

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

DC FREIGHT HAULERS 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 April 11, 2025)**

March 31, 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 DC Freight Haulers Inc. (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 a privately-owned Ontario corporation. The Debtor’s president is Harman Kalra (“**Harman**”).

Affidavit of Manoj Davé sworn March 19, 2025 [Davé Affidavit] at [para. 3](#), Tab 4 of RBC’s Application Record Volumes 1-3 dated March 24, 2025.

3. The Debtor describes itself as a trucking company that specializes in refrigerated and cross-border transportation with 38 vehicles and 48 drivers.

Davé Affidavit, *supra* at [para. 5](#).

4. The Debtor is indebted to RBC in connection with certain credit facilities made available by RBC and HSBC Bank Canada (now RBC) (the “**Credit Facilities**”) to the Debtor pursuant to and under the terms of the credit agreement dated May 8, 2024 (the “**Primary Credit Agreement**”) and the master lease agreements dated October 25, 2021 and November 9, 2023 and the lease schedules thereunder (collectively, the “**Lease Agreements**” and, together with the Primary Credit Agreement, the “**Credit Agreements**”).

Davé Affidavit, *supra* at [para. 6](#).

5. As security for its obligations to RBC, the Debtor granted a general security agreement in favour of RBC dated September 16, 2021 (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](#).

6. Harman, Gurjant Dhanda and Abbass Chaudhry (collectively, the “**Guarantors**”), personally guaranteed the Debtor’s obligations to RBC under the Credit Agreements in the principal amount of \$2,300,000, pursuant to a written guarantee and postponement of claim agreement dated May 11, 2024.

Davé Affidavit, *supra* at [para. 8](#).

7. 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 over 60 registrations by multiple registrants that appear to pertain to certain specific collateral and are made by a range of creditors, including numerous equipment finance companies, all of which have been served with this application.

Davé Affidavit, *supra* at [paras. 9-10](#).

8. All the non-leasing Credit Facilities are repayable on demand. There have also been defaults under the Credit Agreements that the Debtor has failed to address to date, including, without limitation, payment defaults.

Davé Affidavit, *supra* at [para. 11](#).

9. As such, on January 24, 2025, RBC formally wrote to the Debtor and Guarantors and demanded repayment of the non-leasing amounts owed to RBC (the “**Demand Letters**”).

Accompanying the Demand Letter to the Debtor on January 24, 2025 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**”). As set out in the Demand Letters, CAD \$1,412,660.67 plus USD \$468,354.69 was owing by the Debtor to RBC as at January 16, 2025 in respect of the non-leasing Credit Facilities (the “**Demanded Indebtedness**”), and a further \$322,743.37 was owing by the Debtor in respect of the leasing Credit Facilities (together with the Demanded Indebtedness, the “**Indebtedness**”).

Davé Affidavit, *supra* at [paras. 12-13](#).

10. Despite demand, the Demanded Indebtedness was not repaid.

Davé Affidavit, *supra* at [para. 14](#).

11. On February 7, 2025: (i) RBC asked the Debtor “*to get your lawyer to connect with RBC’s lawyers ASAP;*” and (ii) Harman responded “*Yes our lawyers have already contacted RBC lawyers [sic].*”

Davé Affidavit, *supra* at [para. 15](#).

12. In fact: (i) no lawyer on behalf of the Debtor or any of the Guarantors contacted RBC’s lawyers until 11 days later on February 18, 2025; and (ii) even then, the contacting lawyer advised that “*our office is in the process of being retained by the [Debtor].*”

Davé Affidavit, *supra* at [paras. 16-17](#).

13. There has been no contact with this lawyer since February 19, 2025, and no notice of appearance has been filed by this lawyer or any other lawyer on behalf of the Debtor.

Davé Affidavit, *supra* at [para. 18](#).

14. RBC also commenced and served a separate claim in February 2025 against the Guarantors in respect of the Guarantee (the “**Guarantee Claim**”). No response to the Guarantee Claim has been received.

Davé Affidavit, *supra* at [para. 19](#).

15. Neither the Demanded Indebtedness nor the Indebtedness has been repaid, in full or in part.

Davé Affidavit, *supra* at [para. 20](#).

16. At this stage, RBC has lost faith in the Debtor’s management and believes that the only prudent and reasonable 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.

Davé Affidavit, *supra* at [para. 21](#).

PART III – ISSUE

17. 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

18. 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](#).

19. 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>).

20. 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>).

21. 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>).

It is Just and Convenient to Appoint the Receiver

22. 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.

23. 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. The Debtor has had ample time to repay the Demanded Indebtedness or make satisfactory arrangements acceptable to RBC, but has failed to do so.

Davé Affidavit, *supra* at [para. 20](#).

24. At this stage, RBC believes that its 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.

Davé Affidavit, *supra* at [para. 22](#).

25. 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 [para. 25](#).

PART V – RELIEF REQUESTED

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 31st day of March, 2025.

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

1. [*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]).
2. [*Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*](#), 2013 ONSC 6866.
3. [*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).

Applicant

Respondent

Court File No. CV-25-00001496-0000

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Proceedings commenced at Brampton

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(returnable April 11, 2025)**

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