

Court File No. CV-26-00000686-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ROYAL BANK OF CANADA

Applicant

-and-

1937752 ONTARIO LIMITED., 1000582272 ONTARIO INC., and 1000060338
ONTARIO INC.

Respondents

FACTUM OF THE APPLICANT

(Application Returnable March 26, 2026)

March 23, 2026

HARRISON PENSA LLP

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Royal Bank of Canada

TO: Service List

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PART I – THE APPLICATION

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., as Receiver (“**SPERGEL**” or the “**Receiver**”), without security, of all of the assets, undertakings and properties of the Respondents, 1937752 Ontario Limited (“**752 Ontario**”), 1000582272 Ontario Inc. (“**272 Ontario**”), and 1000060338 Ontario Inc. (“**338 Ontario**” and collectively the “**Debtors**”), acquired for, or used in relation to the business carried on by the Debtors, including the Real Property (as defined below), located in Burlington, Ontario;
- 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 Debtors pursuant to the GSAs and the Mortgage;
 - b) The Debtors defaulted under the terms of the Letter Agreement,
 - c) The Debtors have failed to cure the Defaults, and the Demands issued by the Bank have expired;
 - d) In the face of the expired Demands, the Debtors are insolvent. No further terms of credit nor forbearance is available to the Debtors from the Bank;
 - e) The Bank's Security provides the Bank with the right to appoint a Receiver over all property of the Debtors including the Real Property, as a result of the Defaults;
 - f) It is necessary for the protection of the Debtors' estate that a Receiver be appointed;
 - g) A Receiver will also be required to preserve and maintain the property and Real Property of the Debtors and complete the orderly sale of same, and to ensure that the proceeds of any such sale are applied to the Debtors' obligations. In relation to any such sale, the Appointment of Receiver is also necessary to deal with the subsequent claims to the proceeds;
 - h) The Bank has provided substantial time for the Debtors to complete a refinancing or sale of the Real Property, and the Debtors have been unable to do so;

- i) As detailed below, the Bank's security is at immediate risk as a result of the following:
- i. 752 Ontario has ceased operations;
 - ii. the Bank has no visibility on the Real Property and is unaware if same is being properly maintained;
 - iii. 252 Ontario continues to operate as a pharmacy and such operation in the face of the Debtors' insolvency may impair the Bank's security;
 - iv. There are substantial arrears owing to the Bank by each of the Debtors'.

PART II – FACTS/OVERVIEW

2. 752 Ontario, is a company incorporated pursuant to the laws of the Province of Ontario, with its registered office located in Milton, Ontario.

Reference: Affidavit of Michael Foster, sworn March 16, 2026, at para 2 and Exhibit "A" thereto (the "Foster Affidavit").

3. 752 Ontario formerly operated as a pharmacy and has ceased operations.

Reference: Foster Affidavit at para 3 thereto.

4. 272 Ontario is a company incorporated pursuant to the law of the Province of Ontario, with its registered office located in Milton, Ontario.

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

5. 272 Ontario operates as a pharmacy from the Real Property (as defined below) under the name Realm Pharmacy.

Reference: Foster Affidavit at para 5 thereto.

6. 338 Ontario is a company incorporated pursuant to the law of the Province of Ontario, with its registered office located in Burlington, Ontario.

Reference: Foster Affidavit at para 6 and Exhibit "C" thereto.

7. 338 Ontario, owns real property, municipally known as Unit 30 – 3200 Dakota Common, Burlington, Ontario, and legally described as:

UNIT 30, LEVEL 1, HALTON STANDARD CONDOMINIUM PLAN NO. 756 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN HR1959589; TOGETHER WITH AN EASEMENT OVER PARTS 57, 74 & 80 20R22221 AS IN HR1983883; CITY OF BURLINGTON (BEING ALL OF PIN 26058-0030)

UNIT 34, LEVEL B, HALTON STANDARD CONDOMINIUM PLAN NO. 756 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN HR1959589; (BEING ALL OF PIN 26058-0573)

UNIT 35, LEVEL B, HALTON STANDARD CONDOMINIUM PLAN NO. 756 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN HR1959589; (BEING ALL OF PIN 26058-0574)

UNIT 12, LEVEL 1, HALTON STANDARD CONDOMINIUM PLAN NO. 756 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN HR1959589; (BEING ALL OF PIN 26058-0551)

UNIT 74, LEVEL B, HALTON STANDARD CONDOMINIUM PLAN NO. 756 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN HR1959589; (BEING ALL OF PIN 26058-0613)

UNIT 75, LEVEL B, HALTON STANDARD CONDOMINIUM PLAN NO. 756 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN HR1959589; (BEING ALL OF PIN 26058-0614)

UNIT 97, LEVEL B, HALTON STANDARD CONDOMINIUM PLAN NO. 756 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN HR1959589; (BEING ALL OF PIN 26058-0636)

UNIT 107, LEVEL B, HALTON STANDARD CONDOMINIUM PLAN NO. 756 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN HR1959589; (BEING ALL OF PIN 26058-0646)

(the “**Real Property**”)

Reference: Foster Affidavit at para 7 and Exhibit “D”.

