

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

10337200 CANADA INC. d/b/a OVERLAND EAST TRANSPORTATION

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 January 23, 2026)**

January 21, 2026

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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**”), in substance, appointing msi Spergel inc. (“**Spergel**”) as receiver (in such capacity, the “**Receiver**”), without security, of all the assets, properties and undertakings of 10337200 Canada Inc. d/b/a Overland East Transportation (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, and all proceeds thereof (collectively, the “**Property**”).

PART II – SUMMARY OF FACTS

2. The Debtor is incorporated under the *Canada Business Corporations Act* with a registered head office located at a house in Brampton, Ontario. According to the Debtor’s corporate profile report, Farhan Zafar Butt (“**Butt**”), Aslim Hussain (“**Hussain**”) and Sana Pervaiz (“**Pervaiz**” and, together with Butt and Hussain, the “**Guarantors**”) are “*individuals with significant control*” of the Debtor.

**Affidavit of Manoj Davé sworn January 9, 2026 [Davé Affidavit] at para. 3,
Tab 4 of RBC’s Application Record dated January 9, 2026.**

3. The Debtor was also registered extra-provincially in Nova Scotia under the business name of “Overland East Transportation” until such registration was revoked on July 17, 2023.

Davé Affidavit, supra at para. 3.

4. The Debtor describes itself as a trucking company that provides “*local and international transport services*” from its operating location of 18 Strathearn Avenue, Unit C1, in Brampton, Ontario (the “**Operating Location**”). According to government filings, the Debtor is supposed to have 38 vehicles and 45 drivers.

Davé Affidavit, supra at para. 4.

5. As further detailed below, RBC discovered in late December 2025 that the Debtor had vacated the Operating Location. RBC was not advised of this development by the Debtor or anyone on the Debtor's behalf.

Davé Affidavit, *supra* at para. 5.

Debt and Security

6. The Debtor is indebted to RBC in connection with certain credit facilities made available by RBC to the Debtor (the “**Credit Facilities**”) pursuant to and under the terms of: (i) the credit agreement dated March 22, 2023 (as same may have been amended, replaced, restated or supplemented from time to time, the “**Primary Credit Agreement**”); (ii) the master lease agreement dated March 29, 2022 and the five lease schedules thereunder (collectively, the “**Lease Agreements**”); and (iii) and the Visa agreement dated February 10, 2022 (the “**Visa Agreement**” and, together with the Primary Credit Agreement and the Lease Agreements, the “**Credit Agreements**”).

Davé Affidavit, *supra* at para. 6.

7. As security for its obligations to RBC, the Debtor granted a general security agreement in favour of RBC dated January 20, 2022 (the “**GSA**”), registration in respect of which was duly made pursuant to the *Personal Property Security Act* (Ontario) (the “**PPSA**”).

Davé Affidavit, *supra* at para. 7.

8. The Guarantors also jointly and severally guaranteed the Debtor's obligations to RBC under the Credit Agreements in the principal amount of \$3,000,000, pursuant to a written guarantee and postponement of claim agreement dated March 24, 2023 (the “**Guarantee**”).

Davé Affidavit, *supra* at para. 8.

9. RBC is the first-to-register general secured creditor of the Debtor. All registrants under the PPSA are being served contemporaneously with this application.

Davé Affidavit, *supra* at para. 9.

Default, Delay, Demand and Disappearance

10. All the non-leasing Credit Facilities are repayable on demand. Prior to the Debtor's disappearance from the Operating Location, there were also defaults under the Credit Agreements, including, without limitation, payment defaults.

Davé Affidavit, *supra* at para. 10.

11. On September 8, 2025, RBC wrote to the Debtor and advised that it wished to bring its relationship with the Debtor to an end, and requested that the Debtor obtain a replacement lender by November 8, 2025. No substantive response to RBC's letter was received during the two-month notice period of September 8, 2025 to November 8, 2025.

Davé Affidavit, *supra* at paras. 11-12.

12. On November 10, 2025, the Debtor's counsel delivered two letters to RBC. The first letter advised of the Debtor's counsel having been retained. The second letter advised that the Debtor: "*continues to work toward securing alternate financing; however, due to circumstances beyond [the Debtor's] control, including delays in finalizing terms with the incoming lender, additional time is required to ensure that the transition is completed in a financially responsible manner without creating unnecessary operational disruption.*"

Davé Affidavit, *supra* at para. 13.

13. By early December 2025, the Debtor had still not closed its purported replacement financing or provided any update to RBC regarding such efforts (aside from verbal assurances that such efforts were moving forward).

Davé Affidavit, *supra* at para. 14.

14. RBC proceeded on December 3, 2025 to make formal written demand on the Debtor and the Guarantors for payment of the amounts owed to RBC under the Credit Agreements and the Guarantee, as applicable (the “**Demand Letters**”). Accompanying the Demand Letter to the Debtor was a notice of intention to enforce security (the “**BIA Notice**”) pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”).

Davé Affidavit, *supra* at para. 15.

15. As at December 3, 2025, and as set out in the Demand Letters and the BIA Notice, \$3,357,403.88 was owing by the Debtor to RBC for principal and interest in respect of the Credit Facilities (together with accruing interest and costs and expenses, the “**Indebtedness**”).

