

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

B E T W E E N

ROYAL BANK OF CANADA

Applicant

- and -

TUNG AIR TRANSPORT LTD., 2527366 ONTARIO INC.,
R. LESSARD TRUCKING LIMITED and 1000101395 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 RESPONDENTS

Date: April 11, 2025

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PART I – OVERVIEW

1. The Applicant, Royal Bank of Canada ("**RBC**"), brought this application for an Order appointing MSI Spergel Inc. ("**Spergel**") as receiver over all of the Respondents' property and other relief as set out in the Draft Order (this "**Application**").
2. RBC has been granted various security by the Respondents, including mortgages on real property in the sum of \$29,200,000.00, which far exceeds the approximately \$18,000,000.00 owing by the Respondents. Moreover, there is no risk to RBC's security position.
3. Despite RBC's own actions which have caused and/or contributed to the defaults and their reneging on an agreement to forbear from bringing this Application – the Respondents have made every effort to cooperate with RBC and to provide Spergel with information and records requested. The Respondents would be willing

to continue to provide RBC with the visibility and transparency it seeks into the Respondents' finances and operations, as an alternative to the appointment of a receiver at this time.

4. The Respondents have a reasonable and viable opportunity to secure financing which would allow them to pay out all amounts owing to RBC, without the need of the appoint of a receiver. However, the Respondents require some time to finalize such financing.

5. The more appropriate disposition would be an Order which would provide the Respondents a reasonable amount of time to finalize such financing, and which balances the parties' interests.

PART II – SUMMARY OF FACTS

A. Background

a) The Tung Air Group

6. Tung Air Transport Ltd. ("**Tung Air**") is a family-owned business that was established in 2002 by Sardara S. Tung ("**Sardara**"), beginning with a single truck operated by him, and has grown into multiple businesses making up the Tung Air Group of businesses, including the other Respondents. Since then, Sardara has been able to grow the business substantially to operating a fleet of as many as 70 trucks and 200 trailers providing trucking and transport services for all sorts of goods across Canada and the United States. At its height in 2022, Tung Air grew to annual revenues of approximately \$17M, with less trucks and tractors because the market was more favourable at that time.¹

7. Over that time, Tung Air has been able to develop longstanding relationships with third-party logistics companies with high-value multinational corporations, including but not limited to, Coca-Cola, Pepsico, liquor companies, and other

¹ Affidavit of Eknoor Singh Tung, affirmed March 26, 2025 (the "**Tung Affidavit**"), at [paras 4-6, 83-84](#), Responding Application Record ("**RR**"), Tab 1.

multinational corporations, all of whom have used Tung Air for their transport needs across Canada and the United States.²

8. R. Lessard Trucking Ltd. ("**Lessard**") is a division of the Tung Air group that has trucking operations and sells various aggregates materials such as roof-stone, mulch, topsoil, and a variety of other stones. Lessard's most regular clients are the City of Windsor, LeFarge, Walker, and large contractors, but private customers are also permitted to purchase materials.³

9. 2527366 Ontario Inc. ("**252**") is a holding company which owns the real property located at 1244 Kamato Road, Mississauga, Ontario (the "**Kamato Property**"). 252 operates as landlord for Tung Air, who is the only tenant on the Kamato Property.⁴

10. 1000101395 Ontario Inc. ("**100**") is also a holding company which owns a portion of the real property located at 2260 Manning Road, Windsor, Ontario, with Lessard owning the other portion (the "**Manning Property**", together with the Kamato Property, the "**Real Properties**"). 100 has no day-to-day operations.⁵

11. In 2023, the Respondents were directly or indirectly employing more than 100 people, many of whom were single-earner families who depended upon income derived from the companies for their basic needs.⁶

b) Real Property Owned by the Tung Air Group

12. The Kamato Property is a 2.66 acre (115,809 sqft.) single-tenant industrial site located in the predominantly commercial district of Northeast in the northeastern quadrant of the City of Mississauga, with convenient access to Highway 401, Highway 427, Highway 410, Highway 407, and Lester B. Pearson International Airport.

