COURT FILE NO. CV-26-00000686-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN

ROYAL BANK OF CANADA

APPLICANT

AND

1937752 ONTARIO LIMITED., 1000582272 ONTARIO INC., AND 1000060338 ONTARIO INC.

RESPONDENTS

RESPONDENTS' MEMORANDUM OF FACT AND LAW

OVERVIEW

1. This is an application for the extraordinary remedy of a court-appointed receiver under s. 243 of the Bankruptcy and Insolvency Act. The Respondents submit that the appointment is neither just nor convenient. The Applicant contributed to the alleged defaults through its own conduct, including control over accounts and misapplication of funds. Equitable relief should be denied.

FACTS

2. The facts are drawn from the Respondents' affidavits. The Applicant exercised control over financial operations, restricted access to accounts, and interfered with payments. The Respondents are pursuing refinancing.

ISSUES BEFORE THE COURT

a) Is it just or convenient to appoint a receiver?

b) Should equitable relief be denied due to the Applicant's conduct?

c) Are there less intrusive alternatives?

LAW AND ARGUMENT

3. Test for Receivership

Under s. 243 of the BIA, the Court may appoint a receiver where it is 'just or convenient'. In Bank of Montreal v Carnival National Leasing Ltd., 2011 ONSC 10072011 ONSC 1007, https://canlii.ca/t/2fqm3 the Court held that the remedy is discretionary and depends on fairness. In *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 40 C.B.R. (3d) 274, Blair J. (as he then was) dealt with a similar situation in which the bank held security that 2011 ONSC 1007 (CanLII) permitted the appointment of a private receiver or an application to court to have a court appointed receiver. He summarized the legal principles involved as follows:

> 10 The Court has the power to appoint a receiver or receiver and manager where it is "just or convenient" to do so: the Courts of Justice Act, R.S.O. 1990, c. 43, s. 101. In deciding whether or not to do so, it 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. The fact that the moving party has a right under its

security to appoint a receiver is an important factor to be considered

but so, in such circumstances, is the question of whether or not an

appointment by the Court is necessary to enable the receiver-manager

to carry out its work and duties more efficiently; see generally Third

Generation Realty Ltd. v. Twigg (1991) 6 C.P.C. (3d) 366 at pages

372-374; Confederation Trust Co. v. Dentbram Developments Ltd.

(1992), 9 C.P.C. (3d) 399; Royal Trust Corp. of Canada v. D.Q. Plaza

Holdings Ltd. (1984), 54 C.B.R. (N.S.) 18 at page 21. It is not

essential that the moving party, a secured creditor, establish that it will

suffer irreparable harm if a receiver-manager is not appointed: Swiss

Bank Corp. (Canada) v. Odyssey Industries Inc. (1995), 30 C.B.R (3d) 49.

[25] It is argued on behalf of Carnival that the appointment of a receiver is an extraordinary

In Royal Bank of Canada v Soundair Corp. (1991), 4 O.R. (3d) 1 (C.A.), the Court emphasized maximizing recovery and fairness.

5. **Clean Hands Doctrine:** A party seeking equitable relief must come with clean hands: Toronto (City) v Polai (1969), https://canlii.ca/t/g1ckz

The Applicant's conduct contributed to default and disentitles it to relief.

6. Applicant has full control of the bank accounts of the Respondents. Bank has moved money between accounts on their own without any input from the Respondents. This behavior of the bank is questionable and it has contributed to default. Therefore Applicant is not entitled for relief

7. **Bad Faith and Lender Misconduct**

In 1196158 Ontario Inc. v 6274013 Canada Ltd., 2012 ONCA 544, https://canlii.ca/t/fsf5w courts recognized that lender conduct is relevant in reaching on any conclusion.

The Applicant exercised excessive control, amounting to a shadow directorship.

8. It is evident from the affidavit of Rohit Sharma that RBC had an excessive control over the affairs of Respondents' business and financing. Applicant controlled the business of the respondents is evident from the fact that even bank approached he landlord directly to terminate the release.(Ref paragraph 6 and exhibit "C" of the affidavit of Rohit Sharma affirmed on 01-APR-2026). The business of the second location was closed deliberately by the Applicant. RBC was aware of the refinance plan, renovations/transition and it was discussed to convert LOC to term loan but RBC chose not to do so later on. This is a misalignment of the agreed structure and failure to implement intended financing plan. RBC acted in bad faith and made

Corporations vulnerable. RBC is now alleging default as they are relying on the conditions of the structure.

9. There was no intention of the Respondent to close the primary location for 1937752 Ontario Ltd. All the funds of refinancing were disbursed by RBC and there was no unput from the Respondents that how the funds should be allocated. Instead RBC paid out the funds at their discretion and maxed out the Line of Credit.(Ref: paragraph 5 of the affidavit of Rohit Sharma affirmed on 01-APR-2026).

10. Mr. Noronha's affidavit dismisses the wording of bank statements as secondary to the Letter Agreement. While the Bank's legal application refers to Facility #2 as a "Non-Revolving Term Facility" , the actual mortgage statement dated December 31, 2025, explicitly labels it a "DEMAND LOAN". Respondents were never informed that their Term Loan had been converted to a Demand Loan. This discrepancy represents a material lack of transparency and a deviation from the agreed-upon financing plan, which was designed to support a long-term project transition.

11. Mr. Noronha's affidavit relies on Michael Foster's claim of "unauthorized overdraft activity" to justify receivership. This claim is demonstrably false. Internal bank communications show that Mr. Noronha himself explicitly requested and authorized these overdrafts.

12 **Less Drastic Remedy**

Receivership is a last resort: Refinancing and restructuring remain viable.

Applicants mentions various factors to support the application on page 18 and 19 of their factum:

a) Respondents agree to para b on page 18 of the Applicant's Factum.

b) Respondent does not agree to para b and c of the Applicant's Factum because the business and security of the Applicant is more safe in the hands of the Respondent instead of receivers. Receives expenses are so high that the value of the property will diminish quickly.

c) Respondent does not agree to para d and e of the Applicant's Factum because the control of the finance and management is in the hands of the Applicant from day one of the refinancing and they are responsible for mismanagement of the affairs of the Respondents corporations. If their decisions have back fired then it does not mean to put the whole blame on the Respondents rather Applicant should accept their failure and give opportunity to Respondents to get refinance from other bank to put their business on track which will be a win-win situation for both parties.

13. **Balance of Convenience**

The Court must consider harm: RJR-MacDonald Inc. v Canada (AG), [1994] at page 270, http://lawjournal.mcgill.ca/

A receiver would destroy value of the Corporation because they do not have ant stake in the organization. In order to save an organization and the interest of the Applicant, it is necessary to provide opportunity to Respondents to look for refinance which is good for both parties. Hence Respondents deserves a couple of month time to arrange the refinance.

If the refinance could not be obtained then Applicant has still opportunity to bring back this application.

ORDER REQUESTED

The Respondents request dismissal of the application or in the alternative adjournment of this application for two months so that Respondents could explore the refinancing options.

All of which is respectfully submitted.

Date: 15-APR-2026

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