8. Rohit Sharma (“**Rohit**”) and Rohini Sharma (“**Rohini**”) are principals of the Debtors and are guarantors of the obligations owing by the Debtors to the Bank.

Reference: Foster Affidavit at para 8 thereto.

9. The Debtors are insolvent, and are 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) 752 Ontario ceasing operations constituting a material adverse change;
- c) Unauthorized overdraft activity on accounts held by 752 Ontario; and,
- d) Arrears owing to suppliers.

(collectively, the “**Defaults**”).

Reference: Foster Affidavit at para 9.

The Obligations to the Bank and Security Held

338 Ontario

10. As of March 5, 2026, 338 Ontario was indebted to the Bank in the amount of \$2,379,789.65, plus accruing interest and the Bank's continuing costs of enforcement including legal and professional costs (the "**338 Ontario Obligations**"), in respect of certain financing advanced to 338 Ontario pursuant to the terms of a Letter Agreement dated June 17, 2025, (the "**338 Ontario Letter Agreement**").

Reference: Foster Affidavit, at para 11 and Exhibit "E".

11. The credit facilities established by the 338 Ontario Letter Agreement is a non- revolving term facility in the amount of \$2,340,000.00, upon which the sum of \$2,379,789.65 was owing as at March 5, 2026 (the "**338 Ontario Financing**").

Reference: Foster Affidavit, at para 12.

12. The 338 Ontario Financing is secured by, *inter alia*, the following:

- a) General Security Agreement from 338 Ontario dated October 6, 2023 (the "**338 Ontario GSA**").
- b) Guarantee and Postponement of Claim from 752 Ontario dated June 20, 2025, limited in sum of \$2,340,000.00 (the "**752 Ontario Guarantee ISO 338 Ontario**"), supported by a General Security Agreement from 752 Ontario dated October 6, 2023 (the "**752 Ontario GSA**")
- c) Guarantee and Postponement of Claim from 272 Ontario dated June 20, 2025, limited in sum of \$2,340,000.00 (the "**272 Ontario Guarantee ISO 338 Ontario**"), supported by a General Security Agreement from 272 Ontario dated October 6, 2023 (the "**272 Ontario GSA**" collectively with 338 Ontario GSA and 752 Ontario GSA, the "**GSA's**")

- d) Guarantee and Postponement of Claim from Rohit and Rohini dated June 20, 2025, limited to the sum of \$2,340,000.00 (the “**Personal Guarantee ISO 338 Ontario**”).
- e) Charge/Mortgage from 338 Ontario, in the principal sum of \$2,340,000.00, receipted as instrument number HR2112771 on June 25, 2025, over the Real Property (the “**Mortgage**”), as governed by Standard Charge Terms No. 20015 (the “**Standard Charge Terms**”).
- f) Assignment of Rents from 338 Ontario, receipted as instrument number HR2112773 on June 25, 2025 (the “**Assignment of Rents**”).

(collectively, the “**338 Ontario Security**”).

Reference: Foster Affidavit, at para 13 and Exhibit “F”- “N” thereto.

272 Ontario

13. As of March 5, 2026, 272 Ontario was indebted to the Bank in the amount of \$508,244.84 in respect of certain financing, plus accruing interest and the Bank’s continuing costs of enforcement including legal and professional costs (the “**272 Ontario Obligations**”), advanced pursuant to the terms of a Royal Bank of Canada Credit Agreement dated August 15, 2023 and amended by Amending Agreements dated June 17, 2025 and November 10, 2025 (the “**272 Ontario Letter Agreement**”).

Reference: Foster Affidavit, at para 14 and Exhibit “O”.

14. The credit facilities established by the 272 Ontario Letter Agreement are:

- a) Revolving Demand Facility: with a maximum credit limit of \$100,000, on which the sum of \$100,103.77 was owing as at March 5, 2026;
- b) Non-Revolving Term Facility: with a maximum limit of \$400,000.00, on which the sum of \$383,715.60 was owing as at March 5, 2026;

- c) Credit Card Facility: with a maximum credit limit of \$20,000.00, on which the sum of \$24,425.47 was owing as at March 5, 2026;

(collectively, the “**272 Ontario Financing**”).

