

CITATION: Royal Bank of Canada v. Peace Bridge Duty Free Inc., 2025 ONSC 4233
COURT FILE NO.: CV-21-00673084-00CL
DATE: 20250718

SUPERIOR COURT OF JUSTICE – ONTARIO (COMMERCIAL LIST)

RE: ROYAL BANK OF CANADA, Applicant

AND:

PEACE BRIDGE DUTY FREE INC., Respondent

BEFORE: Kimmel J.

COUNSEL: *Sanjeev Mitra*, for Royal Bank of Canada

David T. Ullmann, for Peace Bridge Duty Free Inc.

E. Patrick Shea, for the Landlord – Peace Bridge Authority

Robert Drake, for Cindy Beam, Employee

Leanne Williams and Rudrakshi Chakrabarti, for the Receiver

HEARD: July 2, 2025

**ENDORSEMENT
(RECEIVER’S MOTION FOR APPROVAL OF SALE OF INVENTORY
AND ITS CONDUCT AND ACTIVITIES)**

The Motion

[1] Msi Spergel inc. ("Spergel"), in its capacity as receiver, without security (in such capacity, the "Receiver") of all the assets, undertakings and properties of Peace Bridge Duty Free Inc. (the "Debtor" or the "Company") acquired for, or used in relation to a business carried on by the Debtor (the "Business") and all proceeds thereof (collectively, the "Property"), brought a motion seeking relief in two capacities that was originally returnable on June 17, 2025:

- a. Relating to its original role as court appointed Monitor, prior to its appointment as Receiver, Spergel seeks approval of the Monitor’s Third and Fourth Reports, its fees and disbursements and those of its counsel for the period February 1, 2022 to and including April 23, 2025, and the discharge of the Monitor (collectively, the “Monitor’s Discharge Relief” as detailed in paragraphs 1 (a)–(e) of the Notice of Motion); and
- b. Relating to its current role as Receiver, Spergel seeks the approval of its conduct and activities since being appointed as such, and its proposal for the sale of the Debtor’s

inventory as part of the Landlord RFP. It also seeks a sealing order over the RFP (Confidential Appendix 1 to the Receiver's First Report) pending its public release (the "Receiver's Relief").

[2] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Receiver's First Report dated June 10, 2025 (the "First Report") and the Supplement to the First Report dated June 23, 2025 (the "Supplement"), collectively, the "Reports").

[3] The Monitor's Discharge Relief was addressed by an endorsement and order dated June 17, 2025. It was not opposed.

[4] The Receiver's Relief was adjourned to a further hearing that was held on July 2, 2025. The Receiver's Relief is supported by the two primary creditors, Royal Bank of Canada, the senior secured creditor and applicant ("RBC" or the "Bank"), and the Buffalo & Fort Erie Public Bridge Authority (the "Authority" or "Landlord"), the most significant unsecured creditor and the Landlord of the Debtor. The Debtor opposes it.

The Debtor's Standing

[5] With the appointment of the Receiver, the standing of the Debtor to object to the Receiver's Relief was questioned by the Bank and the Landlord. These creditors maintain that the Debtor has no interest in the Receiver's Relief. The Debtor is insolvent. This relief is in furtherance of the creditor recovery process. In this situation, those purporting to represent the Company hold only equity positions that rank behind the significant creditor debt, with approximately \$1.9 million owing to the Bank and a minimum of \$8 million acknowledged to be owing to the Landlord (and up to \$17 million owing to the Landlord if disputed amounts are included).

[6] There is a long history to this matter, much of which involves animosity between the Debtor and the Landlord. The Receiver's Relief seeks approval for the sale of the Debtor's inventory as part of a request for proposals that the Landlord is planning to issue for the purpose of finding a new tenant for the Peace Bridge Duty Free Store (the "Landlord RFP"). In the meantime and notwithstanding the appointment of the Receiver, the Debtor and its employees continue to be involved in the operation of the duty free store because of licensing restrictions that have prevented the Receiver from taking over the management and operation of the Business.