² Tung Affidavit, at [paras 4-6](#), RR, Tab 1.

³ Tung Affidavit, at [para 7](#), RR, Tab 1.

⁴ Tung Affidavit, at [para 8](#), RR, Tab 1.

⁵ Tung Affidavit, at [para 9](#), RR, Tab 1.

⁶ Tung Affidavit, at [para 84](#), RR, Tab 1.

13. The most recent appraisal was conducted by Colliers International Realty Advisors Inc. ("**Colliers**") in June of 2024, and appraised with an as-is current market value of \$ [REDACTED] (the "**Kamato Appraisal**").⁷

14. The Manning Property is a 39.40 acre industrial site located on the east side of Manning Road between Highway 42 and Little Baseline Road in Lakeshore, Ontario, near Windsor. The site is improved with a 5,960 sqft. truck repair building, 3,200 sqft. storage building, and a 1,951 sqft. residential dwelling.

15. The most recent appraisal was conducted by Colliers in June of 2024, and appraised with an as-is current market value of \$ [REDACTED] (the "**Manning Appraisal**").⁸

c) Credit Agreements and RBC's Security

16. In or around 2023, Tung Air, 252, and Lessard (the "**Credit Parties**") entered into various credit agreements with RBC, as follows:

- a) the Credit Agreement dated May 16, 2023, as between RBC and Tung Air (the "**Tung Air Credit Agreement**");⁹
- b) the Credit Agreement dated May 16, 2023 (the "**252 Credit Agreement**");¹⁰ and
- c) the Credit Agreement dated May 16, 2023, as amended on June 27, 2024 (the "**Lessard Credit Agreement**").¹¹

(collectively, the "**Credit Agreements**").

17. Each of the Credit Parties cross-guaranteed the obligations of each of the other Credit Parties under each of the Credit Agreements, and in various amounts, pursuant

⁷ [Kamato Appraisal](#), Exhibit A to the Tung Affidavit, RR, Tab 1A.

⁸ Manning Appraisal, Exhibit B to the Tung Affidavit, RR, Tab 1B.

⁹ [Tung Air Credit Agreement](#), Exhibit E to the [Affidavit of Sylvia Kovesdi sworn March 6, 2025](#) (the "**Kovesdi Affidavit**"), Application Record ("AR"), Tab 4E.

¹⁰ [252 Credit Agreement](#), Exhibit E to the Kovesdi Affidavit, AR, Tab 4E.

¹¹ [Lessard Credit Agreement](#), Exhibit E to the Kovesdi Affidavit, AR, Tab 4E.

to a series of Guarantee and Postponement of Claim agreements (the “**Cross-Guarantees**”). Further, 100 guaranteed the obligations of each of the Credit Agreements in various amounts, pursuant to Guarantee and Postponement of Claim agreements (the “**Guarantees**”).¹²

18. Moreover, the Respondents provided RBC with significant security, including but not limited to:

- a) General security agreements from each of the Respondents in favour of RBC, constituting a first ranking security interest in all present and after acquired personal property of each of the Respondents (collectively, the “**GSAs**”);
- b) Collateral mortgages registered on the Respondents’ real property, as follows:
 - (i) a \$18,040,000.00 collateral mortgage provided by 252 in favour of RBC, constituting a first in priority charge registered on title to the Kamato Property with PIN 13294-0034 (LT) as instrument PR4208028 (the “**Kamato Mortgage**”);
 - (ii) a \$10,060,000.00 collateral mortgage provided by Lessard in favour of RBC, constituting a first in priority charge registered on title to the portion of the Manning Property owned by Lessard with PIN 75009-0015 (LT) as instrument CE1137095 (the “**Lessard-Manning Mortgage**”); and
 - (iii) a \$1,100,000.00 collateral mortgage provided by 100 in favour of RBC, constituting a first in priority charge registered on title to the portion of the Manning Property owned by 100 with PIN 75009-

¹² Tung Affidavit, at [paras 19-22](#), RR, Tab 1.

