

ONTARIO

SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

ROYAL BANK OF CANADA

Applicant

- And -

2292319 ONTARIO INC.

Respondent

MOTION RECORD OF THE RESPONDING PARTY'S TENANTS:
SK FOOD EQUIPMENT, COOL OCEAN IMPEX and SCRAP TO GO
(in responding to Applicant's supplement motion record returnable Oct. 13, 2016)

Date: October 5, 2016

SK FOOD EQUIPMENT
COOL OCEAN IMPEX
SCRAP TO GO
Email: 888bsc@gmail.com
Mailing address:
Attn.: Sherri Chen and Raymond Young
P.O. Box 7233
Warden Centre PO
Markham, ON L3R 5V1

To: Sanjeev P.R. Mitra (LSUC 37934U)
Jeremy Nemers (LSUC 66410Q)
Aird & Berlis LLP
Barrister & Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9
Email: smitra@airdberlis.com & jnemers@airdberlis.com

And others per the service list attached to the motion

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AFFIRMATION OF JOE HONG LI
(In responding to the Applicant's Supplemental Motion Record)
(Returnable 13th October 2016)

1. I, Joe Hong Li, owner of SK Food Equipment ("SK") and its two sub-lessees: COOL OCEAN IMPEX and SCRAP TO GO, (collectively referred to as SK), have been the tenants of the now bankrupted landlord: 2292319 ONTARIO INC. located at 38 Metropolitan Rd. Scarborough, Ontario. SK started the existing leases from 2012, and expiring in 2019. It has an option allowing SK to renew the leases for another 5-year term. (Copies of the leases in the Applicant's Motion document).
2. While being the tenants of the 2292319 Ontario Inc., SK and its sub-tenants were leases abiding companies. They paid rents and other expenses such as hydro timely and followed all the terms and conditions stated in the leases.

The Bankruptcy of the Landlord

3. In late March 2016, 2292319 Ontario Inc. was under Receivership. Based on the court documents, SK knew that the Receiver (Mis Spergel Inc.) has only one key mandate, that is, according to Royal Bank's Notice of Motion (returnable July 28, 2016) page 2, it stated:

“(d) declaring that any purchaser of the premises municipally known as 38 Metropolitan Road, Toronto, Ontario (the “Premises”) from the Receiver shall be entitled to vacant possession of the Premises, free and clear of the interests and claims, if any, of any and all occupants of the Premises, including, without limitation, any and all leases, subleases and similar arrangements (collectively, the “Leases”) that may exist in respect of the Premises.”

SK's insurance document

4. Soon after the Court appointing Msi Spergel as the Receiver, it started the mandate of “vacant possession of the Premises.” Despite that SK and its sub-tenants have been responsible tenants, nevertheless, on May 5, the Receiver issued 3 Notice of Default, purportedly one for SK and two for its two sub-tenants, under the excuse of:

“While a document purporting to be a certificate of insurance has been provided to the undersigned on May 5, 2016. This document does not confer any liability on the purported insurer. Further, it is not in the name of the Tenant. You are required to cure the foregoing default forthwith and in any event not later than the time provided with the Lease.”

5. Then on May 13, the Receiver issued Notice of Termination to SK. Its reason:

“While a document purporting to be a certificate of insurance has been provided to the undersigned on May 5, 2016. This document does not confer any liability on the purported insurer. Further, it is not in the name of the Tenant. Finally it does not extend coverage to the activities of the Tenant at the Premises.”

6. The Receiver never provided any insurance authority or legal basis for it to determinate: “This document does not confer any liability on the purported insurer.”
7. At the July 28 Motion Hearing, Justice Wilton-Siegel rebuked Receiver’s requests for terminating SK’s leases. Instead, the Justice ordered that SK’s to provide insurance document to prove the sub-tenant ‘Scrap to Go’ has coverage in 10

days. (the 9th and 10th day were Saturday and Sunday). Due to the pressing of timing, SK immediately covered with the proper insurance for Scarp to Go per the Order. On August 4, SK provided the insurance certificate to the Receiver. Later, the Receiver asked for the insurance policy, the policy was provided by email upon receiving the voluminous document from the insurance agent. (the document is enclosed in the instant Motion).

SK's hydro allocation and payments:

8. Prior to the Receiver taking over the Premises, SK and the then Landlord had this arrangement about the hydro allocation and payment. Every time the landlord received the hydro bill, its staff would check all the sub-meters and determine the fair share each tenant should pay. All the time, there was no problem. SK and its sub-tenant Cool Ocean haven been in frozen foods business actively, they maintain a fairly stable hydro consumption; Scrap to Go has been in scrap metals storage. The combined usage of the three companies has been between \$7500 to \$7900 monthly, it accounted for closed to 15% of the total hydro consumption of the entire building. (A two-story building with 87,000 s.f)
9. Once the Receiver took over the Premises, its method of calculating the hydro allocation has not been in accordance with the reasonable charges that SK should pay. Thus dispute relating to hydro consumption happened. During the last few months, the Receiver sent SK three hydro payment demands, the first one ending on June 21 2016, it asked SK to pay a total of $\$75,832 + 4,175 = \$80,007$ for 128 days consumption. (Or \$20,846 for one month) (it accounted for 43.45% of the entire building's hydro consumption).

