properly and equitably deal with the interests of creditors other than the Applicant. A receivership provides parties with an effective forum in which to deal with any issues, including any competing claims, that may arise in respect of the Debtor and its property.

50. As at the date of this Factum, the Applicant is not aware of any restructuring efforts by the Debtor that stands any reasonable chance of success.

(c) The Terms of the Receivership Order are Appropriate

51. The terms of the proposed Receivership Order are substantially the same as the terms of the Commercial List's model receivership order, and the modifications to same are indicated in the blacklined copy provided.

Blackline of the draft Order against the Model Receivership Order; Application Record, Tab 1, Schedule "A-2".

PART IV – ORDER REQUESTED

52. For the reasons set forth herein and in the Application Record, it is respectfully submitted that the appointment of a receiver is just and convenient and is necessary for the protection of the estate of the Debtor and the interests of the Bank and other stakeholders.

53. The Bank respectfully requests that this Honourable Court grant the Appointment Order substantially in the form attached as Schedule "A" to the Notice of Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of July, 2024

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SCHEDULE "A"

LIST OF AUTHORITIES

1. *RMB Australia Holdings Limited v. Seafield Resources Ltd.,* 2014 ONSC 5205 (CanLII);

2. *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.,* 2020 ONSC 1953 (CanLII);

3. *Elleway Acquisitions Limited v. The Cruise Professionals Limited*, 2013 ONSC 6866 (CanLII);

4. *Confederation Life Insurance Co. v. Double Y Holdings Inc.*, 1991 CarswellOnt 1511 (Ont. S.C.J. (Commercial List));

5. *Swiss Bank Corporation (Canada) v. Odyssey Industries Incorporated* (1995), 30 C.B.R. (3d) 49;

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Bankruptcy and Insolvency Act, RSC 1985, c B-3

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

(f) is appointed under subsection (1); or

(g) 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.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

No advance consent

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

Exception

(3) This section does not apply, or ceases to apply, in respect of a secured creditor

(a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or

(b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

Idem

(4) This section does not apply where there is a receiver in respect of the insolvent person.

Courts of Justice Act, RSO 1990, c. C-43.

Injunctions and receivers

101. (1) In the Superior Court of Justice, an interlocutory 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.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

ROYAL BANK OF CANADA	v.	SMART SUPER MART LTD.
Applicant		Respondent

Court File No. CV-24-00086229-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
HAMILTON, ONTARIO

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