

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

ROYAL BANK OF CANADA

Applicant

- and -

AHM TRANSPORT INC., AISHKA EXPRESS 2016 INC., AISHKA EXPRESS
INC., AISHKA RECYCLING INC. and TANUSH TRANSPORT INC.

Respondents

FACTUM OF THE RECEIVER
(Receiver's Motion returnable May 6, 2025)

April 29, 2025

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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 – Commercial List (the "**Court**") dated September 16, 2024 (the "**Appointment Order**") of the Property (as defined in the Appointment Order) of the Respondents, AHM Transport Inc. ("**AHM**"), Aishka Express 2016 Inc. ("**Aishka 2016**"), Aishka Express Inc. ("**Aishka Express**"), Aishka Recycling Inc. ("**Aishka Recycling**"), and Tanush Transport Inc. ("**Tanush**") (collectively, the "**Debtors**") for, *inter alia*, the following relief:
 - a) An Approval and Vesting Order approving the sale by auction (the "**Auction**") contemplated by a Contract to Auction between Ritchie Bros. Auctioneers (Canada) Ltd. (the "**Auctioneer**") and the Receiver dated April 22, 2025 (the "**Auction Agreement**") for the sale of certain of the property of the Debtors (the "**Auction Assets**"), and upon delivery of a receipt for payment in full by the Auctioneer to each of the purchasers at the Auction, *inter alia*, vesting all of the right, title and interest in and to such Auction Assets sold at the Auction absolutely in each purchaser free and clear of and from any security, charge or other restriction, with the Receiver empowered and authorized to release and file discharges of all registered claims and encumbrances under the *Personal Property Security Act* ("**PPSA**") and *Repair and Storage Liens Act* ("**RSLA**").
 - b) An Ancillary Order for, among other things:
 - (i) That the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable May 6, 2025, and dispensing with further service and confirmation thereof;
 - (ii) Approving the First Report of the Receiver dated April 24, 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;

- (iii) Approving the Receiver's Interim Statement of Receipts and Disbursements as detailed in the First Report; and,
 - (iv) Approving the fees and disbursements of the Receiver and its counsel, Harrison Pensa LLP, and authorizing payment of same.
 - c) An Asset Recovery Order for, among other things:
 - (i) Compelling the Debtors and the Principals (as defined herein) to disclose to the Receiver the location of the Missing Property (as defined in the First Report) within a specified time frame as approved by this Court;
 - (ii) Compelling the Debtors and the Principals to deliver the Missing Property to the Receiver and/or permit the Receiver to take possession and exercise control over the Missing Property within a specified time frame; and
 - (iii) Instructing the local police force or peace officers to assist the Receiver in implementing this Order in relation to the Missing Property, including in gaining access to and recovering the Missing Property
- 2. It is the position of the Receiver that the actions of the Receiver, as well as the Auction and the Asset Recovery Order, should be approved, and that the relief requested should be granted, due to the following:
 - a) The Auction will involve a process with integrity and will encourage a competitive environment for the solicitation of offers and has the support of the Debtors' senior secured creditor, Royal Bank of Canada (the "**Bank**");
 - 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 fees of the Receiver and the Receiver's counsel are fair and reasonable when considering the *Bank of Nova Scotia v. Diemer* factors, specifically due to the difficulty locating the rolling stock and the substantial pool of creditors making claims that required review by the Receiver. All of which has resulted in substantial time and effort expended by the Receiver and the Receiver's counsel, being charged at similar market rates; and
- d) The Asset Recovery Order is necessary for the Receiver to fulfil its mandate under the Appointment Order, for which has been obstructed by the Debtors.

THE FACTS

The Debtors and the Receiver

- 3. Each of the Debtors are incorporated pursuant to the laws of the Province of Ontario, with a registered head office in Ontario.

First Report of the Receiver to the Court dated April 24, 2025 (the "First Report"), at para 2.

- 4. Thushutha Puvanenthiran ("**Thushutha**") is listed as a director of AHM and Aishka Express. Puvanenthiran Jeyabalasingam ("**Puvanenthiran**") is listed as director of Aishka 2016 and Tanush. Jeyabalasingam Puvanenthiran ("**Jeyabalasingam**") and together with Thushutha and Puvanenthiran, the "**Principals**") is the director of Aishka Recycling.

First Report, at para 2.