[7] Given the long history of dealings between these parties, the Debtor's distrust of the Landlord and the unique circumstances of this case, the Debtor was permitted to make its submissions and raise its objections to the Receiver's Relief. Those objections are summarized as follows:

- a. The sale of its inventory is premature. The Debtor holds out the prospect that by the end of August 2025 the senior secured creditor, RBC, might be repaid or fully protected through other security.
- b. Even if there is going to be a sale, the inventory should not be sold through the Landlord RFP process as it would give the Landlord, with which the Debtor has been litigating for a number of years now, control over the Debtor's remaining assets (its Lease, to which its operating license is tied, and its inventory), all through a process that does not involve the

Receiver. The Debtor submits that there should be a sale process undertaken by the Receiver and that the market should be widely canvassed, particularly in light of expressions of interest from third party prospective purchasers of its Business that it has received.

- c. The Receiver's conduct and activities should not be approved because the Receiver has not taken any or sufficient steps towards the repayment of the Bank or dealing with the Landlord, nor has the Receiver adequately dealt with the regulator regarding the operating license for the duty free store in the meantime.

[8] The Debtor's objections are all premised on a theoretical scenario that ignores the Landlord's position as a significant creditor in respect of the Debtor's primary asset, the Lease. The Landlord is a significant creditor because the Debtor is in default under the Lease. The Debtor has been and remains unable to cure even its acknowledged defaults under the Lease. The Debtor is not suggesting that there is any outcome that will result in those defaults being cured; rather it suggests that either the Landlord will agree to waive them or the court will order an assignment of the Lease over the Landlord's objections and without requiring the defaults to be cured. The objections also ignore and fail to take into account the further complication that the value of the Debtor's Business is dependent upon its operating license which is, in turn, dependent on the operating Business having a lease with the Landlord.

Summary of Outcome: Receiver's Relief

[9] The Receiver's Relief is granted.

[10] The inventory is the only asset of the Debtor's that the Receiver can realize upon. The operating license is dependent upon the existence of a lease with this Landlord. The only way for the Business to continue at its current location on the Peace Bridge is under an amended lease or a new lease. The Landlord has consistently stated throughout these proceedings that it is not prepared to waive the rent arrears under the existing Lease. There is no realistic prospect that a buyer of the Business would agree to assume or take an assignment of the Lease that is in default and with a minimum of \$8 million owing in rent arrears.

[11] The Landlord requires a public RFP process before it will enter into a new lease. The sale of the Debtor's inventory as part of the Landlord's RFP process guarantees that the inventory will be purchased at cost. This is the best that the parties can hope for since the inventory is not scarce and is readily available for purchase at cost from the source wholesalers. This guarantee eliminates the risk that the Debtor's inventory might otherwise have to be liquidated for below cost, which is a possible outcome if the Receiver were to attempt to sell or return the inventory on its own.

The Debtor's Current Situation

[12] The Debtor has three assets:

- a. its Lease, which is in default;

- b. its operating license, which is dependent upon the Lease; and
- c. its Inventory, largely consisting of alcohol and tobacco from third party suppliers who are owed historical amounts but have continued to supply despite the historical payables owing to them by the Debtor, although even the current payables to these debtors are approximately \$600,000.

[13] Subsection 24(1) of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.), provides that if a person is operating a Duty Free Shop ("DFS"), a DFS license for such operations is required. The DFS license is non-transferable.

[14] The Business cannot operate from any other location. A potential operator is required to have an existing lease in place before applying to the CBSA to obtain a license (see Duty Free Shops Regulations, S.O.R./86-1072, s. 3(5); Canada Border Services Agency ("CBSA") Memorandum D4-3-2: Duty Free Shop – Licensing, s. 22. The Debtor has no business without its Lease with the Landlord.

[15] The inventory of the Debtor consists primarily of products that are not capable of being sold to the public without adhering to special regulatory requirements not available to the Receiver. The Receiver has not taken possession of the Debtor's inventory.

[16] The current license is held by the Debtor. The Business continues to be operated by the Debtor's employees under the Debtor's license. After the Receiver was appointed, the CBSA sent a license termination notice effective August 18, 2025, but it has indicated a willingness to work with the Debtor and the Receiver to allow the duty free store to remain open in the short term. All parties appear to be confident that the CBSA will not terminate the license on August 18, 2025 if there is some plan to address the Debtor's situation.