Davé Affidavit, *supra* at para. 16.

16. Despite demand, the Indebtedness was not repaid (nor was any response received whatsoever). Deposit activity in the Debtor’s bank accounts with RBC also ceased.

Davé Affidavit, *supra* at para. 17.

17. On December 22, 2025, RBC’s affiant attended at the Operating Location and observed that the Debtor’s unit appeared to be vacant and under renovation. RBC’s affiant did not observe any vehicles with Debtor signage in or around the Operating Location.

Davé Affidavit, *supra* at para. 18.

18. RBC's affiant then conducted an online search for the Operating Location, and discovered a rental listing advising the Operating Location was "*available for immediate lease.*" The rental listing had been posted for 87 days.

Davé Affidavit, *supra* at para. 18.

19. Neither the Debtor (nor anyone on its behalf) advised RBC of the Debtor's intention to depart from the Operating Location. Indeed, as set out in the second letter from the Debtor's counsel of November 10, 2025, the Debtor was purportedly taking steps "*to ensure that the transition is completed in a financially responsible manner without creating unnecessary operational disruption.*"

Davé Affidavit, *supra* at para. 19.

20. At this stage, RBC considers the only reasonable and prudent path forward is to take any and all steps necessary to protect the Property on an urgent basis by having a receiver appointed, and it is within RBC's rights under its security to do so.

Davé Affidavit, *supra* at para. 20.

PART III – ISSUE

21. 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

22. On a demand loan, “*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 Ltd., 2011 ONSC 1007, 74 C.B.R. (5th) 300, [2011] O.J. No. 671 at paras. 21-22 (Gen. Div. [Comm. List]) [Carnival Leasing] (CanLII: <https://canlii.ca/t/2fqm3>).

23. 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 where such appointment is “*just or convenient.*”

BIA, [s 243\(1\)](#); CJA, [s 101](#).

24. 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 (1996), 40 C.B.R. (3d) 274, [1996] O.J. No. 5088 at para. 10 (Gen. Div. [Comm. List]) [Freure Village] (CanLII: <http://canlii.ca/t/1wbtz>).

25. When the rights of the secured creditor under its security includes a specific right to 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*] (CanLII: <http://canlii.ca/t/g22q3>).

26. 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*] (CanLII: <https://canlii.ca/t/k0x62>).

27. It is not necessary for the applicant to establish irreparable harm or urgency, but it is respectfully submitted that such urgency has been established in the present case, given (most notably) the Debtor having vacated its Operating Location without advising RBC of same, and the Debtor having ceased making deposits into its bank account with RBC.

Carnival Leasing, *supra* at paras. 24 and 28-29.

Davé Affidavit, *supra* at paras. 17-19.

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 RBC's notice letter on September 8, 2025 and the formal demand that was issued on December 3, 2025. Indeed, by all accounts, the Debtor used the intervening three-month period to shut-down its operations, which the Debtor attempted to conceal from RBC.

Davé Affidavit, *supra* at paras. 11-12, 15 and 18-19.

***Carnival Leasing, supra* at para. 13.**

29. RBC submits that the test for the appointment of a receiver is met. Pursuant to subsection 13(a) of the GSA, RBC is contractually entitled to have a receiver appointed over the Debtor 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 Debtor and RBC.

Davé Affidavit, *supra* at Exhibit "F" (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 urgent protection of the Debtor's estate and the interests of RBC as a secured creditor.

Davé Affidavit, *supra* at para. 21.

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

Davé Affidavit, *supra* at para. 20.

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

Davé Affidavit, at paras. 23-24.

PART V – RELIEF REQUESTED

33. In light of the foregoing, it is respectfully submitted that this Court should grant the Receivership Order on an urgent basis.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of January, 2026.

Per: 
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SCHEDULE “A”**AUTHORITIES CITED****Jurisprudence**

1. *Bank of Montreal v. Carnival National Leasing Ltd.*, 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 on Clair Creek* (1996), 40 C.B.R. (3d) 274, [1996] O.J. No. 5088 (Gen. Div. [Comm. List]).
3. *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866.
4. *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.

Courts of Justice Act, R.S.O. 1990, c. C-34, as amended, ss. 101 and 103

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.

Certificate of pending litigation

103 (1) The commencement of a proceeding in which an interest in land is in question is not notice of the proceeding to a person who is not a party until a certificate of pending litigation is issued by the court and the certificate is registered in the proper land registry office under subsection (2). R.S.O. 1990, c. C.43, s. 103 (1).

...

Order discharging certificate

(6) The court may make an order discharging a certificate,

- (a) where the party at whose instance it was issued,
 - (i) claims a sum of money in place of or as an alternative to the interest in the land claimed,
 - (ii) does not have a reasonable claim to the interest in the land claimed, or
 - (iii) does not prosecute the proceeding with reasonable diligence;
- (b) where the interests of the party at whose instance it was issued can be adequately protected by another form of security; or
- (c) on any other ground that is considered just,
and the court may, in making the order, impose such terms as to the giving of security or otherwise as the court considers just. R.S.O. 1990, c. C.43, s. 103 (6).

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