- 5. Spergel was appointed as the Receiver of all the assets, undertakings, and properties of the Debtors (collectively, the "**Property**") by the Court pursuant to the Appointment Order. The Property consists of, among other things, various leased heavy haul transportation equipment.

First Report, at para 5 and Appendix "4" thereto.

The Receiver's Activities

6. As detailed in the First Report, since the Appointment Order, the Receiver's activities, directly or through its independent counsel, have concentrated on:
 - a) attending at the business premises of the Debtors to take possession of the Property;
 - b) attending at various yards in order to take possession of the assets owned and/or leased by the Debtors;
 - c) communicating with the Debtors and the Principals to locate certain missing property; and
 - d) dealing with secured creditors holding purchase money security interests in certain of the assets leased and/or financed by the Debtors and providing releases to such creditors where appropriate.

First Report, at para and 12.

The Auction

7. Pursuant to paragraph 3(k) of the Appointment Order, the Receiver is authorized to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000 (collectively, the "**Sale Threshold**"); and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or aggregate purchase price exceeds the application amount set out above.

First Report, at para 20.

8. Since its appointment, the Receiver has taken possession of certain of the Auction Assets (as defined as the "Debtors Vehicles" in the First Report), and the Receiver has entered into the Auction Agreement for the proposed sale by the Auctioneer by way of Auction of the Auction Assets.

First Report, at paras 21-23 and Appendix "6" thereto.

9. The Receiver is proposing the Auction as:
 - a) The Auctioneer is an experienced auctioneer;
 - b) the rates and commissions provided in the Auction Agreement are fair and reasonable;
 - c) a public auction is a commercially reasonable method for disposing of the Auction Assets; and,
 - d) the net proceeds of sale from the Auction will be held by the Receiver pending further Order of the Court.

First Report, at paras 24 and 26.

10. The Receiver seeks authorization to discharge any *PPSA* or *RSLA* registration against the Auction Assets, on sale of same at Auction, to allow for title to transfer to the respective purchasers of the Auction Assets.

First Report, at para 28.

11. The Receiver is of the view that the proposed Auction is a process with integrity that will encourage a competitive environment for the solicitation of offers, and will optimize the Receiver's ability to maximize the value realized from the Auction Assets.

The Missing Property

12. During the administration of the receivership, the Receiver has discovered that certain assets subject to the Bank's security are unaccounted for, not available to the Receiver,

and the whereabouts of same are unknown (the “**Missing Property**”, as detailed in the First Report).

First Report, at para 13.

13. The Missing Property are assets that are subject to a Master Lease Agreement dated July 8, 2019 between the Bank and Aishka Express.

First Report, at para 14.

14. The Bank has made various registrations under the *PPSA* as against Aishka Express perfecting its interest.

First Report, at para 15.

15. The Receiver has made multiple attempts to correspond with the Debtors, and counsel for the Debtors, advising of the obligation of the Principals and the Debtors under the Appointment Order to provide the Missing Property to the Receiver, but to date the Receiver has not received responses regarding same.

First Report, at paras 16-18 and Appendix “5” thereto.

16. 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 Missing Property within a specified period of time.

First Report, at para 18.

17. The Receiver is also requesting the assistance of local police force or peace officers to assist the Receiver or its agents in gaining access to the Missing Property in order to recover same. The Receiver anticipates that the Missing Property may be stored on private property and that police or peace officers may be required to gain lawful access to the Missing Property.

First Report, at para 19.

Professional Fees and Disbursements

18. The Receiver and its counsel have properly incurred fees and disbursements as detailed in the First Report (the “**Professional Fees**”).

First Report, at paras 29 and 30 and Appendices “8” and “9” thereto.

19. It is the position of the Receiver that the Professional Fees are reasonable and necessary and should be approved by this Honourable Court.

First Report, para 31.

Receiver's Interim Statement of Receipts and Disbursements

20. The Receiver's Interim Statement of Receipts and Disbursements as at April 22, 2025, is appended to the First Report, and it is the Receiver's position that such receipts and disbursements are reasonable and should be approved.

First Report, at para 32 and Appendix “10” thereto.

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 Auction

25. Receivers are clothed with the powers set out in the order appointing them. Receivers are consistently granted the power to market and sell property belonging to a debtor.