[17] The Business continues to be operated only because the Landlord is allowing the Debtor to pay less rent than is owing under the Lease. The Landlord has so far agreed with the Receiver, month to month, only to charge percentage rent to the Tenant under the Lease and not the base rent. This was a short-term accommodation reached between the Landlord and the Receiver.

[18] The Landlord has not waived its claimed rent arrears that, on its calculations, exceed \$17 million. Even on the Debtor's own calculations, the rent arrears owing to the Landlord are in excess of \$8 million (confirmed by the Receiver to be reflected in the Company's books and records). Further, the Receiver points out that the rent arrear calculations do not include some other amounts that the Debtor was obligated under the Lease to pay for capital expenditures (in 2022) or the Debtor's annual minimum \$1 million marketing spend.

[19] The Receiver cannot market and sell the operating license or the Lease, each of which could only be transferred with the consent of the CBSA and the Landlord respectively. All that the Receiver can market and sell is the Debtor's inventory, which consists primarily of tobacco and alcohol. The Receiver could try to sell the inventory to authorized purchasers (e.g., that have a CBSA license to sell duty free items) but the same inventory is readily available to those purchasers directly from source sellers. The Receiver could also try to sell the inventory back to the source sellers.

[20] If the Debtor's inventory is sold pursuant to Landlord's RFP process, that process guarantees that any new tenant will pay cost for any of the Debtor's inventory that remains on closing. Any such sale will still be subject to court approval and vesting order.

Sealing Requests

[21] The Debtor attempted to file and have sealed a confidential record containing a confidential Exhibit F that is comprised of an exchange of without prejudice settlement offers between the Landlord to the Tenant in January 2024. There was no evidence or argument provided to support the request for the court to seal this exhibit. The Landlord objected to the court doing so on the basis that it was covered by settlement privilege. The request to file this confidential exhibit was withdrawn by the Debtor at the outset of the hearing. The court only considered the publicly filed responding record from the Debtor.

[22] The Receiver asked the court to seal a confidential appendix to the First Report that describes the Landlord's RFP process (the "Landlord RFP Document"). The Landlord RFP Document contains commercially sensitive information that could be detrimental to the bidding process and could create unfairness if disclosed prior to the commencement of the Landlord RFP. It must remain confidential until the process becomes public so all potential participants have equal access to it, rather than just those who might be monitoring these court proceedings. Although the Debtor suggested that the Landlord already has a pre-selected new tenant, there is no evidence of such. The Landlord represented to the court through its counsel that it intends to conduct an open and public RFP process and wants all participants to be on a level playing field.

[23] The Receiver is only proposing that the sealing order remain in effect until notification to the Receiver that the Landlord RFP process has been initiated, at which point the Landlord RFP Document will be made public.

[24] The Court has the jurisdiction to seal the Landlord RFP Document under s. 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and may do so in circumstances such as this where: (a) there is a serious risk to an important public interest; (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the order outweigh its negative effects: see *Sherman Estate v. Donovan*, 2021 SCC 25, [2021] 2 S.C.R. 75, at paras. 38, 40; and *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 S.C.R. 522, at para. 53.

[25] Sealing the Landlord RFP Document will ensure that all parties receive information about the Landlord RFP at the same time. The commercial interests in maintaining the integrity of the Landlord RFP process and maximizing the competition in the bidding process are important public interests that would be jeopardized if the Landlord RFP Document is not sealed. The important public interest at stake is described as the commercial interests of the Receiver, the Landlord, the bidders, the creditors, and the stakeholders in ensuring a fair sales and marketing process is carried out, with all bidders on a level playing field. If one party receives the Landlord RFP before others, they could have more time to analyze the requirements and prepare a more comprehensive and competitive proposal. This could lead to an uneven playing field, disadvantaging other bidders who later receive the Landlord RFP.

[26] Accordingly, the sealing order requested by the Receiver in respect of the Confidential Appendix to the First Report is granted.

[27] It will be the responsibility of counsel for the Receiver to ensure that the sealed Confidential Appendix is provided to the court clerk at the filing office in an envelope with a copy of this endorsement and the signed order with the relevant provisions highlighted so that it can be physically sealed. Counsel who files the sealed Confidential Appendix shall also ensure that after the Landlord commences its RFP process and the Landlord RFP Document has been made public, the Confidential Appendix is unsealed and placed in the court file.

