

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ROYAL BANK OF CANADA

Applicant

-and-

BLOCK AND STONE RESOURCE GROUP INC., ANDREW NEGUS, and GLENN HAWTON

Respondents

FACTUM OF THE APPLICANT

(Application Returnable May 29, 2026)

May 14, 2026

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Court File No. CV-26-00000033-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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PART I – THE APPLICATION

1. The Applicant, Royal Bank of Canada (the “**Bank**”) seeks an Order, substantially in the form attached as Schedule “A” (the “**Appointment Order**”) to the Notice of Application, appointing msi Spergel inc. as Receiver (“**Spergel**” or the “**Receiver**”), without security, of all of the assets, undertakings and properties of the Respondent, Block and Stone Resource Group Inc. (the “**Debtor**”) acquired for, or used in relation to the business carried on by the Debtor.
2. The Applicant, the Bank, also seeks judgments against the Respondents, Andrew Negus (“**Andrew**”) and Glenn Hawton (“**Glenn**” and together with Andrew, the “**Guarantors**”), in accordance with the guarantees given to the Bank for the debts, liabilities and obligations of the Debtor.
3. The Applicant, the Bank, also seeks 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 Lease;
 - b) The Debtor defaulted under the terms of the Letter Agreement, as a result of, *inter alia*, failing to make payments to the Bank as they became due; excess borrowings; and cessation of regular business;
 - c) The Debtor has failed to cure the Defaults, and the Demands issued by the Bank have expired;
 - d) The Debtor is in a dispute with the Lionshead Landlord of the Processing Facility. The Debtor has been unable to ship inventory to customers, resulting in the Debtor not generating revenue, and Debtor customers making claims to inventory said to be paid for.
 - e) 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; and,
 - f) The Bank's Security provides the Bank with the right to appoint a Receiver over all

PART II – FACTS/OVERVIEW

2. The Debtor is a company incorporated pursuant to the laws of the Province of Ontario, which carries on business in South Bruce Township and Lions Head, Ontario, with its registered office located in Owen Sound, Ontario.

Reference: Affidavit of W. Craig McInnes, sworn April 28, 2026, at para 2 (the “McInnes Affidavit”) and Exhibit “A” thereto.

3. Andrew and Glenn are each individuals, principals of the Debtor and guarantors of the Obligations (as defined below) owing by the Debtor to the Bank.

Reference: McInnes Affidavit, at paras 3 and 4.

4. The Debtor supplies natural stone for commercial and residential construction, specializing in Ontario and Indiana limestone, and operates from leased premises:

- a) a limestone quarry from in the South Bruce Township owned by Bridge Excavating Ltd.; and,
- b) a stone processing facility located at 4128 Hwy 6, Lions Head, Ontario (the “**Processing Facility**”) owned by Bluewater Quarry Inc. (the “**Lions Head Landlord**”)

Reference: McInnes Affidavit, at para 5.

5. The Bank has been advised by the Debtor that the Debtor is in a dispute with the Lions Head Landlord with respect to an extraction agreement and the Lions Head Landlord has blocked access to Processing Facility. As a result, the Debtor has been unable to ship inventory to customers, resulting in the Debtor not generating revenue, and Debtor customers making claims to inventory said to be paid for.

Reference: McInnes Affidavit, at para 6.

6. The Debtor is not making regular deposits to its accounts at the Bank and the Revolving Demand Facility (as noted below) has ceased revolving and is at its credit limit.

Reference: McInnes Affidavit, at para 7.

7. 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) failing to make payments to the Bank as they became due;
- b) chronic borrowings in excess of credit limits; and,
- c) cessation of regular business.

Reference: McInnes Affidavit at para 8.

8. The Defaults led to the Bank issuing the Demands, as defined below, and the Bank is unwilling to provide the Debtor with any further credit or forbearance.

Reference: McInnes Affidavit at paras 9 and 10.

The Obligations to the Bank and Security Held

9. As of April 24, 2026, the Debtor was indebted to the Bank in the amount of \$1,384,991.28, 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 Royal Bank of Canada Credit Agreement dated January 18, 2024, and as amended by the Amending Agreements dated July 18, 2024, January 2, 2025, and December 3, 2025 and the HASCAP Credit Agreement dated May 20, 2021 (collectively, the "**Letter Agreement**").

Reference: McInnes Affidavit, at para 11 and Exhibit "B".

