

**ONTARIO
SUPERIOR COURT OF JUSTICE**

MITSUBISHI HC CAPITAL CANADA, INC. and
MITSUBISHI HC CAPITAL CANADA LEASING, INC.

Applicants

- and -

ORBIT EXPRESS INC., 10055913 CANADA INC.,
and 8615314 CANADA INC.

Respondents

FACTUM OF THE RECEIVER
(Receiver's Motion returnable July 4, 2025)

June 25, 2025

HARRISON PENZA LLP
Barristers & Solicitors
130 Dufferin Avenue, Suite 1101
London, ON N6A 5R2

Timothy C. Hogan (LSO #36553S)
Tel: (519) 679-9660
Fax: (519) 667-3362
Email: thogan@harrisonpenza.com

Lawyers for the Receiver,
msi Spergel inc.

TO: SERVICE LIST

NATURE OF MOTION

1. This is a motion by msi Spergel inc. ("**Spergel**"), in its capacity as court-appointed Receiver (the "**Receiver**"), appointed pursuant to an order of the Ontario Superior Court of Justice (the "**Court**") dated August 23, 2024 (the "**Appointment Order**") of the Property (as defined in the Appointment Order) of the Respondents, Orbit Express Inc. ("**Orbit**"), 10055913 Canada Inc., and 8615314 Canada Inc. (collectively, the "**Debtors**") for, *inter alia*, the following relief:
 - a) abridging the time for service, filing and confirmation of the Notice of Motion and the Motion Record, and validating service so that the motion is properly returnable July 4, 2025;
 - b) approving the First Report to the Court of the Receiver dated May 30, 2025 (the "**First Report**"), and the activities and conduct of the Receiver set out therein provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the First Report;
 - c) directing the Debtors and the Principals, as defined below, to permit the Receiver to take possession and exercise control over the Property;
 - d) directing Noble Express Inc. ("**Noble**") and 7583150 Canada Inc. ("**758**", together with Noble, the "**Related Companies**") to assist the Receiver in implementing the Appointment Order and to provide information to the Receiver regarding the Property;
 - e) authorizing the Receiver or its agents and representatives or any other party authorized by the Receiver to take possession of and remove any of the Debtors' Property from Noble or 758's possession;
 - f) instructing the local police force or peace officers to assist the Receiver in implementing this Order, including in gaining access to and recovering the Debtors' Property in Noble or 758's possession, as required by the Receiver;
 - g) permitting the Receiver or its agents and representatives to enter the Mississauga Yard, as defined below;

- h) authorizing the Receiver or its agents and representatives or any other party authorized by the Receiver to take possession of and remove from the Mississauga Yard any of the Debtors' Property located at the Mississauga Yard;
 - i) instructing the local police force or peace officers to assist the Receiver in implementing this Order, including in gaining access to the Mississauga Yard and recovering the Debtors' Property, as required by the Receiver; and
 - j) authorizing and directing Bank of Montreal ("**BMO**") to identify and disclose all account numbers and financial institutions that the Misappropriated Funds were transferred to, and any information reasonably requested by the Receiver in relation to same.
2. It is the position of the Receiver that the relief requested by the Receiver should be granted, due to the following:
- a) The relief requested by the Receiver is reasonable in light of the Principals and the Debtors' refusal to abide by the terms of the Appointment Order, cooperate with the Receiver in relation to the Debtors' assets;
 - b) The activities of the Receiver were conducted within the ambit of its powers granted by the Appointment Order, and have been undertaken in furtherance of the Receiver's duties in these proceedings;
 - c) The Receiver has good reason to conclude that the Debtors' assets may be located at the Mississauga Yard and assets may have been transferred to the Related Companies;
 - d) The Principals Misappropriated Funds (estimated in the sum \$617,000) and have not returned the remaining Misappropriated Funds, despite these Receiver's requests. It is reasonable for BMO to identify and disclose all account numbers and financial institutions that the Misappropriated Funds were transferred to, and any information reasonably requested by the Receiver in relation to same;

- e) There is good reason to believe that the Related Companies may have assets of the Debtors;
- f) The Order sought is necessary for the Receiver to fulfil its mandate under the Appointment Order, for which has been obstructed.