Analysis

[28] Given that only the Debtor is objecting to the Receiver's Relief, the focus of the analysis will be on its objections, in the course of which the issues raised and that need to be decided in order to grant the Receiver's Relief will be addressed. I do not accept the Debtor's objections and find that:

- a. The sale of the Debtor's inventory is not premature.
- b. The inventory is the only asset of the Debtor that the Receiver can realize upon and there is no alternative process that will guarantee that the Debtor will recover its cost of the inventory.
- c. The Receiver's conduct and activities should be approved.

a) Sale of Debtor's Inventory is not Premature

[29] The Debtor approaches this on the basis that since the Landlord has agreed to accept what the Debtor considers to be an appropriate level of rent, and the Debtor is able to meet those lesser monthly rent obligations, if this continues and those rent savings can be applied towards the amounts owing to RBC, RBC's loan can be extinguished and the receivership will be at an end.

[30] The Debtor asserts that the Bank can be repaid or will be fully secured¹ by the end of August 2025 and that would end the Receiver's mandate, so the Debtor contends that the Receiver is jumping the gun by trying to sell the inventory now.

[31] The Receiver did not have a chance to fully vet in the Debtor's cash flow provided just before the hearing. Leaving aside the questions raised about certain assumptions made by the Debtor, there is no dispute that the Debtor's suggestion that RBC could be repaid in full by the end of August based on its cash flow projections assumes that the Landlord will continue to provide rent relief, so that the

¹ The Debtor says that RBC is holding an additional approximately \$750,000 in collateral security associated with a letter of credit that the Debtor has provided but that it claims will never be called upon. The Bank does not accept the certainty with which the Debtor asserts that the Bank will be "fully protected" by the value of the collateral security for this letter of credit.

Debtor's monthly expenses remain artificially suppressed and the funds that would otherwise be used to pay the rent due under the Lease can be used to instead repay RBC.

[32] The Landlord has made it clear that the current rent relief is month to month and not guaranteed. It further asserted that it has not waived the significant rent arrears it is owed. The Landlord has distraint rights that it could attempt to exercise since there is no bankruptcy order against the Debtor. If the Debtor's inventory is distrained it will not be able to sell it to generate revenues to repay the Bank under the Debtor's hypothetical scenario of a full repayment to the Bank by the end of August 2025.

[33] Furthermore, since the Landlord is a significant creditor, the Receiver will not be automatically discharged just because RBC is repaid. The Receiver owes a duty to other creditors as well, including the Landlord.

[34] The Debtor then suggests that the problem with the Landlord could be solved if the Receiver would pursue the litigation that the Debtor commenced against the Landlord while the Receivership application was pending, seeking to reduce rent arrears claimed by the Landlord (from \$17 million to \$8 million) and to adjust the current and future rent under the Lease due to tariffs introduced by the U.S. government in 2025.

[35] The Debtor has not offered to fund this litigation. The last round of litigation between the Debtor and the Landlord lasted for over a year, and led to costs awards against the Debtor that remain unpaid of approximately \$280,000: see January 17, 2020 Endorsement; *Royal Bank of Canada v. Peace Bridge Duty Free Inc.*, 2025 ONCA 54, at para. 78. Even if successful, this new litigation will not extinguish the Debtor's significant debt owing to the Landlord.

[36] The sale of the Debtor's inventory is not premature. The Debtor needs to face the reality of its financial circumstances and the receivership.

b) The Landlord RFP Process vs. a Full Blown Sale Process

[37] The Debtor's alternative position (its first position now having been rejected) is that, if the court is going to authorize a sale process it should be for the entire Business not just the inventory, and it should be run by the Receiver, not the Landlord. However, the Receiver does not have the ability to realize on or otherwise sell or assign the other two assets of the Debtor, namely the DFS license and the Lease.