Reference: Foster Affidavit, at para 15.

15. The 272 Ontario Financing is secured by, *inter alia*, the following:

- a) The 272 Ontario GSA.
- b) Guarantee and Postponement of Claim from 752 Ontario dated October 6, 2023, limited to the sum of \$550,000 (the “**752 Ontario Guarantee ISO 272 Ontario**”), supported by the 752 Ontario GSA.
- c) Guarantee and Postponement of Claim from 338 Ontario dated October 6, 2023, limited to the sum of \$550,000 (the “**338 Ontario Guarantee ISO 272 Ontario**”), supported by the 338 Ontario GSA, the Mortgage, and the Assignment of Rents
- d) Guarantee and Postponement of Claim from Rohit and Rohini dated October 6, 2023, limited to the sum of \$550,000 (the “**Personal Guarantee ISO 272 Ontario**”).

(collectively, the “**272 Ontario Security**”).

Reference: Foster Affidavit, at para 16 and Exhibits “P”-“R” thereto.

752 Ontario

16. As of March 5, 2026, 752 Ontario was indebted to the Bank in the amount of \$135,968.25 in respect of certain financing, plus accruing interest and the Bank’s continuing costs of enforcement including legal and professional costs (the “**752 Ontario Obligations**” collectively with 338 Ontario Obligations and 272 Ontario Obligations, the “**Obligations**”), advanced pursuant to the terms of a Royal Bank of Canada Credit Agreement dated June 17, 2025 (the “**752 Ontario Letter Agreement**” and collectively with the 272 Ontario Letter Agreement and the 338 Ontario Letter Agreement, the “**Letter Agreement**”).

Reference: Foster Affidavit, at para 17 and Exhibit “S”.

17. The credit facilities established by the 752 Ontario Letter Agreement are:

- a) Revolving Demand Facility: with a maximum credit limit of \$100,258.23, on which the sum of \$101,249.12 was owing as of March 5, 2026;
- b) Credit Card Facility: with a maximum credit limit of \$20,000.00, on which the sum of \$20,030.87 was owing as of March 5, 2026;

(the “**752 Ontario Financing**” and collectively with the 338 Ontario Financing and the 272 Ontario Financing, the “**Financing**”).

Reference: Foster Affidavit, at para 18.

18. The 752 Ontario Financing is secured by, *inter alia*, the following:

- a) The 752 Ontario GSA.
- b) Security Agreement (Chattel Mortgage) from 752 Ontario, dated October 6, 2023, constituting a first ranking and specific interest in equipment (the “**752 Ontario Chattel Mortgage**”).
- c) Guarantee and Postponement of Claim from 272 Ontario dated October 6, 2023, limited to the sum of \$970,000 (the “**272 Ontario Guarantee ISO 752 Ontario**”), supported by the 272 Ontario GSA.
- d) Guarantee and Postponement of Claim from 338 Ontario dated October 6, 2023, limited to the sum of \$970,000 (the “**338 Ontario Guarantee ISO 752 Ontario**”), supported by the 338 Ontario GSA, the Mortgage, and the Assignment of Rents.
- e) Guarantee and Postponement of Claim from Rohit and Rohini dated October 6, 2023, limited to the sum of \$970,000 (the “**Personal Guarantee ISO 752 Ontario**”).

(the “**752 Security**” and collectively with the 272 Ontario Security and the 338 Ontario Security, the “**Security**”).

Reference: Foster Affidavit, at para 19 and Exhibits “T”- “W” thereto.

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

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

Reference: Foster Affidavit, at paras 20-22, and Exhibit “X”-“Z” thereto.

The Bank’s Security Interest in the Real Property

20. The Bank’s interest in the Real Property is secured by the Mortgage, which constitutes a first charge on the Real Property..

Reference: Foster Affidavit, at paras 13, 23 – 25, and Exhibit “M” thereto.

Defaults and Demands

21. The Debtors are insolvent, and have defaulted under the Financing, as set out above.

Reference: Foster Affidavit, at para 26.

22. As a result of the continuing Defaults, the Bank did deliver demands for payment and Notices of Intention to Enforce Security to the Debtors, all dated February 11, 2026, pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”). The Bank also issued demands for payment to the guarantors of the Debtors, dated February 11, 2026 (collectively, the “**Demands**”).

Reference: Foster Affidavit, at para 27 and Exhibit “AA”.