0016 (LT) as instrument CE1137089 (the “**100-Manning Mortgage**”).

(the Kamato Mortgage, Lessard-Manning Mortgage, and the 100-Manning Mortgage, collectively, the “**Mortgages**”).¹³
(Collectively, the “**Security**”)

19. Accordingly, the Mortgages constitute \$29,200,000.00 in collateral charges over the equity of the Kamato Property and Manning Property, which have an approximate aggregate current market value of \$34,550,000.¹⁴

d) The Indebtedness

20. RBC alleges that the Credit Parties are indebted to RBC as of January 9, 2025 in the aggregate sum of \$18,032,003.52 (the “**Indebtedness**”) as follows:

- a) Tung Air’s direct indebtedness as of January 9, 2025 totalling **\$1,595,068.35**;
- b) 252’s alleged direct indebtedness as of January 9, 2025 totalling **\$13,643,746.94**; and
- c) Lessard’s alleged direct indebtedness as of January 9, 2025 totalling **\$2,793,188.23**.¹⁵

B. Events Leading up to this Application

21. Throughout the Credit Parties’ borrowing relationship with RBC, their accounts were managed by Sreekumar “Kumar” Nair, Director, Senior Commercial Markets, who is employed by RBC (“**Mr. Nair**”). Mr. Nair would communicate either with Sardara or his son, Eknoor Tung (“**Eknoor**”), who had recently taken over managing the Credit Parties’ operations.

¹³ Tung Affidavit, at [paras 23-27](#), RR, Tab 1.; [Mortgages](#), Exhibit J and K to the Kovesdi Affidavit, MR, Tab 4J and 4K.

¹⁴ Tung Affidavit, at [para 34](#), RR, Tab 1.

¹⁵ Tung Affidavit at [para 32](#), RR, Tab 1.

22. As Mr. Nair was RBC's representative for all matters relating to the Credit Parties' accounts pursuant to the Credit Agreements, Sardara and Eknoor always trusted and relied upon his direction and information as being accurate, and followed the advice and direction that he provided.¹⁶

23. Until the Credit Parties ran into the financial slow-down that is widespread across the industry in beginning in early-2023, they were widely regarded as a success story, and were able to make the necessary payments pursuant to the Credit Agreements.

24. Unfortunately, the combination of the industry-wide slowdown which affected Tung Air and Lessard, some operational and financial system flaws, and some real estate purchases which diminished the Credit Parties' excess cash-flow, they began experiencing periodic cash-flow shortages in 2024.¹⁷

a) Renewal and Refinancing of the Kamato Mortgage

25. The 252 Credit Agreement was set to mature on May 17, 2024, which constituted the largest of the Credit Parties' credit facilities. Prior to the end of the term, 252's monthly payment towards the Kamato Mortgage was largely consistent at around \$94,265.23 per month, which provided the 252 with predictability as it pertained to cash-flow. As such, payments towards the Kamato Mortgage were made without issue.¹⁸

26. In advance of such date, Eknoor spoke with Mr. Nair to ask whether there was any possibility of RBC providing a further credit line in upcoming renewals of the 252 Credit Agreement to assist with the increasing cash-flow needs.

27. Mr. Nair advised that RBC would be unable to facilitate further credit, and instead directed the Credit Parties to alternative lenders that Mr. Nair knew, including

¹⁶ Tung Affidavit, at [paras 38-42](#), RR, Tab 1.

¹⁷ Tung Affidavit, at [paras 85-86, 111-114](#), RR, Tab 1.

¹⁸ Tung Affidavit, at [paras 63-64](#), RR, Tab 1.

specifically Abdul Khaliq of ASK Associates ("Mr. Khaliq"). Mr. Nair provided assurances and endorsed Mr. Khaliq as being qualified and experienced in providing similar financing arrangements which would permit the Credit Parties to refinance on preferable terms and pay out RBC for all amounts owing under the Credit Agreements.