[*Integrated Building Corp. v. Bank of Nova Scotia \(1989\), 75 C.B.R. \(N.S.\) 158 \(Alta. C.A.\).*](#)

[*Battery Plus Inc. \(Re.\), \[2002\] O.J. No. 731, at paras 2-3, 19, 22-23, 34-5.*](#)

26. There are four factors the court should consider in exercising its discretion whether to authorize a sale process. The factors are:
 - a) Is the sale transaction warranted at this time;
 - b) Will the sale benefit the "economic community";
 - c) Do any of the creditors have a bona fide reason to object to the sale of the business or assets; and
 - d) Is there a better viable alternative.

[Crate Marine, 2015 ONSC 1062 \(CanLII\), at para 14.](#)

27. After the court is satisfied that it is appropriate to approve a sale process, when reviewing a sale process proposed by a receiver a court should consider the following factors:
- a) the fairness, transparency and integrity of the proposed process;
 - b) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and,
 - c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

[CCM Master Qualified Fund v. blutip Power Technologies, 2012 ONSC 1750 \(CanLII\), at para 6.](#)

28. Where a Court is asked to approve a transaction in a receivership context, the Court is to consider:
- i. whether the party made a sufficient effort to obtain the best price and to not act improvidently;
 - ii. the interests of all parties;
 - iii. the efficacy and integrity of the process by which the party obtained offers; and,
 - iv. whether the working out of the process was unfair.

[Royal Bank of Canada v. Soundair Corp. \(1991\), 4 O.R. \(3d\) 1 \(ONCA\), at para 16.](#)

[Skyepharm PLC v. Hyal Pharmaceutical Corp. \(1999\), 12 C.B.R. \(4th\) 87 \(ONSC., appeal quashed, \(2000\), 47 O.R. \(3d\) 234 \(C.A.\)\), at para 3.](#)

29. In reviewing a receiver's decisions and recommendations, the court exercises considerable caution and grants considerable deference to the receiver. As the Court of Appeal in *Regal Constellation Hotel Limited* stated:

Although the courts will carefully scrutinize the procedure followed by a receiver, they rely upon the expertise of their appointed receivers, and are reluctant to second-guess the considered business decisions made by the receiver in arriving at its recommendations. The court will assume that the receiver is acting properly unless the contrary is clearly shown.

[Regal Constellation Hotel Ltd., Re, 2004 CanLII 206 \(ON CA\), at para 23.](#)

30. The Auction recommended by the Receiver is a reasonable, robust and transparent sale process, designated to realize the fair value for the Auction Assets, and satisfies the criteria for approval.
31. Based on the foregoing, it is respectfully submitted that this Honourable Court should approve the Auction. It is the Receiver's position that any sale resulting from the Auction would be in accordance with the *Soundair* principals, for the following reasons:
- a) the Auction will optimize the Receiver's ability to maximize the value realized from the Auction Assets;
 - b) the Auction will provide all interested parties with an equal opportunity to bid on the sale of the Auction Assets;
 - c) The Auctioneer is an experienced auctioneer; and,
 - d) the fees and commissions provided in the Auction Agreement are fair and reasonable.
32. The Bank, as senior secured creditor of the Debtors, supports the Auction.
33. The Receiver respectfully submits that the Auction should be approved.

The PPSA and RSLA Discharges

34. In the Receiver's view, the authority to discharge the relevant *PPSA* and *RSLA* registrations against the Auction Assets is provided for in the template Approval and Vesting Order.
35. However, to avoid any misunderstanding or uncertainty, the Receiver seeks the specific authority to discharge the *PPSA* and *RSLA* registrations against the Auction Assets in order to complete the sale of same at the Auction.
36. Section 243(1)(c) of the *Bankruptcy and Insolvency Act* (Canada) ("**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.](#)

37. 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 *PPSA* and *RSLA* registrations against the Auction Assets.

Approval of the Asset Recovery Order

38. 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 *BIA*.
39. As noted above, 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.](#)

40. This Honourable Court has used its authority to grant an Asset Recovery Order 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.](#)

41. 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 Missing Property.

The Interim Statement of Receipts and Disbursements should be Approved

42. The Receiver's Interim Statement of Receipts and Disbursements as at April 15, 2025 is appended to the First Report, and are reasonable. The Receiver respectfully requests that such receipts and disbursements be approved by this Honourable Court.

