

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

PENTAGON LOGISTICS INC.

Respondent

**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 on August 7, 2025 at 9:30 a.m.)**

July 18, 2025

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PART I – NATURE OF THE APPLICATION

1. The Applicant, Royal Bank of Canada (“**RBC**”), makes an application for an Order (the “**Receivership Order**”) appointing msi Spergel inc. (“**Spergel**”) as receiver (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings and properties of Pentagon Logistics Inc. (the “**Debtor**”) acquired for or used in relation to a business carried on by the Debtor.

2. The Debtor owes RBC approximately CAD \$1.1 million plus approximately USD \$300,000. RBC holds security over the assets of the Debtor, including a general security agreement which gives RBC the right to apply to court for the appointment of a receiver.

3. The Debtor has advised RBC that it has no means to pay its debt obligations and that it has ceased operations. RBC made formal demand on the Debtor on May 28, 2025, which demand has not been honoured.

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

5. The Debtor has consented to the appointment of a receiver.

PART II – SUMMARY OF FACTS

6. The Debtor is a privately-owned Ontario corporation, with its registered office located in Mississauga, Ontario. Drazen Bratic (“**Drazen**”) and Marko Bratic are the Debtor’s registered directors and officers. The Debtor operates as a trucking transport and logistics company with operations across North America.

**Affidavit of Ryan Wood sworn July 16, 2025 [Wood Affidavit] at paras. 3-4,
Tab 4 of RBC’s Application Record dated July 18, 2025 [Application
Record].**

7. The Debtor is indebted to RBC in connection with certain credit facilities (the “**Credit Facilities**”) made available by RBC to the Debtor pursuant to and under the following agreements (collectively, the “**Credit Agreements**”):

- (a) the credit agreement dated August 9, 2021 between RBC and the Debtor, as amended by amending agreements dated April 11, 2022 and October 13, 2022 (collectively, the “**Primary Credit Agreement**”);
- (b) the VISA agreement entered into between RBC and the Debtor dated March 9, 2016 (the “**VISA Agreement**”); and
- (c) the master lease agreement entered into between RBC and the Debtor dated February 25, 2016, together with any leasing schedules entered into thereunder;

Wood Affidavit, *supra* at para. 5.

8. As security for its obligations to RBC, the Debtor granted a general security agreement to RBC dated April 5, 2016 (the “**GSA**”), registration in respect of which was duly made pursuant to the *Personal Property Security Act* (Ontario) (the “**PPSA**”).

Wood Affidavit, *supra* at para. 6.

9. The Debtor’s obligations to RBC are also guaranteed by Drazen up to the principal amount of \$2,600,000.00 (the “**Guarantee**”).

Wood Affidavit, *supra* at para. 7 and Exhibit “E”.

10. RBC has a PPSA registration against the Debtor in respect of all collateral classifications other than consumer goods (the “**General RBC Registration**”). In addition to the General RBC Registration, the Debtor’s certified PPSA search results reflect 36 other registration families as of July 7, 2025. Each of the other registrations is limited on its face to certain equipment/motor vehicles, and/or is registered after the General RBC Registration.

Wood Affidavit, *supra* at para. 8 and Exhibit “F”.

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

Wood Affidavit, *supra* at para. 8.

12. Certain of the Credit Facilities are repayable on demand. In addition, over the pendency of the lending relationship between RBC and the Debtor, numerous defaults have occurred, including, without limitation, payment defaults and the occurrence of a material adverse change in the financial condition and/or operation of the Debtor.

Wood Affidavit, *supra* at para. 9.

13. The Debtor advised RBC by way of email correspondence dated May 21, 2025 that it has no means to pay its debt obligations and that it has ceased operations.

Wood Affidavit, *supra* at para. 10 and Exhibit “G”.

14. On May 28, 2025, RBC proceeded to make formal demand on the Debtor and Drazen for payment of the amounts owed to RBC under the Credit Agreements and the Guarantee, as applicable (the “**Demand Letters**”). A notice of intention to enforce security (the “**BIA Notice**”) pursuant to subsection 244(1) of the BIA accompanied the Demand Letter sent to the Debtor.

Wood Affidavit, *supra* at para. 11 and Exhibit “H”.

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

15. As particularized in more detail in the Demand Letters, CAD \$1,102,635.92 plus USD \$303,533.13 was due and owing to RBC for principal and interest as of May 28, 2025, plus accruing interest and costs.

Wood Affidavit, *supra* at para. 12 and Exhibit “H”.

16. The Debtor and Drazen have failed to honour the Demand Letters and have failed to make arrangements satisfactory to RBC for the repayment in full of all amounts owing to RBC. The indebtedness remains outstanding and continues to increase.

Wood Affidavit, *supra* at paras. 13-14.

17. On July 15, 2025, the Debtor executed and delivered to RBC a consent to the appointment of a receiver (the “**Consent to Receiver**”).

Wood Affidavit, *supra* at para. 18 and Exhibit “J”.

18. For the reasons outlined above, including the non-operation of the Debtor and its Consent to Receiver, RBC is of the position 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.

Wood Affidavit, *supra* at para. 15.

PART III – ISSUE

19. The sole 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

20. On a demand loan (as in the cases of the operating credit facility under the Primary Credit Agreement and the credit card facility under the VISA 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*].

21. RBC seeks the appointment of a receiver pursuant to subsection 243(1) of the BIA and section 101 of the *Courts of Justice Act* (Ontario) (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](#).

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

23. 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:

[W]hile 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 Limited v. The Cruise Professionals Limited, [2013 ONSC 6866](#) [Comm. List] at [para. 27](#) [*Elleway Acquisitions*].

24. 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.

iSpan Systems LP, [2023 ONSC 6212](#) [Comm. List] at [para. 31](#) [*iSpan Systems*]

25. 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

26. The test for the appointment of a receiver is met. Pursuant to, without limitation, sections 11 and 13 of the GSA, RBC is contractually entitled to have a receiver appointed over the Debtor upon default. Such default has occurred, and furthermore, the Debtor has consented to the appointment of a receiver. As such, 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 Debtor and RBC.

Wood Affidavit, *supra* at Exhibit “D” and Exhibit “J”.

27. More than a reasonable time for the Debtor to repay RBC has elapsed since the issuance of the Demand Letters and BIA Notice on May 28, 2025.

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

28. 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 Debtor’s estate and the interests of RBC as a secured creditor.

Wood Affidavit, *supra* at paras. 15-17.

29. Spergel is a licensed insolvency trustee and is familiar with the Debtor’s circumstances and arrangements with RBC. Spergel has consented to act as the Receiver should the Court so appoint it.

Wood Affidavit, *supra* at para. 17 and Exhibit “I”.

PART V – RELIEF REQUESTED

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of July, 2025.



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SCHEDULE “A”**AUTHORITIES CITED**Jurisprudence

1. [*Bank of Montreal v. Carnival National Leasing Limited*](#), 2011 ONSC 1007, 74 C.B.R. (5th) 300, [2011] O.J. No. 671 (Gen. Div. [Comm. List]).
2. [*Bank of Nova Scotia v. Freure Village of Clair Creek*](#), 40 C.B.R. (3d) 274, [1996] O.J. No. 5088 (Gen. Div. [Comm. List]).
3. [*Elleway Acquisitions Limited v. The Cruise Professionals Limited*](#), 2013 ONSC 6866 [Comm. List].
4. [*iSpan Systems LP*](#), 2023 ONSC 6212 [Comm. List].

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.

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 - **PENTAGON LOGISTICS INC.**

Applicant

Respondent

Court File No. CV-25-00747526-00CL

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Proceedings commenced at Toronto

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