28. In or around May 2024, a term loan renewal agreement dated May 16, 2024 was delivered by RBC with respect to the 252 Credit Agreement (the "**Renewal Agreement**"). The Renewal Agreement would have renewed the terms of the 252 Credit Agreement for a further 12 month term, the interest rate and payments for the Kamato Mortgage would have remained fixed, and accordingly, the monthly payments towards the Kamato Mortgage would have remained predictable at the same rate of \$94,265.23 per month.¹⁹

29. Moreover, if 252 did not enter into the Renewal Agreement, it would switch to a variable rate. Although Mr. Nair advised Eknoor and Sardara that the monthly payments would increase on a variable rate, he did not ever provide sufficient details nor provided an appropriate explanation as to how much such payments would increase by.

30. Accordingly, based solely on reliance of Mr. Nair and Mr. Khaliq's representations and assurances, 252 did not execute the Renewal Letter and decided to proceed with Mr. Khaliq and try to secure refinancing for the Kamato Mortgage.²⁰

31. Mr. Khaliq's assurances proved to be without merit, despite him leading Eknoor and Saradara on about funding being imminent. Ultimately, Mr. Khaliq was never able to secure replacement financing. As a result, the payments towards the

¹⁹ Tung Affidavit at [paras 43-46](#), RR, Tab 1.

²⁰ Tung Affidavit at [paras 47-62](#), RR, Tab 1.

Kamato Mortgage increased significantly, which further impacted the Credit Parties' cash flow.²¹

32. By such point in time, all of the Credit Parties' accounts had been transferred to Special Loans, and accordingly, the accounts were no longer managed by Mr. Nair. The practices thereafter change, and RBC began returning cheques as NSF far more frequently than it had before, and with far less warning or opportunity to remedy the issues, which further exacerbated cash-flow and operational issues.²²

b) RBC Alleges Defaults and the Respondents Seek to Cooperate

33. By letter dated December 19, 2024, RBC proposed the appointment of Spergel as a monitor on behalf of RBC (the "**Monitor**"), and enclosed an engagement letter to be executed by the Respondents (the "**Engagement Letter**").

34. The letter asked that the Respondents execute the Engagement letter "immediately", but no specific date was provided as a deadline for execution of the Engagement Letter. Contrary to RBC's assertions, RBC did not establish any firm deadlines by which the Respondents had to execute the Engagement Letter.²³

35. Eknoor is self-admittedly not a legally sophisticated individual, and so, he sought to retain legal counsel to advise him of the enforcement proceedings and the terms of the Engagement Letter before he could appropriately decide whether the Respondents were agreeable to RBC's offer.²⁴

36. In January of 2025, the Respondents retained counsel, Ray Thapar ("Mr. Thapar"). After catching up on what had occurred, and consulting with the Respondents, Mr. Thapar wrote to counsel for RBC to accept the offer that had been extended by RBC to execute the Engagement Letter in consideration for RBC agreeing to forbear from bringing enforcement proceedings, including this Application.

²¹ Tung Affidavit at [paras 69-80](#), RR, Tab 1.

²² Tung Affidavit at [para 82](#), RR, Tab 1.

²³ Tung Affidavit at [paras 94-95](#), RR, Tab 1.

²⁴ Tung Affidavit at [para 96-98](#), RR, Tab 1.

37. Notably, the parties were specifically in agreement that RBC's offer for the appointment of the Monitor was an alternative to RBC taking steps for the appointment of a Receiver. As such, when the Respondents delivered the executed Engagement Letter to RBC on January 31, 2025, they believed that there was a formal agreement and RBC would not bring an application for receivership.