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

- a. Revolving Demand Facility: upon which the sum of \$580,785.67 was owing as at April 24, 2026;
- b. Non-Revolving Term Loan: upon which the sum of \$10,808.52 was owing as at April 24, 2026;

- c. Non-Revolving Lease Facility: upon which the sum of \$574,326.91 was owing as at April 24, 2026;
- d. Credit Card Facility: upon which the sum of \$51,239.24 was owing as at April 24, 2026; and,
- e. Term Facility/HASCAP Loan: upon which the sum of \$146,437.47 was owing as at April 24, 2026

(collectively, the “**Financing**”).

Reference: **McInnes Affidavit, at para 12.**

11. The Debtor also operated an account with the Bank which was in an overdraft position in the amount of \$21,393.47.

Reference: **McInnes Affidavit, at para 13.**

12. The Lease Facility is also governed by the terms of the Master Lease Agreement dated April 5, 2016, with leasing schedules 201000026329, 201000029754, 201000039914, 201000045029, 201000045554, and 201000081641 (collectively, the “**Lease**”).

Reference: **McInnes Affidavit, at para 14.**

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

- a) General Security Agreement from the Debtor dated December 14, 2010 (the “**GSA**”);
- b) Security Agreement (Chattel Mortgage for other than Inventory and Consumer Goods) from the Debtor dated April 9, 2019;
- c) The Lease;
- d) Guarantee and Postponement of Claim from Glenn dated December 23, 2010, limited to the sum of \$400,000.00 (the “**Glenn Guarantee**”); and,

- e) Guarantee and Postponement of Claim from Andrew dated July 25, 2024, limited to the sum of \$625,000.00 (collectively with the Glenn Guarantee, the “**Guarantees**”).

Reference: McInnes Affidavit, at para 15 and Exhibits “C” and “G” thereto.

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

14. 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 and the Lease. The Lease reserves title to the Lease Equipment to the Bank.

Reference: McInnes Affidavit, at paras 16 to 19, and Exhibit “H” thereto.

The Guarantees

15. The Guarantees are standard form bank guarantees, which are “all accounts”, “continuing” guarantees. The Guarantees provide that the Bank is not required to exhaust its recourse against the Debtor or security held prior to pursuing payment from the Guarantors pursuant to the Guarantees.

Reference: McInnes Affidavit, at paras 20 to 22.

Defaults and Demands

16. The Debtor is insolvent, and have defaulted under the Financing, as set out above, which defaults continue.

Reference: McInnes Affidavit, at para 23.

17. 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**”), all dated March 6, 2026. The Bank also issued demands for payment to the Guarantors, each dated March 6, 2026, in relation to the Guarantees (collectively, the “**Demands**”).

Reference: McInnes Affidavit, at para 24, and Exhibit “I” thereto.

18. On March 17, 2026, the Debtor consented to the Bank retaining Spergel, to act as a consultant to review and report on the debtor’s financial and operational performance.

Reference: McInnes Affidavit, at para 25, and Exhibit “J” thereto.

19. On March 18, 2026, counsel for the Bank advised corporate counsel for the Debtor that the Bank would grant a period of forbearance, while continuing to rely on the Demands, to permit Spergel to assist with the Bank’s review.

Reference: McInnes Affidavit, at para 26.

20. On April 20, 2026, counsel for the Bank advised corporate counsel for the Debtor that the Bank would be making application to the Court to seek the appointment of a Receiver.

Reference: McInnes Affidavit, at paras 27.

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

The Appointment of a Receiver

22. 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 is 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 28 and 29.

23. 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 30 to 32.

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

Reference: McInnes Affidavit, at para 39.

PART III – ISSUES, LAW AND ARGUMENT

Issues

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

- A. Should this Court appoint the Receiver?
- B. Should this Court grant judgments against the Guarantors?

A. This Court should appoint the Receiver

(a) This Court has jurisdiction to appoint the Receiver

26. 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".](#)

27. 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 is located in Ontario. The locality of the Debtor is, therefore, Ontario, and this application is properly brought before the Ontario Superior Court of Justice.

28. 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".](#)

29. 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

30. 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".](#)

31. 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 March 6, 2026, and this application is being heard on a date that is after the date on which any applicable notice periods expired.

32. 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”](#).

33. 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.](#)

34. 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.](#)

35. This relief that is granted more as a matter of course, is especially true in cases in which the circumstances further support such an appointment. That is the case here.

36. With this lower burden, the following additional “just or convenient” factors identified by Justice Farley in *Confederation Life Insurance Co. v. Double Y Holdings Inc.* 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 Insurance Co. v. Double Y Holdings Inc.*, 1991 CarswellOnt 1511 (Ont. S.C.J. (Commercial List)) [“Confederation Life”], paras. 19-24, Tab 1 of the Applicant’s Book of Authorities.**

37. 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.