23. On February 18, 2026, counsel for the Debtors contacted counsel for the Bank to negotiate potential terms of forbearance. On February 19, 2026, counsel for the Bank emailed counsel

for the Debtors to request certain conditions be fulfilled prior to considering terms of forbearance.

Reference: Foster Affidavit, at para 28.

24. On February 26, 2026, counsel for the Bank emailed counsel for the Debtor to advise that the Bank was terminating credit, the Bank would permit banking services on day-to-day basis to March 27, 2026, and that the Bank was moving forward with enforcement.

Reference: Foster Affidavit, at para 30.

25. On February 26, 2026, counsel for the Debtors emailed counsel for the Bank to provide certain requested reporting and request additional forbearance. Counsel for the Bank responded to advise that the Bank would be proceeding with an application to appoint a receiver.

Reference: Foster Affidavit, at para 31, and Exhibit “BB” thereto.

26. All statutory notice periods in relation to the Demands have expired, and the Debtors and the guarantor of the Debtors have failed to repay the Obligations due, despite the Demands.

Reference: Foster Affidavit, at para 32.

The Appointment of a Receiver

27. 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 Debtors are in default of the Financing. The Bank is in a position to appoint a receiver over the assets and property of the Debtors, including the Real Property as secured by the Bank’s Security, pursuant to section 243 of the BIA.

Reference: Foster Affidavit, at paras 33-34.

28. The GSAs and Mortgage grant the Bank the right to appoint a Receiver over the Real Property and all personal property of the Debtors, as a result of the Defaults of the Debtors under the Financing.

Reference: Foster Affidavit, at paras 35 to 39.

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

Reference: Foster Affidavit, at para 49.

PART III – ISSUES, LAW AND ARGUMENT

Issues

30. 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

31. 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”](#).

32. The Debtors are Ontario corporations with their registered offices in Ontario. The business carried on by the Debtors that are subject to the proposed receivership is located in Ontario. The locality of the Debtors is, therefore, Ontario, and this application is properly brought before the Ontario Superior Court of Justice.

33. 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"](#).

34. 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

35. 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"](#).

36. The Applicant sent the Demands together with its Notice of Intention to Enforce Security pursuant to such section of the BIA, to the Debtors on February 11, 2026, and this application is being heard on a date that is after the date on which any applicable notice periods expired.

37. 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"](#).

38. 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.](#)

39. 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.](#)

40. 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.

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

41. 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.**

42. In the present case, the Debtors are 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.

Confederation Life, para. 20.

43. Thus, with the Applicant's contractual entitlement to appoint a receiver and the existence of 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.

44. 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 para 28, Tab 2 of the Applicant's Book of Authorities.

45. 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 Debtors contractually agreed to the appointment of a receiver.*** The loan agreements and the related transaction documents among the Applicant and the

- Debtors 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 defaults 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 Debtors 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 Debtors do not have the working capital needed to maintain its property. If the property of the Debtors deteriorates, the realizable value of the Security will diminish as a result.
- d) ***The Debtors' business needs to be stabilized and preserved.*** The Debtors' liquidity crisis will continue to worsen in the absence of action. A receiver will be able to provide stability and transparency, and take the necessary steps to preserve the Security, including conducting an orderly sale process that will generate recoveries for creditors. If the Debtors' business experiences further disarray, or the Security is not preserved, there will be further negative consequences.
- e) ***The Applicant has lost confidence in the Debtors' management.*** The Debtors have 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 Debtors due to the events described in the Foster Affidavit.

- f) ***Position and interests of other Creditors.*** 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 Debtors and their property.

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

(c) The Terms of the Receivership Order are Appropriate

47. 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

48. 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 Debtors and the interests of the Bank and other stakeholders.

49. 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 23rd day of March, 2026



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Solicitors for the Applicant,
Royal Bank of Canada

SCHEDULE "A"**LIST OF AUTHORITIES**

1. *Confederation Life Insurance Co. v. Double Y Holdings Inc.*, 1991 CarswellOnt 1511 (Ont. S.C.J. (Commercial List))
2. *Elleway Acquisitions Limited v. The Cruise Professionals Limited*, 2013 ONSC 6866 (CanLII)
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

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.

locality of a debtor means the principal place

(a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,

(b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or

(c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated; (localité)

trustee or **licensed trustee** means a person who is licensed or appointed under this Act. (*syndic* ou *syndic autorisé*)

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.

1937752 ONTARIO LIMITED., et al.

Applicant

Respondents

Court File No. CV-26-00000686-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
MILTON, ONTARIO

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