38. It was only upon Mr. Thapar inquiring in the days following about the commencement of Spergel's process pursuant to the Engagement Letter, that RBC's Counsel informed Mr. Thapar that they were no longer agreeable to proceeding with the Monitor as the Respondents had not executed the Engagement Letter in time, and were instead pursuing the appointment of a Receiver.²⁵

39. However, as RBC decided to proceed with this Application, the Respondents were faced with the prospect of a receivership, and were required to refocus their efforts away from day-to-day operations to securing financing which would permit them to pay out RBC for the Indebtedness. Consequently, the Respondents' operations suffered, and is reflected in the drastic change in their accounts receivable and activity within their accounts.²⁶

C. RBC Brings this Application

a) The Application

40. RBC delivered the Application Record on Friday, March 7, 2025, for an initial returnable date of Wednesday, March 12, 2025.

41. Despite little notice, the Respondents retained new counsel, Kramer Simaan Dhillon LLP, and sought a brief adjournment so counsel could prepare materials on behalf of the Respondent, which was opposed by RBC. Respondents' counsel agreed to a relatively short timetable, and agreed to cooperate with RBC in its appointment of Spergel as a private receiver in the interim.

²⁵ Tung Affidavit at paras [99-105](#), citing the correspondence included as [Exhibit I](#) and [Exhibit J](#), RR, Tabs 1I and 1J.

²⁶ Tung Affidavit at [paras 106](#), RR, Tab 1.

42. On or about March 13, 2025, Spergel delivered an Information Request letter (the “**Information Request**”), wherein it requested various documentation, but also referred specifically to their appointment proceeding in accordance with the Engagement Letter.²⁷

43. Since then, the Respondents have delivered significant amounts of documents and records in satisfaction of the requests set out in the Information Request; and, where documents have been unavailable, steps have been taken to have them prepared and provided to Spergel as soon as possible.²⁸

b) The Respondents’ Efforts

44. The Respondents have acknowledged and recognized the need for professional and external support for their operations, and have already retained CFO/Financial Controller and accounting services to assist in bringing their financial operations up to date.²⁹

45. Moreover, the Respondents have been working with an experienced commercial mortgage broker to assist them with their efforts to obtain replacement financing. Of note, the Respondents have secured a letter of intent from Aureus Capital Management (the “**Aureus LOI**”), in which they advise of their willingness to provide refinancing of the Real Properties in the aggregate amount of \$20,600,000.00, and on reasonable terms.³⁰

46. The Respondents intend to accept and proceed with the Aureus LOI, which would allow for the entirety of the Indebtedness owing to RBC to be paid out, and

²⁷ [Information Request](#), Exhibit BB to the Tung Affidavit, RR, Tab 1BB; Email correspondence dated March 13, 2025 from Mukul Manchanda to Eknoor Singh, Exhibit B to the Supplementary Affidavit of Eknoor Singh Tung, affirmed April 11, 2025 (“**Supplementary Tung Affidavit**”).

²⁸ Tung Affidavit, at [paras 159-162](#), RR, Tab 1.

²⁹ Tung Affidavit at [paras 111-119](#), RR, Tab 1.

³⁰ Letter of Intent from Aureus Capital Management, dated April 11, 2025 (“**Aureus LOI**”), Exhibit A to the Supplementary Tung Affidavit.

would extinguish the need for the relief RBC seeks. Aureus has advised that they need at least until May 30, 2025 to close the deal.

PART III – ISSUES AND THE LAW

47. On RBC’s Application, the only issue to determine is whether it is just and convenient for this Court to appoint Spergel as receiver over the Property.

48. However, if this Court grants the Order RBC seeks, this Court must also determine whether it is reasonable in the circumstances to suspend the effect of such an Order until at least June 2, 2025.

A. The Applicable Law

49. The test relevant to appointing a receiver pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act* (“**BIA**”) and section 101 of the Ontario *Courts of Justice Act* (“**CJA**”) is well established – whether the appointment is “just and convenient”.

50. In making a determination about whether it is just and convenient in the circumstances of a particular case, the Court must have regard to all of the circumstances, and in particular the nature of the property and the rights and interests of all parties.³¹

51. The list of factors enumerated in the Supreme Court of British Columbia decision of *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.* is oft cited to inform the determination of whether it is appropriate to appoint a receiver, and are to be considered “holistically”:

- a. whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;

³¹ [*Bank of Nova Scotia v. Freure Village on the Clair Creek*](#), [1996] O.J. No. 5088 (Gen. Div. – Commercial List) (CanLii) [at para 10](#).

