



Court File No.

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

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

**KAPILA TRANSPORT INC., 2669621 ONTARIO INC., KGS FREIGHT INC.,
2624598 ONTARIO INC., and KAPILA TRANSPORT ALBERTA LTD.**

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**

(Court seal)

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing

- ☐ In person
- ☐ By telephone conference
- ☒ By video conference

for scheduling purposes before a Judge presiding over the Commercial List on a date to be scheduled, or as soon after that time as the matter can be heard, via Zoom coordinates to be provided by the court.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of

Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: June 3, 2025

Issued by
Local registrar

Address of court office 330 University Avenue
Toronto, ON M5G 1R7

TO: SERVICE LIST

APPLICATION

1. The applicant, Royal Bank of Canada (“**RBC**”), makes application for an Order that:

- a) if necessary, abridges the time for service and filing of this notice of application and the application record or, in the alternative, dispenses with and/or validates service of same;
- b) appoints msi Spergel inc. (“**Spergel**”) as receiver, without security, of all the assets, undertakings and properties of Kapila Transport Inc. (“**Kapila**”), 2669621 Ontario Inc. (“**266**” and, together with Kapila, the “**Borrowers**”), KGS Freight Inc. (“**KGS**”), 2624598 Ontario Inc. (“**262**”), and Kapila Transport Alberta Ltd. (“**Kapila AB**” and, collectively with KGS, 262 and the Borrowers, the “**Corporate Credit Parties**”) acquired for, or used in relation to any business(es) carried on by the Corporate Credit Parties and all proceeds thereof (collectively, the “**Property**”), including, without limitation, (i) the real properties municipally known as 313 – 317 Darrell Drive, Ayr, Ontario, and legally described under PINs 03851-0038 (LT) and 03851-0039 (LT) (collectively, the “**Ayr Property**”), and (ii) the real property municipally known as 3378 Putnam Road, Putnam, Ontario, and legally described under PIN 08178-0162 (LT) (the “**Putnam Property**” and, together with the Ayr Property, the “**Real Properties**”); and
- c) grants such further and other relief as is just.

2. The grounds for the application are:

- a) the Corporate Credit Parties are privately held and incorporated under the Ontario *Business Corporations Act*, with registered head offices in Ayr, Ontario, and Cambridge, Ontario, as applicable;
- b) the Corporate Credit Parties operate a trucking company with operations throughout Canada and the United States;
- c) 266 is the registered owner of the Real Properties;

- d) the Borrowers are indebted to RBC in connection with certain credit facilities (the “**Credit Facilities**”) made available pursuant to and under the terms of, without limitation, (i) the credit agreement dated December 8, 2023 between Kapila and RBC (the “**Kapila Credit Agreement**”), (ii) the master lease agreement dated February 14, 2019 between Kapila and RBC and any leasing schedules thereunder (collectively, the “**MLA**”), and (iii) the credit agreement dated December 8, 2023 between 266 and RBC (the “**266 Credit Agreement**” and, collectively with the Kapila Credit Agreement and the MLA, the “**Credit Agreements**”);
- e) the Corporate Credit Parties are each also liable to RBC under the following guarantees granted in favour of RBC (collectively, the “**Corporate Guarantees**”):
 - i) regarding the obligations of Kapila:
 - 1) the guarantee granted by 266 dated December 17, 2022, limited to the principal amount of \$3,400,000;
 - 2) the guarantee granted by 262 dated December 17, 2022, limited to the principal amount of \$3,400,000;
 - 3) the guarantee granted by Kapila AB dated December 17, 2022, limited to the principal amount of \$3,400,000; and
 - 4) the guarantee granted by KGS dated December 17, 2022, limited to the principal amount of \$2,600,000; and
 - ii) regarding the obligations of 266:
 - 1) the guarantee granted by Kapila dated June 7, 2023, limited to the principal amount of \$6,800,000;
 - 2) the guarantee granted by 262 dated June 7, 2023, limited to the principal amount of \$6,800,000;
 - 3) the guarantee granted by KGS dated June 7, 2023, limited to the principal amount of \$6,800,000; and
 - 4) the guarantee granted by Kapila AB dated June 7, 2023, limited to the principal amount of \$6,800,000;
- f) as security for their respective obligations to RBC, the Corporate Credit Parties provided security in favour of RBC (the “**Security**”), including, without limitation:

- i) the first charge/mortgage granted by 266 in the principal amount of \$6,750,000 in respect of the Ayr Property, which was registered on title on January 17, 2019 and amended on June 28, 2023;
- ii) the general assignment of rents granted by 266 in respect of the Ayr Property on January 17, 2019;
- iii) the first charge/mortgage granted by 266 in the principal amount of \$5,500,000 in respect of the Putnam Property, which was registered on title on June 29, 2023;
- iv) the general assignment of rents granted by 266 in respect of the Putnam Property, which was registered on title on June 29, 2023;
- v) the general security agreement dated January 11, 2019 granted by 266, registration in respect of which was made under the *Personal Property Security Act* (Ontario) (the “PPSA”);
- vi) the general security agreement dated January 11, 2019 granted by Kapila, registration in respect of which was made under the PPSA;
- vii) the general security agreement dated March 17, 2021 granted by KGS, registration in respect of which was made under the PPSA;
- viii) the general security agreement dated March 17, 2021 granted by Kapila AB, registration in respect of which was made under the PPSA;
- ix) the general security agreement dated April 16, 2021 granted by 262, registration in respect of which was made under the PPSA; and

- x) the security agreement (chattel mortgage) dated April 5, 2016 granted by Kapila, registration in respect of which was made under the PPSA;
- g) RBC is the only registered secured creditor on title to the Real Properties;
- h) the certified PPSA search results for Kapila show 51 different registration families, including, without limitation, a PPSA registration in favour of RBC against all collateral classifications other than consumer goods (the “**General RBC Registration**”). Each of the other PPSA registrations is either limited on its face to certain equipment/motor vehicles, and/or was registered after the General RBC Registration;
- i) the certified PPSA search results for KGS show two different registration families, including, without limitation, a PPSA registration in favour of RBC against all collateral classifications other than consumer goods. The only other PPSA registration was registered after RBC’s registration;
- j) the certified PPSA search results for 266, 262 and Kapila AB reflect that RBC is the only registered secured creditor in respect thereof;
- k) in early 2025, Waterloo Regional Police Service advised RBC that a forklift located at the Ayr Property, and over which RBC is a registered secured creditor, had been seized by the police as part of an investigation;
- l) certain of the Credit Facilities are repayable on demand, and in addition, one or more Event of Default (as defined by the Credit Agreements) had occurred;
- m) on January 28, 2025, RBC made formal written demand on the Corporate Credit Parties for payment of the demand and matured Credit Facilities owing to RBC under the Credit Agreements and the Corporate Guarantees, as applicable (collectively, the “**First Demand Letters**”), which were accompanied by notices of intention to enforce security pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”);

- n) as set out in the First Demand Letters, a total of CAD \$2,870,708.42 plus USD \$161,106.60 was due and owing by the Borrowers to RBC for principal and interest as of January 21, 2025 (plus accruing interest and costs) (collectively, the “**January Demanded Indebtedness**”);
- o) the Corporate Credit Parties failed to honour the First Demand Letters or to make arrangements satisfactory to RBC, which constituted a further Event of Default under the Credit Agreements such that all other amounts owing to RBC under the Credit Agreements were accelerated;
- p) on February 27, 2025, RBC made further formal written demand on the Corporate Credit Parties for payment of the leasing and un-matured term amounts owed to RBC under the Credit Agreements and the Corporate Guarantees, as applicable (collectively, the “**Second Demand Letters**”);
- q) as set out in the Second Demand Letters, a further total of CAD \$5,835,092.66 was due and owing by the Borrowers to RBC for principal and interest as of February 19, 2025 (plus accruing interest and costs) (collectively, the “**February Demanded Indebtedness**” and, together with the January Demanded Indebtedness, the “**Demanded Indebtedness**”);
- r) the Demanded Indebtedness remains outstanding;
- s) at this stage, RBC considers that the only reasonable and prudent path forward is to take any and all steps necessary to protect the Property by having a receiver appointed, and it is within RBC’s rights under the Security to do so;
- t) it is just and equitable that a receiver be appointed. A receiver is necessary for the protection and monetization of the Property;
- u) Spergel has consented to being appointed as the receiver;
- v) Spergel is a licensed insolvency trustee and is familiar with the circumstances of the Corporate Credit Parties and their arrangements with RBC;

- w) the other grounds set out in the affidavit of David Jenkins, to be sworn, in support of the within application (the “**Jenkins Affidavit**”);
- x) subsection 243(1) of the BIA;
- y) section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- z) rules 1.04, 2.01, 2.03, 3.02, 16, 38 and 41 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- aa) such further grounds as are required and this Court may permit.