THE FACTS

The Background

- 3. Mitsubishi HC Capital Canada, Inc. and its affiliate, Mitsubishi HC Capital Canada Leasing, Inc. (collectively, the “**Lender**”) provided credit facilities to the Debtors, including equipment financing for tractors and trailers used in the Debtors’ business operations (the “**Trucking Equipment**”).

First Report of the Receiver to the Court dated May 30, 2025 (the “First Report”), at para 5.

- 4. Yadwinder Singh Randhawa (“**Yadwinder**”) and Kulwant Singh (“**Kulwant**”) are the principals of Orbit (collectively, the “**Principals**”).

First Report, at para 2.

- 5. On July 30, 2024, the Honourable Justice Emery granted an order (the “**Interim Receivership Order**”) appointing Spergel as the interim receiver and manager, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors (the “**Property**”).

First Report, at para 6 and Appendix “A” thereto.

- 6. On August 23, 2024, the Honourable Justice McSweeney granted the Appointment Order.

First Report, at para 7 and Appendix “A” thereto.

The Receiver’s Activities

7. As detailed in the First Report, since the Interim Receivership Order, the Receiver's activities, directly or through its independent counsel, include, among other things:
- a) advising the Debtors of the Receiver's duties and the Debtors' obligations pursuant to the Appointment Order, including that the Receiver is authorized to take possession or control of and is to be granted access to the Debtors' Property;
 - b) communicating with the Debtors and Yadwinder to request information and locations of the Trucking Equipment and other Property of the Debtors;
 - c) corresponding with BMO regarding the bank accounts of the Debtors and the Principals and the Misappropriated Funds, as defined below; and,
 - d) dealing with secured creditors holding security interests in certain of the assets leased and/or financed by the Debtors.

First Report, at para and 16.

Actions of the Debtors and the Principals

8. Since the granting of the Interim Receivership Order, the Receiver has faced considerable difficulty in determining the location of the Debtors' Property, in particular the location of the Trucking Equipment and the Misappropriated Funds, as defined below.

First Report, at para 17.

i. The Trucking Equipment

9. As a result of the efforts of the Receiver and the Lender, it has been discovered that, certain of the Debtors' Property is located at 1010 Central Parkway West, Mississauga, Ontario (the "**Mississauga Yard**") and some of the Debtors' Property has been transferred to the Related Companies.

First Report, at paras 35, 47, 48 and 53.

10. Both the Receiver and representatives of the Lender have attempted to take possession of the Trucking Equipment and have been unsuccessful due to the lack of cooperation from the Principals.

First Report, at paras 18-36 and Appendices "C" to "F" thereto.

ii. The Misappropriated Funds

11. On October 30, 2024, the Receiver contacted Canada Revenue Agency ("**CRA**") to request an update regarding a possible Harmonized Sales Tax refund to Orbit (the "**HST Refund**"), and was notified that CRA had inadvertently transferred funds on October 24, 2024, in the amount of approximately \$853,000 in respect of the HST Refund (the "**Misappropriated Funds**") to the bank account held at BMO bearing Account No. 2679-1974-922 (the "**BMO Account**").

First Report, at para 40.

12. The Receiver contacted BMO to put a hold on the Misappropriated Funds, however BMO advised the Receiver that Yadwinder had made several disbursements on October 24, 2024, from the BMO Account totalling \$848,622.05, including to Yadwinder's personal accounts as well as to accounts held by Kulwant, Hardwinder Singh and Lakhwant Singh.

First Report, at para 41.

13. BMO put a hold on the Misappropriated Funds still contained in the BMO Account as well as a hold on the personal accounts of Yadwinder and Kulwant held with BMO that had received the Misappropriated Funds totaling \$230,992.99 (the "**Recovered Misappropriated Funds**"). On November 13, 2024, BMO transferred the Recovered Misappropriated Funds to the Receiver. The Receiver is currently holding the Recovered Misappropriated Funds in its trust account. BMO was unable to reverse or recover the remaining Misappropriated Funds that were disbursed.

First Report, at para 43.

14. The Principals have not returned the remaining Misappropriated Funds, despite the Receiver's requests.

First Report, at para 44.

The Related Companies

15. In the course of the Receiver's efforts to recover the Trucking Equipment, the Receiver identified Noble and 758 (the Related Companies) that the Principals' operate their broader trucking and logistics business through and which the Debtors have transferred assets to.