- b. the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;
- c. the nature of the property;
- d. the apprehended or actual waste of the debtor's assets;
- e. the preservation and protection of the property pending judicial resolution;
- f. the balance of convenience to the parties;
- g. the fact that the creditor has a right to appointment under the loan documentation;
- h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
- i. the principle that the appointment of a receiver should be granted cautiously;
- j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
- k. the effect of the order upon the parties;
- l. the conduct of the parties;
- m. the length of time that a receiver may be in place;
- n. the cost to the parties;
- o. the likelihood of maximizing return to the parties; and
- p. the goal of facilitating the duties of the receiver.³²

52. Although the Respondents accept that the case law has found that the burden on the applicant for receivership is lessened 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 presence of such a contractual entitlement is not determinative of the issue.³³

³² [*Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para 25.](#)

³³ [*RBC v. 2531961 Ontario Inc. et al.*, 2024 ONSC 1272 \(“**ONSC 1272**”\) at para 10.](#)

B. The Respondents' Position on this Application

53. The Respondents' position has been consistent from the outset – they appreciate that RBC is owed the Indebtedness, and they have remained focused on securing financing in order to pay RBC for all amounts owing.

54. Moreover, they have taken no issue with allowing Spergel or some other monitor that RBC seeks for the purposes of getting visibility and transparency into the Respondents' state of affairs.

55. However, the Respondents seek more time to secure the necessary financing to pay out the Indebtedness to RBC, and are on the cusp of securing such financing pursuant to the Aureus LOI.

56. While the Respondents acknowledge that in most cases, appointment of a receiver may be just and convenient in those circumstances, the Respondents submit that there are considerations in the present circumstances which should impact this Court's overall assessment, including the conduct of the parties; the fact that RBC's Security on the Real Properties, alone, significantly exceeds the amount of Indebtedness, and is not at risk; and, the impact on the Respondents.

57. Instead, the Respondents submit that it would be appropriate to maintain the private-monitoring by Spergel in the interim, or in the alternative, have this Court appoint Spergel as a court-appointed monitor – rather than granting the significant Order RBC seeks which would likely eliminate any chance the Debtors have to remain in operation.

a) The Respondents entered into an Agreement with RBC to Appoint Spergel as Monitor

58. RBC brought this Application after entering into an agreement with the Respondents to forbear from doing so, but then reneged. The Engagement Letter was executed by the Respondents' solely on the basis and in consideration for RBC forbearing from bringing this Application.

59. On basic contractual principles, there was an offer made by RBC to forbear from bringing this Application if the Respondents executed the Engagement Letter permitting Spergel to act as private-monitor, the Respondents accepted after retaining and consulting with their counsel at the time, Mr. Thapar, and there was consideration clearly flowing from both parties.

60. Despite RBC's assertions to the contrary, RBC and Spergel sought to rely on the executed Engagement Letter as the grounds upon which Spergel was appointed.³⁴

61. The Respondents took the position that if RBC sought to enforce the Engagement Letter, then it should honour the terms of the agreement upon which the Engagement Letter was executed – forbearance of this Application.

62. Initially, RBC sought to have this Court afford "judicial recognition" of the agreement and Spergel proceeding as monitor pursuant to the Engagement Letter. However, at the case conference, RBC entirely withdrew this argument – presumably, because it recognized that RBC would then have to honour its end of the agreement, being forbearing from this Application.³⁵

63. Notwithstanding, the Respondents have cooperated with Spergel.

b) The factors creating urgency for this Application are no longer present

64. RBC delivered the Application Record on the eve of Friday, March 7, 2025, for an initial returnable date of Wednesday, March 12, 2025, without notice or consultation as to the Respondents' availability to proceed on such date.