3. The following documentary evidence will be used at the hearing of the application:

- a) the Jenkins Affidavit;
- b) the consent of Spergel to act as the receiver; and
- c) such other material as is required and this Court may permit.

June 3, 2025

AIRD & BERLIS LLP
Barristers & Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

Sanjeev P. R. Mitra (LSO No. 37934U)
Tel: (416) 865-3085
Email: smitra@airdberlis.com

Jeremy Nemers (LSO No. 66410Q)
Tel: (416) 865-7724
Email: jnemers@airdberlis.com

Calvin Horsten (LSO No. 90418I)
Tel: (416) 865-3077
Email: chorsten@airdberlis.com

Lawyers for Royal Bank of Canada

Court File No.

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ROYAL BANK OF CANADA

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SERVICE LIST

(current as of June 3, 2025)

TO:	AIRD & BERLIS LLP Brookfield Place 181 Bay Street, Suite 1800 Toronto, ON M5J 2T9 Sanjeev P. R. Mitra Tel: (416) 865-3085 Email: smitra@airdberlis.com Jeremy Nemers Tel: (416) 865-7724 Email: jnemers@airdberlis.com Calvin Horsten Tel: (416) 865-3077 Email: chorsten@airdberlis.com Lawyers for the Applicant
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AND TO:	MSI SPERGEL INC. 200 Yorkland Boulevard, Suite 1100 Toronto, ON M2J 5C1 Mukul Manchanda Tel: (519) 661-6705 Email: mmanchanda@spergel.ca Proposed Receiver
AND TO:	DIVI CAPITAL COUNSEL, P.C. 200 Bay Street, Suite 1200 Toronto, ON M5J 2J2 Divi Dev Tel: 416-477-3556 Email: ddev@divdis.com Lawyer for the Respondents
AND TO:	KAPILA TRANSPORT INC. 313 Darrell Drive Ayr, ON N0B 1E0 Gitish Kapila Email: GK@kapilatransport.com Borrower
AND TO:	2669621 ONTARIO INC. 240 Bismark Drive Cambridge, ON N1S 4Y5 Meha Kapila and Gitish Kapila Email: mehakapila@hotmail.com and GK@kapilatransport.com Borrower
AND TO:	KGS FREIGHT INC. 240 Bismark Drive Cambridge, ON N1S 4Y5 Gitish Kapila Email: GK@kapilatransport.com Corporate Guarantor

AND TO:	2624598 ONTARIO INC. 240 Bismark Drive Cambridge, ON N1S 4Y5 Meha Kapila Email: mehakapila@hotmail.com Corporate Guarantor
AND TO:	KAPILA TRANSPORT ALBERTA LTD. 16316 19 AVE SW Edmonton, AB T6W 3P6 Gitish Kapila Email: GK@kapilatransport.com Corporate Guarantor
AND TO:	GITISH KAPILA 240 Bismark Drive Cambridge, ON N1S 4Y5 Email: GK@kapilatransport.com Personal Guarantor
AND TO:	MEHA KAPILA 240 Bismark Drive Cambridge, ON N1S 4Y5 Email: mehakapila@hotmail.com Personal Guarantor
AND TO:	OFFICE OF THE SUPERINTENDENT OF BANKRUPTCY 151 Yonge Street 4th Floor Toronto ON M5C 2W7 Tel: (416) 973-6441 Email: osbservice@ised-isde.gc.ca

