

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

**FALCON XPRESS TRANSPORTATION GROUP INC., FALCON INVESTMENT
GROUP INC., 6086 MAYFIELD INC. and 2593548 ONTARIO INC.**

Respondents

**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 April 8, 2025)**

March 25, 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**”), in substance, appointing msi Spergel inc. (“**Spergel**”) as receiver (in such capacity, the “**Receiver**”), without security, of all the assets, properties and undertakings of Falcon Xpress Transportation Group Inc. (“**Transportation**”), Falcon Investment Group Inc. (“**Investment**”), 6086 Mayfield Inc. (“**Mayfield**”) and 2593548 Ontario Inc. (“**259**” and, together with Transportation, Investment and Mayfield, the “**Debtors**”), acquired for, or used in relation to a business carried on by the Debtors and all proceeds thereof (collectively, the “**Property**”), including, without limitation, the real property municipally known as 6086 Mayfield Road, Caledon, Ontario and legally described by PIN 14348-0627 (LT) (the “**Real Property**”).

2. The Debtors collectively owe RBC more than \$15 million. RBC holds security over the assets of the Debtors, including general security agreements and a charge over the Real Property, which give RBC the right to apply to court for the appointment of a receiver.

3. On January 28, 2025, RBC and the Debtors entered a forbearance agreement dated January 21, 2025 (the “**Forbearance Agreement**”), which contains consents to receivership from each of the Debtors (the “**Consents to Receivership**”).

4. The Debtors have breached the Forbearance Agreement, and the Consents to Receivership have become active. RBC still waited several additional weeks before commencing this receivership application to give the Debtors two opportunities to close a purported financing to repay RBC, which purported financing has not closed.

5. It is respectfully submitted that it is just and convenient for the Receiver to be appointed.

PART II – SUMMARY OF FACTS

6. Transportation is incorporated under the laws of Canada and extra-provincially registered in Ontario and British Columbia. Each of Investment, Mayfield and 259 is incorporated under the laws of Ontario, and Mayfield is the registered owner of the Real Property. Jarnail Singh Sidhu is the sole director of each of the Debtors.

Affidavit of Mark Arnold sworn March 18, 2025 [Arnold Affidavit] at paras. 3-4, Tab 4 of RBC's Application Record dated March 20, 2025 [Application Record].

7. The Debtors are indebted to RBC in connection with certain credit facilities (the “**Credit Facilities**”) made available to them pursuant to and under the terms of the following credit agreements:

- (a) the credit agreement dated July 29, 2021 (as amended on August 13, 2021 and July 11, 2024), the VISA agreement dated September 13, 2021 and the master lease agreement dated October 15, 2020 (and the leasing schedules thereunder), all between RBC and Transportation (collectively, the “**Transportation Credit Agreements**”);
- (b) the credit agreement dated July 28, 2021 (as amended on November 15, 2024) and the VISA agreement dated September 17, 2021, both between RBC and Mayfield (collectively, the “**Mayfield Credit Agreements**”); and
- (c) the VISA agreement dated August 23, 2021 between RBC and Investment (the “**Investment Credit Agreement**” and, together with the Transportation Credit Agreements and the Mayfield Credit Agreements, the “**Credit Agreements**”).

Arnold Affidavit, *supra* at paras. 6-8.

8. In addition, the following corporate cross-guarantees were granted by the Debtors in favour of RBC (the “**Guarantees**”):

- (a) the guarantee in the amount of \$5,600,000 dated August 11, 2021 granted by Investment regarding the obligations of Transportation;
- (b) the guarantee in the amount of \$5,600,000 dated August 11, 2021 granted by 259 regarding the obligations of Transportation;
- (c) the guarantee in the amount of \$5,600,000 dated August 11, 2021 granted by Mayfield regarding the obligations of Transportation;
- (d) the guarantee in the amount of \$12,500,000 dated August 11, 2021 granted by Investment regarding the obligations of Mayfield;
- (e) the guarantee in the amount of \$12,500,000 dated August 11, 2021 granted by 259 regarding the obligations of Mayfield; and
- (f) the guarantee in the amount of \$12,500,000 dated August 11, 2021 granted by Transportation regarding the obligations of Mayfield.

Arnold Affidavit, *supra* at para. 9.

9. To secure their respective obligations to RBC, the Debtors provided security to RBC (the “**Security**”), including, without limitation:

- (a) in the case of Mayfield:
 - (i) the first charge/mortgage in the principal amount of \$18,100,000 in respect of the Real Property, which was registered on title as Instrument No. PR3902941 on September 1, 2021 (the “**Mortgage**”);

- (ii) the assignment of rents in respect of the Real Property, which was registered on title as Instrument No. PR3902979 on September 1, 2021; and
 - (iii) the general security agreement dated August 11, 2021 (the “**Mayfield GSA**”), registration in respect of which was made under the *Personal Property Security Act* (Ontario) (the “**PPSA**”); and
- (b) in the case of Transportation, Investment and 259, the general security agreements also dated August 11, 2021 (together with the Mayfield GSA, the “**GSAs**”), registration in respect of which was also made under the PPSA.