65. RBC appears to have brought the Application with such urgency out of concern that the Respondents' "transaction volumes had sharply dropped", such that they believed that the Respondents opened additional accounts, and inferred some nefarious purpose for such change in transactions. For instance, counsel for RBC

³⁴ Email correspondence dated March 13, 2025 from Mukul Manchanda to Eknoor Singh, Exhibit B to the Supplementary Tung Affidavit.

³⁵ Aide Memoire of Royal Bank of Canada, dated March 19, 2025, Exhibit C to the Supplementary Tung Affidavit.

emphasized this concern as a basis to refuse the adjournment sought by the Respondents on the first returnable date.³⁶

66. However, the activity in the Credit Parties' accounts have remained relatively consistent, and all bank statements for all accounts used by the Respondents have been provided to Spergel alongside necessary explanations.³⁷

67. Although RBC maintains that the activity in the Credit Parties' accounts have sharply dropped, it no longer makes any assertion of impropriety on the part of the Respondents.

68. Nevertheless, the focus and cause for concern expressed by RBC in its materials and by its counsel, has remained that they sought information and insight into the Credit Parties' business so they could ensure that their Security position was protected.

69. The Respondents have cooperated with Spergel, provided documents requested in the Information Request, have retained external consultants to satisfy the remaining items, and would continue to cooperate while it is finalizing its replacement financing pursuant to the Aureus LOI.

c) RBC's Security is not at Risk

70. RBC alleges that a receivership over all of the Respondents assets and other relief pursuant to their proposed Draft Order is necessary to protect their Security for the Indebtedness of each of the Respondents as there is a risk of their Security diminishing.

71. Contrary to RBC's assertions, the indebtedness of each of the Credit Parties to RBC is secured by the Mortgages in favour of RBC that substantially exceed the Indebtedness, as follows:

³⁶ Tung Affidavit, at [paras 127-128](#), RR, Tab 1.

³⁷ Tung Affidavit, at [paras 128-137](#), RR, Tab 1.

- a) Tung Air's alleged direct indebtedness as of January 9, 2025 totalling **\$1,595,068.35 ("Tung Air Indebtedness")**, is secured by:
- (i) the Kamato Mortgage in the amount of \$18,040,000.00, by virtue of the 252-Tung Air Cross-Guarantee;
 - (ii) the Lessard-Manning Mortgage in the amount of \$10,060,000.00 by virtue of the Lessard-Tung Air Cross Guarantee; and
 - (iii) the 100-Manning Mortgage in the amount of \$1,100,000.00, by virtue of the 100-Tung Air Guarantee.
- b) 252's alleged direct indebtedness as of January 9, 2025 totalling **\$13,643,746.94 ("252 Indebtedness")**, is secured by:
- (i) the Kamato Mortgage in the amount of \$18,040,000.00, registered on the Kamato Property in favour of RBC;
 - (ii) the Lessard-Manning Mortgage in the amount of \$10,060,000.00 by virtue of the Lessard-252 Cross Guarantee; and
 - (iii) the 100-Manning Mortgage in the amount of \$1,100,000.00 by virtue of the 100-252 Guarantee.
- c) Lessard's alleged direct indebtedness as of January 9, 2025 totalling **\$2,793,188.23 ("Lessard Indebtedness")**, is secured by:
- (i) the Lessard-Manning Mortgage in the amount of \$10,060,000.00, registered on the Manning Property in favour of RBC;
 - (ii) the Kamato Mortgage in the amount of \$18,040,000.00, by virtue of the 252-Lessard Cross-Guarantee; and
 - (iii) the 100-Manning Mortgage in the amount of \$1,100,000.00, by virtue of the 100-Lessard Guarantee.

72. Accordingly, RBC has Security which far exceeds the amount of the Indebtedness, including the Mortgages alone, which have granted RBC security in the aggregate amount of \$29,200,000.00 against an appraised aggregate value of \$34,550,000.00 for the Real Properties.³⁸

73. There is no reason why the value of the Property, including the Real Properties, will degrade over the coming months as alleged by RBC, without providing any evidence to support such an assertion. RBC has not provided any evidence or other support for such an assertion.