[38] The DFS license is not transferable and could only be issued to a party that already has a DFS license or would need to apply for a new DFS license. Further, a potential operator is required to have an existing lease in place before applying to the CBSA to obtain a license (see DFS Regulation, s. 3(5); Canada Border Services Agency, *Memorandum D4-3-2: Duty Free Shop – Licensing* (Ottawa: Canada Border Services Agency, 2024) , s. 22). There is no business without a lease with the Landlord.

[39] The Lease cannot be assigned without the Landlord's consent or a court order. The Landlord has made it clear throughout these proceedings that it will not consent to an assignment of the Lease without the defaults under the existing Lease being cured. If the Court were to order the assignment of the lease without the Landlord's consent, sections 84.1(4) of the *Bankruptcy and Insolvency Act*,

R.S.C., 1985, c. B-3, and s. 11.3 of the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, would guide the Court's analysis (see *Urbancorp Cumberland I GP Inc. (Re)*, 2020 ONSC 7920, at para. 35). In this context, the Court would need to consider, among other factors, (a) whether the proposed assignee is capable of performing the obligations under the assigned contract; and (b) whether it is appropriate to assign the rights and obligations to that person.

[40] Section 84.1(5) of the BIA explicitly states: "The court may not make the order unless it is satisfied that all monetary defaults in relation to the agreement - other than those arising by reason only of the person's bankruptcy, insolvency or failure to perform a non-monetary obligation - will be remedied on or before the day fixed by the court." An assignment of the Debtor's Lease is highly improbable in these circumstances given the outstanding arrears.

[41] The Landlord intends to use the Landlord RFP process to find a new tenant and operator of the duty free store. It has agreed to include a requirement in the Landlord RFP process for the successful bidder to purchase the Debtor's inventory available at the time of closing at cost. Section 18(3) of the DFS Regulations states that, "the ownership of goods in a duty free shop may be transferred to a person having a license in respect of another duty free shop, on condition that the goods are dealt with in accordance with any law relating to customs and excise, and, in the case of intoxicating liquor, in accordance with section 15." Any successful bidder in the Landlord RFP process would need to be in a position to operate the duty free store. Therefore, they would need to be CBSA-approved and in a position to buy and sell the inventory (e.g., have a CBSA license to do so).

[42] It is the Receiver's position that this is the most effective way to find a fulsome solution for there to be a duty free store on the Peace Bridge while effecting the best recovery for the Debtor's stakeholders.

[43] The Debtor's inventory and cost structure is not unusual or unique to the Debtor so the Receiver does not anticipate that any potential bidder outside of the Landlord RFP process would offer to pay a premium for inventory that it could otherwise purchase at cost. To the contrary, the Receiver explains it in the First Report that it is concerned that it will only be able to sell the inventory at less than cost to third parties, or could be subject to offset for payables if it attempted to return the inventory to the source vendors.

[44] Under either scenario, the Receiver does not see any realistic prospect of obtaining more than cost on any sale of the inventory and, faced with even a remote prospect that it could end up receiving less than cost, it recommends that the inventory be sold through the Landlord RFP process that will guarantee that the inventory is purchased at cost.

[45] The Debtor does not want the Landlord, with which the Debtor has been litigating for a number of years now, to have control over the Debtor's remaining assets (its Lease, to which its operating license is tied, and its inventory) through a sale process that does not involve the Receiver. The Debtor submits that there should be a sale process undertaken by the Receiver and the market should be widely canvassed, particularly in light of expressions of interest from third party prospective purchasers of its Business that the Debtor claims to have received.

[46] The suggestion of a broader process for the sale of the Debtor's Business and all of its assets assumes that the Landlord will continue to accept the month to month lower monthly rent amounts (which the Receiver says the Landlord has specifically not committed to do) and that the Landlord will agree to amend the Lease to lower the rent obligations for an assignee of the Debtor (which the Landlord has not given any indication it is prepared to do) and will agree to waive some or all of the past rent arrears (which the Landlord has consistently said throughout these proceedings it will not agree to do).

[47] The Landlord has advised the Receiver that it requires a public RFP process to enter into new lease terms for the Peace Bridge Duty Free Store. This is consistent with the Debtor's own experience, having participated most recently in an RFP process in 2016 to secure the existing Lease.