The Fees and Disbursements of the Receiver and its Counsel Should Be Approved

43. The Receiver respectfully submits that the Professional Fees of the Receiver and the Receiver's counsel, as detailed in the First Report, should be approved.
44. In determining whether to approve the fees of a receiver and its counsel, the Court should consider whether the remunerations and disbursements incurred in carrying out the receivership were fair and reasonable and take into consideration the following factors, which constitute a useful guideline, but are not exhaustive:
- a) the nature, extent and value of the assets;
 - b) the complications and difficulties encountered;
 - c) the degree of assistance provided by the debtor;
 - d) the time spent;
 - e) the Receiver's knowledge, experience and skill;
 - f) the diligence and thoroughness displayed;
 - g) the responsibilities assumed;
 - h) the results of the receiver's efforts; and,

- i) the cost of comparable services when performed in a prudent and economical manner.

[*Bank of Nova Scotia v. Diemer, 2014 ONCA 851, at paras. 33 and 45.*](#)

45. When the above *Bank of Nova Scotia v. Diemer* factors are applied to this case, the Receiver submits:

- a) **The nature, extent and value of the assets.** The majority of the assets of the Debtors consists of moveable tractors and trailers. The total of such assets could have a significant value;
- b) **The complications and difficulties encountered.** As described in the First Report, the Receiver has had to attend various locations in order to locate and take possession of the assets of the Debtors, and have dealt with the substantial pool of creditors of the Debtors;
- c) **The degree of assistance provided by the debtor.** The Receiver has been provided minimal assistance by the Debtors in relation to locating the assets of the Debtors;
- d) **The time spent.** The Receiver submits that the time spent by the Receiver and the Receiver's counsel reflects the work done in connection with the receivership, and the complications and difficulties encountered;
- e) **The Receiver's knowledge, experience and skill.** The Receiver has significant receivership experience, including experience with similar types of businesses as that of the Debtors. The Receiver has the knowledge and skill for this matter, and the Receiver submits that the billing rates are comparable to the hourly rates charged by other firms with similar experience and skill for services rendered in relation to similar proceedings;
- f) **The diligence and thoroughness displayed.** The Receiver has been diligent in its efforts in the receivership, including, but not limited to, the efforts to locate the assets of the Debtors and review the various secured claims of the interested parties of the Debtors;

g) **The responsibilities assumed.** With the lack of assistance by the Debtors, the Receiver has assumed the responsibility of locating assets of the Debtors across Canada;

h) **The results of the receiver's efforts.** The results of the Receiver include obtaining possession of various equipment, including the Auction Assets, and other equipment released to secured creditors; and,

i) **The cost of comparable services when performed in a prudent and economical manner.** The Receiver submits that the costs are comparable to services provided to similar matters and that the billing rates are comparable to the hourly rates charged by other firms with similar experience and skill.

46. It is the Receiver's view that it and its counsel's fees and disbursements were incurred at the respective party's standard rates and charges, and are fair, reasonable and justified in the circumstances. Further, the fees and disbursements sought accurately reflect the work done by the Receiver and by its counsel in connection with the receivership.

ORDER REQUESTED

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of April, 2025.



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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. [*Integrated Building Corp. v. Bank of Nova Scotia*, 1989 ABCA 114 \(CanLII\)](#)
3. [*Battery Plus Inc., Re*, 2002 CanLII 49569 \(ON SC\)](#)
4. [*Royal Bank of Canada v. Soundair Corp.* \(1991\), 4 OR \(3d\) 1 \(ONCA\)](#)
5. [*Skyepharm PLC. V. Hyal Pharmaceutical Corp.*, 1999 CanLII 15007 \(ONSC\)](#)
6. [*Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 \(CanLII\)](#)
7. [*Regal Constellation Hotel Ltd., Re*, 2004 CanLII 206 \(ON CA\)](#)
8. [*Crate Marine*, 2015 ONSC 1062 \(CanLII\)](#)
9. [*CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750 \(CanLII\)](#)
10. [*Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41 \(CanLII\)](#)
11. *Canadian Western Bank v. Canadian Motor Freight Ltd. et al* (December 2, 2024),
Toronto CV-24-00728550-00CL (ONSC CL)
12. [*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.

ROYAL BANK OF CANADA

v.

AHM TRANSPORT INC., et al.

Applicant

Respondents

Court File No. CV-24-00725055-00CL

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FACTUM OF THE RECEIVER

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