74. Moreover, the Kamato Appraisal and Manning Appraisal were prepared within the last year, prepared by a reputable source, Colliers, provide this Court with the most recent and credible valuation of the Real Property in the record.

75. Despite RBC's bald assertions to the contrary, RBC has failed to provide any substantive evidence to support the assertion that they do not provide an accurate representation of the true value of the Real Properties. RBC purportedly retained CBRE Limited for such purposes, but they did not include anything from them in their materials.³⁹

d) The Respondents are on the cusp of obtaining financing

76. As set out above, the Respondents have been working to obtain financing which would allow them to pay all amounts owing to RBC, and retain their family business.

77. The Aureus LOI is on reasonable terms, provides funding which exceeds the Indebtedness, and would permit the Respondents to improve their operations and continue as a going concern.

³⁸ Tung Affidavit at [paras 28-34](#), RR, Tab 1.

³⁹ Supplemental Affidavit of Sylvia Kovesdi, sworn April 2, 2025, Reply Application Record, Tab 1A.

78. However, the Respondents require further time to close the Aureus LOI, and have been advised that they need until at least May 30, 2025 to do so.⁴⁰

79. This matter has not been languishing before this Court for months, and the Respondents have not been afforded any unnecessary or improper adjournment.

80. In similar cases before this Court, respondents to an application seeking the appointment of a receiver have been afforded far greater latitude and time to secure financing, and on worse circumstances.⁴¹

e) The Respondents wish to continue their business

81. The Respondents run a family business that carries their name, and they seek an opportunity to obtain financing which will satisfy the Indebtedness, make the necessary operational and financial adjustments to their businesses, and continue as a going concern.

82. Further, the likelihood of Tung Air or Lessard maintaining its viability, reputation, and clients, is significantly affected if a receiver is appointed.

83. Finally, the many employees and contractors who rely on Tung Air or Lessard for employment and an income for their families, would also likely be significantly affected if a receiver is appointed.⁴²

⁴⁰ Supplementary Tung Affidavit, at para 5, RR, Tab 1.

⁴¹ See for instance, [*RBC v. 2531961 Ontario Inc. et al*](#), 2024 ONSC 1272, where an application for receivership was commenced by RBC in that case almost a year prior to finally obtaining an Order appointing a receiver, for reasons including, permitting the respondent time to try to finalize financing arrangements.

⁴² Tung Affidavit, at paras 120-126, RR, Tab 1.

PART IV – ORDER SOUGHT

84. For all of the reasons above and as may be submitted further by counsel for the Plaintiffs, the Plaintiffs respectfully request the following relief:

- a) an Order dismissing the Application;
- b) in the alternative, an Order that this Application be adjourned until some date after May 30, 2025, with or without Spergel remaining as a private monitor appointed by RBC;
- c) if the Order sought by RBC is granted, then an Order suspending its effect until some date after May 30, 2025;
- d) costs of this motion;
- e) such further relief as this Honourable Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 11th day of April, 2025.

Micheal Simaan / Kishan Lakhani
Kramer Simaan Dhillon LLP
Lawyers for the Respondents

SCHEDULE "A"

LIST OF AUTHORITIES

Juriprudence

- 1) [*Bank of Nova Scotia v. Freure Village on the Clair Creek*](#), [1996] O.J. No. 5088 (Gen. Div. – Commercial List) (CanLii)
- 2) [*Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*](#), 2009 BCSC 1527 (CanLii)
- 3) [*RBC v. 2531961 Ontario Inc. et al.*](#), 2024 ONSC 1272 (CanLii)

SCHEDULE "B" – RELEVANT STATUTES AND RULES

Nil.

ROYAL BANK OF CANADA
Applicant

-and-

TUNG AIR TRANSPORT LTD. et al.
Respondents

Court File No. CV-25-00738060-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

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