Arnold Affidavit, *supra* at para. 10.

10. The parcel registers for the Real Property reflect that RBC is the only secured creditor with a charge registered over the Real Property.

Arnold Affidavit, *supra* at para. 17.

11. RBC also has a registered security interest against each of the Debtors under the PPSA covering “Inventory”, “Equipment”, “Accounts”, “Other” and “Motor Vehicle” (in each case, the “**RBC General Registration**”).

Arnold Affidavit, *supra* at para. 11.

12. The PPSA search results for Mayfield reflect that RBC is its only registered secured creditor under the PPSA.

Arnold Affidavit, *supra* at para. 12.

13. The PPSA search results for Transportation and Investment reflect registrations made by other creditors, all of which are limited to certain collateral and/or were registered after the RBC General Registration. One of these other registrations is by the Crown against Transportation.

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

14. The PPSA search results for 259 reflect 65 different registration families. Aside from the RBC General Registration against 259, almost all the other PPSA registrations are limited to certain collateral and/or were registered after the RBC General Registration. However, Mercedes-Benz Financial Services Canada Corporation and Daimler Truck Financial have a registration against 259 that covers “Inventory”, “Equipment”, “Accounts”, “Other” and “Motor Vehicle”, and was registered before the RBC General Registration. All creditors registered against the Debtors under the PPSA have been served with a copy of the within application.

Arnold Affidavit, *supra* at para. 15.

Affidavit of Service of Calvin Horsten sworn March 24, 2025.

Default, Demand and Unsuccessful Forbearance

15. Certain of the Credit Facilities are repayable on demand.

Arnold Affidavit, *supra* at para. 18.

16. In addition, one or more Event of Default (as defined in the Credit Agreements) has also occurred, including, without limitation, the failure by the Debtors to perform any obligation they may have under any agreement with RBC, and the nonpayment when due of any principal or interest forming part of the outstanding indebtedness to RBC.

Arnold Affidavit, *supra* at para. 18.

17. As a result of the foregoing, on December 10, 2024, RBC made formal written demand on the Debtors for payment of the amounts owed to RBC under the Credit Agreements and guaranteed under the Guarantees (collectively, the “**Demand Letters**”). Notices of intention to enforce security (the “**BIA Notices**”) pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) accompanied the Demand Letters sent to the Debtors.

Arnold Affidavit, *supra* at paras. 18-19.

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

18. As particularized in the Demand Letters (and the eventual Forbearance Agreement), the following amounts were owing under the Credit Agreements to RBC for principal and interest as of December 6, 2024 (plus accruing interest and costs) (collectively, the “**Indebtedness**”):

- (a) \$12,051,566.53 under the Mayfield Credit Agreements;
- (b) \$5,077,987.60 plus USD\$20,555.06 under the Transportation Credit Agreements; and
- (c) \$17,505.37 under the Investment Credit Agreement.

Arnold Affidavit, *supra* at para. 23.

19. Following issuance of the Demand Letters and the BIA Notices, the Debtors indicated (through their original counsel) that they were “*trying to repay the mortgage along with the other facilities before January 31.*”

Arnold Affidavit, *supra* at para. 20.

20. However, upon being presented with a forbearance agreement reflecting this January 31 date, the Debtors requested the forbearance period be extended to April 30, 2025.

Arnold Affidavit, *supra* at para. 20.

21. RBC agreed to extend the ordinary course forbearance period from January 31, 2025 to April 30, 2025, provided that certain milestones occur in the interim, including, without limitation, the payment of certain interim amounts during the forbearance period to: (i) pay down the Indebtedness; and (ii) pay all amounts ranking in priority thereto (the “**Priority Amounts**”).

Arnold Affidavit, *supra* at para. 21.

22. After lengthy negotiations, including, without limitation, a request by the Debtors’ new counsel that the deadlines for repayment of the various Priority Amounts be extended (which request RBC accommodated), the parties entered into the Forbearance Agreement on January 28, 2025.

Arnold Affidavit, *supra* at paras. 21-22.

23. The Forbearance Agreement includes the following terms (amongst others):
- (a) a forbearance period ending on the earlier of April 30, 2025 and an Intervening Event (as defined in the Forbearance Agreement) (the “**Forbearance Period**”);
 - (b) the Debtors acknowledging the Indebtedness, existing defaults and demands;
 - (c) certain interim payment obligations during the Forbearance Period;
 - (d) a requirement that Mayfield provide evidence to RBC that Mayfield has paid its property taxes in full by February 11, 2025;
 - (e) a requirement that the Debtors provide evidence to RBC of all other Priority Amounts having been paid in full by March 13, 2025; and
 - (f) executed Consents to Receivership from each of the Debtors to be used in the event of the expiration or termination of the Forbearance Period.

Arnold Affidavit, *supra* at para. 22.