First Report, at paras 46 and 47

16. The Receiver notes with respect to the Debtors and the Related Companies:
- (a) 166 Thomas Avenue, Brantford, Ontario is the registered head office of 758. It is also the address for the Principal Yadwinder, in his capacity as a director and officer of Orbit and in his capacity as a director of 100, and the address for Dajit Singh, in his capacity as a director of 100;
 - (b) 28 Cape Dorset Crescent, Brampton, Ontario, is the registered head office of Orbit. It is also the address for Dilawar Singh, in his capacity as a director and shareholder of Noble, and the address for the Principal Kulwant, in his capacity as a director of Orbit. 28 Cape Dorset is also owned by Kulwant;
 - (c) 66 Executive Court, Brampton, Ontario, is the registered office address for 100. It is also the address for the Director Kulwant, in his capacity as an officer of Orbit, and in his capacity as a director of 100. 66 Executive Court was previously owned by Kulwant; and
 - (d) As set out in the Lender's Application Record dated July 19, 2024, a Alberta Corporate Profile Report for Noble obtained on January 12, 2024 listed Yadwinder, Kulwant, and Harinder Singh Virk as directors and voting shareholders of Noble. By May, 2024, Yadwinder and Kulwant were no longer listed as directors and voting shareholders, having been replaced with Dilawar Singh.

First Report, at para 48

17. 758 operates a trucking and logistics business out of Southwestern Ontario. The Debtors have transferred ownership of certain Trucking Equipment from Orbit to 758, in contravention of the Receivership Order.

First Report, at paras 51, 52

18. In the course of MHCCA's efforts to assist the Receiver in recovering Trucking Equipment, MHCCA's representative recovered four vehicles that were previously registered to Orbit that had been transferred into 758's name without the knowledge or consent of Orbit (the "758 Trucking Equipment").

First Report, at para 53

19. Noble operates a trucking and logistics business out of Edmonton, Alberta. Given Noble's connections to Orbit and 100, the Receiver is concerned the Debtors are using Noble to hide or dissipate the Debtors' Property. As a result, the Receiver is seeking relief to require the principals of Noble to assist the Receiver and provide information about the Debtors' Property.

First Report, at para 55

20. The Receiver seeks the assistance from the Court to enforce the provisions of the Appointment Order, and to compel the Debtors and the Principals to disclose to the Receiver the location of the Debtors' Property and permit the Receiver to take possession of Debtors' Property.

ISSUES, LAW AND ARGUMENT

The Court's Procedural Powers

21. The Court may, by order, extend or abridge any time prescribed by the Rules on such terms as are just. Further, the Court may dispense with compliance with any Rule at any time where and as necessary in the interest of justice. Finally, the Court may

dispense with service where it is impractical to effect prompt service and/or it may validate service where it is satisfied that the document came to the notice of the person to be served.

[Rules 2.03, 3.02, 16.04 and 16.08, Rules of Civil Procedure, R.R.O. 1990, Reg. 194](#)

The Receiver's Activities

22. The Receiver's activities in these proceedings have been undertaken in furtherance of the Receiver's duties and are consistent with the Receiver's powers, as set out in the Appointment Order. The Receiver has acted reasonably and in the best interests of the Debtors' stakeholders, and this Court has the inherent jurisdiction to approve such activities.

Bank of America Canada v. Willann Investments Ltd. (1993) 20 C.B.R. (3d) 223 (ONSC), at paras. 3 and 4, referenced in the Receiver's Book of Authorities at Tab 1.

23. All of the Receiver's activities were conducted within the ambit of its powers granted by the Appointment Order and each of the activities were necessary to ensure that the proceedings were as orderly, effective and fair to all stakeholders as possible.
24. The Receiver therefore respectfully submits that the First Report, and its activities to date as set out therein, should be approved by this Court.

Approval of the Order for the Recovery of the Property

25. Receivers are clothed with the powers set out in the order appointing them. Receivers are consistently granted the power to take possession and control over all of the Debtors' property, assets and undertakings as pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**").
26. Section 243(1)(c) of the *BIA* has been interpreted as giving judges the broadest possible mandate in insolvency proceedings to enable them to react to any circumstances that may arise in relation to court ordered receiverships.

[Peace River Hydro Partners v. Petrowest Corp., 2022 SCC 41 \(CanLII\) at para. 148.](#)

27. This Honourable Court has used its authority to grant an Order for the recovery of property where there was ample basis of a lack of cooperation and outright obstruction as to the Receiver carrying out its duties as set out in the order appointing them.