[48] The Debtor has provided scarce details but says there are three interested purchasers of its Business. The Debtor appears to recognize that it is unlikely that there is a third party that would be willing to take over this Lease (that the Receiver has confirmed is not profitable), and that comes with the baggage of significant rent arrears. The Debtor also appears to recognize that the CBSA license is not assignable. To overcome these obstacles, the Debtor suggests that a Reverse Vesting Order ("RVO") structure could be utilized.

[49] The Debtor acknowledges that its proposed use of an RVO structure in this way would be a novel expansion of this discretionary remedy that the court has so far applied only in limited circumstances. Here, any purchaser would need the Lease so what the Debtor is suggesting is that the historic obligations under it be left behind in ResidualCo so that a purchaser could, in effect, start afresh, very likely over the objections of the Landlord. The suggestion that it would be preferable for the Receiver to engage in a sale process dependent on a novel and likely contested use of this RVO structure is speculative and uncertain. Further, it does not resolve the problem that the Landlord's co-operation would still be required to address concerns with the Lease terms going forward with any prospective purchaser/assignee of the Lease.

[50] Even if this Lease could be left behind entirely, the license to operate the duty free store requires (among other strict ownership and other requirements) a lease with this Landlord. The Debtor's confidence that the Landlord will negotiate a new lease with a new tenant and simply walk away from its RFP process and its past rent arrears under this Lease is wholly speculative and defies commercial logic.

[51] The Debtor complains that the Landlord RFP process is purporting to market an interest that currently belongs to the Debtor under its Lease, namely the right to occupy the DFS premises on the Peace Bridge. The Landlord and the Receiver recognize that if the Landlord's RFP process identifies a new potential tenant for the Premises (that will buy the Debtor's inventory at cost), the Landlord and/or the Receiver will have to take steps to disclaim or terminate the Debtor's existing Lease. That will be in an issue for another day. It has never been suggested that the Landlord will enter into a lease with a new tenant without first dealing with the existing Lease with the Debtor.

[52] The Debtor complains that it will be excluded from participating in the Landlord's RFP process. The Landlord confirmed that the Debtor will be disqualified from participating in the RFP process, for among other reasons because the Debtor has not paid the outstanding rent arrears or costs awards owing to the Landlord and has sued and is threatening to sue the Landlord. These are not

disqualifications that were created for the purpose of disqualifying the Debtor; they are standard disqualifications that the Debtor is subject to because of its past dealings with the Landlord. In any sale process, the Landlord is going to have the right to approve the new tenant.

[53] The Debtor complains that at least one of the unidentified interested parties that it has been dealing with will be excluded from participating in the Landlord's RFP process because it is not a Canadian owned entity. Section 3(3) of the Duty Free Shop Regulations restricts foreign ownership of the holders of the CBSA licenses. The Landlord RFP process is tied to the CBSA license to sell duty free goods and thus precludes participation of any foreign owned entities that would not be qualified to be granted a CBSA license. As long as they meet the licensing qualifications, the prospective purchasers that the Debtor says have contacted it could participate in the Landlord RFP process. If they do not meet the licensing requirements then they cannot participate in the Landlord RFP process and also would not be able to purchase the Debtor's Business of operating a DFS even if the Receiver had the ability to market and sell it.

[54] This motion is concerned with the asset that the Receiver has the ability to market and sell: the Debtor's inventory. It is not uncommon for a receiver to enlist the assistance of someone better situated to market and sell an asset that is under receivership. In this case it is the Landlord that is uniquely situated to include a requirement in the Landlord RFP for prospective new tenants to purchase the Debtor's inventory at cost since this inventory is the only asset of the Debtor that the Receiver is able to sell and it is tied to a CBSA license that is, in turn tied to the Lease.

[55] The Receiver and the Bank suggest that the approval sought by the Receiver's Relief regarding the proposed sale of inventory through the Landlord RFP process should be considered by the court and assessed with regard to the factors in *Royal Bank of Canada v Soundair Corp.* (1991), 4 O.R. (3d) 1 (C.A.). This analogy is apt.

[56] When applying the *Soundair* principles to a proposed sale process the court must assess: (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 proposed process will optimize the chances, in the circumstances, of securing the best possible price for the asset(s) to be sold: see *Choice Properties Limited Partnership v. Penady (Barrie) Ltd.*, 2020 ONSC 3517, at paras. 14 -16.