24. Following the February 11, 2025 deadline in the Forbearance Agreement by which Mayfield was to have paid all its property taxes, the following occurs:

- (a) RBC asks for written evidence that the February 11, 2025 deadline has been met;
- (b) the Debtors indicate that approximately \$80,000 of property taxes remain owing;
- (c) contrary to the Debtors' representations, RBC independently obtains an updated property tax certificate dated February 13, 2025, which reflects approximately \$123,000 outstanding for property taxes and another \$27,000 due shortly thereafter;
- (d) notwithstanding the Intervening Events regarding property taxes and the Debtors' representations thereof, the Debtors repeatedly assure RBC that the Debtors' refinancing to repay RBC will close by no later than March 7, 2025;
- (e) RBC advises the Debtors that they may have until 12:01 a.m. on March 8, 2025 to payout RBC (absent a further Intervening Event in the interim), failing which RBC would terminate the Forbearance Period;
- (f) RBC advises the Debtors on March 4, 2025 that further interim Intervening Events have occurred, including, without limitation: (1) the Debtors' failure to make the \$95,000 payment that was due to RBC under the Forbearance Agreement on March 3, 2025; and (2) Transportation having borrowed in excess of its credit limit;
- (g) RBC confirms to the Debtors on March 4, 2025 that the Forbearance Period has been terminated, the Consents to Receivership have been released from escrow and instructions have been given to proceed with a receivership application; and
- (h) the Debtors advise on March 5, 2025 that the "*payout date of March 17 is still in effect,*" and then, after the March 17 date passes, that the financing "*is still in play.*"

Arnold Affidavit, *supra* at para. 24.

25. As of the time of swearing the Arnold Affidavit in support of the receivership application on March 18, 2025, and as of the time of serving this factum on March 25, 2025:

- (a) over \$15 million remains owing to RBC; plus
- (b) several hundred thousand dollars remain owing for property taxes and Canada Revenue Agency arrears. In this regard, the Debtors have failed to provide objective supporting evidence to demonstrate the amounts of these Priority Amounts, much less reduce these Priority Amounts to zero.

Arnold Affidavit, *supra* at para. 25.

26. Based on the foregoing, RBC has lost confidence in the Debtors' management to honour the Debtors' commitments, including, without limitation, by making the necessary arrangements to repay RBC and any Priority Amounts. At this stage, RBC believes 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, and it is within RBC's rights under its Security to do so.

Arnold Affidavit, *supra* at paras. 26-27.

PART III – ISSUE

27. Given the above facts and the Consents to Receivership from the Debtors, 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

28. 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). Both statutes enable the Court to appoint a receiver where such appointment is “*just or convenient*.”

BIA, *supra* [s. 243\(1\)](#).

***Courts of Justice Act* (Ontario) [CJA], [s. 101](#).**

29. 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*].**

30. 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:

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

31. 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 6212](#) at [para. 31](#) [*iSpan Systems*].

32. Furthermore, the appointment of a receiver becomes less extraordinary still when dealing with a default under a mortgage, as in the present case.

BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc., [2020 ONSC 1953](#) at [paras. 43-44](#).

33. Furthermore, when a debtor executes a consent to receivership (as the Debtors did in this case), courts have held that commercial certainty expects a court to honour such negotiated agreements and consents. For example, as was held recently by The Honourable Justice M.A. Marion:

Negotiated forbearance agreements, including the use of consent orders, are an important part of insolvency practice. Commercial certainty for all stakeholders dictates that parties should expect that courts will hold them to their bargains, absent further agreement or circumstances that would make it appropriate to nullify or remove the order...

ATB Financial v. Mayfield Investments Ltd., [2024 ABKB 635](#) at [para 40](#).

It is Just and Convenient to Appoint the Receiver

34. RBC submits that the test for the appointment of a receiver is met. RBC is contractually entitled to have a receiver appointed over the Debtors, including under the Security and the Consents to Receivership. Intervening Events have occurred under the Forbearance Agreement 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 Debtors and RBC.

Arnold Affidavit, *supra* at Exhibit “G”, Standard Charge Terms 20015, s. 42.

Arnold Affidavit, *supra* at Exhibit “I”, Mayfield GSA, s. 13(a).

Arnold Affidavit, *supra* at Exhibit “I”, GSA from Transportation, s. 13(a).

Arnold Affidavit, *supra* at Exhibit “I”, GSA from Investment, s. 13(a).

Arnold Affidavit, *supra* at Exhibit “I”, GSA from 259, s. 13(a).

Arnold Affidavit, *supra* at Exhibit “N”, Forbearance Agreement, Schedule “D” - Consents to Receivership.

35. 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 Debtors’ estate and the interests of RBC as a secured creditor. The Debtors have had ample time to address their defaults with RBC, and RBC has been more than accommodating, yet the Debtors have failed to honour their commitments time and again.

Arnold Affidavit, *supra* at paras. 25 and 28.

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

Arnold Affidavit, *supra* at para. 30.

PART V – RELIEF REQUESTED

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of March, 2025.



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**SCHEDULE “A”
AUTHORITIES CITED**

Jurisprudence

1. *ATB Financial v. Mayfield Investments Ltd.*, [2024 ABKB 635](#).
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. *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, [2020 ONSC 1953](#).
4. *Elleway Acquisitions Limited v. The Cruise Professionals Limited*, [2013 ONSC 6866](#).
5. *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.

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.

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 -

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FACTUM OF THE APPLICANT
(Returnable April 8, 2025)

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