Canadian Western Bank v. Canadian Motor Freight Ltd. et al (December 2, 2024), Toronto CV-24-00728550-00CL (ONSC CL), referenced in the Receiver's Book of Authorities at Tab 2.

[Canadian Western Bank v. Canadian Motor Freight Ltd., 2025 ONCA 263 \(CanLII\) at paras. 3-5.](#)

28. The Appointment Order at paragraph 3 provides the Receiver with the following powers, *inter alia*:

a) To take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

b) To receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

[...]i) To initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereinafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. [...]

[...]

l) To apply for any vesting order or other orders necessary to convey the Property or any parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

[...]

- s) To take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations

and in such case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined in paragraph 4 of the Appointment Order), including the Debtors, and without interference from any other Person.

First Report, at Appendix A

- 29. The Appointment Order at paragraph 4 requires that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entitled having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property of the Receiver, and shall deliver all such Property to the Receiver, upon the Receiver's request.

First Report, at Appendix A

- 30. The Appointment Order at paragraph 11 prohibits Persons from discontinuing, failing to honour, altering, interfering with, repudiating, terminating or ceasing to perform any right, renewal right, contract, agreement, license or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

First Report, at Appendix A

- 31. The Receiver therefore respectfully requests that in the current circumstances this Honourable Court use its authority to grant the Order sought by the Receiver in relation to the recovery of the Debtors' Property.

ORDER REQUESTED

32. The Receiver requests the relief as set forth in the Notice of Motion and the related Orders.

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



HARRISON PENSA LLP

Barristers & Solicitors
130 Dufferin Avenue, Suite 1101.
London, ON N6A 5R2

Timothy C. Hogan (LSO #36553S)

Tel: (519) 679-9660

Fax: (519) 667-3362

Email: thogan@harrisonpensa.com

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**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Bank of America Canada v. Willann Investments Ltd.* (1993) 20 C.B.R. (3d) 223 (ONSC)
2. [*Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41 \(CanLII\)](#)
3. *Canadian Western Bank v. Canadian Motor Freight Ltd. et al* (December 2, 2024),
Toronto CV-24-00728550-00CL (ONSC CL)
4. [*Canadian Western Bank v. Canadian Motor Freight Ltd.*, 2025 ONCA 263 \(CanLII\)](#)

**SCHEDULE “B”
RELEVANT STATUTES**

Rules 2.03, 3.02, 16.04 and 16.08, Rules of Civil Procedure, R.R.O. 1990, Reg. 194.

COURT MAY DISPENSE WITH COMPLIANCE

2.03 The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

EXTENSIONS OR ABRIDGMENT

General Powers of Court

3.02(1) Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed.

Times in Appeals

(3) An order under subrule (1) extending or abridging a time prescribed by these rules and relating to an appeal to an appellate court may be made only by a judge of the appellate court.

Consent in Writing

(4) A time prescribed by these rules for serving, filing or delivering a document may be extended or abridged by filing a consent.

SUBSTITUTED SERVICE OR DISPENSING WITH SERVICE

Where Order May be Made

16.04 (1) Where it appears to the court that it is impractical for any reason to effect prompt service of an originating process or any other document required to be served personally or by an alternative to personal service under these rules, the court may take an order for substituted service or, where necessary in the interest of justice, may dispense with service.

Effective Date of Service

- (2) In an order for substituted service, the court shall specify when service in accordance with the order is effective.
- (3) Where an order is made dispensing with service of a document, the document shall be deemed to have been served on the date of the order for the purpose of the computation of time under these rules.

VALIDATING SERVICE

16.08 Where a document has been served in a manner other than one authorized by these rules or an order, the court may make an order validating the service where the court is satisfied that,

- (a) The document came to the notice of the person to be served; or
- (b) The document was served in such a manner that it would have come to the notice of the person to be served, except for the person's own attempts to evade service.

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Court File No. CV-24-00003220-0000

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PROCEEDING COMMENCED AT
BRAMPTON, ONTARIO

FACTUM OF THE RECEIVER

HARRISON PENZA ^{LLP}

Barristers & Solicitors

130 Dufferin Avenue, Suite 1101

London, Ontario N6A 5R2

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