[57] The Landlord RFP would be a fair and transparent way in which to sell the Debtor's inventory. There is no reason for concern about the sale procedure's integrity or commercial efficacy. The Receiver is of the view that the arrangement with the Landlord to require the successful bidder in the Landlord RFP process to buy the inventory at cost would net the highest realization for the stakeholders and is commercially reasonable in the circumstances.

[58] RBC supports the Receiver's recommendation and urges the court to do the same and defer to the Receiver's business judgement on how best to realize upon the available assets of the Debtor in these unique circumstances.

[59] I am satisfied that the Receiver's recommendation that the inventory be sold as part of the Landlord RFP process has been made fairly, after considering the interests of all stakeholders, including those of the Debtor. In such circumstances, the court will ordinarily defer to a

recommendation made by a receiver: see *Marchant Realty Partners Inc v. 2407553 Ontario Inc.*, 2021 ONCA 375, at paras. 15, 19. No good reason to depart from that practice has been presented here.

[60] Importantly, the court is not being asked to approve the RFP process as it relates to the solicitation of a new tenant by the Landlord. However, if that process results in a transaction involving any aspect of the Debtor's Property, including the inventory or the Debtor's right to occupy the leased premises under the existing Lease, it is expected that court approval will be sought, for example to vest the inventory in a purchaser and to deal with the Lease, whether it be to lift the stay to allow the Landlord to terminate the Lease or to approve a disclaimer of the Lease by the Receiver.

c) The Receiver's Conduct and Activities

[61] Although the Debtor is careful to say that it is not accusing the Receiver of malice, it accuses the Receiver of various misconduct outlined in paragraph 43 of its factum. For example, the Debtor accuses the Receiver of interfering with the Debtor's negotiations with prospective purchasers, despite having only advised the Receiver about one of them before this motion and maintaining that they cannot be identified so the Receiver still does not know who they are.

[62] The Debtor also criticizes the Receiver's dealings with the CBSA, faulting the Receiver for contributing to the CBSA's decision to deliver the termination notice that was recently delivered and raising concerns based on hearsay evidence about a recent meeting with the CBSA that the Receiver attended and that the Receiver directly contradicts in its Reports. The Debtor's criticisms of the Receiver's handling of the CBSA after the Receiver was appointed are difficult to reconcile with the Debtor's own failure to present any evidence of having notified the CBSA about the possibility of the appointment of a receiver dating back to the commencement of this application in the fall of 2021 and through the ensuing years that the application was pending (the court's surprise about which was noted in the April 8, 2025 endorsement at para. 23).

[63] The Debtor is also concerned with lack of initiative on the part of the Receiver by not acting to address concerns associated with U.S. tariffs with the Landlord. The Receiver says that it has done so on a temporary basis by negotiating the month to month arrangement for the Landlord to only charge percentage rent under the Lease.

[64] All of the listed concerns of the Debtor are speculative and have not been substantiated. Many of the other points of criticism have to do with the Receiver's failure to report upon matters that the Receiver has explained would not ordinarily be the subject of a report regarding a proposed sale process, such as the anticipated timing of recoveries for secured creditors. Other concerns have to do with the fairness of the Landlord RFP process; however, neither the Receiver nor the Landlord were seeking the court's approval of that process, which the Landlord has run on previous occasions and the Debtor has participated in and emerged as the successful tenant.

[65] The fact that the Receiver is proposing to piggyback the sale of the Debtor's inventory on a process happening outside of the Receivership does not require the Receiver or the court to review the overall fairness of that process in terms of the Debtor's or its proposed purchaser's ability to participate in it. As was pointed out by the Receiver and the Landlord, the Debtor does not have a right to redeem the inventory in this situation so its ability to participate in the Landlord RFP process,

insofar as it impacts its ability to buy back its inventory, is not a concern, and its ability to participate in that process more broadly is not a matter that the Receiver or the court can or should become involved in.

[66] As a general matter, I note that criticisms of a court appointed officer should not be made lightly. They are a serious matter. While the Debtor says it is not attacking the motives of the Receiver, many of its criticisms go beyond attacks on how the Receiver has carried out its duties. These types of attacks should not be made unless they can be substantiated.