AND TO:	DEPARTMENT OF JUSTICE CANADA Ontario Regional Office 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1 Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca
AND TO:	HIS MAJESTY THE KING IN RIGHT OF CANADA as represented by Ministry of Finance Legal Services Branch Revenue Collections Branch – Insolvency Unit 33 King Street West, P.O. Box 627 Oshawa, ON L1H 8H5 Email: insolvency.unit@ontario.ca
AND TO:	BANK OF MONTREAL 5750 Explorer Drive, 2 nd Floor Mississauga, ON L4W 0A9 PPSA Registrant
AND TO:	BANK OF NOVA SCOTIA – DLAC Scotia Plaza 44 King Street W Toronto, ON M5H 1H1 PPSA Registrant
AND TO:	CANADIAN DEALER LEASE SERVICES INC. 372 Bay Street, Suite 1800 Toronto, ON M5H 2W9 PPSA Registrant
AND TO:	CANADIAN WESTERN BANK 300, 606 4 Street SW Calgary, AB T2P 1T1 PPSA Registrant
AND TO:	CANADIAN WESTERN BANK LEASING INC. 300, 606 4 Street SW Calgary, AB, T2P 1T1 PPSA Registrant

AND TO:	CANADIAN WESTERN BANK LEASING INC. 12230 Jasper Avenue, Suite 201 Edmonton, AB T5N 3K3 PPSA Registrant
AND TO:	COAST CAPITAL EQUIPMENT FINANCE LTD. 800-9900 King George Blvd. Surrey BC V3T 0K7 PPSA Registrant
AND TO:	COLD IRON TRUCK CENTER INC O/A COLD IRON TRUCK CENTER INC 600 Harrop Drive Milton, ON L9T 3H2 PPSA Registrant
AND TO:	CWB NATIONAL LEASING INC. 1525 Buffalo Place (3118102) Winnipeg, MB R3T 1L9 PPSA Registrant
AND TO:	DAIMLER TRUCK FINANCIAL 2680 Matheson Blvd. E. , Suite 500 Mississauga, ON L4W 0A5 PPSA Registrant
AND TO:	DAIMLER TRUCK FINANCIAL SERVICES CANADA CORPORATION 2680 Matheson Blvd. E., Suite 202 Mississauga, ON L4W 0A5 PPSA Registrant
AND TO:	DE LAGE LANDEN FINANCIAL SERVICES CANADA INC. 3450 Superior Court, Unit 1 Oakville, ON L6L 0C4 PPSA Registrant
AND TO:	ECAPITAL FREIGHT FACTORING, INC. 174 West Street S. Orillia, ON L3V 6L4 PPSA Registration

AND TO:	LBEL INC. 5035 South Service Rd Box 5060 Burlington, ON L7L 6M9 PPSA Registrant
AND TO:	MERCEDES-BENZ FINANCIAL SERVICES CANADA CORPORATION 2680 Matheson Blvd. E., Suite 500 Mississauga, ON L4W 0A5 PPSA Registrant
AND TO:	MERIDIAN ONECAP CREDIT CORP. 204 - 3185 Willingdon Green Burnaby, BC V5G 4P3 PPSA Registrant
AND TO:	MERIDIAN ONECAP CREDIT CORP. 4710 Kingsway, Suite 1500 Kingsway Burnaby, BC V5H 4M2 PPSA Registrant
AND TO:	MITSUBISHI HC CAPITAL CANADA LEASING, INC. 401-1100 Burloak Drive Burlington, ON L7L 6B2 PPSA Registrant
AND TO:	VAULT CREDIT CORPORATION 41 Scarsdale Road, Suite 5 Toronto, ON M3B 2R2 PPSA Registrant
AND TO:	VFS CANADA INC. 238 Wellington St. E., 3 rd Floor Aurora, ON L4G 1J5 PPSA Registrant

EMAIL SERVICE LIST

smitra@airdberlis.com; jnemers@airdberlis.com; chorsten@airdberlis.com; mmanchanda@spergel.ca;
mehakapila@hotmail.com; GK@kapilatransport.com; ddev@divdis.com; osbservice-bsfservice@ised-isde.gc.ca; AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca; insolvency.unit@ontario.ca;

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Proceedings commenced at Toronto

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AIRD & BERLIS LLP

Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Sanjeev P. R. Mitra (LSO No. 37934U)

Tel: (416) 865-3085

Fax: (416) 863-1515

Email: smitra@airdberlis.com

Jeremy Nemers (LSO No. 66410Q)

Tel: (416) 865-7724

Fax: (416) 863-1515

Email: jnemers@airdberlis.com

Calvin Horsten (LSO No. 90418I)

Tel: (416) 865-3077

Fax: (416) 863-1515

Email: chorsten@airdberlis.com

Lawyers for Royal Bank of Canada