38. 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 its intention to enforce security, and the applicable notice periods have elapsed.
- c) ***The lender's security is at risk of deteriorating.*** The Bank is concerned that the Debtor does not have:
 - i. Access to the Processing Facility to allow it to ship product;
 - ii. the ability to generate revenue working capital needed to maintain its business and property. If the property of the Debtor 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. 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 experience 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 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 their property.

39. 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

40. 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".

B. This Court should grant Judgment against the Guarantor

41. A proceeding can be commenced by application where it is unlikely that there will be any material facts in dispute requiring a trial.

Rule 14.05(3)(h) of the Rules of Civil Procedure.

42. The Guarantees are standard form bank guarantees, which are “all accounts”, “continuing” guarantees.

Royal Bank of Canada v. Samson Management & Solutions Ltd., 2013 ONCA 313.

43. The Guarantees provide as follows:

*FOR VALUABLE CONSIDERATION, receipt whereof is hereby acknowledged, the undersigned and each of them (if more than one) hereby jointly and severally guarantee(s) payment on demand to Royal Bank of Canada (hereinafter called the “Bank”) of all debts a liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by **Block and Stone Resource Group Inc.** (hereinafter called the “Customer”) to the Bank or remaining unpaid by the customer to the Bank, heretofore or hereafter incurred or arising and whether incurred by or arising from agreement or dealings between the Bank and the customer or by or from any agreement or dealings with any third party by which the Bank may be or become in any manner whatsoever a creditor of the customer or however otherwise incurred or arising anywhere within or outside the country where this guarantee is executed and whether the customer is bound alone or with another or others and whether as principal or surety (such debts and liabilities being hereinafter called the “Liabilities”).*

AND THE UNDERSIGNED AND EACH OF THEM (IF MORE THAN ONE) HEREBY JOINTLY AND SEVERALLY AGREE(S) WITH THE BANK AS FOLLOWS:

...

(2) This guarantee shall be a continuing guarantee and shall cover all the Liabilities, and it shall apply to and secure any ultimate balance due or remaining unpaid to the Bank.

(3) The Bank shall not be bound to exhaust its recourse against the Customer or others or any securities it may at any time hold before being entitled to payment from the undersigned of the Liabilities. The undersigned renounce(s) to all benefits of discussion and division.

Reference: McInnes Affidavit Exhibits “F” and “G” thereto.

44. Demands have been made on the Guarantees and the sums demanded are due thereunder.

45. The Applicant respectfully submits that a lender is not required to exhaust its recourse against a borrower or security held prior to pursuing payment from a guarantor where the contractual terms of the guarantee provide for same.

Reference: *Toronto-Dominion Bank v. Konga*, [2016 ONCA 976](#) at paragraphs 17-25.

46. In light of the foregoing, it is respectfully submitted that this Court should grant Judgments against the Guarantors under the Guarantees.

PART IV – ORDER REQUESTED

47. 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.

48. 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.

49. The Bank also respectfully requests that this Honourable Court grant Judgments against the Guarantors under the Guarantees.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of May, 2026



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SCHEDULE "A"**LIST OF AUTHORITIES**

1. *Elleway Acquisitions Limited v. The Cruise Professionals Limited*, 2013 ONSC 6866 (CanLII);
2. *Confederation Life Insurance Co. v. Double Y Holdings Inc.*, 1991 CarswellOnt 1511 (Ont. S.C.J. (Commercial List));
3. *RMB Australia Holdings Limited v. Seafield Resources Ltd.*, 2014 ONSC 5205 (CanLII);
4. *Swiss Bank Corporation (Canada) v. Odyssey Industries Incorporated* (1995), 30 C.B.R. (3d) 49;
5. *Royal Bank of Canada v. Samson Management & Solutions Ltd.*, 2013 ONCA 313
6. *Toronto-Dominion Bank v. Konga*, 2016 ONCA 976

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.

Rules of Civil Procedure, RRO 1990, Reg 194

Application under Rules

(3) A proceeding may be brought by application where these rules authorize the commencement of a proceeding by application or where the relief claimed is,

...

(h) in respect of any matter where it is unlikely that there will be any material facts in dispute requiring a trial. R.R.O. 1990, Reg. 194, r. 14.05 (3); O. Reg. 396/91, s. 3; O. Reg. 537/18, s. 2.

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FACTUM OF THE APPLICANT

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