[67] The complaints the Debtor has raised about the conduct of the Receiver as a basis for not approving the conduct and activities in the Receiver's Reports are all tied to its opposition to the approval of the sale of the inventory through the Landlord RFP process. Since that opposition was not successful, the grounds for opposing the approval of the Reports largely fall away.

[68] The Receiver's conduct and activities set out in its Reports appear to have been conducted within the ambit of its powers granted by the Appointment Order and to achieve an outcome that is as orderly, effective and fair to all stakeholders as possible. There is no basis upon which to find, as the Debtor asks the court to do, that they were not undertaken in good faith in furtherance of the Receiver's mandate.

[69] It has become the practice of the court to periodically approve the activities of its court appointed officers to ensure that their activities are being conducted in a prudent and diligent manner, and to ensure the stability of ongoing insolvency proceedings. It is within the court's inherent jurisdiction to do so: see *In the Matter of The Body Shop Canada Limited*, 2024 ONSC 3882, at para. 27, citing *Target Canada Co. (Re)*, 2015 ONSC 7574, 31 C.B.R. (6th) 311, at paras. 22-23.

[70] The approval of the Reports and the activities of the Receiver described therein has been made subject to the standard qualification that has become the Commercial List practice to include in these types of orders, limiting reliance upon this approval to the Receiver. The Reports are approved.

Order

[71] The proposed form of approval order in respect of the sale of the inventory through the Landlord RFP process is consistent with the Commercial Court standard form of order for this type of approval. So as to avoid any confusion, I have removed the word "sale" from heading over paragraph 3, to make it clear (as is the intention) that all the court is approving right now is the marketing of the sale of the inventory as part of the Landlord RFP process. Paragraph 4 has been revised to reflect it is just the method of marketing for sale that is the subject of this order. The sale approval will be sought at a later time if there is a successful transaction.

[72] I have also removed the word "decisions" from paragraph 5 of the proposed form of approval order as that was not part of the relief sought in the Notice of Motion and is not typically included in orders approving the conduct and activities of receivers, and the addition was not specifically addressed in the Receiver's submissions.

Costs

[73] The Debtor's opposition to the Receiver's Relief is another "Hail Mary" by the Debtor, consistent with its conduct throughout as described in paragraph 34 of the court's April 8, 2025 endorsement, as follows:

[34] While the Debtor and its employees argue that the court should strive to recognize and protect the interests of RBC without the effective liquidation of the business and the loss of forty jobs, they have not demonstrated that there is any viable way to do this. The Debtor just keeps coming back with suggestions for how it might be able to make arrangements to satisfy RBC if it is given more time, but then when given the additional time, it is not able to do so. It now asserts that it "has sufficient cash collateral to repay almost all of its debt" to RBC, but that is not good enough from RBC's perspective, nor does it address the significant debt that the Debtor owes to its Landlord.

[74] This repeated pattern of coming to court at the last minute to ask for more time to repay RBC to avoid the receivership and its implications, all the while ignoring the significant debt owed to the Landlord, is costly for all of the stakeholders. This might be grounds for a costs award to be made against the Debtor. However, the only parties that filed materials on this motion were the Debtor and the Receiver. While the Debtor's objections have not been substantiated and it did add to the cost of the proceedings for the parties to have to come back for a second attendance for this approval, it is the Receiver's role to justify its recommendations to all stakeholders and this is an unusual situation that warranted some consideration, even if not for the reasons identified by the Debtor.

[75] I have determined in the exercise of my discretion under s. 131 of the *Courts of Justice Act* and Rule 57, having regard to the relevant factors and given my extensive knowledge of the history of these proceedings, that there should be no costs ordered payable by the Debtor for this motion.

[76] The Debtor's costs (costs of counsel representing the Debtor presumably under the instruction of its shareholders) shall not be funded out of the assets of the Company under the management and control of the Receiver. The Receiver's costs may be. The Landlord and RBC did not file materials but they may have contractual recourse for recovery of their costs, about which no finding is made one way or the other.



KIMMEL J.

Date: July 18, 2025