Receiver's second hydro bill ending on July 21, it asked SK to pay a total of $\$110,193 + 712 = \$110,905$ for 128 days consumption. (Or \$28,881 for one month) (It accounted for 50% of the entire building's hydro consumption).

Receiver's third hydro bill ending on July 21, it asked SK to pay a total of \$40,398 + 7,952 = \$48,350 for 128 days consumption. (Or \$12,591 for one month) (It accounted for 21.38% of the entire building's hydro consumption).

SK asked the Receiver to show the bills from Toronto Hydro, a total of 4 bills were provided. The bills' dates were: May 10, 2016; June 3, 2016; July 11, 2016 and Aug 5, 2016. Based on the 4 bills' 'Adjusted kWh uses' column (Hydro advised this is the proper way to calculate), the total hydro used for the entire building was 1,316,340 kWh. The Receiver's calculation, based on the sub-meters, SK's consumption for the same 128 days period was 198,946 kWh. It represents 15.11%. The total hydro charge was \$226,174.78 for 1,316,340 kWh. And 15.11% of \$226,174.78 is \$34,183.08. In other words, the fair share of SK's hydro consumption for the 128 days should be \$34,183.08. And SK agreed to pay that. But the Receiver would not agree.

SK explained to the Receiver the proper way of calculation, but the Receiver insisted SK must pay the sum of \$48,350.00. Then, the Receiver issued a Notice of Default for hydro bill non-payment against SK.

10. Based on the facts, the Receiver has been trying every way to evade SK, despite that SK has been paying rents monthly timely, and with proper insurance coverage; In addition to having valid leases. SK believes the Applicant's acts, through the Receiver, has been oppressive in against small tenants.

11. Therefore, SK requests that Applicant's motion be denied and SK be allowed to stay per the leases and to pay the fair share of hydro bill as stated above.

I, Joe Hong Li, affirm that the above statement is true.

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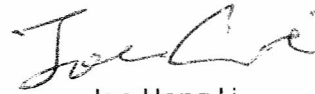
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I, Joe Hong Li, affirm that the above statement is true.



Joe Hong Li

Date: 5th October 2016

For SK Food Equipment and its sub-tenants:
Cool Ocean Impex and Scrap to Go.

NOTICE OF DEFAULT

TO: S.K. Food Equipment

RE: Leases dated August 17, 2012, November 26, 2012 and February 18, 2014 (collectively referred to as the "Leases") between 2292319 Ontario Inc. and S.K. Food Equipment (the "Tenant") of premises known as 38 Metropolitan Road, Toronto, Ontario (the "Premises")

MSI Spergel Inc., in its capacity as Court appointed receiver of 2292319 Ontario Inc., which is the landlord of the above-noted Premises, hereby gives you notice that the Tenant is in default of the Leases as a result of the Tenant failing to remit payment for its proportionate share of hydro usage at the Premises pursuant to section 5 of the Leases. Multiple requests to provide payment were previously provided to you by the Receiver.

This notice is without prejudice to any and all of the Landlord's rights under the Leases and at law. The Landlord does not, as a result of any of its actions or the contents of this notice, acknowledge, waive or accept any other defaults in respect of the Leases.

The acceptance by the Landlord of any rent or payments for hydro after the date of this notice will not constitute a waiver of the Landlord's rights as a result of the aforementioned default or any other defaults under the Leases and the time periods for your remedying the default will not hereby be extended. Any failure or delay by the Landlord in strictly enforcing your performance under the Leases are all without prejudice to the Landlord's rights under the Leases and at law.

DATED at Toronto, Ontario on September 12, 2016

MSI SPERGEL INC., ~~in its capacity as receiver~~
of 2292319 ONTARIO INC., and not in its
personal capacity

Per: 

Name:

Title:

PHILIP GENNISS
SENIOR PRINCIPAL

Per: _____

Name: _____

Title: _____

I/We have authority to bind the Corporation.

ROYAL BANK OF CANADA

Applicant

--AND--

COURT FILE NO. CV-16-11331-00CL

2292319 ONTARIO INC.

Respondent

ONTARIO

SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

MOTION RECORD OF THE RESPONDING PARTY'S TENANTS:
SK FOOD EQUIPMENT, COOL OCEAN IMPEX and SCRAP TO GO

Sherri Chen and Raymond Young

SK FOOD EQUIPMENT

Email: 888bsc@gmail.com

Tel: 647-535-5270

Mailing address:

P.O. Box 7233

Warden Centre Post Office

Markham, ON L3R 5V3

Party in Person